# RIGHT OF WAY MANUAL OF INSTRUCTIONS

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Table of Revisions

| Revision Effective Date | Chapter | Section | Page | Revision Notes |
|---|---|---|---|---|
| 07/01/2011 | 4<br>5 | 4.2.6<br>5.3.5 | 10<br>15 | Legislation enacted-Maximum waiver amount increased to $25,000. When offers between $10,000 and $25,000 are based on waivers, the agent must inform the landowner that their offer is based on a waiver and that they are entitled to an appraisal if they so desire |
| 07/01/2011 | 4 | 4.2.10 | 12, 13 | Legislation enacted-Notice of Intent certified delivery no longer required |
| 07/01/2011 | 5 | 5.2.2 K<br>5.3.5 | 7<br>14 | Legislation enacted-Copy of all approved appraisals or BARs performed in approximately the same time frame (within six months) and for the same areas of acquisition/easements provided to landowner |
| 07/01/2011 | 5<br><br><br><br><br><br>7<br><br><br>8<br>8, Att. 2<br>9<br>Appx. A | 5.3.2<br>5.6.7<br>(item 11)<br>5.9.7<br><br><br>7.6.9<br>(item 6)<br><br><br>8.2.8<br>VI<br>9.1.2 | 10<br>47<br><br>69, 70<br><br><br>61<br><br><br>8<br>8<br>1<br>3 | Legislation enacted - title of "Commowealth Transportation Commissioner" changed to "Commissioner of Highways" |
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# RIGHT OF WAY AND UTILITIES DIVISION

# RIGHT OF WAY
# MANUAL OF INSTRUCTIONS

## THIRD EDITION
## January 1, 2011

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# CHAPTER 1 – INTRODUCTION

## Section 1 – Introduction

### 1.1.1 Introduction to this Manual

The intent of this manual is to detail policy and procedures relating to the activities of the acquisition of right of way and its disposition for the Commonwealth of Virginia. Federal Highway Administration staff provides oversight in the development and implementation of all policies and procedures defined in this manual to ensure the Virginia Department of Transportation's (VDOT's) compliance with federal mandates. Staff and consultants contracted to perform right of way work will use the manual as a reference tool in their daily work activities. Any deviation from this manual needs to be fully documented and maintained by the Regional Office with copies sent to the Central Office. The appropriate Program Manager in the Central Office is to be notified if this deviation could result in a substantial impact on the laws governing the acquisition or disposition of right of way.

Functions involved in the acquisition and disposition processes are divided as sub-sections in the manual. Any questions regarding information contained in the manual or interpretation of information in the manual should be directed to the appropriate Program Manager in the Central Office.

Information in the manual will be updated as necessary to ensure our compliance with state and federal laws/regulations. The Director of the Right of Way and Utilities Division (Director) may issue Instructional Memorandums to supplement or change the policies and procedures contained in this manual. These Instructional Memorandums (IM) will be effective immediately and will remain in effect until the manual is updated and the IM is voided. The Director has the sole authority within the division to approve a modification to this manual.

### 1.1.2 Introduction to Right of Way Functions

Acquisition of right of way for the construction and/or improvement of Virginia's highways is a complex, sensitive process that incorporates the talents of a highly specialized professional staff. They must have experience in their functional areas, have

a demonstrated ability to analyze and evaluate situations to arrive at a win-win resolution, and be able to interact with individuals at all levels effectively.

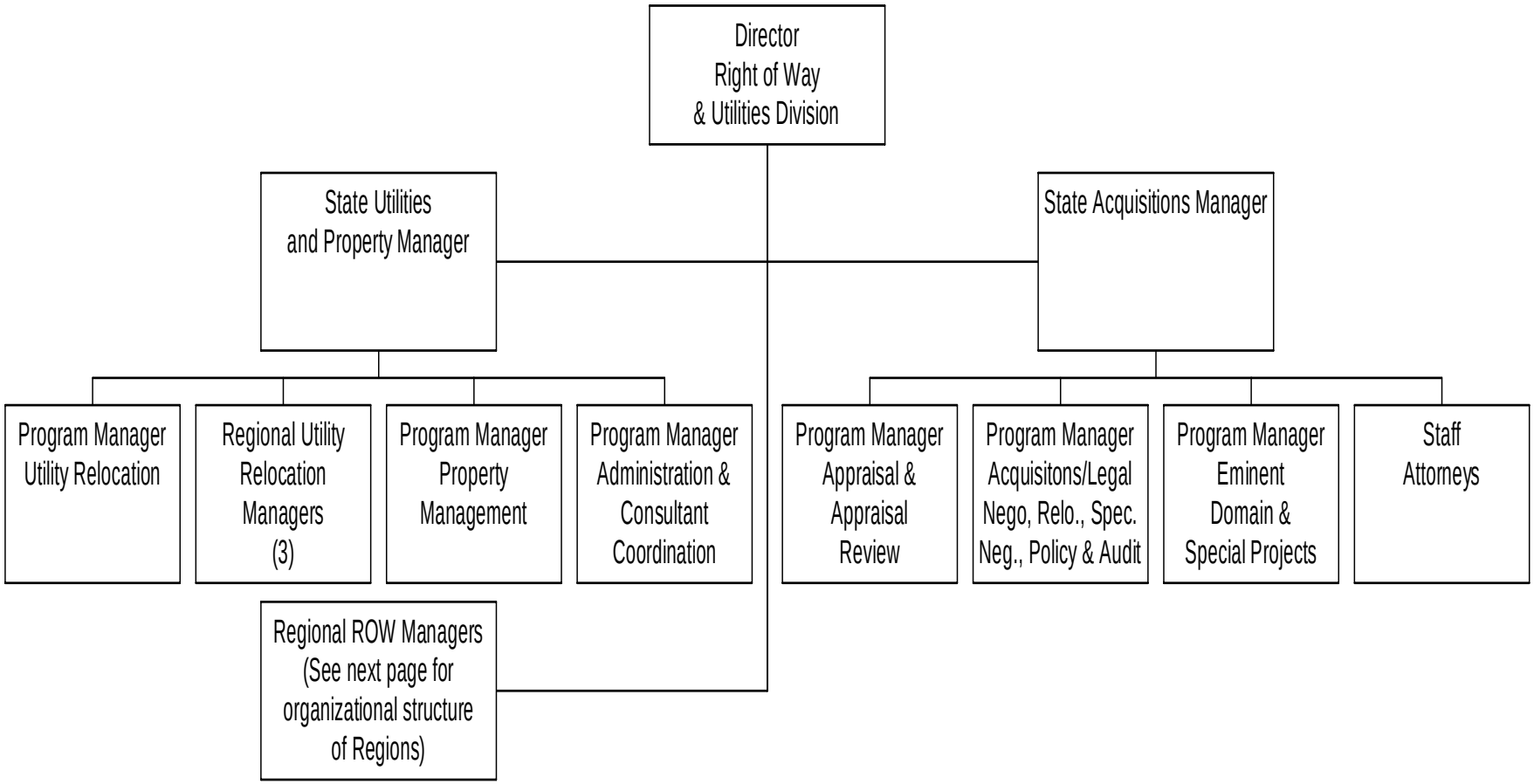
The right of way process is highly controlled by various laws and regulations. Compliance is required with most of the substantial body of law that governs private real estate transactions. In addition, state and federal laws apply that are specific to public-funded programs that are subject to use of eminent domain that may cause displacement of residents and businesses. These statutes assure the citizens of the Commonwealth affected by the right of way process are treated fairly and equitably. They also provide VDOT the authority to ensure right of way can be delivered expeditiously at fair market value.

Functional areas of right of way include Negotiation, Legal, Appraisal, Relocation, Utilities, and Property Management. All of these areas have a Program Manager located in the Central Office. They are charged with developing and implementing policy in accordance with federal/state laws, providing guidance and interpretation, leadership, training, and performing quality assurance reviews on work completed by district staff and consultants. Other programs within the Central Office are Reimbursement, Special Projects, Project Scheduling and Certification, Special Negotiations, and Consultant Contracting. The Program Managers report to two Assistant Division Administrators designated as the State Acquisitions Manager and the State Utilities and Property Manager, who report to the Director.

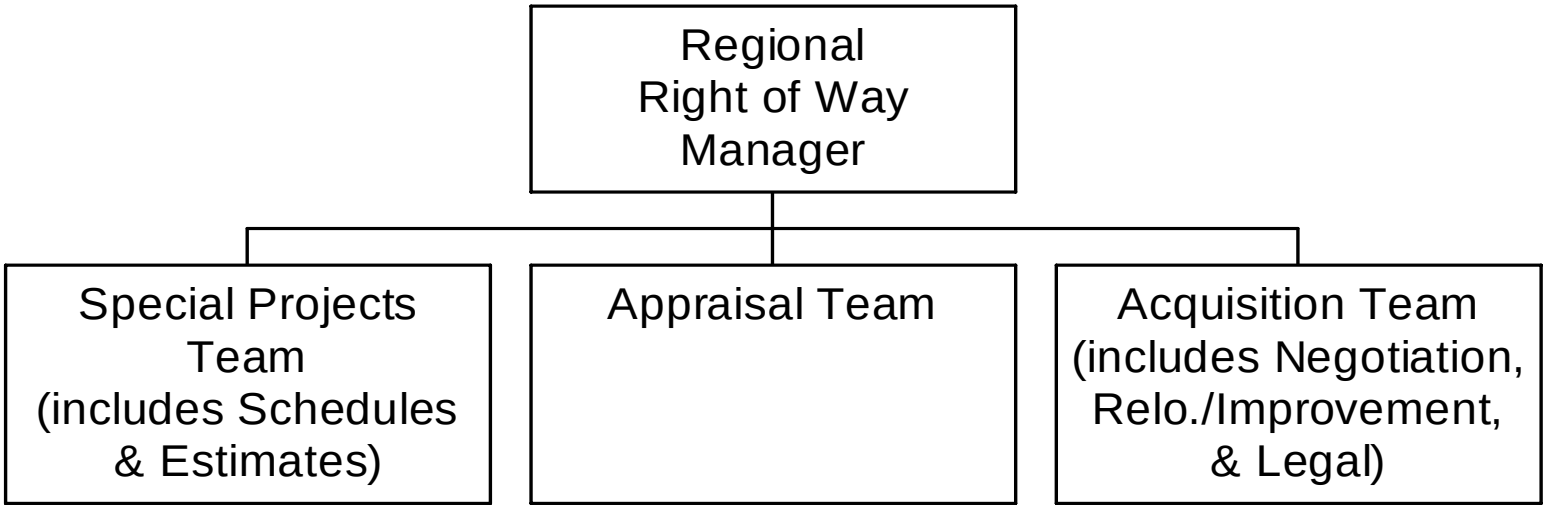
Policies and procedures concerning utilities and utility relocations are contained in the separate VDOT Utility Manual available online at www.virginiadot.org.

An organization chart for the Central Office is provided on the following pages to illustrate the organizational structures described above.

## Central Office
## Right of Way and Utilities Division



# Central Office
# Right of Way and Utilities Division
# Regional Offices



VDOT is divided into nine construction districts and a Central Office. The Right of Way and Utilities Division is organized into three regional offices and a Central Office. Each of the nine districts has a working relationship with a regional right of way and utility office that is responsible for performing daily activities of right of way and utilities. Each one of these right of way regions has a Manager who reports to the Director.

Following is a list of VDOT Regional and central Right of Way and Utilities offices with addresses, location instructions and contact telephone numbers.

**Virginia Department of Transportation Offices**

| ADDRESS | LOCATION | PHONE |
|---|---|---|
| **Central Office**<br>1401 E. Broad St.<br>Richmond VA 23219 | I-95 – Exit 74 | 804-786-2923<br>Director, Right of Way and Utilities Division |
| **Northeast Region (includes Culpeper, Fredericksburg & Northern Virginia Districts)** | | |
| 4975 Alliance Dr.<br>Fairfax, VA 22030 | VDOT/VSP Admin. Bldg.<br>0.1 mile North of intersection of W. Ox Rd. (Route 608) & Lee Hwy. (Route 29) across the street from Costco Plaza | 703-259-2986<br>Regional Manager |
| **Southeast Region (includes Hampton Roads & Richmond Districts)** | | |
| 1700 North Main St.<br>Suffolk VA 23434 | On Route 460 in the City of Suffolk | 757-925-2527<br>Regional Manager |
| **Western Region (includes Bristol, Lynchburg, Salem & Staunton Districts)** | | |
| P.O Box 3071<br>731 Harrison Ave.<br>Salem, VA 24153 | I-81 exit 140,<br>Route 311 South,<br>left on Cleveland, right on Craig, left on Harrison | 540-387-5366<br>Regional Manager |

### 1.1.3 Right of Way Staff

Staff assigned to Right of Way and Utilities and consultants who perform services for the Division are held to a very high standard. They must display ethical behaviors, professionalism, and have knowledge of not only right of way and utilities but also a general understanding of all preliminary activities to meet and interact with landowners. As they interact with these individuals, they must reflect a positive image of VDOT, as they are often the only contacts during the project. Normally, staff work independently in the performance of daily activities but will consult with management in unusual situations to obtain guidance.

The staff's main focus during the acquisition process is protecting the rights and interests of property owners and displacees, meeting the scheduled advertisement date and maintaining stewardship of public funds used for transportation purposes.

### 1.1.4 Work Environment

It is the policy of VDOT and the Right of Way and Utilities Division that the working environment be free of hostility, intimidation, harassment or discrimination against any person on the basis of race, color, religion, national origin, political affiliation, sex, age, martial status or disability. All staff will strive to follow the employment policies that have been developed by the Department of Human Resource Management and VDOT.

### 1.1.5 Outside Employment

Employees may not engage in any other employment in other agencies, outside of state service, in any private businesses or in the conduct of professions, either

A. During the hours for which they are employed to work; or

B. Outside their work hours—if such employment is deemed by VDOT to affect employees' work performance or to be in violation of the Virginia Conflict of Interest Act.

According to agency policies, employees are required to notify VDOT of outside employment. VDOT may deny employee requests for engaging in outside employment based on the criteria above [(A) and (B)].

No property belonging to or under contract to the Commonwealth may be used for outside employment activities.

### 1.1.6 Political Activities and Conflict of Interests

Neither an actual nor apparent conflict of interest should exist when a VDOT officer or employee takes an active role in politics. The following activities are prohibited under this policy:

- Being a candidate for elective public office in a partisan election (an election in which at least one of the candidates nominated or elected represents a political party whose candidates received electoral votes in the previous presidential election)
- Serving as a delegate, alternate or proxy to a political party convention
- Holding office in a political club or party, or managing political rallies, meetings or clubs
- Taking an active role in a candidate's campaign, such as making speeches and managing campaign activities
- Distributing, initiating or circulating campaign material or nominating petitions in a partisan election
- Working to register voters in a partisan election
- Soliciting, either from State employees or local officials, the payment, contribution or loan of any thing of value to a party committee, group, agency or person for political purposes. Examples include
    - Political contributions

- Tickets to political fund-raisers

- Using one's official authority or influence to interfere with or affect the result of a nomination or election for office

### 1.1.7 Freedom of Information Act

All public records in the possession of VDOT, except those specifically exempted from the Act or those exempted by other statues in the Code of Virginia, will be made available to citizens of Virginia upon request. This request for records must be reasonably specific and in accordance with § 33.1-16 of the Code of Virginia.

Individual property owner or tenant files are not subject to disclosure under the Act until the time frame in § 33.1-16 has expired. Prior to releasing any right of way records, contact the Central Office or the District Administrator for guidance.

### 1.1.8 Title VI

VDOT and the Right of Way and Utilities Division are the recipient of federal financial assistance in the construction and maintenance of Virginia's highways. As such, we are required to comply with Title VI of the Civil Rights Act of 1964, as amended, and all nondiscrimination laws and authorities in our interactions with landowners. Title VI prohibits agencies receiving federal-funds from discriminating against anyone on the grounds of race, color, national origin, sex, age or disability.

### 1.1.9 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended

This Act prohibits unfair and inequitable treatment of persons displaced on federal and federally assisted programs and projects. Ensuring equitable practices in the allocation of benefits and services to beneficiaries affected by state and federal programs and projects is our priority.

### 1.1.10 Executive Order 12898

"Federal Action to Address Environmental Justice in Minority Population and Low-Income Populations" requires agencies receiving federal funding to achieve

environmental justice as part of its mission in identifying disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations.

### 1.1.11 Code of Ethics

The Right of Way and Utilities Division subscribes to the Code of Ethics of the International Right of Way Association (IRWA), which is quoted below:

"Recognizing the responsibility of our profession to the people and business of our country, we do hereby adapt the following CODE OF ETHICS for our constant guidance and inspiration predicated upon the basic principles of truth, justice and fair play.

- To show faith in the worthiness of our profession by industry, honesty and courtesy, in order to merit a reputation for high quality of service and fair dealing
- To add to the knowledge of our profession by constant study and to share the lessons of our experience with our fellow members
- To build an ever increasing confidence and good will with the public and our employers by poise, self-restraint and constructive cooperation
- To ascertain and weigh all of the facts relative to real properties in making an appraisal thereof, using the best and most approved methods of determining the just and fair market value
- To conduct ourselves in the most ethical and competent manner when testifying as an expert witness in court as to the market value of the real properties, thus meriting confidence in our knowledge and integrity
- To accept our full share of responsibility in constructive public service to the community, state and nation

- To strive to attain and to express a sincerity of character that shall enrich our human contacts, ever aiming toward that ideal – 'The practice of the Golden Rule'."

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# CHAPTER 2 - PRELIMINARY RIGHT OF WAY STAGE

## Section 1 - General

### 2.1.1 Preliminary Engineering - Right of Way Stage Defined

The preliminary engineering - right of way stage of project development includes those activities that are performed by the Regional Right of Way Office before approved right of way plans are completed on property to be acquired. Elements in the preliminary stage include the following: project pre-scoping, scoping, right of way estimates, right of way plan development, field inspections, public involvement and public hearings and meetings, preparation of title information, assembly of market data and, where appropriate, appraisals. These elements will be discussed in detail in this chapter except title information, which is addressed in Chapter 3 and appraisals, which are addressed in Chapter 4.

The products produced during the preliminary engineering - right of way stage are the right of way plan, relocation plan, Relocation Assistance Report, title reports or summaries, a list of buildings and structures with assigned D numbers and, where appropriate, appraisals. Information secured during the preliminary engineering - right of way stage contributes to the content of the environmental assessment or impact statement.

### 2.1.2 Objectives of Preliminary Engineering Activities

The purpose of preliminary engineering stage activities is to obtain and analyze information that is necessary to develop project plans and to later perform acquisition and relocation in a timely, effective manner. The appraiser, negotiator, relocation agent and property manager rely on information embodied in one or more of the preliminary stage products. Another important objective is to contribute to the evaluation and mitigation of environmental and property impacts caused by the proposed project. It is important to collect right of way information relating to acquisition and displacement impacts in the project area, such as impacts on employment, neighborhood cohesion, housing availability, environmental justice issues, and community tax base.

### 2.1.3 Acquisition and/or Relocation Incentive Programs

In the appropriate situation, the right of way schedule can be shortened significantly by utilizing a right of way acquisition and/or relocation incentive program. Such incentive programs can be customized for a specific project to maximize the time required to clear right of way and, in most instances, reduce the administrative, acquisition and legal costs.

If the Regional Manager feels that an incentive program should be considered, a request should be made to the Director. If the Director concurs, he will obtain approval from the FHWA. If approved, the Director will provide the Regional Manager with specific criteria and requirements that must be strictly followed in implementing the incentive program. An incentive program must be uniformly administered so that all landowners and displacee's receive fair and equitable treatment.

Additional information, advice and assistance regarding an Acquisition or Relocation Incentive Program or its implementation can be obtained by contacting the Acquisition/Legal Section.

## Section 2 – Right of Way Plans & Estimates

### 2.2.1 General

There are plans showing property data at every project stage. Large-scale plans, based on aerial photos that show the proposed right of way in relation to houses and other improvements, are needed to display at public meetings and hearings. Detailed plans and plats showing property lines, proposed right of way lines, acquisition and residue areas, and all improvements are needed for the appraisal and acquisition functions. It is critical that right of way information be reflected on plans as early as possible and that topographical and improvement data is accurate and complete. Omissions and errors on plans or plats that are not identified until negotiations have begun with the property owner may cause significant delay and added cost. It is also critical that the right of way cost estimate be carefully prepared to include estimates for **all** items that will be charged to a right of way cost center.

### 2.2.2 Data Needed for Planning

The planning for highways to be constructed on new location will typically include two or more alternative alignments for segments of the proposed highway corridor. The corridor will usually be shown on aerial mosaics or maps drawn from aerial photographs. These maps may not include property lines, property owner names, or acreage areas.

For new projects that are improvements to existing highway locations, the plans will show property data based on the latest survey or at least the information from when the highway was last improved. These plans should be updated by the Location and Design Division's Survey Section to show recent development and ownership changes.

Right of way and utility data and estimates are needed incrementally at various stages during the development of a highway project. These correspond to specific points in the planning and design process commencing at project scoping and continuing through the location stage public hearing (when applicable), design stage public hearing, and right of way acquisition. The VDOT Project Manager will request the right of way data needed and specify a reasonable completion deadline. The request will be in writing, usually on Location and Design Form PM-104.

The data and estimates that Right of Way and Utilities needs to furnish at various times will include:

- Right of way and utility cost estimates. [PCES Form (Project Cost Estimation System)]
- Conceptual Stage Relocation Report and Estimates (as required). (See Chapter 6 Section 2)
- Utility Adjustment Estimates. [PCES Form (Project Cost Estimation System)]
- Tax loss estimates. [Form RW-241 (RUMS Form CE3)] (provided to Environmental Division).
- Recommendations on how to deal with observed improvements such as wells, septic systems, etc. that are located outside the proposed right of way where their value or use might be affected by the project..
- Encroachments on existing or proposed right of way.

The above noted PCES Form can be found on VDOT'S Intranet Web site at http://isyp/scoping/ces_search.asp.

### 2.2.3 Preparation and Submission of Data

Regional right of way personnel who prepare the data and estimates will make an on-the-ground inspection of affected properties to determine their present use, development, and improvements. It should be noted when development or utility facilities have been constructed since the aerial photograph was taken or previous plan was developed. In addition, installations may be present that may not be identifiable from photos. This includes, in particular, storage tanks, wells, cisterns, irrigation facilities, and out buildings.

It may be necessary for the Regional Utility Manager or the Utility Relocation Coordinator, as appropriate, to consult with local utility owners to determine estimates for utility facilities, particularly underground facilities not shown on study plans.

Detailed notes used in preparation of estimates and data will be kept by the Regional Right of Way Office. These records serve to document the estimates. They also assist preparation of estimates on future projects at the same location.

After the right of way estimates have been prepared, it is the responsibility of the person who prepared the estimate to ensure that all preliminary engineering, utility, and property data are entered into RUMS. They will also ensure that a copy of the estimate is forwarded to the Project Scheduling and Certification Section. It is not necessary that the dollar values be shown in RUMS but the number of parcels, relocations, utility owners involved, and estimate date should be entered and updated.

### 2.2.4 Surveys

The Department (normally through the District Location and Design Section) will perform a survey of property on the project right of way after the Commonwealth Transportation Board approves the location. The survey will identify property lines, ownership, major improvements, topographical data, sanitary drain fields, wells and utilities affected by the project. As the survey work proceeds, property survey data and copies of property plats will be forwarded to the Regional Right of Way Office. These will be used to prepare the necessary appraisals. The completed survey will be available in computer aided design (CADD) format and Falcon.

### 2.2.5 Distribution of Preliminary Plans

The Location and Design Division will place into Falcon preliminary plans needed for information or performance of studies. When necessary, prints of these plans can be provided to all stakeholders without access to Falcon to include the following: utility owners, local governments and planning departments, and all participants in the field inspection.

## Section 3 – Right of Way Estimates & Field Studies

### 2.3.1 Components of Right of Way Estimates

Right of way estimates are prepared to identify funding needs for projects. Although others may request estimates, those requests are usually made by the VDOT Project Manager.

1. **Right of Way Estimate – Web Site – Project Cost Estimation System (PCES Form) will be used to compile a** lump sum estimate to include all items that will be charged to a right of way cost center. The right of way estimates are comprised of the following components:

   a. **Preliminary Engineering (9101 Phase) –** The estimate will include costs anticipated to be incurred for Preliminary Engineering. This amount should be adequate to cover all right of way costs (including administrative time) prior to Notice to Proceed for Right of Way and/or Utilities, such as scoping estimates, Preliminary Field Inspections, Field Inspections, Public Hearings, Information Meetings, etc. Adequate costs will be included in this portion of the estimate to cover appraisals and titles when performed prior to Notice to Proceed for Right of Way and/or Utilities.

   b. **Acquisition (9102 Phase)** – The estimate should include all acquisition costs. This amount should be adequate to cover costs for land, improvements, and damages. It should cover the administrative costs of acquisition, all labor including attorney fees and incidental expenses related to the acquisition, title examinations, closings, appraisals, and negotiations from Notice to Proceed for Right of Way and/or Utilities through project closing. The estimate also should include a

component to cover condemnation costs, including attorney's fees, expenses, expert witness fees, internal labor, anticipated increases in awards and settlements and interest on awards. In addition it should include demolition contracts (including demolition inspector charges), survey charges for right of way stakings, hazardous material removal, and preliminary property management costs up to the point where the Property Management Section assumes responsibility for leasing, selling or managing the property.

c. **Relocation Assistance –** The estimate should include costs for the number of families, businesses, farms, non-profit organizations, and personal property that are being affected. This amount should be adequate to cover all relocations costs. It also should include the cost of cable TV relocations.

d. **Utility Adjustments –** The estimate will include costs for utility adjustments, if applicable. This amount should be adequate to cover project costs, including a 10% contingency, Utility Preliminary Engineering (all utility costs prior to Notice to Proceed for Right of Way and/or Utilities), Utility Plan Review, Construction Inspector and Survey charges. Additionally, it should cover Utility Owner Costs and, if known, costs of work to be included in plans as construction costs.

e. **GRAND TOTAL –** The estimate should include a Grand Total of all Right of Way, Relocation Assistance, and Utility Right of Way Costs (excluding Utility Owner Costs and Utility Construction Costs).

2. **Relocation Assistance Report –** This provides an estimate of relocation costs and impacts for each proposed alignment. Information is secured from visual observation and secondary sources such as census data or community organizations. Details on the Relocation Report are found at Chapter 6, Section 2.

3. **Utility Adjustment Estimate – PCES Form (Project Cost Estimation System) –** A lump sum estimate, separately indicating amounts that are project costs and utility owner costs. Refer to VDOT Utility Manual, Chapter 4, Section 5 for detailed instructions about this estimate

4. **Tax Loss Estimates – Form RW-241 (RUMS Form CE3) –** An estimate of loss of tax revenue to local taxing authorities that is caused by right of way acquisition. It is determined by multiplying the Right of Way Taking Estimate [PCES Form (Project Cost Estimation System)] by the average effective true tax rate for the county or city involved. The tax rate is derived from the latest listing published by the Virginia Department of Taxation. This listing is published every two years and is obtained from the office of the State Tax Commissioner. The latest tax rates may also be obtained from the Assessor in each county or city or the Virginia Department of Taxation Web site at http://www.tax.virginia.gov/site.cfm?alias=LocalTaxRates (this site lists the tax rates beginning with 1999). In addition the estimate will include the total acreage involved of every use classification (commercial, residential, etc.) The total acreage to be acquired in each jurisdiction is also determined.

5. **Recommendations –** Persons making the field observations will observe and report on a variety of social and economic characteristics that will be useful in completing the environmental assessment that is performed for the project. These are described in the following sub-section (2.3.2).

### 2.3.2 Social and Economic Factors

Right of way acquisition and displacement from homes and businesses frequently cause social and economic impacts to persons displaced and to the general community in the vicinity through which the highway passes. Persons making the field observations for preparation of right of way data and estimates should be observant of the following community characteristics and possible project impacts:

1. Concentration of minority, low income, or elderly residents and families.
2. Indications of a cohesive neighborhood being bisected by a highway alignment.
3. Disproportionate displacement of low income, minority, or elderly residents because of the project.
4. Dependency of a large number of residents on public transportation to travel to work, schools or shopping.

5. Acquisition of businesses that provide employment to a significant number of community residents, or are the sole retail source for a product or service, or will diminish the viability of a shopping district.

6. Acquisition of community resources, such as health or recreation facilities, parks, churches, or schools.

7. Diminished access to the above community resources caused by the proposed highway location.

8. Acquisition of housing of a type that is in short supply, such as those that accommodate large families or rental housing for moderate income residents.

9. Presence on the project of residents with special needs, such as non-English speaking families or handicapped residents dependent on special services available nearby.

In some instances, it may be appropriate to talk with local officials, community leaders, local planning officials, business leaders, or citizens having special insight and knowledge of the community.

Conditions such as those related above will be reported in the right of way study along with appropriate conclusions and recommendations. Information about the community and the effects of the proposed highway can contribute to a more complete assessment of the social and environmental impacts within the context of a study of overall environmental impacts.

### 2.3.3 Environmental Justice

Presidential Executive Order 12898, dated February 11, 1994, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations* requires a special focus in transportation planning on environmental and human health conditions affecting minority and low income populations. This places stronger emphasis on conditions that have previously been a concern in environmental studies for proposed projects. Right of way representatives performing field observations and studies should be alert to the presence of low income and minority populations and report any effects that may occur as a result of the project, either of a beneficial or detrimental nature. The consideration of environmental justice factors is to include the community affected by the proposed highway and not be limited to the right of way acquisition area.

Following are several examples of environmental justice issues:

- The highway design bisects a cohesive neighborhood. Twenty low income households will be displaced. The commercial district will be separated from the residential area on which it depends. Residents will have to shop at a remote regional mall. Many do not own cars, and the area is poorly served by public transit.

- The proposed project will improve traffic flow and capacity on an urban highway by terminating several intersecting streets, erecting pedestrian barriers, and widening for an additional traffic lane. All acquisitions are from the east side of the highway, a low income minority neighborhood. The right of way representative at the preliminary field review notes that a large community youth center is located a short distance west of the highway, with its main entrance facing east.

- The proposed right of way for an expanded interchange will require acquisition of a single room occupancy (SRO) apartment building housing fifteen low income elderly residents. Some community members have criticized the building for housing alcoholics and projecting a bad image on the community. A simple design modification would not touch the SRO building but would require acquisition of two single family homes, each in the value range of $130,000 - $160,000.

## Section 4 – Field Inspection Plans

### 2.4.1 General

The purpose of the field inspection is to confirm that the preliminary plans accurately and completely reflect the existing conditions and that the proposed improvements are properly designed. It is an occasion to identify existing encroachments and improvements, such as dwellings, wells, out buildings, drainage facilities, mobile homes, and etc that may have been missed in the early survey. Environmentally sensitive areas and sites of historic or archeological significance should be identified. Occupants or stored property should also be identified. The objective is to develop the best set of project plans before design is finalized and property acquisition begins. The field inspection is a multi-disciplinary effort, with participants from functional specialties that are relevant to the circumstances in the project area and the highway design.

Right of way and utilities personnel will participate in the field inspection. It is an opportunity to refine the plans and preclude later plan revisions that can cause increased costs, project delays, revised appraisals, and added acquisitions.

In some districts the field inspection is only held for major projects. In those cases where a field inspection is not held on a project, an assigned right of way agent should still complete the field inspection checklist referred to in Section 2.4.4, provide it to the VDOT Project Manager and retain it in the office's project file.

### 2.4.2 Planning the Field Inspection

The VDOT Project Manager will plan and coordinate the field inspection and will notify the Regional Right of Way Office of scheduled inspections. Upon receiving such notification, the Special Projects Team Leader will participate or will assign one or more right of way personnel to participate in the field inspection. Except in extraordinary circumstances, the personnel assigned should be the same personnel who attended all scoping and project meetings for the project.

The assigned Right of Way and Utilities representative(s) will perform the following tasks in advance in order to prepare for the field inspection:

1. View the project location in person and on the ground and make a thorough desk review of the plans and profiles.
2. Compile a list of questions and items to be discussed, investigated and resolved or recommended during the field inspection.
3. Review the survey information. If new development, encroachment or facilities are present, it is critical that the survey be updated and plans be revised before the field inspection is held.

Thorough and complete advanced preparation is essential to a proper right of way and utilities representation at the field inspection.

### 2.4.3 Use of Field Inspection Checklist

The checklist included in Section 2.4.4 is an aid to conducting a thorough field review. It is not inclusive. Other items will need to be considered as required by conditions in the project area and the project plan.

The person assigned to attend the field inspection will prepare a report of the inspection with notations of items reviewed, discussed and recommended. The report will include coverage of as many items in the checklist as are relevant, plus other topics and items considered during the review.

### 2.4.4 Checklist

#### A. Horizontal Alignment

1. Can any alignment changes be made to reduce costly takings, property damage, relocations, utility adjustments, etc.?

2. Can the proposed right of way lines be adjusted to conform to property lines or existing fences? If so, prepare a sketch of an alternative or mark the prints. Be prepared to support your recommendation. Consider how the change would affect right of way and construction costs.

3. Have social, economic and environmental values been adequately considered? Pay particular attention to possible effects on neighborhood cohesion; bisection; difficult access to farmland or improved property; or separation of residential communities from public transportation, emergency services, commercial services, and parks and recreation.

4. Are there potential environmental justice issues that may arise from the project? (see Section 2.3.3)

5. Are any parks, outdoor foundations, wetlands, or sites of historic or archeological significance affected by the project?

#### B. Vertical Alignment

1. Are grades satisfactory as to their effect on adjacent property? If not, explain how they might be changed.

2. Will super-elevation adversely affect adjacent property? Are there any alternatives?

3. Are cuts and fills excessive in consideration of the use of adjoining property?

#### C. Topography

1. Are all important topographical features indicated correctly on the plans?

2. Pay special attention to encroachments, entrances, cemeteries, springs, wells, septic systems, signs, landscaping, fencing, etc.

## D. Property and Parcel Information

1. Are all parcel numbers assigned and has all property owner parcel data been entered in RUMS. In assigning parcel numbers, it should be remembered that the parcel numbers should be compatible with the locality's tax map numbers. If multiple parcels are owned by a single person but together have only one assigned tax map number then there should be only one (1) parcel number assigned on the plans. If a single parcel is divided by a road but has one tax map number, it will be assigned a single parcel number. If a single parcel is divided by a road and has 2 tax map numbers, then 2 parcel numbers should be assigned.

2. Are complete property lines accurately shown on plans?

3. Are names of property owners shown correctly on plans? If owned by U.S. Government or the Commonwealth of Virginia, is the agency with jurisdiction also shown?

4. If a parcel is owned by the Commonwealth of Virginia, the United States Government, a railroad, Dominion Power, the Department of the Army, etc., has the Special Negotiations Section been advised?

5. Is parcel data for each property indicated on the right of way data sheet? This includes areas of the whole and proffer information.

6. Are all improvements outside the right of way that will have value or their use affected by the project shown on the plans? This includes underground facilities.

7. Have all agreements to convey for public or highway use (proffers, those associated with re-zoning approvals and special use permits) been researched to confirm that the conveyance has been made to the Commonwealth or the locality and properly recorded?

8. Have known property zoning requirements (e.g. green space requirements) been properly identified on the plans? Was the VDOT Project Manager made aware of this information in an attempt to avoid conflicts?

9. Are there any cemeteries or graves shown on the plans? If so, have all graves been shown correctly? If so, follow the steps outlined in Section 3.4.7 of this manual.

## E. Private Utilities

1. Are septic systems and/or wells shown on the plans? This includes areas of the whole, acquisitions, easements, and residues.

2. Is the function of septic systems located outside the right of way affected by the project?

### F. Public Utilities

1. Should highway improvement be performed on the opposite side of the highway to avoid utility conflicts?

2. Will trees or aesthetic features be adversely affected by utility relocations?

### G. Railroads

1. Are railroads properly identified?

2. Are railroad right of way lines shown?

3. Is encroachment on railroad property necessary?

### H. Construction Limits

1. Do construction limits extend beyond the right of way line, requiring temporary or permanent easements?

2. Should areas now shown as easements be converted to fee acquisition?

3. Should areas shown as temporary easements be changed to permanent?

### I. Right of Way Features and Considerations

1. Is existing right of way clearly and correctly shown on plans?

2. Is prescriptive right of way noted on the plans?

3. Is proposed right of way completely shown on plans?

4. Is proposed right of way of adequate and not of excessive width?

5. Are minor right of way adjustments needed to avoid excessive or unnecessary damage or takings?

6. Should a proposed acquisition line be added to preclude uneconomic remnants or to bring the acquisition to a logical natural barrier?

7. Are right of way breaks excessive? Can any be eliminated?

8. Should proposed right of way lines be extended at the beginning or end of the project to be continuous across the entire property frontage?

9. Does the proposed right of way line coincide with existing property lines where possible, particularly in urban areas?

### J. Limited Access Right of Way

1. Are limited access lines completely shown on all plan sheets?
2. Are existing limited access lines labeled separately from proposed limited access lines?
3. Are limited access beginning and ending points clearly labeled at a satisfactory point?
4. Can minor adjustments be made to access control to prevent landlocking property?
5. If done, were the frontage road study results provided (see Section 5 of this Chapter)?
6. Are landlocked properties clearly identified?

### K. Buildings

1. Have "D" numbers been assigned to all improvements located fully or partially within proposed right of way? (see Chapter 7, Section 2). Have all improvements been entered into RUMS.
2. Is development imminent in the project area or is construction underway?
3. Will advanced or priority acquisition be considered?

### L. Nuisance, Small and Uneconomic Residues

1. Are nuisance parcels created by the proposed right of way? (These are residues so small or irregular to be of no use or value to the owner or owner of adjacent property.)
2. Are small residues created by the proposed right of way? (These are residues that do not have independent value.)
3. Can the right of way line be modified to prevent the creation of nuisance or small residues?
4. Are there strip remainders between old and newly located highways that should be acquired?
5. Are there any recommendations as to acquisitions beyond right of way limits that may be acquired under Commonwealth law? (Explain and support any recommendations.)

### M. Entrances

1. Are existing entrances and driveways shown?

2. Will additional entrances be provided as a result of grade changes at the property line?

3. Are proposed entrance grades acceptable for their intended use?

4. Does grade location or width of a proposed entrance cause excessive damage to the property?

5. Are any private entrances proposed that would be seldom used and/or where the cost of constructing the entrance would exceed the damage to the residue?

6. Do all entrances satisfy current Access Management Requirements?

7. Are temporary construction easements required at any of the entrance locations? Normally, temporary construction easements are not required at entrance locations when the entrance is at grade and the limits of construction do not exceed the footprint of the existing driveway?

### N. Drainage

1. Can modifications be made to the outfall end of cross drainage to reduce property damage?

2. Should curb and gutters and enclosed storm drainage be considered in place of open ditches, or vice versa?

3. Are the indicated drainage easements needed, and are they clearly shown as to alignment, width and designation?

### O. Easements

1. Are temporary or permanent easements needed for construction features, such as entrances, slopes, channels, outfall drainage, etc.? (See item 7 in paragraph M, above.)

2. Are all easements indicated and properly identified as to purpose?

3. Are temporary easements that have significant and different durations labeled appropriately (e.g. a temporary construction easement for a bore pit)?

4. Will any easements cause excessive damage?

5. On corridors that have been developed for residential or commercial use, will the use of permanent construction easements reduce adverse impacts to homes or businesses?

### P. Outdoor Advertising Devices

1. Are D-700 numbers assigned to all affected signs?
2. Are permit numbers indicated?
3. If no signs are affected by the project, has it been so stated in the field inspection report.

**Q. Miscellaneous Items**

1. Are the old roads needed or should they be discontinued or abandoned?
2. Are road connections needed or desired to prevent dead ends and cul-de-sacs?
3. Have bridge sites been checked for adequacy of right of way needed for fill slopes, construction work areas, or maintenance needs?
4. Are easements needed to protect scenic or environmentally sensitive areas?

### 2.4.5 Post Field Inspection Activities

After the field inspection, the assigned Right of Way representative(s) should consult with District Office specialists in the Location and Design Division, Environmental Division, Structures and Bridges Division etc., as necessary to clarify and refine observations and conclusions. They should convey information that may be of interest to specialists who did not participate in the field inspection.

The representative(s) should make sure that all questions and comments developed during the desk review of the plans have been resolved or brought to the attention of others who have direct responsibility for the item.

They should follow up on recommendations and verify agreement reached at field inspection by checking the approved right of way plans when they are received. If important items have been omitted or errors are noted, they should be brought to the attention of the Regional Manager and the District Preliminary Engineering Manager before the appraisal process begins.

## Section 5 – Frontage Road Studies

### 2.5.1 General

Construction of limited or controlled access highways may result in landlocking of adjacent property. A study should be performed, when appropriate, to determine whether construction of an access facility, such as a frontage road, is economically justified. Frontage road studies are to be performed whenever productive land may be bisected or denied access by the proposed highway. In urban areas, service roads may be included in the initial highway design to provide access to high value or intensely developed property or to preserve neighborhood cohesion.

The frontage road study will compare the estimated damage to landlocked property to the cost of providing a frontage road.

### 2.5.2 Frontage Road Study

The Location and Design Division will furnish preliminary plans to the Regional Manager. The plans will be developed to a stage that will show the construction centerline and approximate limited access right of way. The Regional Right of Way Office will be requested to provide information necessary to determine the economic feasibility of providing frontage roads. This will include a Frontage Road Study Report, which is RUMS Form CE7. The form presumes that the cause of denial of access is landlocking. Occasionally frontage road studies are requested for properties not landlocked. The RUMS Form CE7 should be modified as necessary for this purpose.

### 2.5.3 Value Information

The land value estimates called for in the Study Report will be based on fair market value at the time the study is made. The date of the study is always indicated on the top of the report. Formal appraisals are not required. References to recent sales should be made, but formal documentation is not expected. Value information should be as current and relevant as possible. A Review Appraiser will review the completed estimates and indicate whether or not they concur.

The study will include a Landlocked Buildings Report. This provides for a tabulation of all occupied landlocked buildings. Only buildings located outside the proposed limited access right of way should be included. This report will completely explain the present and

projected uses of the landlocked buildings. RUMS Form PM26 (Landlocked Buildings Report) may be used to provide this information.

### 2.5.4 Instructions for the Frontage Road Study Report (RUMS Form CE7)

The study should begin at the point of access to the intersecting highway and extend to the last landlocked property that would be served by the frontage road. The first property listed typically will retain reasonable access to a public road; thus value information for this property may be omitted. The frontage road will usually terminate at a property line of the last property that would be landlocked. Consequently no additional right of way would be required from this property for construction of the frontage road, and Column 6 of the form will be left blank.

Following are instructions for specific columns of RUMS Form CE7:

- Property – Identify the location of the proposed frontage road by designation, side and station numbers.
- Column 1 – Enter the approximate number of landlocked acres only.
- Column 2 – Enter the estimated value of each landlocked remainder before the take for both land and improvements.
- Column 3 – Enter the estimated value of the landlocked area presuming a frontage road is provided. Exclude any enhancement created by providing direct or improved access to the area. The values in Column 3 should, therefore, never be greater than those in Column 2. Enhancement in value as a result of providing improved access should be indicated by an asterisk in Column 3 and explained by a narrative statement elsewhere on the form, including an estimate of the enhancement value.
- Column 4 – Indicate the estimated value of the landlocked remainder without a frontage road (landlocked).
- Column 5 – The value in this column is the net damage or net difference in value to the landlocked remainder with and without the frontage road. Buildings should be itemized separately, and associated relocation costs should be included and separately stated. This entry is used by the Location and Design Division in a comparison with the cost of a frontage road (including right of way) to determine whether the frontage road is justified. The determination may be incremental or progressive as the costs of serving successive properties are evaluated.

- Column 6 – Show the estimated cost of the additional right of way required for the frontage road for each property traversed. Value of land and improvements will be based on before take values considering the original access and additional damages, if any. The data in this column will include number of acres, cost per acre, and total cost. Separately itemize the value of any buildings to be acquired and related relocation costs.

### 2.5.5 Completion of the Study and Design Decision

The Regional Manager will electronically transmit the frontage road report, with right of way information entered, to the VDOT Project Manager. Copies should be transmitted to the Project Scheduling and Certification Section and the project designer. The VDOT Project Manager will complete the study by comparing the net damages of the landlocked property to the cost of providing frontage roads. If there are net savings, a frontage road should be included in the project design.

## Section 6 – Public Hearings and Meetings

### 2.6.1 General

Right of way acquisition and relocation has significant emotional, social, and economic effects on the people who live and own property in proposed highway right of way, as well as the community at large. Right of way presentations at public hearings are a means to inform the public about proposed highway projects that affect their lives and to seek input from the public. Public meetings are also a forum for advising the community of the acquisition and relocation programs and the protections and benefits they afford to property owners and residents.

The Regional Manager will assign one or more right of way representatives to attend a hearing or meeting. The representative(s) should be fully informed about the proposed project and utilize whatever visual aids and displays, when possible. They should provide specific information when possible and not rely on broad statements of agency policy. They should make notes of important points, issues or objections rose by the attendees and

report those things to the appropriate representatives from other divisions or to the Regional Manager when the matters relate to right of way acquisition or relocation.

### 2.6.2 Types of Public Hearings

Public hearings may be held at the location stage and at the design stage of project development. Separate location and design stage hearings are generally conducted when a highway is planned for a new location. When the project is for the improvement of a highway at an existing location, a combined location and design hearing is usually scheduled.

At the location stage, a proposed highway is defined to the extent that it will be within a broad corridor. Within the corridor, several alternative alignments may be under study. The locations of interchanges are identified at the location stage, but their exact geometric configurations are not determined.

At the design stage, one preferred alignment with exact right of way limits will have been proposed and interchanges will have been designed. At this point all properties to be acquired, including buildings, are identified. Changes are possible, and even likely, at the design stage, but plans show detailed design elements.

Right of way information presented at the location stage hearing will be broader in scope but with less detail than at a design stage hearing. Alignments that are under consideration are shown and discussed along with their alternatives. Some whole acquisitions may be identified as definitely within the final acquisition area. Partial acquisitions may not be identified with certainty at the location stage.

### 2.6.3 Informational Meetings

Before a formal public hearing, an informational meeting is often scheduled. If necessary, Right of Way and Utilities Division representatives will be assigned by the Regional Manager to attend these meetings to answer questions and provide information about the process of acquiring property and relocating displaced households and businesses. The tone of an informational meeting is less formal than at a public hearing. There should be an opportunity for interested persons to interact with right of way representatives and secure

information about the effect of the proposed project on their property. An effective informational meeting may answer many questions of an individual nature that would otherwise prolong a formal hearing.

### 2.6.4 Public Hearing Information

The engineering, location, and design features of the project will be presented by representatives of the Location and Design Division. Right of way representatives will discuss the property acquisition and relocation required for the project, distribute right of way brochures, and answer questions relative to right of way acquisition and relocation. This information, to the extent known, will be presented for each of the alternative alignments under consideration.

The right of way studies and estimate information presented at public hearings will be current to not greater than 6 months from the date of the most current plan revision. The Location and Design Division will request updates before scheduling a hearing.

Copies of the Department's booklet Right of Way – A Guide for Property Owners and Tenants, if available, will be distributed at all hearings and meetings. If the booklet is not available, the regional right of way office will create a flyer containing a brief summary of the important information contained in the booklet and the flyer will be distributed at the hearings or meetings.

### 2.6.5 Notice of Willingness

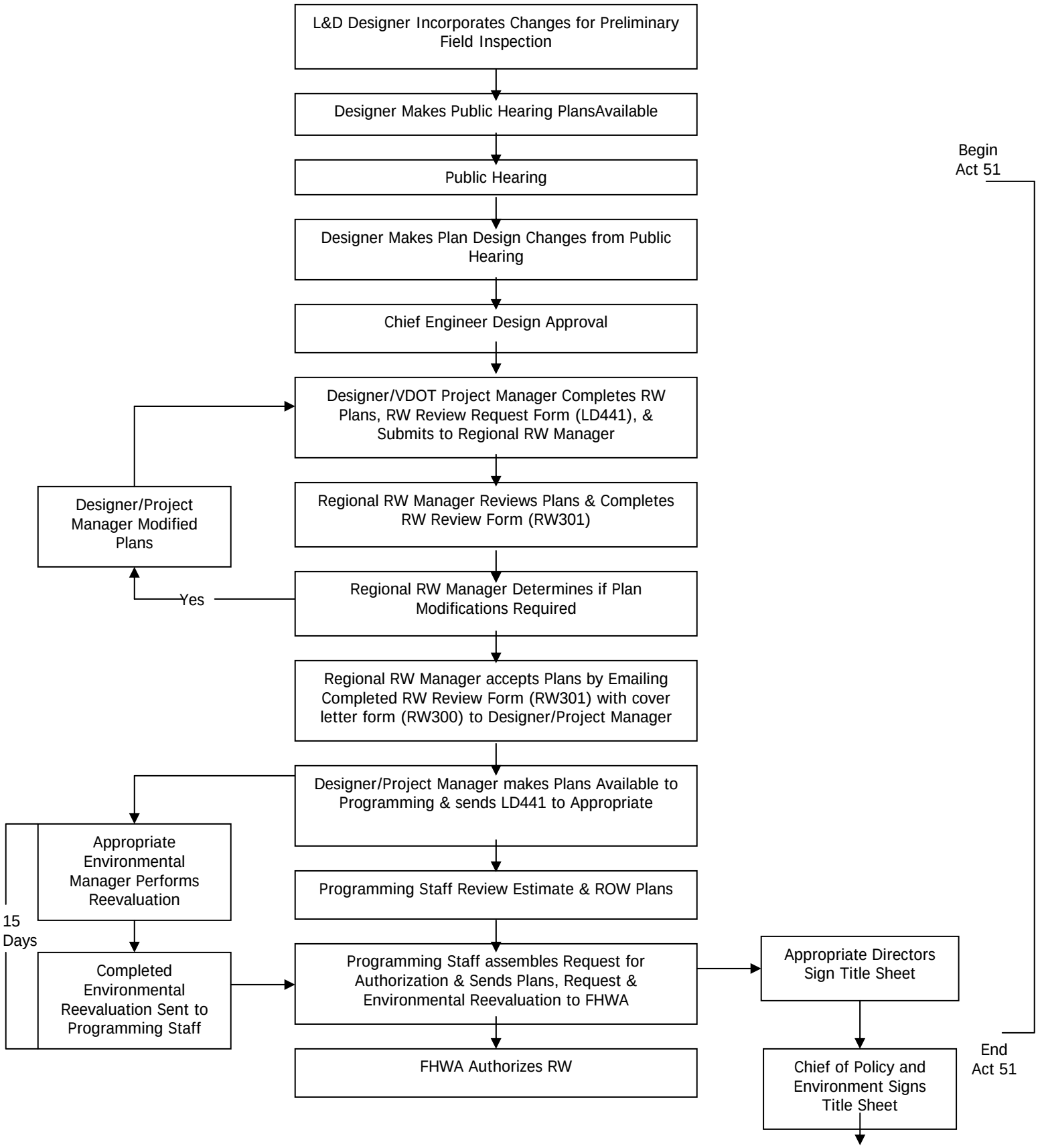
In lieu of a Public Hearing, in some instances the VDOT Project Manager may choose to publicly post a "Notice of Willingness to Hold a Public Hearing." In those instances, right of way personnel may be asked to assist in responding to right of way questions and issues raised by the public but no formal representation will be required.

### 2.6.6 Location and/or Design Approval

The Location and Design Division will submit the public hearing report to the Commonwealth Transportation Board with recommendations for approval of the location and/or design.

### 2.6.7 Distribution of Proposed Right of Way and Utility Plans

After the Public Hearing/Willingness is held, the Location and Design Division will incorporate the plan design changes from the Hearing process and submit to the Chief Engineer for approval. After approval by the Chief Engineer, Location and Design will submit completed plans to the Regional Manager for the Quality Assurance review and acceptance (Section 2.7.2).See Flow Chart on next page.


L&D Designer Incorporates Changes for Preliminary Field Inspection
Designer Makes Public Hearing PlansAvailable
Public Hearing
Designer Makes Plan Design Changes from Public Hearing
Chief Engineer Design Approval
Designer/VDOT Project Manager Completes RW Plans, RW Review Request Form (LD441), & Submits to Regional RW Manager
Regional RW Manager Reviews Plans & Completes RW Review Form (RW301)
Regional RW Manager Determines if Plan Modifications Required
Yes
Designer/Project Manager Modified Plans
Regional RW Manager accepts Plans by Emailing Completed RW Review Form (RW301) with cover letter form (RW300) to Designer/Project Manager
Designer/Project Manager makes Plans Available to Programming & sends LD441 to Appropriate
Appropriate Environmental Manager Performs Reevaluation
15 Days
Completed Environmental Reevaluation Sent to Programming Staff
Programming Staff Review Estimate & ROW Plans
Programming Staff assembles Request for Authorization & Sends Plans, Request & Environmental Reevaluation to FHWA
FHWA Authorizes RW
Appropriate Directors Sign Title Sheet
Chief of Policy and Environment Signs Title Sheet
Begin Act 51
End Act 51

### 2.6.8 Individual Property Owner Notification

Pursuant to Title 33.1-94 of the Code of Virginia (1950 as amended) VDOT is required to notify owners by certified mail at least 15 days prior to the anticipated first entry upon their property with the approximate date of entry and the purpose(s) for the entry. No such notifications are required for subsequent entries except as otherwise provided in this manual.

There are two versions of the letter to be used for this purpose registered in RUMS that address all entries made by the Division. They are registered on the evaluation tab and identified as A13 – Property Inspection Notification of Intent to Enter and A24 – Letter of Intent to Enter-BAR. These letters are to be sent over the signature of the Regional Manager or their designee.

Minor changes to the letters to accommodate unusual situations are permissible; however, no major, substantive modifications are to be made without the concurrence of the State Acquisitions Manager or their designee.

## Section 7 – Notice to Proceed for Right of Way and/or Utilities

### 2.7.1 General

The Right of Way Project Scheduling and Certification Section issues Notices to Proceed for Right of Way and/or Utilities for whole acquisitions, partial acquisitions, hardship acquisitions, and protective acquisitions for most VDOT projects requiring the acquisition of right of way.

### 2.7.2 Review Process in Field

It is the responsibility of the Regional Manager to have plans reviewed by right of way staff to ensure that the right of way and utility elements are correctly depicted on these plans prior to submission for approval by the Chief of Policy and Environment (plans are submitted for approval by LD-441).

This review is a quality assurance check by the Regional Right of Way Section to ensure that the plans contain all necessary features and right of way information relevant to all of the acquisitions on the project. Completion of this quality assurance check and right of way confirmation that all necessary features and information are included is acknowledged by the issuance of RUMS Forms RW-300 (transmittal letter) and RW-301 (plan check list) to Location and Design. If there is any omission of necessary information, it will be indicated in the RW-300 and RW-301, and the specific omission(s) identified.

When the plans are complete and acceptable to the Regional Right of Way Section, the RW-300 and RW-301 will indicate that there are no omissions and that the plans are acceptable. The plans then are made available to the appropriate Environmental Manager (transmittal by Form PM-130) for an environmental reevaluation, if necessary.

### 2.7.3 Review Process in Central Office

Before the Notice to Proceed for Right of Way and/or Utilities can be issued, the Project Scheduling and Certification Section must receive the following: (1) a copy of the plans approved by the Chief of Policy and Environment; (2) a letter signed by the Chief of Policy and Environment (LD-96) declaring it necessary to acquire all lands or interest; (3) notification of approved right of way funding and City or Town Resolution, if an urban project; and (4) a LD-368 signed by the Location and Design Plan Coordination Section. The LD-368 will not be issued until all plats have been sealed and submitted

The Project Scheduling and Certification Section reviews the approved plans to determine that the information on the plans is consistent with information in RUMS and the other project tracking and management systems. The Section also reviews the estimate to determine the number of relocations and its accuracy with regard to the number of parcels.

### 2.7.4 Issuance of Notice to Proceed for Right of Way and/or Utilities Acquisition

After receipt of all items listed in Section 2.7.3, the Notice to Proceed for Right of Way and/or Utilities is issued to the appropriate Regional Manager and the date is entered into RUMS by the Project Scheduling and Certification Section. Copies are distributed to the

Location and Design Division, Environmental Division, as well as to other personnel as appropriate.

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# CHAPTER 3 - LEGAL CONSIDERATIONS IN RIGHT OF WAY ACQUISITION

## Section 1 - General

### 3.1.1 Legal Framework for Right of Way Acquisition

The Department acquires most property required for right of way by option or agreement executed on friendly terms with property owners. However, all acquisitions are subject to the eminent domain process. The underlying power of government agencies to take private property involuntarily for public purposes has generated a range of laws and regulations that are not applicable to private real estate transactions. These statutes control the process of acquisition, protect the rights of owners, and provide benefits that reduce or eliminate hardships on affected owners and occupants. The statutes also enable VDOT to acquire property expeditiously so public projects are completed on schedule and at reasonable cost.

The 1950 Code of Virginia, Titles 25.1 and 33.1, is the primary body of law specific to right of way acquisition. Besides the above specialized statutes, VDOT's real estate activities are subject to most of the same laws that control private real estate transactions concerning contracts, titles, conveyances, property management, and financing. Right of way professionals should develop a good working knowledge of all the laws and regulations that control and influence right of way acquisition and related functions. In addition, it is important to update that knowledge on a continuing basis to keep current with changes in laws and with important cases that affect policy.

### 3.1.2 Staff Counsel Assigned to Regions

Staff Counsel are assigned to each Right of Way Region to provide legal services to the staff in the region. They have offices in district VDOT facilities. Their function is advisory only, and they do not supervise or manage the work of any VDOT employee. In addition, other Assistant Attorneys General are available to provide legal services to the Right of Way and Utilities Division The Staff Counsel provide legal advice and guidance to the regional staffs and to the Special Negotiations and Property Management sections; they provide legal services in all real estate matters. They oversee the preparation of title reports, provide opinions regarding ownership, and review and certify completed reports. They are

responsible for general oversight of all real estate closings and eminent domain procedures, as provided under the Code of Virginia, until such time as Fee Counsel are appointed.

Fee Counsel generally represent the Department in cases involving litigation. Normally these are cases concerning the acquisition of property by eminent domain. As necessary, Staff Counsel coordinate with Fee Counsel and with the Attorney General's Office to interpret, advise and ensure compliance with the law applicable to those cases. On occasion, a Fee Counsel may be hired to provide legal services relating to real estate transactions. If hired, the Fee Counsel will assume the duties normally assigned to the Staff Counsel and the Staff Counsel will provide general oversight.

Bills from Fee Counsel for services related to eminent domain cases and other matters in litigation are normally processed and paid by the Eminent Domain Section. Bills for legal services from Fee Counsel for other legal services, such as fees for a title examination not related to a condemnation case, are processed and paid by the Regional office

Certain forms of real estate ownership hold special status in Virginia law. Staff Counsel have an important role in assisting in the acquisition of property in ownership of estates, corporations, non-profit corporations (including churches), infant and incompetent owners, school boards, and local governments by interpreting each of the types of ownerships. The responsibility of the Staff Counsel is to interpret, advise, and ensure that the statutes in the Code of Virginia are adhered to and enforced in all transactions performed by the Right of Way and Utilities Division.

Right of way professionals will maintain effective communications and coordination with both Staff and Fee Counsel as necessary. However, it is the sole responsibility of the Staff Counsel to interpret the law as applicable to a specific situation and to advise right of way employees as to how this is to guide their actions. It is not the function of right of way employees to interpret the law or advise how the law may affect a planned action

Despite their responsibility for general oversight of real estate matters, when a right of way employee uses a form deed, option or clause that is available in RUMS, on the Right of Way Division pages on Inside VDOT or in this Manual, review, approval or consultation with Staff Counsel concerning these is not required unless substantive changes have been made to

the form or clause. Property descriptions are not deemed to be substantive changes and do not require review. These documents and clauses have been previously reviewed and approved for use by the Attorney General's office.

In addition, when a particular provision, clause or specific wording not available in RUMS, Inside VDOT or this Manual has been approved for use by the Region's Staff Counsel, subsequent review and/or approval of the same provision, clause or wording is not required. If the Acquisition Team Leader believes that any such clause would be helpful in statewide application, they should forward a copy of the approved wording to the State Acquisitions Manager for possible dissemination statewide.

## Section 2 - Virginia Right of Way Laws

### 3.2.1 General

The provisions in the 1950 Code of Virginia, as amended, that contain right of way requirements and authorities are in Title 1-219.1, Limitations on Eminent Domain; Title 15.2, Conveyance of Sub-Division Streets; Title 25.1, Eminent Domain; Title 33.1, Highways, Bridges and Ferries; and Title 2.2, Chapter 37, the Virginia Freedom of Information Act.

The following section provides a summary of important provisions of Titles 1-219, 2.2, 15.2, 25.1, and 33.1. This is intended to provide a brief reference to the subject matter of important statutes. The user of this manual should not rely on this section to resolve questions involving actual case situations, but should read the full text of the law and secure advice from legal counsel as necessary.

### 3.2.2 Statute Summaries

**Title 1-219.1, Code of Virginia – Limitations On Eminent Domain**

Private property can only be taken for public use and only upon payment of just compensation. This section lists a number of uses that are not considered "public use" and includes a list of definitions. This section includes restrictions on condemnation proceedings and gives landowners certain rights.

**Section 15.2-2265. – Conveyance of Sub-Division Streets to a Locality**

Recordation of an approved sub-division plat operates to transfer title, in fee simple, to the respective locality in which the land lays any portion of property that is platted as a street, alley or for other public use. Any portion of the property shown on the plat as being an easement for public use creates a public right of passage except where the plat limits the use such as for stormwater, or public water or sewer.

**Title 2.2, Code of Virginia – Administration of the Government**
**Chapter 37 Virginia Freedom of Information Act**

**2.2-3704**

Public records to be open to inspection; procedure for requesting records and responding to request; charges. See Section 33.1-16 for restrictions.

**Title 25.1, Code of Virginia – Eminent Domain (The Virginia General Condemnation Act)**

**Condemnation Procedures**

**25.1-204 - Effort to purchase required; prerequisite to effort to purchase or filing certificate.**

A condemnor shall not institute proceedings to condemn property until a bona fide but ineffectual effort to purchase from the owner the property sought to be condemned has been made. However, such effort shall not be required if the consent cannot be obtained because one or more of the owners (i) is a person under a disability or is otherwise unable to convey legal title to such property, (ii) is unknown or (iii) cannot with reasonable diligence be found within this Commonwealth.

**25.1-206 - Petition for condemnation.**

The petition for condemnation shall contain:

a) A caption wherein the person vested ...with the power to exercise the right of eminent domain shall be the petitioner, and the named defendants shall be at least one of the owners..., and the property to be taken designated generally by kind, quantity, and location

b) Short and plain statements of the following:

1. The authority for the taking
2. The necessity for the work...
3. The public uses for which the property is to be taken.

4. A description of the work...; and ... property will or is likely to be damaged..., a plat..., in sufficient detail..., including specifications, elevation and grade changes..., shall be attached... to the petition.
5. The estate, interest or rights in the property to be taken
6. A description of the property to be taken...
7. As to each ...property...the names and residences, so far as known by petitioner, of the defendants...; other persons..., where the names are unknown,...may be made defendants under the designation of "Unknown Owners"
8. Compliance with ....25.1-204...; and
9. Where applicable, compliance with ...25.1-102...

c) A prayer asking for judgment (i) that the property...be condemned and the title thereto vested in the petitioner, (ii) that just compensation be ascertained as provided in § 25.1-230 and awarded, and (iii) for such other relief as may be lawful and proper.

d) The petition shall be verified by an affidavit of a duly authorized officer, agent or attorney for the petitioner.

e) The petitioner shall furnish the Clerk one copy of the petition and all exhibits thereto, and such additional copies as ... may be needed by the clerk or any defendant.

**25.1-207 - Inclusion in petition of request for right of entry.**

The petition may also include (i) facts and circumstances on the basis of which the petitioner desires to obtain the right of entry as provided in § 25.1-223 or as provided in any charter and (ii) a prayer asking for such right of entry. See Section 33.1-119 for quick take provisions.

**25.1-208 - Joinder of separate parcels.**

The same petition may join one or more separate pieces, ... of land, whether in the same or different ownership and whether or not sought for the same use; ...

**25.1-209 – Notice of filing of petition.**

Upon the filing of a petition for condemnation, the petitioner shall give the owners 21 days' notice of the filing of such petition and of its intention to apply to the court to ascertain just compensation...

**25.1-210 – Service of notice by order of publication; mailing copy of notice by publication.**

Upon the filing of an affidavit...stating that he believes any owner cannot be personally served because...such owner's place of residence cannot be ascertained or... that it is not

within this Commonwealth, service of the notice may be made on such owner by an order of publication....

**25.1-215 – No notice required where owner is a person under a disability; appointment of guardian ad litem.**

If any owner is a person under a disability and has no guardian...no notice need be issued...and a guardian ad litem ... shall be appointed...

**25.1-220 – Who determines issue of just compensation.**

The issue of just compensation shall be determined by -- a jury, upon a timely election made by an owner as provided in § 25.1-213. However, by agreement...the issue of just compensation may be determined by the court.

**25-1-237 – Payment of compensation and damages into court; vesting of title.**

Upon the return of the report of the body determining just compensation ... the sum so ascertained by the court as compensation... ...may be paid into court. Upon paying... title to property and rights condemned shall vest in the petitioner ...unless such title shall have already vested in a manner otherwise provided by law... (see Section 33.1-119 for 'Quick Taking').

**Relocation Assistance and Real Property Acquisition Policies.**

**25.1-402 – Rules and regulations.**

All state agencies are hereby authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter.

**25.1-403 – Payments not considered income or resources.**

No payment received by a displaced person ... shall be considered as income or resources...for assistance under any state law, or for the purposes of this Commonwealth's personal income tax law, ... or other tax laws. Such payments shall not be considered as income or resources of any recipient of public assistance ... and shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

**25.1-404 - Administrative payments; construction.**

Nothing in this chapter shall be construed as creating ...any element of value or damage not in existence immediately prior to April 10, 1972.

**25.1-406 – Moving and related expenses.**

Whenever the acquisition of real property...by a state agency...will result in the displacement of any person, the state agency shall make fair and reasonable relocation payments...for:

1. Actual...expenses in moving...;

2. Actual direct losses of tangible personal property...business or farm operation, ...

3. Actual ...expenses in searching for a replacement business or farm; and

4. Actual ...expenses necessarily incurred in reestablishing a displaced farm, nonprofit organization or small business ...but not to exceed $25,000.

**25.1-407 – Optional moving expense allowance for persons displaced from dwelling.**

Any...person...displaced from a dwelling ...in lieu of the payments authorized by § 25.1-406 ...shall receive a moving expense allowance..., determined according to a schedule established by the state agency.

**25.1-408 – Optional payment for persons displaced from a place of business or farm operation.**

Any...person... who is displaced from his place of business or farm operation ... in lieu of the payment authorized by § 25.1-406. Such payment shall consist of a fixed payment ... not less than $1,000 nor more than -$75,000 ...

**25.1-409 – Replacement housing for homeowners.**

A. In addition ... the state agency shall make an additional payment not to exceed $22,500 to any ... person who is displaced from a dwelling ...owned and occupied ...for not less than 180 days prior to the initiation of negotiations...

B. The additional payment ...shall be made only to such...person who purchases and occupies a decent, safe and sanitary replacement dwelling not later than the end of the one year period ...beginning on the date on which he receives final payment of all costs... or the date on which the state agency obligation under § 25.1-414 is met. ...

**25.1-410 – Replacement housing for tenants and certain homeowners.**

a) ... a state agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 25.1-409 ...occupied by such person for not less than 90 days.... Such payment shall ... enable ... person to lease or rent, for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. ...

b) Any person eligible for a payment under subsection A may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. ...

**25.1-414 – Authority of agency where replacement housing not available; requiring person to move.**

a) If a ... project ... cannot proceed ... because comparable replacement dwellings are not available and ... such dwellings cannot otherwise be made available, such

agency may take such action as is necessary or appropriate to provide such dwellings...

b) No person shall be required to move ... unless ... replacement housing is available to such person.

**Acquisitions**

**25.1-417 – General provisions for conduct of acquisition.**

a) If a state agency acquires real property...such acquisitions shall be conducted,...in accordance with the following provisions:

1. The state agency shall make every reasonable effort to acquire ... property by negotiation.
2. Real property shall be appraised before the initiation of negotiations, and the owner ... given an opportunity to accompany the appraiser ....
3. Before initiating negotiations..., the state ... shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire... for the full amount so established. ...
4. No owner shall be required to surrender possession of real property ... before the state agency pays the agreed purchase price, or deposits with the state court ... an amount not less than the agency's approved appraisal..., or the amount of the award of compensation in the condemnation proceeding....
5. The construction ... of a public improvement shall be so scheduled that ... no person ... shall be required to move ... without at least 90-days' written notice ....
6. If the state agency permits an owner or tenant to occupy the real property acquired on a rental basis ... the amount of rent required shall not exceed the fair rental value ... to a short term occupier.
7. In no event shall the state agency either advance the time of condemnation, or defer negotiations ..., or take any other action coercive in nature, in order to compel an agreement....
8. ... No state agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
9. If the acquisition ... would leave its owner with an uneconomic remnant, the agency concerned shall offer to acquire the entire property.
10. After ... [a] person has been fully informed of his right to receive ...compensation for ...property, [that] ... person...may ...donate such property....

b) The provisions...create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

**25.1-418 – Reimbursement of owner for certain expenses.**

Any state agency acquiring real property ... as soon as practicable after... the date of payment of the purchase price ...shall reimburse the owner ...for... (i) recording fees ...and similar expenses incidental to conveying such real property...; (ii) penalty costs for prepayment of any preexisting recorded mortgage ...; and (iii) the pro rata portion of real property taxes... .

**25.1-419 – Reimbursement of owner for costs when condemnation proceeding is abandoned or denied.**

The court having jurisdiction of a condemnation proceeding instituted by a state agency ... shall award the owner...such sum as will...reimburse...owner for his reasonable costs...actually incurred..., if (i) the final judgment is that the state agency cannot acquire the real property by condemnation or (ii) the proceeding is abandoned by the state agency....

**25.1-420 – Reimbursement of owner for costs incurred in inverse condemnation proceeding.**

If a declaratory judgment is initiated pursuant to §8.01-187 by the owner ...either (i) the court renders a judgment for the plaintiff ...and awards compensation...or (ii) the Attorney General effects a settlement..., the court or Attorney General,... shall determine and award ..., as part of such judgment ... such sum as will ...reimburse such plaintiff for his reasonable costs ... actually incurred....

**25.1-421 – Buildings, structures and other improvements on real property.**

a) ..., where an interest in real property is acquired ...the state agency shall acquire an equal interest in all buildings... required to be removed ... and ... determined to be adversely affected ....

b) For the purpose of determining the just compensation to be paid for any building ... such building ... shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, ... to remove such building, ... at the expiration of his term. ...the tenant shall be paid an amount equal to the greater of (i) the fair market value that such building ... contributes to the fair market value of the real property ... or (ii) the fair market value of such building....

c) Payment for such building ... as set forth in subsections A and B shall not result in duplication .... No such payment shall be made unless the owner of land involved disclaims all interest in the improvements of the tenant. In consideration of any such payment, the tenant shall assign, transfer and release all his rights title and interests in and to such improvements. Nothing ... shall be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment ... in accordance with other laws of the Commonwealth.

d) The provisions...create no rights or liabilities and shall not affect the validity of any property acquisitions....

**Title 33.1 – Highways, Bridges and Ferries**

**Chapter 1, Commonwealth Transportation Board and Highways Generally**

**33.1-16 – Furnishing information regarding right-of-way transactions.**

.... Such information shall not be released prior to sixty days following the transaction to any person not a party directly interested in such transactions.

The information... shall consist of... (1) name.., (2) the amount of land..., (3) the amount paid ... for land and the amount paid for damage ....

**33.1-58 – Power and authority of Board.**

The Commonwealth Transportation Board may plan, designate, acquire, open ... and regulate the use of limited access highways ....

**33.1-89 - Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition; property owners to be informed and briefed.**

A. The Commonwealth Transportation Commissioner is hereby vested with the power to acquire .... such lands, structures, rights-of-way, franchises, easements and other interest in lands...deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways...and all other purposes incidental thereto....

**33.1-90 – Acquisition of real property which may be needed for transportation projects; sale of certain real property.**

A. When the ... Commissioner determines that any real property will be required in connection with the construction of a transportation project ..., within a period not exceeding twelve years for the Interstate Highway System or ten years for any other highway system ...he may proceed to do so. If the transportation project ... has not been let to contract or construction commenced within a period of twenty years from the date of acquisition of such property and a need for the use of such property has not been determined for any alternative transportation project, upon written demand of the owner ... such property shall be reconveyed ... upon repayment of the original purchase price without interest....

**33.1-91 – Authority to acquire entire tract of land, or parcel thereof, when only part to be utilized for highway purposes.**

...The Commissioner is authorized and empowered... to acquire... the entire tract of land or any part thereof, whenever the remainder ... can no longer be utilized for the purpose for which the entire tract is then being utilized, or a portion of a building is to be taken or the cost of removal or relocation of the buildings, ... would exceed the cost of destroying such

buildings..., or the highway project will leave the remaining portions without means of access ..., or... the resulting damages to the remainder... will approximate or equal the fair market value of such remaining lands; provided, however, that the Commissioner shall not acquire the remainder of such tracts by purchase where the remaining portion is in excess of 10 acres or, by condemnation where the remaining portion is in excess of two acres....

**33.1-92 – Acquisition of residue parcels declared to be in the public interest.**

**33.1-94 – Right to enter on land to ascertain its suitability for highway and other transportation purposes; damage resulting from such entry.**

*[Notice of Intent letter (RUMS Forms A13 and A24 on the evaluation tab) is sent to the landowner by certified mail, at the address recorded in the tax records, return receipt requested, or delivered by guaranteed overnight courier or otherwise delivered to the owner in person with proof of delivery not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the earlier of the date of mailing, if mailed, or on the date delivered. The notice shall include the anticipated date/dates such entry is proposed to be made and the purpose of such entry.]*

**33.1-96 – Acquisition of interests for exchange with railroad, public utility company, public service corporation or company, political subdivision, or cable television company; relocation of poles, lines, etc.**

**33.1-119 – Authority to take possession and title to property before or during condemnation; purpose and intent of provisions.**

*(This is the quick taking procedure.)*

**33.1-120 – Payments into court or filing certificate of deposit before entering upon land**

*(such payments to be based on a bona fide appraisal.)*

**33.1-121 – Payment of certificates of deposit; notice to owner.**

**33.1-122 – Recordation of certificates, transfer of title or interest; land situate in two or more counties or cities** *(pertains to recordation of certificate).*

**33.1-124 – Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.** (d*raw down of deposited funds).*

**33.1-125 – Reformation, alteration, revision, amendment or invalidation of certificate.** *(pertains to revised certificates).*

**33.1-127 – When condemnation proceedings instituted; payment of compensation or damages; order confirming award; recording.**

Within 180 days after the recordation of such certificate... the Commissioner shall institute condemnation proceedings...

**33.1-128 – Awards in greater or lesser amounts than deposit; interest.**

If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into the court for the person or persons entitled thereto.

**33.1-129 – Agreements as to compensation; petition and order of court thereon; disposition of deposit.**

At any time after the recordation of such certificate, but prior to the institution of condemnation proceedings, if the Commissioner and the owner...agree..., the Commissioner shall file... a petition so stating, with a copy of the agreement attached. If...proceedings are already pending at the time of reaching such agreement, no such petition shall be required, but the motion for dismissal... shall contain an averment that such agreement has been reached. Upon the filing of such a petition, or motion to dismiss... the court shall ... enter an order confirming absolute and indefeasible title ... in the Commonwealth. ...

**33.1-130 – Enhancement to be offset against damage.**

In all cases ..., the enhancement... shall be offset against the damage . . But such enhancement in value shall not be offset against the value of the property taken. ...

**33.1-132 – Remedy of landowners under certain conditions.**

Whenever the Commissioner enters upon and takes possession of property under the provisions of §§ 33.1-119 through 33.1-121 and has not instituted condemnation proceedings within 180 days after the recordation of a certificate as required by § 33.1-127, whether the construction of the highway project has been completed or not, the property owner may, if no agreement has been made with the Commissioner as to compensation and damage, if any, petition the circuit court of the county or the court of the city in which such cases are tried, and in which the greater portion of the property lies for the appointment of - a jury to determine just compensation for the property taken and damages done, if any. ...

**33.1-133 – Commissioner may enter into agreement with person, church, association, etc.**

... Commissioner may enter into agreements with such person, church, association, corporation, or other legal entity, for the removal of any remains which may be interred upon the land. Such agreement shall provide for reinterment in some suitable repository. ...

**33.1-134 – Commissioner may file petition for condemnation when no agreement can be reached; notice of condemnation proceedings.**

**33.1-184 – Evidence as to existence of a public road.** *(pertains to existing 30' prescriptive right of way).*

## Section 3 - Title Examinations and Reports

### 3.3.1 General

The Title Report is a written summary of the pertinent results of a search of the public records that discloses the names of the recorded owners of a parcel of property, the nature and source of their interest, the nature and extent of any encumbrances or other restrictions on the property, and the identity of all lien holders and the amount and nature of their claims.

### 3.3.2 Title Reports

Title Reports are to be prepared in conformity with Table 3-1 located in Section 3.5.4 which indicates the extent of the title research required for each acquisition type and value category shown in the Table.

### 3.3.3 Title Report Contents

All Title Reports will contain information concerning:

- Owners
- Source deed
- Taxes and Assessments
- Deeds of Trust
- Liens
- Leases
- Proffers, Zoning Restrictions or Special Use Permits where there is an enforceable obligation on the owner to convey property for public (or highway) use or where such a condition is about to become enforceable
- Easements
- Unreleased judgments
- Financing statements
- Other information (divorce settlements, estates etc.)

### 3.3.4 Current Owner Title Examinations

For the acquisition of all temporary or permanent easements and all partial fee acquisitions, by deed when the consideration is less than $5,000, only a current owner title examination will be required.

### 3.3.5 Timing of Preliminary Title Work

Early performance of title work will facilitate all subsequent phases of the right of way acquisition process. The Code of Virginia 33.1-89 states that prior to making an offer to acquire that "The Commissioner shall also provide to a property owner a copy of any report of status of title prepared in connection with such acquisition, if prepared pursuant to subsection D of 25.1-204." Accordingly, the Regional Manager will normally order title examinations as soon as the public hearing is scheduled or a willingness is posted.

### 3.3.6 Prioritizing Title Examination Assignments

The appropriate Acquisition Team Leader must prioritize the order in which title examinations are conducted and title examination assignments are made. This priority order should be consistent with the priority order described in Section 5.3.4 of this manual. However, in establishing the priorities, consideration should also be given to the type and extent of the title examinations to be performed.

### 3.3.7 Title Examinations After Closing

Following the closing on a voluntary conveyance, a title examiner must take the closing documents to be recorded (normally the deed and attached plat or plan sheet) to the courthouse for recording. Prior to recording the documents, a current owner run down must be conducted to determine whether or not there are clouds or objections to the title that would interfere with the Department's ability to obtain clear title to the property rights being conveyed. If any objections are found which did not appear in the last title update, the title examiner will contact the appropriate Staff Counsel and discuss with him/her the objections. The Staff Counsel will advise the title examiner whether or not to record the conveyance documents and, if not, what additional steps to take. If Staff Counsel cannot be reached, the title examiner should contact the Program Manager Negotiations/Legal or the State Acquisitions Manager for instructions.

### 3.3.8 Responsibility for Title Examinations

The Regional Manager is responsible for administration of the process including assignment of title examinations of specific parcels to staff or outside firms and to contract for Title Abstracts when necessary. RUMS must be used to record all assignments and maintain control over the progress of the work assignments. The regional right of way staff who perform the research and develop the content of a Title Report work under the general guidance and technical supervision of the Staff Counsel assigned to the Region. The Staff Counsel (or Fee Counsel, if retained for this purpose) is solely responsible for certifying the title as being consistent with the contents of the Title Report.

### 3.3.9 Employment of Fee Counsel For Title Examinations

The Regional Manager will use appointed Fee Counsel to perform title examinations only when necessary to meet project advertisement schedules and only after obtaining approval from the State Acquisitions Manager. Some Fee Counsel have been designated by the Attorney General's Office to perform title examination work in addition to representing the Department in litigation. Those counsel have agreed to perform such services for a previously agreed upon fee. If the decision is made to employ Fee Counsel for title examinations, only those Fee Counsel who have been so designated will be employed and then only at the agreed upon fee.

The right of way representative will promptly provide information and documents concerning the needed reports to the Fee Counsel who have been retained to perform the work. The right of way representative will ensure that Staff Counsel is kept advised of the progress of these assignments.

If the Regional Manager is unable to use a Fee Counsel to perform title examinations and cannot have the title examinations completed by his/her own staff or by borrowing staff from another region, he/she will contact the State Acquisitions Manager for advice and assistance.

## Section 4 - Special Ownerships

### 3.4.1 General

Specific provisions in the Code of Virginia control the process by which property is transferred. These provisions will be interpreted by the Staff Counsel. The following are some examples of special ownerships:

- Estates
- Property owned by infants (minors) and incompetents
- County Boards of Supervisors
- School Boards
- Non Profit Corporations
- Cemeteries

The process for acquiring right of way from the above entities requires strict adherence to the governing requirements that are discussed below. Also, close cooperation and coordination between the Right of Way Office and the Staff Counsel are very important.

This section focuses on statutory requirements of property conveyances. The detailed acquisition procedures for special ownerships are found in Chapter 5 (5.3.3 – Special Ownerships).

### 3.4.2 Estate Ownership – Intestate Decedent

The following process will be used if the owner's death occurred after July 1, 1982 (Section 64.1-11 of the Code of Virginia). If death occurred before this date, different provisions of law apply and the Staff Counsel should be consulted.

If the deceased had no children other than those conceived with the surviving spouse then the real estate will pass to the surviving spouse. However, if the deceased had one or more children who were not children of the surviving spouse, the real estate will pass in the following manner:

1. 1/3 fee interest to the surviving spouse
2. 2/3 fee interest to deceased's children or their descendants

Legally adopted children have the same legal status as natural children and will be treated accordingly in operation of the above rule.

Acquisition of property in "intestate estate" ownership will require the negotiator to make inquiries as to the status of all of the heirs. Refer to Chapter 5 - Acquisition, (5.3.3 – Special Ownerships) for specific instructions on the negotiator's responsibilities.

If there is more than one heir eligible for acquisition payment, the manner of payment must be determined before closing. The person performing the closing will be responsible for determining each heir's share after consultation with the Staff Counsel. The options are:

1. One check payable to the estate
2. Separate checks to all heirs
3. Single check payable to one of the heirs

Option 3 can be used only if all heirs agree by signing a Unitary Payment Authorization (RUMS Form D24). While it is not required that the spouses of heirs join in executing the Unitary Payment Authorization, it is desirable that they do so. The negotiator normally presents the Unitary Payment Authorization to the heirs. The original document will be forwarded to the person conducting the closing.

### 3.4.3 Infant and Other Incompetent Owners

The Virginia Department of Transportation (VDOT) must utilize eminent domain if the owner of record does not have legal capacity to convey title. This can normally occur if the owner is a minor, is mentally incompetent or is a prisoner of the State.

If ownership of the property is shared by more than one party, including competent and non-competent parties, the negotiator should consult with Staff Counsel to determine whether or not the competent parties may execute an option and whether guardians or attorneys-in-fact are properly qualified to do so. If necessary, the negotiator will explain the necessity of eminent domain proceedings to all competent parties, legally appointed guardians and those holding effective powers of attorney.

### 3.4.4 County Board of Supervisors

There is no requirement for a court order for conveyances from School Boards and County Boards of Supervisors regardless of the right acquired or the consideration to be paid. However, Boards of Supervisors must hold a public hearing before conveying land in fee simple or granting an easement.

If, initially or after a public hearing, the Board of Supervisors refuses the offer, the property will be acquired under the eminent domain statutes.

VDOT, at its discretion, may assume the costs incurred by County Boards of Supervisors in holding required public hearings. It is VDOT policy to pay such costs upon request if the land is donated. However, VDOT will not bear the costs of the pubic hearing when payment is made for the land.

### 3.4.5 School Boards

School Boards have power to convey easements without restriction but do not have authority to convey fee title. The School Board must perform the following action in order for VDOT to acquire fee simple title by option:

a) The School Board must pass a resolution declaring the land to be surplus and record such a resolution along with an option agreement to the property in the Circuit Court for the county or city where the property is located. Upon recordation of the resolution and option, the title will vest in the county, city, or town comprising the local governing body.

b) After completion of step a), title is vested in the County Board of Supervisors. The Board of Supervisors must then hold a public meeting and subsequent thereto convey the lands to VDOT by option.

If the School Board will not act in conveying land to the local governing body, VDOT must file eminent domain proceedings against the School Board. Should the School Board convey the land to the local governing body, but that body is not agreeable to granting VDOT the option to purchase, the eminent domain proceeding must be filed against the local governing body.

Normal acquisition practices may be followed if only an easement is required for the project. Acquisition of perpetual easements may be considered as an alternative to fee

simple acquisition, inasmuch as School Boards are not restricted in conveying easements. Perpetual easements for construction, operation, and maintenance of a road are appropriate on the Secondary and Primary systems but not on the Interstate system. The perpetual easement is to be described in exactly the same manner as a fee simple acquisition. Additional easements for drainage, slopes, etc., are added at the end of the description as would normally be done.

If the plans or plats show the area to be acquired as proposed right of way, it will be necessary to revise the plans to reflect that a perpetual easement rather than proposed right of way is being acquired.

**NOTE* - 22.1-129, Subsection C. states, "Notwithstanding the provisions of subsections A and B, a school board of . . . [the City of Virginia Beach] shall have the power to sell property to the Virginia Department of Transportation or the Commonwealth Transportation Commissioner when the Commissioner has determined that (i) such conveyance is necessary and (ii) when eminent domain has been authorized for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, and for all other purposes incidental thereto, including, but not limited to, the relocation of public utilities as may be required."**

### 3.4.6 Non Profit Organizations

A. Acquisition by Option

In order to obtain a valid option from a religious or other incorporated non-profit organization, it is normally necessary for the group to have a meeting of the governing body and approve the conveyance. An Order must be entered by the Circuit Court authorizing the trustees to execute an option. In the event that the Court has not been called on to confirm the election of the trustees, an Order must be entered to this effect as well. This process is time consuming and does not authorize entry on the land until a properly executed option is in hand. The same actions are required in order to obtain a right of entry and therefore this process is not available to obtain an immediate right to enter.

The immediate right to enter may be secured by filing a Certificate of Take or Deposit and obtaining an agreement after filing the Certificate. However, the acquisition should be by option if the project advertising schedule will permit and the offer is acceptable to the organization. If it is necessary to file a Certificate of Take or Deposit and conclude the transaction by an Agreement After Certificate, the following procedure will be used:

1. The Negotiator will request that a Certificate of Deposit (RUMS Form COD104/105) or a Certificate of Take (RUMS Form COT 100/101) be completed in its entirety with no omissions.

2. The governing body of the organization is to be advised that the Certificate will be filed with the Clerk of the Court for the protection of both the organization and VDOT. The negotiator will also advise the governing body that our Staff Counsel will be responsible for securing the Court Order authorizing the conveyance of title to VDOT.

3. The Regional Manager will ensure that negotiations with the trustees are reported on form RW-24 and submit the Certificate therewith.

4. At least ten (10) days prior to the date the Certificate is mailed to the Clerk, the governing body of the organization will be notified that a Certificate is being filed. Subsequent to the filing of the Certificate, VDOT will have the right to enter on the property and proceed with construction. The governing body of the organization will further be advised that arrangements will be made to secure a Court Order confirming the indefeasible title to VDOT.

5. A special form of Agreement After Certificate (RUMS Form D21) will be prepared and sent for execution by the trustees. This will enable the proper Court Order to be entered dismissing the suit and vesting indefeasible title to VDOT.

If an agreement cannot be reached with the governing body of the organization or if title to the property is defective, the filing under eminent domain proceedings is to proceed in the usual manner. When a utility easement is required and a Certificate of Take or Deposit is to be filed, the necessary information, including plats and marked prints showing the easement, must be furnished with the RW-24. Whether title is to be secured by filing the Certificate or by option, VDOT will take title to the utility easement for later conveyance to the utility company.

B. Acquisition by Donation Where There Are No Formal Plans ("No Plan Projects")

"No plan projects" are used when minimal survey work is required to accomplish the design engineering; and right of way and construction stakings; and there are no major hydraulic or river mechanics studies required.

Normally properties are acquired for "no plan projects" by donations. However, when reasonably necessary and approved by the Director in advance, VDOT will pay just compensation up to $5,000 per parcel for each acquisition.

"No plan projects" require the preparation of plats and a set of skeleton plans showing the areas to be acquired and typical cross sections. The plats and set of skeleton plans are to be signed by the Director of Transportation and Land Use, or designee. If the landowner agrees to voluntarily convey the property a plat showing the acquisition will be attached to the option and deed.

If an agreement for a voluntary conveyance of the needed rights cannot be obtained and it becomes necessary to acquire the rights by eminent domain, Location and Design will develop a detailed set of plans for each parcel upon which a certificate is to be filed.

Right of Way will issue a "Notice To Proceed" when incidental costs such as those to compensate the landowner for fencing or landscaping are incurred or when it becomes apparent that a certificate of take or deposit must be filed in order to acquire the property, whichever occurs first.

### 3.4.7 Cemeteries

Section 33.1-133 of the Code of Virginia grants the Commissioner authority to acquire by agreement land which is in use as a cemetery. VDOT may reach agreement with the next of kin, or other persons having authority to make disposition of the interred. Negotiations are conducted separately with the owner of the land unless this is the same party who has authority over disposition of the buried remains.

Section 33.1-134 authorizes the Commissioner to condemn cemetery land and to petition the court to have the remains removed to a suitable repository. The next of kin are defendants in such a petition. If the owners or next of kin are unknown, non resident in the State or not competent, the condemnation and other steps in the process will be in accord with the law.

Section 33.1-135 requires that the reason for acquiring the land and removing remains must be specified in the condemnation petition.

Section 33.1-136 requires the court to determine a suitable repository and the manner of the removal and reinterment of remains.

The above statutory provisions create a need to strictly follow a detailed process in acquiring land used as a cemetery and removing and reinterring remains.

In addition to the above statutory provisions, two other general rules should be kept in mind:

1) That right of entry on the land must always be secured by agreement or certificate of deposit or certificate of take before proceeding to enter the cemetery for the purpose of removing and reinterring the remains; and

2) That whenever the next of kin must be dealt with, a petition for a court order to provide for the relocation of the remains will be filed in every case and a notice published in a newspaper of general circulation in the area after agreement with as many of the next of kin as possible can be obtained.

In view of the above statutory provisions or requirements, the following procedures should be used as a guide to handling cemeteries or grave sites:

A. Upon receipt of field inspection plans, the right of way staff member who has been assigned to prepare the estimate, attend the field inspection or complete the field inspection check list will proceed as follows:

   1. Determine the owner of the land on which cemetery is located.

2. Determine whether the owner of the land is a cemetery corporation or if the cemetery is under private control.

3. Determine whether or not the owner of the land has the authority to make disposition of the graves.

4. Determine the number of graves or persons buried.

5. Determine the names of persons buried as well as possible from cemetery records, markers, etc.

6. Make sketch of site showing right of way lines, property lines, limits of cemetery, each grave site, markers, posts, railings, etc., as best as can be determined.

7. Assign parcel number to cemetery, if under separate ownership.

8. Prepare a report including the above information and, if time permits, incorporate it into the right of way field inspection report along with any recommendations pertinent thereto; otherwise, submit separate report to the appropriate Acquisition Team Leader as soon as all of the information is obtained.

B. After it has been determined that the cemetery will definitely be within the right of way limits of the project and approved plans are anticipated, the following procedures should be used in effecting the acquisition of the cemetery and removal of the graves:

1. If the cemetery is a corporation having authority over the land with the right to reinter remains:

   a) Verify ownership of land.

   b) Verify corporation's license to operate.

   c) Verify the corporation has legal authority to make disposition, removal and reinterment of remains.

   d) Upon receipt of approved right of way plans, attempt to reach agreement for acquisition of land and disposition of graves, i.e., reinterment elsewhere in subject cemetery.

2. If corporation does not have legal authority to make disposition or it is necessary to deal with next of kin, proceed as follows:

   a) Determine owner of land and attempt to reach <u>independent</u> agreement for acquisition of land.

   b) Determine names of persons buried; check cemetery records, interview landowners and/or longtime residents in the area.

c) Determine next of kin of all persons buried, including names and addresses; use same source as in Item b.

d) Check on local ordinances. Check on State Health Department requirements, such as a permit application for disinterment.

e) Attempt to reach agreement with all next of kin and incorporate therein the following provisions:

(1) A suitable repository or place of reinterment and whether it will be provided by state or by next of kin. If repository is to be provided by state, attempt to obtain permission to reinter on subject property and include payment therefore and terms thereof in separate transaction; or secure private property nearby obtaining agreement providing for permission, consideration, etc.; or reinter in licensed cemetery obtaining agreement, as required. If repository is provided by next of kin or reinterment is not in a cemetery providing perpetual care, incorporate assurance that state is not responsible beyond completion of reinterment.

(2) The manner of removal, transportation and reinterment; i.e., licensed undertakers or funeral director, with due dignity, reverence and decorum, etc.

(3) The type of vault, casket, box, chest, or other containers, if replacement is necessary.

(4) The type of marker, the disposition or replacement of existing markers, fences, railings, etc.

(5) Provide for direction, consent and authority to be granted by next of kin.

(6) Provide for conformity with State Health Department requirements and all local ordinances.

f) If applicable, prepare specifications for removal, transportation and reinterment in accordance with agreement. Provide for inspection of site. Provide for unit bids on basis of known and unknown graves. Provide for all necessary services, site preparation, etc., or include alternatives.

g) In cooperation with the Consultant Contracting Section, advertise for bids for professional services or licensed undertaker or funeral director.

h) In cooperation with the Consultant Contracting Section, review bids submitted by funeral directors, make selection and advise all bidders as to the results of the bidding. If payment is required at this time for new repository, submit voucher directly to the Fiscal Administrator in the Central Office. Request the Staff Counsel or a local, appointed Fee Counsel to secure a court order for

disinterment and reinterment and to arrange for an order of publication and the posting of notice.

i) Upon issuance of court order and posting of notice, have work performed and secure release from owner and/or next of kin. Obtain invoice from undertaker for services performed and submit voucher covering payment directly to the Fiscal Administrator in the Central Office.

j) Keep written record of all contacts with owner, next of kin, attorney, etc., and indicate results. Keep permanent record of location of new graves.

k) Submit to the Relocation Section under cover letter the agreements reached with next of kin and repository site owners, bids obtained from funeral directors, and copies of all other related papers. The intent being that the Central office file will be as complete as the Region's file.

3. If agreement cannot be reached with the owner of the land, submit report (RW-24) with recommendation to proceed under the eminent domain statutes.

Due to the time required to relocate graves, it is imperative that priority be given to the clearing of rights of way having cemeteries located thereon.

A copy of the title examination on any parcel referencing a cemetery must be submitted by the Regional office to Virginia Public Records Management.

## Section 5 - Closings

### 3.5.1 General

The Staff Counsel is responsible for general supervision of closings. The right of way staff may conduct closings working under the guidance and technical supervision of the Staff Counsel but Staff Counsel should not be involved in each and every closing.

The right of way staff member who is assigned the responsibility for conducting the closing is the "closing agent." In addition to being responsible for conducting the closing, obtaining lien releases and clearing other clouds on the title, it is the responsibility of the closing agent to make appropriate comments on the legal tab in the RUMS to describe the actions taken and progress towards completion of closing and post-closing requirements. The standard verbiage available in RUMS should be used to facilitate such entries when possible. The closing agent is expected to use good professional judgment as to when or if to involve Staff Counsel in a specific closing.

The Staff Counsel will certify all title reports prepared by right of way staff before the closing. All title reports must be prepared to conform to this Chapter. Releases of deeds of trust, taxes and judgements will be secured prior to closing as specified in the last column of Table 3.1 at the end of this section. This last column represents the degree of risk the Right of Way and Utilities Division is willing to accept in connection with closings on voluntary conveyances.

### 3.5.2 Required Closing Documents

The appropriate Acquisition Team Leader will ensure that the closing agent uses the following documents for the closing:

- Instrument of Conveyance
- Plat to accompany the deed for insertion in the state highway plat book
- Warrant for total consideration
- If applicable, the Reimbursable Closing Costs form [Form RW-40 (RUMS Form D58)]
- Closing Statement [Form RW-206 (RUMS Form D57)]

If a portion of the consideration is to be withheld pending specific performance on a contract, such as for a building removal, separate warrants will be prepared.

The closing documents will be prepared or obtained by the closing agent sufficiently in advance of a scheduled closing to permit their review.

### 3.5.3 The Closing Process

The closing agent will have taken required action before the closing to clear any liens or other encumbrances on the property. If the option requires that the owner convey an easement directly to a utility company, the consideration for purchase will not be released until the easement conveyance has been accomplished.

At the closing, the closing agent will recover any closing costs that are the responsibility of the owner. The closing agent will certify the accuracy of the closing statement. The deed, utility easements (if any), and the closing statements will be executed by the parties. The owner will be provided copies of all documents signed.

If the owner is eligible to recover closing costs, the closing agent will approve for payment based on entries in the Landowners Reimbursable Closing Costs form.

If the owner is retaining a building, the consideration to be paid will be reduced by the amount of the retention value of the building. In addition, the consideration paid at closing will be reduced by the amount of the guarantee pending satisfactory removal of the building. A separate warrant will be delivered to the closing agent before closing in the amount withheld.

The closing agent is responsible for ensuring that all conveyance documents (including appropriate plats or plans) are properly recorded after a current owner title examination is conducted and no objections or clouds are found by VDOT.

### 3.5.4 Delivery of Consideration To Owners And Lienholders

Consideration will not be delivered to the owner, any lienholder or any other person under any circumstances until a current owner run down has been completed after the closing, no objections or clouds on VDOT's title are found and the conveyance documents have been properly recorded with the Circuit Court Clerk. Payment of the recordation fee will be made to the Clerk of the Court by the Regional office.

### 3.5.5 Closings Conducted By Mail

A closing may be conducted by mail instead of in person upon the specific request of the landowner(s) and without prompting by the closing agent. All of the requirements for an in person closing must be followed except that the unexecuted conveyance instrument, closing statement and any other documents required, may be mailed to the landowner(s) for execution and return. The landowner(s) will be advised in advance of a closing by mail that we will not disburse the consideration to them until the properly executed conveyance documents are recorded in the Clerk's office.

### 3.5.6 Actions After Closing

The warrant representing the guarantee for removal of buildings will be released when the appropriate Acquisition Team Leader notifies the closing agent that the owner has satisfactorily completed the removal.

After closing, the closing agent will forward the instrument of conveyance, a copy of the closing statement, the Certification of Title, and any other related documents to the Acquisitions/Legal Section. A copy of the closing statement will be retained in the closing agent's file.

**TABLE 3-1**

**TITLE RESEARCH AND CLOSINGS**

| ACQUISITION | TITLE RESEARCH | CLOSING |
|---|---|---|
| **Temporary Easement** | Current owner title examination | **<$10K** – close subject to deeds of trust, taxes & judgments<br><br>**>$10K** – Staff Counsel to advise on closing subject to title objections |
| **Permanent Easement**<br><br>**Utility Easement** | Current owner title (regardless of value) | **<$10K** – close subject to deeds of trust, taxes & judgments<br><br>**>$10K** – Obtain release or subordination of deeds of trust. Close subject to judgments and taxes as no land acquired |
| **Fee Acquisition – Partial Take** | **<$5K** – Current owner<br><br>**>$5K <$50K** - 20 yr. search<br><br>**>$50K** – 60 yr. search | **<$5K** – Close subject to deeds of trust, taxes & judgments<br><br>**>$5K** – Obtain partial releases of deeds of trust. Staff Counsel to advise on releases of judgments & taxes |
| **Fee Acquisition - Total Take** | 60 year search (regardless of value) | Obtain releases of deeds of trust, judgments & taxes regardless of value |
| **Condemnation** | 60 year search (regardless of value) | |

**CAVEAT:**

These guidelines are general in nature. Staff Counsel may, after consultation with the Regional Manager or Acquisition Team Leader, impose more or less stringent title research and/or closing standards if justified in his/her professional judgment after a review of individual cases.

In accordance with Table 3 – 1, where the landowner, after being advised of any provisions of their mortgage relating to voluntary conveyances in eminent domain, refuses to agree with our acquiring the property/property rights "subject to," we will attempt to obtain the appropriate releases from ***all*** lienholders.

Where unreasonable impediments are encountered in promptly securing required lien releases for closing voluntary conveyances, the Regional Manager should acquire the needed right of way by filing a Certificate of Take followed by an Agreement After Certificate (if possible.) VDOT would then file a petition and order providing for the disbursement of the funds deposited in accordance with the priority of any liens transferred thereto. Staff Counsel will process the petitions and orders and should be consulted as needed to facilitate the process.

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# CHAPTER 4 – APPRAISAL

## Section 1 –Organization, Communication and Key VDOT Personnel Roles

### 4.1.1 General

As allowed by law, the Virginia Department of Transportation (VDOT) Commissioner is vested with the power to acquire property rights necessary for the construction, reconstruction, alteration, maintenance, and repair of Virginia's highways. Acquisitions are made by purchase, gift, or condemnation. Acquisitions may include property rights for permanent, temporary, continuous, periodical, or future use. If requested by a municipality, the Commissioner is authorized to acquire right of way and exercise eminent domain within a municipality on projects constructed with state or federal participation. When the Commissioner acquires title to property that is requested by a municipality, the title may be conveyed to the municipality.

### 4.1.2 Organization

VDOT is comprised of nine districts and a Central Office. The districts are consolidated into three regions for the purpose of Right of Way administration. Program sections in the Central Office are responsible for overall program administration and oversight to ensure compliance with state and federal laws and regulations. The Appraisal Section is responsible for the administration of the appraisal program. The Chief Appraiser for VDOT is responsible for this section and reports to the State Acquisitions Manager. The State Review Appraiser reports to the Chief Appraiser. In addition, an Appraisal Assistant assigned to the Appraisal Section assists in scheduling and acts as a liaison with the Consultant Contract Coordinator.

The Division has direct authority for all Right of Way functions including appraisal. The management is administered through a three region structure with field offices in each Region. Each regional office has a Right of Way Regional Manager who reports to the Director. Internal VDOT appraisers are managed by the Regional Managers and report to the Appraisal Team Leader. The Appraisal Team Leader is responsible for supervising and coordinating appraisers and for all other administrative duties necessary to ensure the successful operation of the Region's appraisal program. Work assignments for appraisers

are scheduled statewide as needed by the Central Office Appraisal Section after consultation with and concurrence by the Regional Managers or their designees.

This chapter of the manual is intended to address major policy issues that apply to both internal VDOT appraisers and the external fee appraisers who prepare real property appraisals for acquisitions involving State and Federal funding. This chapter is comprised of seven sections:

1. Organization, Communication and Key Personnel Roles
2. Administration
3. Appraisal Development
4. Specialized Topics in Appraisal Development
5. Appraisal Reporting
6. Report Submission and Review

It is important for the fee or consultant appraiser to maintain open and regular communication with the Reviewer or the Appraisal Team Leader in each Region in order to ensure that requirements are understood and met.

### 4.1.3 Appraiser and/or Right of Way Agent E-mail Addresses and Communication

Contract and fee appraisers are required to maintain an up-to-date e-mail address with the Consultant Contracting Section. Updates and communication of appraisal related issues, requests for proposals, and policy changes are normally made by e-mail. Also, e-mail is encouraged as a method for the appraiser to communicate with VDOT staff and to ask questions as needed throughout the appraisal process.

In addition, the Division maintains an Internet site accessible to the general public. Specifically, the Appraisal Section of VDOT maintains an "Appraiser Resource" page for data links. Suggestions for improvements to the appraisal program are encouraged, and they can be made using this site. It is recommended that consultants and fee appraisers who work for VDOT reference the Appraisal Section web page on a regular basis to keep

up with current updates. The web page is located at http://www.virginiadot.org/business/row-appraisal.asp.

Prior to making a property inspection, the Appraiser and/or Right of Way Agent must be familiar with the right of way plans and plats so they can determine if any discrepancies exist between the plans/plat and the actual site. These discrepancies should be reported to the appropriate Team Leader. Issues that may arise with the right of way plans/plat upon completing an inspection include incorrect property line boundaries, changes in ownership, subdivision names, the assemblage of properties, property data, drainage issues, improvements included on the plans but not present upon inspection, improvements present upon inspection but not noted on the plans, and incorrect property area calculations. Also, it should be noted if the grade and elevations indicated on the profile and cross section plan sheets appear to be inconsistent with actual ground conditions.

Environmental issues that have not been previously noted or communicated should also be reported to the appropriate Team Leader. These issues may include, but are not limited to, underground storage tanks, discarded tires, oil spills, soil contamination, or asbestos located within buildings. Upon notification of any potential environmental issues that have not been previously noted, the appropriate Team Leader should contact VDOT's Environmental Section and advise them of any such discoveries.

### 4.1.4 Key Personnel Roles:

#### A. Central Office Personnel

##### 1. Director

This individual is responsible for the overall administration of the Right of Way and Utilities program and is located in the VDOT's Central Office.

##### 2. State Acquisitions Manager

This individual is responsible for assisting the Director and may act in the Director's absence. This position is responsible for management and oversight of

the following sections: Acquisitions, Appraisal, Relocation, Special Negotiations, Policy & Audit, and Eminent Domain.

### 3. Chief Appraiser

The Chief Appraiser reports to the State Acquisitions Manager. The Chief Appraiser manages the Appraisal Section including program administration, policy review, and quality control while ensuring that appraisals and appraisal policies are in compliance with all applicable state and federal laws and regulations. The Chief Appraiser also provides technical assistance and advice to the Director, the general assembly liaison, the regions and our litigation teams.

### 4. State Review Appraiser

a. The State Review Appraiser reports to the Chief Appraiser. The State Review Appraiser is responsible for monitoring and assuring quality control. This is accomplished through periodic regional reviews which result in formal reports and an ongoing process of informal review. The State Review Appraiser responsibilities also include providing technical assistance to appraisers working for or on behalf of VDOT and acting as a liaison to the Property Management Section with regard to property valuation issues.

### 5. Appraisal Section Assistant

This person is primarily responsible for assisting the Chief Appraiser and State Review Appraiser with scheduling appraisal assignments.

## B. Regional Personnel

### 1. Regional Manager

Each Regional Manager is responsible for the overall administration of the Right of Way program in his or her region. They are responsible for approving all appraisals and Basic Administrative Reports (BARs) for the negotiation of acquisitions. While appraisal work schedules are managed by the Appraisal Section after consultation with and concurrence by the Regional Managers or their

designees, the regional appraisers report directly to the Appraisal Team Leader under the supervision of the Regional Manager.

Appraisal Reports are approved for negotiations by the Regional Manager, the Appraisal Team Leader, or a designee of the Regional Manager. Reports must be electronically signed and dated on the "Approved for Negotiations" line on page one. Each report must meet the requirements of this manual. For appraisals, the approval may not be made until the appraiser and the Review Appraiser have each signed their respective Appraiser Certification forms for the appraisal report.

## 2. Regional Appraisal Team Leader

The Appraisal Team Leader is responsible for, supervising and coordinating appraisers and all administrative duties to ensure the successful operation of the Region's appraisal program.

Examples of the principal duties:

a. Works with the Appraisal Section and the Regional Manager to determine the priority of work to be assigned and supervises the activities of Review Appraisers, staff and fee appraisers, and administrative support staff.

b. Evaluates and maintains continuous performance records [RUMS AF23] for Fee Appraisers, consultants, and specialty experts. Copies of completed performance records are furnished to the Consultant Contracting Section upon the completion of contract.

c. Performs appraisals, appraisal review assignments and acts as a Supervising Appraiser as the need arises.

d. Approves the Fee/Consultant Appraisal Cost Estimate [RUMS AF20] when one is needed.

e. Reviews projects and individual parcels, when practical, with approved appraisers and review appraisers prior to their contract submission.

f. As required and when available, provides plans, cross sections, aerial photographs, sales information, cost estimates, land economic studies, and any other pertinent data to people completing an appraisal provided that the information is factual information and free of individual analysis.

g. Obtains a second appraisal on properties when the complexity of the appraisal problem or the quality of the first appraisal warrants a second opinion of value (see Section 4.6.9).

### 3. Regional Appraisers

The primary responsibility of appraisers is to perform appraisals and review appraisal reports submitted by both staff and Fee Appraisers per the requirements set forth in this manual.

When an appraisal review is performed, a copy of the review appraisal is attached to the original appraisal. In addition to reviewing the appraisal report, the reviewing appraiser will identify uneconomic remnants that result from a proposed acquisition and make a written recommendation to the Regional Manager with regard to a possible purchase. The recommendation should include the appraiser's opinion as to the value of the uneconomic remnant. The appraiser will also assume other responsibilities/duties assigned by the Appraisal Section, the Regional Manager or by the Regional Appraisal Team Leader. Appraiser responsibilities may vary depending upon a Region's needs.

To prevent a conflict of interest, the review appraiser cannot participate in the development of an appraisal that they will review at a later time. Furthermore, a review appraiser cannot prepare appraisals and review appraisals for the same project. The review appraiser on a project should review the project with the assigned appraiser(s) and discuss general issues of concern, scope of work, etc..

If any appraiser requires guidance in connection with an appraisal issue, they may consult with another appraiser, the review appraiser, the Appraisal Team Leader, the State Review Appraiser, or the Chief Appraiser.

## Section 2 –Administration

### 4.2.1 Suggestions and Recommendations for Changes

Recommendations for adding or changing VDOT's appraisal policies are welcome. All recommendations should be addressed to the Chief Appraiser. The process is as follows:

A. Anyone can make a suggestion or recommend a policy change.

B. All recommendations are required to be made in writing to the Chief Appraiser, either by e-mail or letter, and should contain the reasons for a requested policy change and a statement about the potential impact of the proposed change.

C. The Chief Appraiser reviews the requested policy change and makes a recommendation to the State Acquisitions Manager. If necessary, the State Acquisitions Manager will discuss the recommendation with the Director.

D. The recommendation may be rejected, approved, or referred to the Regional Managers for review and comment. It may also be referred to the Appraisal Team Leaders for their review and comment.

E. Once a final decision is made, the Chief Appraiser is notified of the decision. The Chief Appraiser contacts the person who recommended the change with a decision, unless the recommendation came from an anonymous source.

### 4.2.2 The VDOT Appraisal Guide

In addition to this manual, a "VDOT Appraisal Guide" exists to assist the appraiser with questions regarding the treatment of specific topics relevant to appraising property for eminent domain purposes. This manual and the Appraisal Guide are both available on the Appraisal Section of Right of Way and Utilities web site at http://www.virginiadot.org/business/row-appraisal.asp and on the Appraisal Team Site. The appraiser may contact the Regional Appraisal Team Leader, the State Review Appraiser or the Chief Appraiser with any questions.

### 4.2.3 The Uniform Act, Uniform Standards of Professional Appraisal Practice (USPAP), and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)

The Uniform Act Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended. commonly referred to and the Uniform Act was enacted January 2, 1971. It was intended to establish a uniform policy for the fair and equitable treatment of persons who are displaced as a direct result of programs or projects that are undertaken by a federal agency or with federal financial assistance. It ensures that displaced persons shall not suffer disproportionate injuries as the result of programs and projects designed for the benefit of the public as a whole and minimizes the hardship of displacement on such persons. Also, it establishes minimum Real Property Acquisition Policies for appraisal, negotiation, and property possession standards and requirements.

The requirements set forth by the Uniform Act are incorporated within this manual. It is important that the appraiser comply with this manual to ensure compliance with the Uniform Act. Questions regarding the Uniform Act and the appraisal process are explained further in the VDOT Appraisal Guide.

The Uniform Act has varying degrees of impact on the eminent domain appraisal process. In part, it requires that the appraiser comply with Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) where appropriate. The appraiser will be informed if this is the case. VDOT emphasizes and requires that the appraiser comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date of the appraisal report. When performing appraisals and reviews for cost estimates, internal advice, quality control, pre-qualification, or when performing in a non-appraisal position (e.g. negotiator) etc. an appraiser employed by VDOT will not be subject to USPAP Standards relating to development and reporting nor to the record keeping provisions as noted and explained in greater detail in **18 VAC 130-20-170 A** of the Regulations of the Real Estate Appraisal Board of Virginia.

USPAP allows for extraordinary assumptions, hypothetical conditions and jurisdictional exceptions. If an appraisal prepared for VDOT has extraordinary assumptions, hypothetical conditions, and/or jurisdictional exceptions, they must be clearly stated in the appraisal report.

### 4.2.4 Appraiser Licensing and Competency

All individuals performing appraisals for VDOT must be appropriately licensed as an appraiser, and they must meet the competency provision required by USPAP. Staff appraiser trainees will become licensed as Appraiser Trainees within two years from their hire date or as soon as practical. Review Appraisers must also be appropriately licensed and comply with the competency provision of USPAP.

If an Appraiser or Review Appraiser does not meet the competency provision set forth in USPAP but does meet the minimum level of licensure required to review an appraisal assignment, the Appraiser or Review Appraiser must disclose his/her lack of competency to complete the assignment, as required by USPAP, to the Regional Appraisal Team Leader. When doing so, they must state what steps they will take in order to meet the competency provision required by USPAP for completing the review appraisal assignment. The Regional Manager or the Regional Appraisal Team Leader may elect to recommend reassignment of the appraisal or review appraisal to a different Appraiser. Alternately, they may make a recommendation to the Chief Appraiser that the original Appraiser proceed with the assignment subject to the steps proposed to meet the competency requirements under USPAP. The Chief Appraiser or designee will determine if the Appraiser may proceed with the assignment and, if so, under what conditions.

If the required scope of the review appraisal assignment exceeds the Review Appraiser's licensing status, VDOT requires that the Review Appraiser decline the assignment. If the scope of the assignment falls within the realm of a Review Appraiser's licensing status and competency, and the original appraisal reviewed was completed by an appraiser with a higher level of licensure (e.g., the Review Appraiser is a Certified Residential Appraiser but the appraisal was completed by a Certified General Real Estate Appraiser), the Review Appraiser may complete the review appraisal assignment.

### 4.2.5 Appraiser Conduct

Regardless of whether an appraiser is an employee of VDOT or hired under contract, the appraiser is expected to avoid being an advocate on behalf of either VDOT or the property owner. The appraiser is, however, expected to comprehensively analyze and address to the appropriate extent, any and all impacts of a project on an owner's

property. The appraiser should not attempt to steer the appraisal process in an effort to influence the possibility of litigation. The appraiser is expected to employ sound appraisal practices and methodology necessary to produce a credible, reliable, and unbiased opinion of market value as defined within the report and to produce an appraisal that meets the requirements stated in this manual. The appraiser is expected to provide services in a timely manner to avoid project delays that may impact VDOT's ability to meet project deadlines. However, the appraiser's opinions of value should not be influenced by VDOT's project deadlines. Also, when called upon to do so, the appraiser is expected to respond in a timely manner for additional information or clarification. The appraiser must comply with the ethics and confidentiality requirements set forth by USPAP. Neither an appraiser nor a review appraiser can have a direct, or an indirect, interest in a property that they appraise for VDOT. In addition, a Review Appraiser may not review the work of an appraiser that has managerial responsibility for them in their course of work, either directly or indirectly, or where the appraiser under review employs the Review Appraiser, either on a permanent, temporary or contractual basis.

### 4.2.6 Property Evaluation Report Types

VDOT has two types of property evaluation reports, the Basic Administrative Report (BAR) and the appraisal. The BAR is not an appraisal. It is an appraisal waiver. The waiver of appraisal is sanctioned by FHWA and the Commonwealth of Virginia and is utilized to estimate the value of property when the appraisal problem is considered non-complex and the anticipated value falls within the defined value range for this process. It is intended that these documents be completed by non-appraisers; however, special exemptions may be granted by the Chief Appraiser. The Code of Virginia Section 25.1-417 A 2, does not require that a property be appraised prior to the initiation of negotiation when the property being acquired is valued at less than $25,000 based on assessment records or other objective evidence. When the value is $10,000 or less, the same person who develops the BAR can negotiate with the property owner. When the value falls between $10,001 and $25,000, a separate agent must negotiate and the owner must be informed that they are entitled to an appraisal if they so choose. VDOT has added an additional requirement that in order to perform a valuation without an appraisal there must be no incurable damages caused by the taking. When a property

does not require an appraisal, a BAR may be used. This written property evaluation report provides an indication of property value for administrative use in the process of making a simple property acquisition.

Reporting templates are used by VDOT to assist with consistency in presentation of data and information. VDOT has two primary types of appraisal report templates. For uncomplicated acquisitions, an Acquisition Appraisal Report (AA) may be used. For other appraisals, a Narrative Appraisal Report (NA) is used. Both are classified as a "Summary Report" as defined by USPAP. A "Self-Contained" narrative appraisal report may be required on very rare occasions when the complexity of the issues requires a more extended presentation. A "Restricted Use" report is not used by VDOT unless approved by the Chief Appraiser for internal purposes e.g. estimates. All appraisal reports and review appraisals developed in the course of acquisitions must be in writing unless the Director or the Chief Appraiser provides permission to complete an oral report. When an oral report is completed, the VDOT file must contain a file memorandum clarifying the principal foundation for the report's conclusions. Also, the file must contain a signed Appraiser Certification.

If a technical appraisal review is completed on an appraisal in connection with a pending eminent domain case, a VDOT Technical Review Appraisal form is used. VDOT staff may complete an administrative appraisal review upon the request of Staff or Fee Counsel. If an administrative review is prepared for counsel, a copy must be sent to the Eminent Domain Appraisal Coordinator.

### 4.2.7 Basic Administration Report (BAR) Development and Reporting Requirements

VDOT staff employees complete the BAR at the discretion of the Regional Manager or designee. Two BAR formats have been developed to meet the needs of the Agency. One is for acquisitions, and the other is used to estimate the value of a residue. In addition, when a BAR is completed for property management purposes, a picture, a marked sketch or plan sheet showing the property boundaries, and a copy of the comparable sales relied upon to form the opinion of value are required.

When it is determined that a BAR is appropriate for acquisition purposes, the form must be completed in its entirety and approved for acquisitions by the Regional Manager, Appraisal Team Leader, or a designee of the Regional Manager who has been approved by the Chief Appraiser, the State Acquisitions Manager, or the Director. After a BAR is determined acceptable for the sale of residue and/or surplus property, the report is electronically signed and uploaded to RUMS.

### 4.2.8 Appraiser Trainee and Licensed Appraiser

Appraiser Trainees may be licensed by the Commonwealth or unlicensed. A licensed Appraiser trainee is required to sign the appraisal report and provide his/her license number in the report. Also, they are required to sign the Appraiser Certification. When a licensed Appraiser Trainee signs an appraisal report, a supervisory appraiser who is appropriately licensed and who meets the competency provisions as outlined in USPAP is also required to sign the appraisal report and the Appraiser Certification.

If the Commonwealth has not licensed the Appraiser Trainee, the Appraiser Trainee may not sign the appraisal report. However, the Appraiser Trainee's contribution made to the report must be provided in an addendum by the licensed appraiser who signs the report. If the unlicensed Appraiser Trainee provides significant professional assistance, the Appraiser Trainee is required to sign the Appraiser Certification. When doing so, they must note on the Appraiser Certification that they are unlicensed. The licensed appraiser, who signs an appraisal report where an Appraiser Trainee provided significant professional assistance, whether or not they are licensed as an Appraiser Trainee, may not complete a review of the same appraisal report.

### 4.2.9 Appraisals for Court Testimony

Please refer to the Eminent Domain Section of this manual for a description of the process involved in the retaining of an appraiser to serve as an expert witness.

### 4.2.10 Property Inspection and Landowner Contact

Section 33.1-94 of the Code of Virginia requires that a "Notice of Intent" letter must be mailed to the landowner at the address recorded in the tax records or delivered to the

owner in person not less than 15 days prior to the first date of the proposed entry including entries for appraisal purposes.

When an appraisal is required, the appraiser must attempt to contact the property owner by letter [RUMS A13] and **must** afford them, or his/her representative, an opportunity to accompany them during the property inspection. The initial attempt to contact the property owner must be made by certified mail, return receipt requested. A copy of this letter must be attached to the appraisal report. This is required so that the attempt to contact the landowner is adequately documented. The appraiser should make every effort to contact a property owner to invite them to accompany the appraiser on the inspection. Such subsequent attempts may be made verbally by the appraiser and mentioned in the report.

The location of property lines and any site improvements should be confirmed with the landowner, when possible, while inspecting the property. The appraiser must inspect the proposed acquisition area, the exterior, and if applicable, the interior of all improvements located within the acquisition area. If damages to the remainder are anticipated, the appraiser is required to inspect all improvements located within the remainder. The results of a property inspection must be documented. The form of documentation may include a memorandum to the file, use of a property inspection checklist contained in the file, or if preparing a narrative appraisal, the property description information contained in the appraisal. A generic property inspection form [RUMS A24] is available for use. During a property inspection, the appraiser may not express any opinion as to the condition of the improvements or speculate on the value of property. If a person requests that the appraiser and/or Right of Way Agent provide any conclusions with respect to property value or condition, he or she is required to politely advise the person that all factors relevant to value must be studied before arriving at any conclusions.

The licensed appraiser signing the Appraiser Certification is required at a minimum to perform an exterior inspection of any sales or rental comparables used in an appraisal report. An expert witness testifying on behalf of VDOT is required at a minimum to inspect the exterior of any sales or rental comparables that may be relied upon as the basis of their testimony.

### 4.2.11 Parcels

For the purpose of highway appraisals, a parcel may be comprised of several tracts with the same ownership. A property may have several parcel numbers assigned for acquisition purposes. If a property is located within two different projects, it will be assigned different parcel numbers for the land area located in each project. All parcels acquired from one tract or unit under the same ownership can be included in one appraisal. When more than one parcel or one project is included in one appraisal, the appraiser shall indicate the amount allocated to each parcel and/or project within the appraisal. An Executive Summary must be prepared for each parcel. Parcel numbers are assigned during the preliminary engineering phase of project development. A single parcel number is assigned to parcels having a single tax map number in the local assessor's office.

### 4.2.12 Appraisal Cost Estimate (formerly known as the "Time Study")

When contracting with a fee appraiser or a consultant to perform appraisal services, it is necessary for VDOT staff to prepare an "Appraisal Cost Estimate" [RUMS AF20] for all parcels that will be appraised under a contract. The Appraisal Cost Estimate is prepared by VDOT staff to estimate the cost for contracting appraisal services. If VDOT staff complete appraisals for a project, an Appraisal Cost Estimate is not required.

When VDOT staff prepare an Appraisal Cost Estimate, the "State" box on the Appraisal Cost Estimate is checked to denote that VDOT staff completed the estimate. When submitting a proposal, fee appraisers or contractors also complete an Appraisal Cost Estimate and submit it with their proposal. They check the "Fee" box on the Appraisal Cost Estimate to denote that they completed the Appraisal Cost Estimate.

The Regional Manager must approve, sign and date the "State" Appraisal Cost Estimate and attach it to the appraisal contract. In addition, the Appraisal Cost Estimate(s) that is submitted by the Fee appraiser(s) and/or contractor(s) must also be attached to the contract before the appraisal contract is forwarded to the Consultant Contracting Section.

When a "Fee" or a "State" Appraisal Cost Estimate is completed, it must identify:

1. The plan sheet(s)

2. The parcel number

3. The type of appraisal required

4. The level of appraiser required to complete the assignment (Appraiser or Senior Appraiser)

5. A determination if damages may be present

6. The estimated cost to complete each appraisal assignment

In addition, if a "Fee" Appraisal Cost Estimate is completed, the person(s) submitting a proposal to VDOT must identify the appraiser(s) who will complete each appraisal assignment. The appraiser(s) identified to complete an assignment must meet VDOT's minimum appraiser requirements (see Section 4.2.15) to complete the assignment and they should be on VDOT's approved appraiser pre-qualification list.

Appraisers may elect to join together and submit a proposal by using appraisers who are on VDOT's pre-qualified appraiser list. However, a Request for Proposal may not be divided into separate proposals to complete appraisals on specified parcels within a project. When preparing the Appraisal Cost Estimate, consideration should be given to:

A. The complexity of the appraisal problem.

B. The total number of properties included in the assignment.

C. The time element involved and allowed for completion of the assignment.

D. The data and information that will be provided by VDOT.

E. The necessary data and information (scope of the assignments) that needs to be provided by the appraiser.

F. The level of appraiser (Appraiser or Senior Appraiser) that is required to complete the appraisal assignment.

When VDOT staff complete a "State" Appraisal Cost Estimate, the estimated cost to complete each appraisal may be based upon recent experience with hiring contract or

Fee Appraisers. Also, the estimated cost can be based upon the classification of the scope of the work required (e.g., partial acquisition, whole properties, similar appraisals, zoning, etc.) and the report type required.

If the appraiser is listed as a pre-qualified appraiser but they do not meet VDOT's minimum appraiser requirements for completing the appraisal assignment, a "Supervisory Appraiser" who does meet VDOT's minimum appraiser requirements must also be assigned to complete the appraisal and sign the appraisal report(s) for the respective parcel(s).

### 4.2.13 Use of Staff vs. Non-Staff Appraisers

The option is available to use either Staff Appraisers (VDOT personnel) or contract with non-staff appraisers to perform appraisals. The decision often hinges on the availability and the expertise of Staff Appraisers. When a consensus is reached between the Regional Manager and the Appraisal Section that a non-staff appraiser is needed to perform appraisals, the procedures for Consultant Services that are outlined in Chapter 8 apply.

Appraiser(s) identified to complete each assignment (e.g., parcel) must meet VDOT's minimum appraiser requirements as follows:

1. They must be appropriately licensed to complete the appraisal(s) for all parcels outlined in the Appraisal Cost Estimate where they are identified to complete an appraisal assignment unless a Supervisory Appraiser is identified to sign the appraisal report who does meet the minimum licensing requirements.

2. The appraiser must meet the competency provision defined under USPAP to complete the appraisal(s) for all parcels outlined in the Appraisal Cost Estimate where they are identified to complete an appraisal assignment or a Supervisory Appraiser who does meet the competency provision must also be listed for the appraisal assignment.

3. They should be on VDOT's pre-qualified list and they must meet the minimum level of approval required (either Appraiser or Senior Appraiser) to complete the appraisal assignments(s) for all parcels as outlined on the Appraisal Cost Estimate. If the

appraiser identified to complete an appraisal assignment is not on VDOT's prfe-qualified list, a request for an exception must be made to the Consultant Contracting Section. The Director or the Chief Appraiser must review and make a determination if the request will be approved.

If VDOT determines that an appraiser identified to complete an appraisal assignment, or who has been identified to sign as a Supervisory Appraiser for an assignment, does not meet VDOT's minimum requirements as stated above, VDOT may at its sole discretion, **among other possible remedies**, elect to:

1. Assist the consultant/appraiser with identifying an appraiser from VDOT's pre-qualified list who does meet the minimum requirements and who may act in the capacity of a Supervisory Appraiser and sign the appraisal report(s).

2. Withhold and/or cancel payment for the appraisal assignments. If payment is withheld or cancelled, written notification of this action must be sent to the appraiser and the Consultant Contracting Section must be copied on the notification. The notification may be made by e-mail or by letter.

3. Immediately contract with an appraiser who does meet the minimum appraiser requirements for appraisal assignment(s).

In the event that the consultant/appraiser who was awarded a contract needs to replace an appraiser that they identified on the "Fee" Appraisal Cost Estimate to complete a specific appraisal assignment, they must contact the Regional Manager or the Appraisal Team Leader for approval to replace the appraiser. When replacing an appraiser who is listed on the Appraisal Cost Estimate to perform an appraisal, the new appraiser must meet VDOT's minimum appraiser requirements for completing the appraisal assignment, including being determined pre-qualified by VDOT.

### 4.2.14 Pre-Qualification of Appraisers

Appraisers must be pre-qualified and placed on VDOT's Approved Appraiser list or the Approved Review Appraiser list prior to submitting a proposal and/or completing an appraisal assignment. The application for placement on either list, along with the

required supporting documents, is submitted to the Appraisal Section. The Appraisal Section will review the application and required documents to determine if they are complete. If so, the application package is forwarded to the Appraiser Relations Committee for review by **three or more** of its members. Should the applicant be requesting re-admission to the list or have significant eminent domain experience in another jurisdiction, the package may be reviewed and approved by the Chief Appraiser and State Review Appraiser with additional input from the Committee if questions exist. The Appraiser Relations Committee will make a recommendation to the Chief Appraiser. The Chief Appraiser or the Director will determine if the applicant meets the pre-qualification requirements as an approved appraiser or, if applicable, an Approved Review Appraiser. Until an individual is pre-qualified, neither the individual nor the firm representing them is allowed to submit proposals on any Request for Proposals solicited by VDOT.

A Title VI Evaluation Report must be completed and returned with each application package (only one report required per firm). The Title VI Evaluation Report must be re-submitted each year so that the information contained in the report is current. If the Title VI Evaluation Report is not returned within 30 days upon request, the appraiser may be removed from VDOT's pre-qualified Approved Appraiser or Approved Review Appraiser list at VDOT's discretion until the Title VI Evaluation Report is submitted and approved. When a Title VI Evaluation Report is received, it is forwarded to VDOT's Civil Rights Division for review and approval. VDOT's Civil Rights Division will notify the Consultant Contracting Section if the individual or firm's report is in compliance with VDOT's requirements.

Once the appraiser's request for pre-qualification as an Approved Appraiser or Approved Review Appraiser is approved, the Appraiser Relations Committee will assign a qualification level (Appraiser or Senior Appraiser) to the appraiser. The appraiser is notified of placement on the approved appraiser list and their assigned qualification level, or their admission to the approved Review Appraiser list. Exceptions to the Approved Appraiser application process and requirements may be made at the discretion of the Director or by the Chief Appraiser as business needs dictate. An appraiser's application

review process may take up to 90 days to complete after receipt of a complete application package.

### 4.2.15 Appraiser Pre-Qualification and Application Requirements

#### A. Items required for consideration as an Approved Appraiser include:

1. A completed "Appraiser Fee Application".

2. An application package must include three copies of the application package must be submitted to VDOT:

   a) A copy of the appraiser's resume.

   b) A copy of the appraiser's current license.

   c) A completed and signed Title VI Evaluation Report with original signature.

   d) A copy of three-appraisal report work samples, including two reports for past eminent domain appraisal purposes if the appraiser has eminent domain appraisal experience, preferably of commercial properties. Form appraisals are acceptable.

   e) Evidence of completion, if available, of required continuing education specific to eminent domain valuation (7 hours for Appraiser and 28 hours for Senior Appraiser).

   f) A list of three professional references with their contact information.

   g) If available, or prior to submitting a proposal to VDOT, evidence that the appraiser has enrolled in eVA.

VDOT Appraiser Orientation material will be available on our website. When the appraiser signs an application to be pre-qualified as a VDOT approved appraiser or review appraiser, they acknowledge that they have access to the VDOT Appraiser Orientation. Prior to completing their first assignment for VDOT, the appraiser should complete the VDOT Appraiser Orientation.

**B. Basic "Fee Appraiser" requirements include:**

1. Each candidate, regardless of level, must meet the following educational and/or experience requirements:

   a) Be licensed as a "Certified General Real Estate Appraiser" in Virginia with at least three years of appraisal experience in the past ten years.

   Or

   b) Be licensed as a "Residential" or as a "Certified Residential" Appraiser with a minimum of five years appraisal experience.

2. Each appraiser must meet the following continuing education requirements:

   a) People applying for "Appraiser" level must have seven hours of continuing education specific to eminent domain valuation within the past five years.

   b) People applying for "Senior Appraiser" and/or "Review Appraiser" level must have at least twenty-eight hours of continuing education specific to eminent domain valuation within the past five years.

   Absent having the required hours of continuing education, the appraiser may fulfill this requirement within six months of admission to the Approved Appraiser List or prior to the completion of their first appraisal assignment, whichever occurs first. A waiver request for this requirement can be submitted to the Chief Appraiser. Questions regarding a course's suitability should be referred to the Chief Appraiser.

3. References included in the "Appraiser Application" are checked.

4. The appraiser must be able and willing to testify as an "Expert Witness".

5. The Appraiser's firm must have an approved Title VI Evaluation Report on file with VDOT.

All fee and/or consultant appraisers must meet the basic requirements outlined and be admitted to the Approved Appraiser List prior to submitting a proposal to VDOT.

## C. Appraiser Qualification Level Requirements and Work Description

The type of work that an approved appraiser on the "fee appraiser list" may complete will be determined based upon his or her assigned qualification level once their application is approved. Once pre-qualified, the appraiser may request an increase in assigned qualification level by following the procedures outlined in this chapter.

### 1. Appraiser

The licensed appraiser must meet all basic requirements. Appraisers licensed as "Residential" or "Certified Residential" Real Estate Appraisers are categorized as "Appraisers" on the approved appraiser list. Certified General Real Estate Appraisers with less than 2,000 hours of appraisal experience specific to eminent domain will qualify as an "Appraiser" versus a "Senior Appraiser."

#### Work Description

An Appraiser may complete appraisal assignments, and sign appraisal reports, as allowed by their licensing status and within the competency provision of USPAP that involve total property acquisitions. Also, they may complete assignments that involve partial acquisitions of vacant land or land with "minor improvements" where no significant damages result to the remainder. When a change in highest and best use results in significant damages and possible enhancements to a property, a Senior Appraiser is required to complete or supervise the appraisal.

If an Appraiser determines one or more of the following conditions exists:

a) The appraisal assignment for the intended transaction will exceed $250,000 in transaction value;
b) The appraisal is complex in nature because the property has damages, other than minor incurable damages or cost to cure items to a remainder property;
c) The appraisal assignment exceeds that allowed under their licensing status;

d) The Appraiser does not meet the competency provision as defined under USPAP;

they may have a "Supervisory Appraiser" who does meet VDOT's minimum requirements, and who is a VDOT Approved Appraiser, sign the appraisal report as the "Supervisory Appraiser". If a "Supervisory Appraiser" is not available to sign the report, VDOT may reassign the appraisal to an appraiser who does meet VDOT's minimum approved appraiser requirements at its discretion.

**2. Senior Appraiser**

The appraiser meets the basic requirements outlined and must be licensed as a Certified General Real Estate Appraiser. Also, they must have more than 2,000 hours of appraisal experience specific to Eminent Domain. The applicant may be required to submit work samples. If so, their work samples will also be evaluated. In addition, and if applicable, the applicant will be evaluated based upon VDOT's prior experiences with the appraiser. Also, the appraiser must have a minimum of twenty-eight hours of continuing education specific to eminent domain appraisal.

**Work Description**

No limits on acquisition and/or damage costs exist for the approved property types other than those imposed due to licensure status and/or competency to complete an assignment as outlined by USPAP.

### 4.2.16 Pre-Qualification of Review Appraisers

VDOT maintains an Approved Review Appraiser list. These Review Appraisers are available when staff reviewers are unable to meet business requirements. Review Appraisers on the Approved Review Appraiser list may be used at the discretion of the Regional Manager, Chief Appraiser, and the Director as business needs dictate. Inclusion on either the Approved Appraiser list or to the Approved Review Appraiser list is made on an individual appraiser basis versus a firm or a company-wide basis.

Requirements for admission to the Approved Review Appraiser list are the same as those outlined for a Senior Appraiser. In addition, the Review Appraiser must have

demonstrated at least two years of commercial real estate appraisal review experience and have experience testifying as an expert witness. Review Appraisers who are not a VDOT Approved Appraiser must submit an application, Title VI documentation, a resume, and three review appraisal reports samples. Appraisers who are currently VDOT Approved Appraiser only need to submit an application and appraisal review work samples unless otherwise requested to provide additional information.

Three members of the Appraiser Relations Committee will review the application, and the Region's recommendation if applicable, and make a recommendation to the Chief Appraiser. The committee members may request that the applicant meet with them for an interview. The Chief Appraiser will make a final recommendation to the Director who determines if the appraiser will be pre-qualified as an Approved Review Appraiser, pending the acceptance of the applicant's Title VI documentation if this documentation has not already been previously submitted and approved. Exceptions to the pre-qualification Approved Review Appraiser application process and requirements may be made at the discretion of the Director and the Chief Appraiser.

### 4.2.17 Appraiser Fees For Eminent Domain Cases

Fees for post appraisal work, i.e. preparation for and delivery of appraisal testimony will be negotiated with the Fee Counsel and Eminent Domain Section. Such fees must be approved by the Eminent Domain Section.

### 4.2.18 Appraiser Suspension or Removal From VDOT's Approved List

An appraiser may request removal from VDOT's approved list by making a written request to the Regional Office or to the State Review Appraiser. Also, appraisers may be removed from the Approved Appraiser list or the Approved Review Appraiser listl if warranted. Reasons for being removed from the approved appraiser or review appraiser list may include (but are not limited to):

A. The appraiser requests removal from the list.

B. Failure to submit a current Title VI Evaluation Report.

C. A loss of license.

D. A disciplinary action taken by the Real Estate Appraiser Board.

E. An inability to be, or remain, qualified as an expert witness.

In the event that the appraiser's work performance is unacceptable, and at VDOT's sole discretion, the Chief Appraiser may suspend the appraiser from either the Approved Appraiser list and/or the Approved Review Appraiser list for a period up to twelve months. Also, if they are approved as a Senior Appraiser, their approval level may be lowered to Appraiser and/or an educational alternative may be recommended prior to the appraiser completing work for VDOT.

Prior to taking any action for work performance issues, their case is reviewed by the Appraiser Relations Committee. The Region must forward documentation of work performance issues to the Chief Appraiser along with a recommendation. The Chief Appraiser will forward the documentation for review to the Appraiser Relations Committee. Upon reviewing the facts, which may include an interview with the appraiser, the Appraiser Relations Committee will make a recommendation to the Chief Appraiser on what action to take, if any.

The Chief Appraiser may elect to accept or modify the committee's recommendation. If appropriate, a letter by the Chief Appraiser will be sent to the appraiser regarding work performance issues and advising the appraiser of any change in their approved status. An appraiser may appeal the Chief Appraiser's decision to the State Acquisitions Manager by written letter. The State Acquisitions Manager will evaluate the appraiser's appeal and make a decision to affirm or modify the Chief Appraiser's decision. The appraiser will be notified by the State Acquisitions Manager, in writing, regarding the outcome of their appeal. Appraisers who are removed from the approved appraiser list for loss of license and/or disciplinary actions taken by the Real Estate Appraiser Board may request re-admission to the pre-qualified list under the requirements that exist at the time the request is made after a one-year period from the date of their removal.

### 4.2.19 Advertisement for Appraiser Services

Invitations to participate in VDOT Appraisal Orientation sessions at various locations around the state will periodically be sent to appraisers via Appraisal Institute Chapters

and the Realtors' Appraisal Section with advance notice given to the appraisers in the Appraisal Institute's Women and Minority Directory. The latter is in keeping with Title VI goals of greater positive outreach. Individuals may submit pre-qualification forms and documents at any time.

### 4.2.20 Data Ownership

VDOT owns the data provided in an appraisal report or as a result of the appraisal process. At times, market participants may agree to provide data to an appraiser, and they may request that the information provided by them be kept confidential. VDOT cannot guarantee the confidentiality of the data and sources that are provided in an appraisal report. VDOT distributes appraisals to property owners and other sources as required by law. While not preferred, anonymous sources of data will be accepted when no other market data is available (e.g., comparable property operating statements) and the market participant providing the data requests anonymity. However, this data should also be supported by secondary data sources that publish similar data (e.g., "Dollars and Cents for Shopping Centers" for a retail property).

### 4.2.21 Appraisal Quality Assurance

The Appraisal Quality Assurance Review System serves as a review of the appraisal process and to ensure statewide uniformity and compliance with the Right of Way Manual Of Instructions. The State Review Appraiser performs this Quality Assurance function. The Quality Assurance review process is a sampling of various types of appraisals from across the state. These reports indicate areas of weakness and best practices, both procedurally and geographically, and to point out problems with individual persons completing the reports. This information is used to target training needs and to ensure consistency in meeting required standards.

The State Review Appraiser is assigned to one Region per year on a rotating basis for the purpose of completing a Regional Quality Assurance Review. Reviews concentrate on the areas within the Regions with the heaviest workloads and/or projects featuring the most complicated appraisal reports. At least one Region will be reviewed on an annual basis.

The State Review Appraiser, under the direction of the Chief Appraiser, selects a project to review based upon the assignment sheets or contracts received from the Regions. The sampling includes property evaluation reports of each type and they include the Basic Administrative Report (BAR), the Appraisal Acquisition Report (AA) and the Narrative Appraisal Report (NA). A work sample from each person assigned to complete a property evaluation report for a project is reviewed. The State Review Appraiser and/or the Chief Appraiser or his appointee will review each report selected, maintaining notes of the review that indicate their evaluation of the individual report. The State Review Appraiser maintains a copy of all correspondence and documentation related to each project reviewed.

If, during the review of the selected reports, there is reason to believe there may be problem areas with an individual completing a report, the State Review Appraiser may perform additional reviews for work samples of this person that may include assignments completed for the project under review or other projects where the individual has completed reports.

After the annual review has been completed on a project, the Regional Manager and the Appraisal Team Leader are given an opportunity to meet with the Chief Appraiser and/or the State Review Appraiser to discuss the completed review. The format of this meeting allows for specific references to appraisals or appraisers included in the review. All deficiencies noted in the review that require action are discussed and emphasized during this conference.

After the conference with the Regional Manager and Appraisal Team Leader, the State Review Appraiser writes a memorandum that discusses in detail the analysis and conclusions for each report reviewed. This memorandum will emphasize the strengths, weaknesses, and deficiencies found in each report and within the overall review. Areas within a report that require corrective measures are noted. The Regional Manager will receive a copy of this memorandum. A copy of the memorandum is forwarded to the Director, the State Acquisitions Manager, and the Chief Appraiser.

The Director or an appointed representative may discuss this memorandum with the Regional Manager, emphasizing areas that need attention in an individual appraisal or

within the administration of the minimum requirements of the manual. Exceptions noted in the memorandum will be revisited within a six-month period to determine if corrective action has taken place.

## Section 3 – Appraisal Development

### 4.3.1 Appraisal Defined

The appraisal is an estimate of the market value of property supported by all available market data and pertinent facts related to the before acquisition value, the value of the acquisition, and the remaining property value if applicable. The Appraisal of Real Estate, Thirteenth Edition, defines an appraisal as "the act or process of developing an opinion of value". Appraisals submitted to VDOT will comply with the Uniform Standards of Professional Appraisal Practice (USPAP) that are in effect as of the effective date of the Appraisal Report (excluding the exceptions noted in section 4.2.3 of this manual). Among other items, these standards address the development and the reporting of an appraisal, as well as the review of an appraisal.

### 4.3.2 Market Value Defined

Often, the terms "Market Value" and "Fair Market Value" are interchangeably used. For appraisals completed for VDOT, the definitions are synonymous. Market Value has not been defined by Virginia statute. As a common law state, the courts rely on precedence for interpretation. A frequently cited case (Talbot vs. Norfolk 158 Va. 387, 163 S.E. 100; 1932) defined market value as the price which one, under no compulsion, is willing to take for property which he has for sale, and for which another, under no compulsion being desirous and able to buy, is willing to pay for the article.

### 4.3.3 Important Dates

All property evaluation reports must contain the report date. In addition, appraisals must have an effective appraisal date and the date that the property was inspected. Every report that is approved must have an approval date.

If the appraisal is retrospective (the effective date is in the past and it may not be the same as the inspection date), the appraiser should take care to note the applicable real estate laws and regulations in effect as of the effective date of the appraisal.

### 4.3.4 Partial Acquisitions with No Damages to the Remainder

VDOT is frequently faced with the partial acquistion of a property that is necessary for roadway improvements. The appraisal of the acquisition of a partial interest or segment is permitted by the Uniform Standards of Appraisal Practice as described in Standard 1-2 (e)(v). When the partial acquisition has no impact on the remainder, the Department may allow for the use of an abbreviated reporting format. This format does not require that the appraiser formally appraise the property in the after scenario. The assumption in this case is that the remainder is unchanged and, therefore, has the same value as in the before scenario. However, when completing an appraisal for partial acquisition purposes, the appraiser must make a definitive statement as to whether or not damages result to the remainder property. If there are no damages to the remainder and if this is clearly stated within the report, the process of obtaining partial releases from deeds of trust affecting the subject property is made easier.

### 4.3.5 Stipulated Value

The appraiser will not include stipulated value of property in an appraisal prepared for VDOT. These values are based upon third party data (e.g., assessed values of the improvements or rough estimates) for the purpose of showing a before and after accounting. If some of the remaining improvements are affected after a partial acquisition is made, the improvements affected must be valued in the before acquisition and in the after acquisition value. Since stipulated values are not specifically developed by the appraiser in the appraisal process, they may mislead the reader.

### 4.3.6 Use of Primary and Secondary Data

Primary data are information gathered and evaluated first hand (e.g., confirming sales comparables). When using primary data, the source and date confirmed should be stated. Secondary data are derived from sources where the data is not directly compiled.

Sources for secondary data may include real estate publications, including research compiled by local brokers and other data sources. Secondary data is often used to supplement data in the market analysis section of a report. Secondary data should be current, relevant, reliable, accurate, and conceptually correct. Secondary data should not reflect manipulation, ineptness, confusion, carelessness, or conceptual errors by the person or organization supplying the data.

It may be necessary to rely upon specialty appraisal reports. These reports may address a specific issue within the overall valuation (e.g., the value of a sign). The same criteria used to determine the appropriateness of secondary data is used when determining if the data contained in a "specialty report" are appropriate. If the appraiser concludes that the data contained in the report are appropriate, the appraiser may extend the conclusions made into their appraisal by the use of an extraordinary assumption.

### 4.3.7 Clarity, Accuracy, Consistency, and Supportable Conclusions

The appraiser is required to report and present data and information in a logical format within the narrative report templates required by VDOT. The appraiser's conclusions must reflect market behavior. Also, the appraiser must take care to provide consistency within the report and analysis (e.g., if the appraiser estimates replacement for reserves in a stabilized operating statement for a property, capitalization rates extracted from market sales are derived based upon the consideration of reserves for replacements). All conclusions must be documented, supported, and rely upon factual data.

### 4.3.8 Qualitative/Quantitative Adjustments

Due to the lack of market data, it is not always possible to quantify all of the applicable adjustments for the Sales Comparison Approach. Qualitative adjustments allow the appraiser to explain differences between a comparable sale and the subject property by using narrative comments. When making quantitative or qualitative adjustments, the appraiser must provide market evidence (e.g., discussion with market participants) to support their adjustments. Adjustments should be displayed in an adjustment grid.

### 4.3.9 Dedications, Proffers, and Donations

A dedication is a voluntary gift to a local government by the developer of a sub-division of private property for public use, usually in the context of facilitating commercial development. A dedication can only be made on a sub-division plat and must be of record. A proffer is a promise or proposal to provide private land for public use in the future. A proffer often occurs when a developer requests a zoning change or requests site plan approval for a proposed real estate development to a local jurisdiction. As a part of this process, the locality will request the developer to proffer any land that may be needed by a public entity for proposed roadway improvements. The approved site plan or special condition should show in detail the area to be proffered along with a statement indicating the area to be proffered. The appraiser must consider the impact that proffers have on the value of the proposed acquisition and the remainder of the property if applicable.

In order to determine if dedications or proffers are present, the appraiser must thoroughly research land development files (e.g., zoning requests, site plan approval requests, planning department files, etc.) if they are available within a local jurisdiction where the property is located. Proffers that are over ten years old but still have not been consummated may be difficult to enforce. If the appraiser finds a record of a dedication, proffer or other obligation to convey property in the future for public use, transportation or road purposes, he/she should immediately advise the Acquisition Team Leader and the assigned title examiner.

When a proffer statement does exist, it may be difficult to interpret. The statement may be broad and general in its description. The locality's Board of Zoning Appeals may be contacted for its interpretation of the proffer and its expectation that the proffer will be consummated. If the appraiser requires assistance with interpreting a statement, they should contact the Appraisal Team Leader. It may be necessary for Staff Counsel to help interpret the impact of a proffer.

A landowner, after being advised that they may be eligible to receive just compensation for their property, may elect to donate their real property for public use versus receiving

just compensation. Under these circumstances, an appraisal of the real property is not required but will be performed unless waived by the owner.

### 4.3.10 Hypothetical Conditions

USPAP defines a hypothetical condition as *"that which is contrary to what exists but is supposed for the purpose of the anaylsis"*. When appraising for VDOT, the after value is based on a supposition that the project is completed as of the effective date of the appraisal. This is a hypothetical condition resulting from the custom of the courts and the instructions in this manual. Otherwise, the appraiser is not allowed to use additional hypothetical conditions in the appraisal unless they have been instructed to do so by the Department or have requested to do so in writing prior to completing the assignment. When making the request, the appraiser must state the hypothetical condition and the reason for its inclusion (e.g., legal, purpose of reasonable analysis, purpose of comparison, etc.). The Chief Appraiser or State Review Appraiser will furnish written approval if the hypothetical condition is allowed for the specific appraisal problem when requested.

A hypothetical condition can result in a misleading appraisal report if it is not fully disclosed. In the appraisal report, the appraiser must clearly disclose the use of all hypothetical conditions used in the appraisal. If the appraiser receives written approval to base their analysis on hypothetical conditions other than those specifically referenced, a copy of the written approval must be provided in an addenda to the report.

When using a hypothetical condition, the appraiser is required to disclose the known facts concerning the physical, legal, or economic characteristics of the property being appraised. Also, the appraiser is required to address the impact on value resulting from the hypothetical condition(s).

### 4.3.11 Extraordinary Assumptions

USPAP defines an extraordinary assumption as *"an assumption, directly related to a specific assignment, which if found to be false, could alter the appraiser's conclusions or opinions*". An extraordinary assumption presumes as fact otherwise uncertain information about the physical, legal, or economic characteristics of the subject property. For

example, if contamination is *suspected* on a property the appraisal can be prepared as if it was not contaminated based on the extraordinary assumption, as stated in the report. On the other hand if the contamination was known as *fact*, the appraisal could be prepared as if it was not contaminated based on the hypothetical condition, as stated in the report. The assumption may also encompass conditions external to the property, such as market conditions or trends or integrity of data used in an analysis. Extraordinary assumptions used in the appraisal must be clearly disclosed and the basis for relying upon them discussed. Also, the report must disclose the impact on value of any extraordinary assumption used. The conclusions of a specialty appraisal report are incorporated in an appraisal by use of an extraordinary assumption.

### 4.3.12 Jurisdictional Exception

USPAP defines this as *"an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP"*. Jurisdictional exceptions in the appraisal process are not permitted without the prior written approval from the State Acquisitions Manager or from the Chief Appraiser.

### 4.3.13 Comparable Property Data

The Appraiser shall complete the VDOT Comparable Data Form for each comparable property used. The Appraiser will electronically submit the form to the Reviewer for approval. Prior to an appraisal being reviewed and approved, the Review Appraiser is required to review and approve the sales comparables used. In most instances, this activity takes place in advance of the appraiser's appraisal report submissions. After approval of the comparable by the reviewer, the appraiser shall attach a complete copy of the approved Comparable Data Form to the appraisal report.

The information required for each comparable is outlined on the sales comparable data sheets. A comparable data sheet is developed for land (AF15), residential (AF16) and commercial (AF17) properties. The data sheets must be completed in their entirety. The data sheets used must be those in effect on the date the appraisal assignment is made unless otherwise directed by the Regional Manager or the Appraisal Team Leader. In addition to completing the data sheet, the analyst must:

1. Provide photographs of the comparable sales showing the principal above ground improvements or unusual features that affect the value of the comparable. Photographs of improved comparable sales shall be taken from several different locations in order to show any unusual features affecting the value and will be identified by sale number and project. The minimum photograph size is 3 ½" x 5".

2. Note any conditions of sale and include them in the comments.

3. Provide a copy of the recorded plat or a copy of the tax map with the subject property boundaries highlighted.

    a. If available, provide the boundary dimensions or at a minimum provide the amount of road frontage.

    b. Identify road, street, or other means of access.

    c. Identify by number the location and direction the photographer faced.

The individual completing the Comparable Data Form must attempt to confirm the sale with one or more parties who were directly involved with the transaction (e.g., buyer, seller, broker, closing agent, etc.) and document their attempts if unsuccessful. If the appraiser is unable to confirm a sale with a direct party, they may attempt to confirm the sale with an indirect party (e.g., a relative, neighbor, assessor, etc.) who is aware of the transaction and who has familiarity with the local real estate market.

If a direct or an indirect party is not available, the appraiser may use secondary sources (e.g., published data, public records, electronic databases, etc.). The appraiser should avoid total reliance on secondary data. For any sale used, the appraiser must conclude that an arm's length transaction occurred between buyer and seller or provide a "conditions of sale" adjustment, if applicable, that is well supported by market data.

Once a VDOT Review Appraiser approves a comparable for use in the appraisal process, other appraisers may elect to use the comparable data in their appraisals. However, they must be satisfied with the comparable's confirmation and analysis. Each appraiser is responsible for the integrity of the comparable data used in their appraisal and must inspect all comparable properties used in his or her appraisal.

### 4.3.14 Property Description

The appraiser must describe the property as it exists before the acquisition and without considering the impact of any proposed roadway improvements. If the acquisition is a partial one, the appraiser must also provide a detailed description of land and the improvements located within the acquisition area. In addition, the land and improvements located in the remainder must also be described. The level of detail required for a description of the improvements located within the remainder depends on whether or not a change in value has taken place when compared to the remainder's "before value". If so, the level of detail required for the property description is the same as when preparing a description of land and improvements located within the acquisition area. Improvements assigned "D" (demolition) numbers are referenced as such throughout the appraisal.

Land description(s) must address topographical features, road frontage, elevation of the roadway (existing and proposed), drainage, land features (e.g., wooded, pasture, cropland, etc.), existing easements, and floodplain. Also, the zoning, zoning requirements, and deed restrictions that affect the property must be included. Building and site improvement descriptions must address improvements above and below ground. Buildings, landscaping, fencing, sidewalks, walls, driveways, water supply (e.g., well type and depth), septic systems, and all other miscellaneous site improvements must be addressed.

The description of the building improvements that are appraised must include the type of building (e.g., a Butler building), the estimated and/or actual age, and the quality of materials/construction and foundation type. Also a general description of the walls, siding, flooring, roofing, interior trim, plumbing, heating/cooling systems, electrical, and built-in appliances/equipment must be given. The appraiser must reach a stated conclusion about the condition of the improvements.

### 4.3.15 Project Influence Date

The appraiser is to ignore the influence of the project on the "before value" of the subject property. When addressing project influence, the appraiser should cite the milestone that marks the onset. The date that the roadway's final alignment is known may be one

starting point. Others may include the date that funds were approved to complete the design phase, the design approval date, or the date that the project funding is approved to proceed with construction, etc. "A project is coming" should not be used as a basis for setting a beginning date because it is too general. The appraiser may request that the Appraisal Team Leader provide these dates.

### 4.3.16 Market Area Delineation and Analysis

The complexity and the nature of an appraisal problem dictate the level of market analysis required. As defined by the Appraisal Institute's *The Appraisal of Real Estate*, 13th edition, the level of market analysis used to develop a highest and best use for a property may be based upon inferred analysis or it may be expanded to include a fundamental market analysis. This source states, "*inferred analysis is sometimes referred to as trend analysis, is descriptive and emphasizes historical data rather than future projections*". Also, it states that a fundamental analysis is a "*more detailed study of market conditions, focusing on the specific sub-market of the subject property and providing strong reasoning and quantifiable evidence for projections of future development… This level of analysis is based on the premise that real estate value is tied to the services the property provides and that a study of the market for those services will reveal influences on the value of the real estate*". The degree of market analysis required by VDOT may involve the use of an inferred analysis if the proposed acquisition does not result in a change in the highest and best use of a property. When the appraiser concludes that the property, or properties, have an intensive highest and best use and/or the highest and best use is different from its current use (e.g., the current use is pasture land but the appraiser concludes that the land's highest and best use is for retail development at some future point in time), the appraiser is required to prepare a fundamental market analysis, Level C, as defined and outlined by *The Appraisal of Real Estate*, 13th edition. When a fundamental market analysis is required, the appraiser is required to use the Narrative Appraisal (NA) report.

### 4.3.17 Highest and Best Use

Highest and Best Use *"is the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible,*

*and that results in the highest value"* (The Appraisal of Real Estate, 13th Edition). The appraiser must provide statements that describe their analysis and conclusions pertaining to the highest and best use of the property as though vacant and, if applicable, of the property as improved. The four tests of highest and best use (physically possible, legally permissible, financially feasible, and maximally productive) must be considered for each analysis.

The existing use and zoning must be given consideration as well as the possibility of obtaining a zoning change to a more intensive use. However, even if a zoning change to a more intensive use is likely, any potential use under the zoning change must be financially feasible. If no effective demand exists for a use, even though it is allowed by zoning, the appraiser may not conclude that it is the highest and best use for a property.

If an improved property has a highest and best use as vacant for a different use when compared to the existing improvements, the appraiser must consider the impact on the level of depreciation for the existing improvements.

If a property has different land usages and/or demarcation/division lines established under its highest and best use, these same requirements apply to each usage or demarcation/division. If questions arise about the level of analysis required, the appraiser should contact the Appraisal Team Leader or the State Review Appraiser. Either may contact the Chief Appraiser if additional clarification is required. If the appraiser concludes that damages or enhancements exist after the acquisition, the appraiser must include a highest and best use analysis of the remainder property as if vacant and as improved, if applicable.

### 4.3.18 Interim Use

Interim use is the current highest and best use that is likely to change in a short period of time. The appraiser must identify the interim use of a property, as well as the comparable properties. The differences in interim uses for comparable properties that may have the same future highest and best use must be considered in the appraiser's analysis. The appraiser should exercise caution when valuing a property that has a different highest and best use "as vacant" when compared to the highest and best use

"as improved". When this is the case, the appraiser is required to estimate when the land use will change. The interim value of improvements located on the land should reflect the estimated timing of a land use change.

### 4.3.19 Speculative Use

Speculative use is defined as the purchase or sale of property motivated by the expectation of realizing a profit at some future point in time from a future highest and best use. As a general rule, the remote or speculative damages are not to be considered. *Revocor v. Commonwealth Transportation Commissioner*, 259 Va. 389, 526 S.E. 2d, (2000). If damages are considered, the appraiser should exercise caution that any premium concluded for land and/or improvement for a potential future highest and best use is clearly derived from market-based transactions. Uses considered must be reasonably probable or likely to have an effect on the present market value of the land and purely imaginary or speculative value should not be considered. *Pruner v. State Highway Commissioner*, 173 Va. 307, 4 S.E.2d, 393, (1939). Profit and losses cannot be considered because they are too speculative. *Brown v. May*, 202 Va. 300, 117 S.E.2d 101, (1960). Qualitative adjustments are not acceptable support for deriving a premium paid for a speculative future use. The support must be quantifiable.

### 4.3.20 Partial Acquisitions and Valuation of the Remainder

When the appraiser concludes that the value of the remainder has diminished or that enhancements offset damages, the appraiser is required to complete an after value. Also, any appraisal prepared for court testimony must include the after value unless the case is uncontested. The appraiser may check with the Appraisal Team Leader for guidance to determine if the case is uncontested. When completing an "after value", the appraiser is required to use the Narrative Appraisal template. The value of the property before the acquisition and the value of the remainder after the acquisition are two distinct appraisals. The appraiser must assume a hypothetical condition that the proposed roadway improvements are completed as of the effective date of the appraisal when completing the after value. The valuation of the remainder must be supported and documented to the same extent and thoroughness as the valuation of the property

before the proposed acquisition. One or more of the following must support the valuation of the remainder:

A. Comparable sales similar to the remainder property, including its highest and best use.

B. Data that demonstrates the economic loss and, if applicable, any gain brought about by a change in land use, units of production, development costs, rental activity, cost-to-cure, etc.

C. Data and conclusions from severance damage studies that are related to similar acquisitions.

D. In the event the data described in A through C are not available, the appraiser must state this in the appraisal and must use any other reasonable appraisal premise or technique pertinent to deriving the after value.

If the appraised value of the remainder indicates damage (with or without enhancements) an explanation must be included in the appraisal. If it is unclear that damages are compensable, the appraiser will contact the Regional Manager or Appraisal Team Leader and request legal instructions. The advice of Staff Counsel should be sought for guidance on this issue,

### 4.3.21 Damages

Estimated damages to the remainder property must be supported by market data. The reasoning and analysis used to determine the amount of damages must incorporate market data and appropriate appraisal techniques.

Damages may be offset by either special and/or general benefits that accrue to the property as a result of the proposed roadway improvements. In addition, the appraiser must consider any benefits that may accrue from the permanent use of drainage structures, bridges or conduits for vehicular traffic, water and sewer lines, etc., which may be granted under a reservation clause (that has been made a part of the deed), a dedication, or a proffer. The appraiser should contact the Regional Manager or the Appraisal Team Leader to determine how to treat the reservation clause, dedication, or

the proffer. A determination must be made as to whether the right granted is compensable. If damage is financially feasible to cure, then it must be supported with appropriate explanation and justification (e.g., cost estimates from contractors). If the cost to cure damage exceeds the amount of the damage to the remainder, the cure is not feasible.

### 4.3.22 Non-Compensable Damages

The list below is a sample of non-compensable items that should not be included when determining if the remainder property is damaged:

A. Increase in land value, due in whole or in part, of the land and/or property acquired that result from the proposed highway project itself. *Transportation Commissioner of Virginia v. DuVal*, 238, Va. 679, 385 S.E. 2d, 605, (1989). However, if the change in highest and best use resulted from reasons unrelated to the proposed highway project, the property owner is entitled to the benefit of the property's increase in value. *Transportation Commissioner of Virginia v. DuVal*, 238, Va. 679, 385 S.E. 2d, 605, (1989) and *Tremblay v. State Highway Commissioner*, 212 Va. 166, 183 S.E.2d 141, (1971) and Section 25.1-417 (3).

B. Lost business or profits. *Brown v. May*, 202 Va. 300, 117 S.E. 2d 101, (1960).

C. Loss of goodwill. *Richmond and P.R. Company v. Seaboard and C. Company*, 103 Va. 399, 49 S.E. 512, (1923).

D. Loss of sentimental value to the owner of the property. *State Highway Commissioner v. Reynolds*, 206 Va. 785, 146 S.E. 2d 261, (1966).

E. Changed use of a public way. *State Highway Commissioner v. Lanier Farms, Inc.*, 233 Va. 506, 357 S.E. 2d 531, (1987) and *State Highway Commissioner v. Howard*, 213 Va. 731, 195 S.E. 2d 880, (1973).

F. Loss arising from an owner's inability to find an adequate substitute location. *State Highway Commissioner v. Parr* 217 Va. 522, 230 S.E. 2d 253 (1976).

G. The presence of noise, dirt, and fumes caused by increase of traffic and disturbance from construction. *Ryan v. Davis*, 201 Va. 79, 109 S.E.2d 409, (1959).

H. Loss due to an annoyance and/or inconvenience suffered by the public in general. *City of Lynchburg v. Peters*, 156 Va. 40, 157 S.E. 769, (1931).

I. Loss as a result of a contractor completing construction work for the proposed roadway improvements. *Ryan v. Davis*, 201 Va. 79, 109 S.E.2d 409, (1959).

J. Loss resulting from circuity of travel caused by dividing a highway. *State Highway Commissioner v. Howard*, 213 Va. 731, 195 S.E.2d 880, (1973).

K. Loss resulting from re-routing or the diversion of traffic. *State Highway Commissioner v. Howard*, 213 Va. 731, 195 S.E.2d 880, (1973).

L. Loss resulting from an increase or a decrease in the amount of traffic volume. *State Highway Commissioner v. Howard*, 213 Va. 731, 195 S.E. 2d 880, (1973).

M. Danger from possible illegal acts that may result from a roadway improvement. *State Highway Commissioner v. Lanier Farm, Inc.*, 233, Va. 506, 357 S.E.2d 531, (1987).

N. Attorney's fees incurred on behalf of the landowner, as a general rule, are not recoverable unless there is a statue that specifically provides for recovery. There is no such statue in eminent domain except in inverse condemnation.

O. Loss as a result of the reasonable exercise of police powers. *State Highway Commissioner v. Howard*, 213, Va. 731, 195 S.E.2d 880, (1973).

P. Loss resulting from a change in access if the owner still retains reasonable access to the public road system. *State Highway Commissioner v. Lanier Farm, Inc.*, 233 Va. 506, 357 S.E.2d, 521 (1987) and *State Highway Commissioner v. Howard*, 213 Va. 731, 195 S.E.2d 880, (1973).

Q. Loss that is speculative and remote or that is difficult to discern. *Revocor v. Commonwealth Transportation Commissioner*, 259 Va. 389, 521 S.E.2d 4, (2000).

R. Contractor negligence caused by negligent or unskilled construction by condemnor's contractor is not to be considered. Ryan v. Davis 201, Va. 79, 109, S.E.2d 409, (1959).

### 4.3.23 Enhancements

In public acquisition valuation, enhancement to a remainder property after a partial acquisition is sometimes categorized into general or special benefits. General benefits are those that accrue to an entire neighborhood or community. Special benefits are those that accrue to a specific property as a result of the roadway improvements.

It is possible for a remainder property to be damaged as a result of the proposed roadway improvements and also experience one or more benefits. Virginia law provides for the offset of damages by any enhancements that result from either general or special benefits. If the net result is that the remainder property value is enhanced, this enhancement cannot offset the value of the acquisition [Long vs. Shirley, 117VA 401, 145E 2d 37s (1941)].

If the remainder property is enhanced and there are no damages, an after value is not required unless the appraisal is for court testimony, and the case is contested. When determining if enhancement or damage is present, the appraiser must hypothetically assume that the roadway improvements are completed as of the effective date of the appraisal.

### 4.3.24 Approaches to Value

The application of the three approaches to value (cost, sales comparison, and income) is used as the appraisal problem and market data dictate their relevance. The omission of an approach to value under appropriate circumstances does not result in a limited appraisal. However, an explanation for the omission of any approach to value is required. The appraiser must use appropriate appraisal methodology and techniques for each approach to value.

Before the application of any approach, the appraiser must collect specific, pertinent data from the market for analysis. The requirements for data verification for sales

comparables are described in Section 3.13, "Comparable Property Data". The process of extracting relevant market data is essential in the application of adjustments and/or units of comparison throughout the valuation process and when completing the final reconciliation of value.

### 4.3.25 Cost Approach

In part, the cost approach is based on the principle of substitution. This principle effectively means that the cost of acquiring an equally desirable substitute property tends to set property values. If you can acquire land and build a similar property for less, then you would do so.

In the cost approach, the cost estimate of the improvements is based on the reproduction or replacement cost of the improvement as of the effective appraisal date plus entrepreneurial incentive less accrued depreciation. The value is then derived by adding the value of the land to the depreciated cost of the improvements. The following is a discussion of the elements of the Cost Approach:

#### A. Land Value

Land value is determined by its highest and best use as though vacant. It may be estimated by using the sales comparison approach, allocation, extraction, capitalization of ground leases, and land residual technique (e.g., subdivision method). The subdivision method should seldom be used alone as the courts are often reluctant to accept this method. The appraiser may use one or more of these procedures to derive a land value. Whichever procedure is used requires adequate support for the conclusions made. Market value of the land sought may not be proved by evidence of gross receipts or gross sales of a business conducted on the property subject to condemnation (*May v. Dewey*, 201 Va. 621, 112 S.E.2d 838, 1960).

#### B. Cost Estimate Data and Entrepreneurial Incentive

The replacement cost new of the improvements (unless the reproduction cost is specifically indicated) can be measured by using several techniques. The most

prevalent techniques include using a cost estimating service, obtaining contractor estimates, or a combination of the two. If reference is made to a cost-index service, the book, page number, and section will be furnished. References to contractors' estimates require the name of the supplier, point of contact, address, telephone number, the date of the estimate, and its valid date. Entrepreneurial incentive is based upon what a developer reasonably anticipates receiving as a result of developing a project. While entrepreneurial profit can be extracted from the marketplace to assist in determining future developer expectations, this information is historical data and does not address anticipated benefits.

**C. Depreciation:**

Accrued depreciation is the loss in value between the reproduction or replacement cost and its present value as of the date of the appraisal. It can result from physical deterioration, functional obsolescence, and/or economic obsolescence. Physical depreciation may be determined by a number of methods including the age-life method, the modified economic age-life method, the breakdown or engineering method, the sales comparison technique, the income capitalization or annuity method, observed depreciation method, and the physical age-life or straight-line method. Local market practices should determine the method used. Any depreciation used must be supported using market data and must be explained.

### 4.3.26 Sales Comparison Approach

The Sales Comparison Approach is a method of estimating value by comparing the subject property with comparable properties that have recently sold and are arm's length transactions. This approach is applicable to most property types. It may be the most reliable indicator of market value when a sufficient number of recent comparable property sales are available.

Adjustments are made for differences within the properties and are referred to as the elements of comparison. Every adjustment made will have an explanation supporting the differences. In some instances, an explanation will set forth the reasoning and analysis

upon which the adjustment is based. The analysis of market data shall be the basis for all adjustments, not opinion.

When making adjustments to comparables, an adjustment grid may be appropriate to illustrate the adjustments made. When it is appropriate to include an adjustment grid, the appraiser is required to do so. The Review Appraiser is responsible for determining if an adjustment grid in the sales comparison approach is unnecessary. In addition, the Review Appraiser must determine if the use of Qualitative vs. Quantitative adjustments is warranted. If ample market data exists, a market grid and quantitative adjustments are required. If listings are required for use in the analysis, then the appraiser must consider their reliability when reconciling the Sales Comparison Approach. In addition, the appraiser must consider the reliability of the Sales Comparison Approach when completing a final reconciliation of value.

### 4.3.27 Income Approach

The income approach is used to estimate the present worth of future benefits. The value of the property rights that produce an income stream can be estimated using the income approach. The appraiser should ensure that capitalization rates are market based.

Estimated rents, collection loss, vacancy loss, and operating expenses must be market based and supported by market data. These estimates may or may not be similar to the actual operating results for the subject property. When a substantial difference exists between market based income and an expense and the actual operating history for the subject property, the appraiser is required to provide an explanation in sufficient detail to provide a clear and logical understanding for the differences.

### 4.3.28 Personal Property and Furniture, Fixtures & Equipment (FF&E)

In some instances, it may be difficult to determine if certain items or fixtures should be treated as personal property or as real estate. In cases where it is difficult to determine, the appraiser may contact the Appraisal Team Leader for guidance. The Regional Manager or their designee is responsible for making the determination.

### 4.3.29 Reconciliation

The appraiser is expected to reconcile each approach to value used in the appraisal by evaluating and weighing the quantity, quality, and relevance of the data provided in the approach to value (i.e., would a potential buyer consider the same comparables used in sales comparison approach as a reasonable alternative to the subject property). Any limitations with obtaining data should be considered (e.g., were expense comparables used in income approach representative of the subject property). If more than one approach to value is used in the appraisal, a final reconciliation of value is required.

The final reconciliation provides the appraiser with an opportunity to review the appraisal for consistency (e.g., is the effective age of the property in the cost approach consistent with the physical condition reported). Data in one approach to value can be more accurate and meaningful than data in another. Also, market participants may consider the relevance of one approach to value superior to another approach even if the quality of data is inferior (e.g., market participants may rely upon the income approach for an existing income producing property even if the data contained in the cost approach is deemed more reliable than data in the income approach). Evidence that supports the quality and relevance of the indicated value in each approach used is considered (e.g., were capitalization rates derived from market sales using actual expense data or were the expenses estimated by the appraiser).

The final value reconciliation of the subject property should reflect the use of appropriate appraisal methodology. Also, it should reflect consistent analysis and logic presented throughout the report. Once a final value is derived, the value must be allocated to show the value to land, buildings, and other improvements.

## Section 4 – Specialized Topics in Appraisal Development

### 4.4.1 Tree, Shrub or Improvement

When appraising site improvements, the appraiser must be careful to estimate their value in terms of contribution to the overall property value. Using replacement cost or

insurable value alone may not represent the true contributing value of a site improvement.

### 4.4.2 Easements

Location and Design is responsible for providing Right of Way and Utilities with any plans and plats that show the details of any proposed easements. A copy of the plans/plats is then provided to the appraiser. In the property description, the appraiser must describe any known easements. The value of easements may vary since each easement may have a different impact on the property, and it is typically based upon a percentage of fee value. When a new or an additional easement is required, the appraiser must value the easement and estimate the damages, if any, to the remainder property as a result of the construction of the facility for which the easement is being provided. Improvements (e.g., sidewalks, drives, walls, fencing, landscaping, trees, wells, septic systems, etc.) within the proposed easement that will be affected by the easement should be paid for at either their depreciated or their contributing value. The percentage is based upon the impact that the easement has on the remainder property. Consideration should be given as to whether the easement is new or if it is a replacement easement. Appraisers must provide rationale for their conclusions.

Once the value of the acquisition is determined, the value attributed to the proposed easement(s) must be allocated. The value after the acquisition should reflect the damages to the remainder, if any, as a result of the easement(s). Where there is consideration to be paid for easements(s) (market value for the area acquired for easement and/or damages), it must be shown on the Executive Summary.

### 4.4.3 Overlapping Easements

Some right of way acquisitions require the valuation of several easements (e.g., power, telephone, gas, water, temporary, permanent) that overlap each other. When the easements overlap, the net area of the overlapping easement area is valued. The area of each individual easement should not be valued and then combined to derive a value for the overlapping easement area. This can overstate the value of the combined easements. It may result in a value that exceeds 100% of the fee simple value of the

area, which is not permitted. The appraiser must consider both the effect of each individual easement and the combined easements.

### 4.4.4 Prescriptive Easements

Prescriptive easements are easements in perpetuity for the continued maintenance and use of state roadways as defined in Section 33.1-184 of the 1950 Code of Virginia, as amended. The easement is typically measured 15 feet in width on either side of the center of the existing road making a total width of 30 feet. Given the intensive use of the land in the easement, the appraiser is at liberty to value the area encumbered with supporting rationale.

### 4.4.5 Right of Way Line Passes Through a Building

If the right of way line passes through a building, the building is to be acquired and assigned a "D" (demolition) number.

### 4.4.6 Parking

When appraising an acquisition that features parking, a description of the existing parking area must cover at a minimum the following attributes:

A. Lot condition.
B. The number of parking spaces and the number of handicapped spaces.
C. A description of the traffic patterns and access to the lot.
D. A statement of whether or not the parking conforms to local ordinances and zoning.
E. An analysis of whether or not the existing parking is suitable for the highest and best use as improved (if applicable).
F. An assessment of whether or not the number of parking spaces can be expanded at a future date.
G. A description of the location of the parking area relative to the location of the improvements.
H. A sketch of the parking area relative to the improvements.

If a partial acquisition of the property is made, the appraiser must determine if the parking after the acquisition is impacted by the acquisition. If so, the same attributes

outlined above are considered. When evaluating comparable sales the appraiser must analyze the attributes outlined and compare them to the subject when determining the before and after value. After doing so, a conclusion is reached as to whether or not damages or cost-to-cure items are present (e.g., re-striping costs to make better use of the remaining parking area).

### 4.4.7 Fencing

When the proposed acquisition severs an existing enclosure fence (e.g. for livestock, day care center, etc.) or security fence, the appraiser will place a value to re-enclose the remainder with a similar type fence. The cost to re-enclose the property will be shown on the Executive Summary as a cost-to-cure damage, incidental item. Should the linear footage of fencing necessary to re-enclose the property be less than the amount acquired, the difference (linear footage before less linear footage necessary to re-enclose) shall be included in the compensation as a site improvement based on the depreciated value. The appraiser will document the replacement costs data by obtaining estimates within the local area. All other fencing is handled as a site improvement and valued based upon its contributing value to the whole property. A complete description of the fencing must be included in the property description and its value included in the overall property value. When the right of way is proposed to be fenced as part of the construction project, the appraiser will not estimate a cost-to-cure damage to re-enclose the property.

When any easement (including a utility easement) lies beyond the proposed right of way and the enclosure and/or security fencing must be moved twice the owner should be compensated for both moves if the relocation cost is not included in the construction contract.

### 4.4.8 Permanent Property Pins

It is assumed that engineering information regarding the location of property pins has been properly verified and located by the survey party and that this is correctly indicated on the plans. The appraiser should check the plans to determine if property pins are

present. In addition, the appraiser must check with the landowner and/or any available plats at the time of the property inspection to determine if any property pins are not shown on the plans.

The appraiser must determine if property pins disturbed during construction will be replaced by the contractor. When the appraiser determines that property pins fall within the acquisition area and will not be replaced as part of the project, the appraiser must furnish an estimate of the cost of resetting or replacing the property pins and must provide an explanation of this cost in the appraisal. The cost estimate is based on the number of pins required to re-enclose the landowner's survey, not the number of existing pins within the acquisition area. When, as a result of the acquisition, a number of pins require replacement, the appraiser should consider the cost of the per pin replacement cost when compared to the cost of a total property survey and use the least expensive solution.

### 4.4.9 Septic Facilities/Water Systems

When septic facilities or water systems (e.g., wells) are disturbed or affected by the proposed acquisition, they are handled as a cost-to-cure damage (assuming the building remains) if they can be relocated on the remainder and the proposed project does not include the installation of water or septic sewer facilities. The appraiser shall contact a representative of the local Health Department and obtain a written commitment or a permit to relocate the system on the remainder. A written estimate of the cost involved should be obtained from a competent local contractor performing this type of service. The estimate should be included in the appraisal. If it cannot be relocated on the remainder, the appraiser should contact the Regional Manager for instructions.

### 4.4.10 Specialty Item Appraisals and Studies

When a separate valuation of machinery, equipment, timber, or other specialty item is required, it may be necessary to employ the services of a specialist in a particular discipline. The employment of the specialist may be made by an individual contract with the specialist or included within a contract for a fee or contract appraiser (see Consultant

Contracts, Chapter 8). The magnitude of the appraisal problem may necessitate the employment of two or more specialists.

A specialty item appraisal obtained by VDOT must be written, and it must comply with the requirements outlined in USPAP, if it is applicable, as of the effective date of the appraisal. The value of specialty items shall not be arbitrarily added to the valuation of the other realty but shall be considered to the extent of their contributory value when establishing the value of the whole property. When potential questions exist, each appraisal shall contain a list of items outlining whether they are being handled as personal property or real estate. If it is determined that a fixture or item is being handled as real estate or part of realty, its value will be considered as a part of the total realty. The appraisal will contain sufficient information to properly identify the object, including but not limited to:

A. A brief description of the item

B. The manufacturer's name

C. The model name

D. The item's serial number.

When a specialist makes a separate valuation of items that are considered non-realty items, the salvage value of each item must be measured and included within the report. In addition, if relocation of a sign is an option, the cost to do so must be included. These estimates are used for assisting the Relocation Section of Right of Way and Utilities.

It also may be necessary to commission a specialized study to determine the impact of an acquisition on a property. For instance, the acquisition area may impact parking. An engineer may need to be hired to perform a study of the before versus after acquisition impact on a parking lot. A general contractor may need to estimate the cost to construct the redesigned parking lot.

### 4.4.11 Contractor's Estimates

Estimates obtained for site improvements and/or contractor's estimates for costs, oral or written, require as a minimum the name of the estimate supplier, contact name, address and telephone number of the supplier, and the date of the estimate. Estimates for site improvements shall be included in the appraisal report. In the case of an unusual site improvement, a written estimate should be obtained with the understanding that the estimator may be required for court testimony.

Written contractors' estimates obtained by VDOT will contain, as a minimum and in addition to the above, the following information where applicable:

A. The state and/or federal project number and parcel identification.

B. The identification of the property and its ownership.

C. The estimate of value(s), including retention value and relocation cost, if applicable.

D. The data and analysis to explain, substantiate, and document the estimate of value(s), if applicable.

E. The date on which the estimate of value(s) is made and the valid date of the estimate.

F. Other descriptive material required (maps, charts, plans, photographs), as applicable and/or requested.

G. Agreement to support the values in court testimony during the valid time of the estimate.

### 4.4.12 Buildings, Structures, and Other Improvements Not Owned by the Fee Owner

Occasionally, it is necessary to appraise a property when the fee owner of the land does not own the buildings, structures, and/or other improvements located on the property. In instances where the improvements are acquired or adversely affected by the acquisition or construction of the project, it becomes necessary to estimate the individual interest of the affected parties.

In appraising a property of this nature, the appraiser shall make an inquiry as to the ownership of the improvements during the inspection of the property. A complete itemized list of these improvements (buildings, structures, fixtures, equipment, outdoor advertising signs, etc.) will be obtained and included in the appraisal report. Generally, such improvements located on a property result from a written lease agreement. The appraiser shall attempt to obtain all available information, including a copy of the lease, and include it in the appraisal. The property, however, will be appraised at market value without consideration of the contract rent. For the purpose of determining the just compensation for these improvements they are to be appraised at their contributing value or at their salvage value, whichever is greater. This is in accordance with the provisions of the Uniform Act (49 CFR, Section 24.105). Salvage value refers to "the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense." as cited in the Uniform Act (Section 24.2(a)(23)).

After the total estimate of compensation has been determined for the property, the appraiser will allocate the value of the individual components of the property. The total allocation shall not exceed the total estimate of compensation due to the property owners. This allocation will be included in the appraisal report. In order to accurately separate the compensation due the individual owners of the property, separate summary sheets are required. The first sheet will list the total value of the acquisition and damages, if any. The second sheet will give the value of the acquisition due the fee holder of the land or lessor's interest. The third will give the value of acquisition due the owner of the improvements not owned by the fee owner or lessee's interest. The value of sheets two and three will equal the value of sheet one. Only one Certificate of Appraiser and Review Appraiser Summation and Certification for the total acquisition value is required.

### 4.4.13 Manufactured Housing

Chapter 6 - Relocation of this manual briefly addresses the process of valuing a manufactured home. A determination must be made whether or not it is personal or real property. The Regional Manager or the Appraisal Team Leader, prior to the appraisal assignment being made, determines the property type. However, the appraiser is

responsible for independently confirming whether or not the property is personal or real property. When doing so, the appraiser should consider the condition, manner of attachment, and the owner's intent. If the condition of the structure does not allow for it to be moved, then it is considered realty. If it is determined that the structure has been permanently secured to the land in accordance with local requirements, it is considered real estate. When the appraiser determines that the property is real estate, an appraisal is required.

### 4.4.14 Residue and Surplus Appraisal Reports

VDOT's policy is to attempt to convey residue and surplus real estate to private ownership. The disposition of these properties is conducted in a manner that protects the public interest and assures that no private individual receives a windfall profit at public expense. Therefore, residue and surplus properties are appraised prior to their conveyance if the value is estimated at $10,000 or higher by objective measure (e.g., real estate assessment) or if it is determined that the parcel can be developed for an independent use. Otherwise, a BAR may be used. When appraising residue and surplus parcels, the appraiser should refer to Chapter 7 - Property Management to ensure that proper procedures are followed. The following applies to appraisals completed for residue and surplus parcels:

A. Residue and/or surplus parcels are divided into two basic categories for appraisal purposes:

   1. Class 1 parcels can be independently developed and are appraised based upon their highest and best use. The type of appraisal report used depends upon the complexity of the assignment.

   2. Class 2 parcels cannot be independently developed. Often, the highest and best use of these parcels is for assemblage with an adjacent landowner's property because they represent an uneconomic remnant. When assemblage is the highest and best use, the parcel is often appraised as follows:

      a) The adjacent property with which the residue and/or surplus parcel(s) can be assembled will be appraised, generally land only.

b) The residue and/or surplus parcel(s) combined with the adjacent property with which it/they can be assembled will be appraised.

c) The difference between the two appraisals will be the basis for the appraiser's conclusion. Care should be taken to reflect the motivation of the buyer and the resulting influence on value and the contribution of the residue to the assembled tract in increasing land valuations.

B. If the residue is located in an Enterprise Zone, include this information in the appraisal. The Central Office staff is required to track this data in RUMS. The Dictionary of Real Estate, Fourth Edition identifies an Enterprise Zone as *"A designated area within a depressed, usually inner-city, area in which firms are given favorable tax treatment and freedom from a number of planning constraints"*.

C. All appraisals and valuation reports must be electronically signed and uploaded via RUMS for review and approval. Once the report has been recommended, the recommendation confirmation will then be forwarded to the Property Management Section for approval to negotiate.

D. Small residues valued at $500 or less require only a letter from the Regional Manager recommending the sale as being in the best interest of the Commonwealth.

### 4.4.15 On Premise Signs

On-premise signs are divided into two categories: signs worth more than $1,000 (those with considerable value) and those that are worth $1,000 or less.

1. Signs with a considerable value typically feature one or more of the following attributes:
   a. It has electrical service.
   b. It requires the services of a sign company for a repair.
   c. It requires the services of a sign company for relocation.
   d. It requires the services of a masonry contractor to construct.

   A specialty appraisal is required to value these signs.

2. Signs with a value of $1,000 or less are valued based upon their cost new less accrued depreciation. Using a cost index such as Marshall & Swift, the appraiser may develop cost and depreciation estimates. Also, the appraiser may use their prior knowledge and experience as a basis for estimating the cost new and the amount of depreciation for these signs. However, examples and data to support the appraiser's opinion must be provided. Alternatively, the appraiser may ask the Regional Manager to hire the services of an appropriate sign contractor to place a value on the sign.

The value attributed to the signs in both categories, and included as payment in the appraisal report, is based upon their cost new less accrued depreciation or based upon their contributory value to the real estate.

The appraiser must also include the relocation cost and the retention/salvage value for the sign. This is necessary should the owner decide to retain the sign during negotiations. However, if the cost to relocate an on-premise and/or non-permitted sign exceeds its depreciated market value, the sign will not be relocated.

### 4.4.16 Outdoor Advertising (Billboard) Signs (Under Permit by VDOT)

Outdoor advertising signs will be referred to the Appraisal Section for assignment to a staff or fee appraiser who is trained in the complexities surrounding the valuation of this property type.

### 4.4.17 Hazardous Materials

Upon inspecting the property, the appraiser must note if any hazardous materials appear present. If so, they must contact the Regional Manager. In most cases, the appraiser is instructed to appraise the property under a hypothetical condition that the hazardous materials do not exist. Otherwise, the appraiser should follow the guidelines set forth in USPAP.

### 4.4.18 Oil Company Equipment

The value of any land, improvements, and oil company equipment located within the acquisition area will be appraised as well as any damage to the remainder. The appraiser

must obtain a cost estimate from a reputable contractor that provides the following information about the oil company equipment:

1. A cost new estimate for the equipment.

2. The depreciated value of the equipment.

3. An estimate of the salvage value of the equipment.

In addition, if it is determined that a remainder site can be used as a service station, the estimate must contain:

4. The cost to relocate the equipment to the remainder site and to re-establish the site for use as a service station.

The contractor's estimate must be dated. Also, it must include a statement that the contractor is willing to provide court testimony, if needed.

The oil company equipment such as dispensers, signs, underground tanks, etc., as well as concrete aprons and all necessary underground piping, are considered realty.

## Section 5 – Appraisal Reporting

### 4.5.1 Types of Appraisal Reporting

Two types of appraisal report templates are used by VDOT. They include an Acquisition Appraisal (AA) and a Narrative Appraisal (NA). In addition, a VDOT Technical Review Appraisal Report is used for review appraisals. If a report requires an update, a VDOT Appraisal Update form may be used.

USPAP, Standard 2: Real Property Appraisal Reporting outlines the requirements applicable to the reporting of an appraisal. The minimum reporting requirement accepted by VDOT is a written "Summary Report", as defined by USPAP. Restricted Use reports are not permitted. Oral appraisal reports are not permitted without the approval of the Chief Appraiser. A self-contained written appraisal report may be requested subject to obtaining written approval from the Chief Appraiser. The appraiser may elect to provide

a self-contained report in lieu of a summary report if the appraiser deems that the complexity of the appraisal problem warrants this type of reporting.

### A. The Acquisition Appraisal (AA) Report [RUMS AP3]

The acquisition appraisal report meets the minimum reporting requirements for VDOT. This appraisal is a complete appraisal, summary report, as defined by USPAP. It is used to value partial acquisitions comprised of land or land and minor improvements. Cost-to-cure items, such as property pins, fencing, water supply, septic systems, etc., may be included. The AA report cannot be used if there is estimated to be incurable damages to the remaining property, changes in zoning, or changes in highest and best use.

### B. The Narrative Appraisal (NA) Report [RUMS AP4]

Similar to the Acquisition Appraisal, a narrative appraisal is a complete appraisal, summary report. This format is used when the appraisal problem does not meet the criteria for using a Basic Administrative Report or the Acquisition Appraisal Report format. The type of appraisal report format used is determined by the scope of the appraisal problem. A narrative appraisal is required for properties that are improved properties and comprise total acquisitions, where damages to the remaining property are anticipated, or where the complexity and scope of the appraisal problem requires a more detailed analysis.

### C. The VDOT Technical Review Appraisal [RUMS AF8]

Review appraisals are required to comply with USPAP requirements. The VDOT Technical Review Appraisal is designed to assist the appraiser with USPAP compliance. Attachments to the review appraisal form may be used to supplement the appraiser's analysis.

### D. The Appraisal Update [RUMS AF19]

This form specifically addresses the value allocation that VDOT requires, and it is designed to meet USPAP requirements. The update incorporates the original scope, definition of market conditions, intended use, client and intended user, purpose,

hypothetical conditions, extraordinary assumptions as those contained in the original appraisal report, unless otherwise specified.

### 4.5.2 Minimum Reporting Requirements for All Appraisal Reports

All appraisal reports must meet the minimum requirements outlined by USPAP for a Summary Report and by the Right of Way and Utilities Manual. VDOT highlights the following areas that should be included in the appraisal report:

A. Each page of the report must be numbered and indicate the UPC/PPMS number and the parcel number.

B. The appraiser who completed the report must sign each report, and all signatures and/or initials must be dated. People who provided significant professional assistance in the preparation of the report should be listed and the extent of their contributions included.

C. The appraiser must estimate the value of any cost-to-cure items.

D. The appraisal report must include the effective appraisal date, the date of the property inspection, and the report date.

E. The landowner's name, telephone number, if available through the normal course of business, and address must be stated. The most recent contact date with the landowner must be stated. The appraiser must report if the landowner or their representative accompanied the appraiser on the property inspection and state the person's name that did so.

F. Tenant names, addresses, telephone numbers, and the terms of any agreements in place between the landowner and the tenants must be given, if available.

G. State the purpose, scope, client, and the intended use of the appraisal report.

H. State jurisdictional exceptions that were relied upon in the appraisal.

I. State any hypothetical conditions and/or extraordinary assumptions that are used.

J. Note any hazardous material observed during the property inspection.

K. Generally state any personal property located within the acquisition area.

L. List and discuss any proffers, dedications, reservations, or other development restrictions that are present, or efforts to identify these things.

M. Provide a sales and listing history, if available, for the past five years and analyze any sales that transpired, including any subdividing of the property that has taken place. If the property did not convey or was not subdivided in the past five years, the appraiser must make a statement to that effect. If a difference exists between a property's historical sales price(s) versus its appraised value, other than that explained by time, an explanation is required. The minimum required information includes:

1. Grantee
2. Grantor
3. Date of sale
4. Deed book/page number
5. Verified consideration and with whom
6. Size

N. Provide the property tax assessment and the amount of the real estate taxes.

O. FEMA flood map information (e.g., flood map identification, date, and zone for the subject) must be provided.

P. Exposure time (the estimated time on the market prior to the effective appraisal date required for the property to have sold at the appraised value) for the subject must be included as required by USPAP.

Q. Provide a description of the subject property in sufficient detail to understand its physical characteristics. At a minimum, this will include an identification or listing of

the buildings, structures, and all site improvements, as well as any fixtures considered real property, that are located in the acquisition area.

R. Provide project identification information that includes state and federal project numbers, county/city, plan sheets, profiles, entrance profiles, stations, and parcel number(s).

S. Each report must contain an Appraiser Certification and a Statement of Contingent and Limiting Conditions in a format approved by VDOT.

T. A market area analysis sufficient in depth to understand the real estate economics that impact the subject property given the type of property and the complexity of the appraisal problem. The market area boundaries must be clearly stated. The analysis will be segmented to include the general data for the entire project and the specific market area affecting the value of the subject property. The level of market analysis required depends upon the complexity of the individual appraisal assignment.

U. Provide an analysis and discussion of the subject property's highest and best use that is sufficient in depth given the property type and the complexity of the appraisal.

V. The description of the proposed acquisition area(s) will provide the size, basic shape, approximate frontage and depth of the fee acquisition, all easements, and any site improvements. Overlapping easement areas will be noted.

W. A description of the sales shall be provided in the body of the report with a copy of the Comparable Data form included in the addenda. A location map should be included showing the location of all sales and the subject property.

X. An explanation for adjustments made to the sales must be provided. Also, a reconciliation of the final value by the Sales Comparison Approach must be provided.

Y. Provide an allocation of estimated just compensation due to the landowner as a result of the acquisition using a completed Executive Summary that summarizes key information pertinent to the appraiser's conclusions. When there is more than one parcel and/or more than one project presented in an appraisal, the appraiser will indicate the recommended just compensation for each parcel and/or project within

the report and/or on the Executive Summary Sheet and will allocate the final reconciliation of value into the components acquired.

Z. An explanation for any approaches excluded when valuing improved property must be included.

AA. If more than one approach to derive value is used by the appraiser, the appraisal report must include a final reconciliation of value that weighs the applicability and strength of each approach used.

BB. Provide photographs of the property showing the area of acquisition, all above ground improvements visible from the area of acquisition and/or the property features that affect property value. The appraisal shall contain sufficient photographs to assure a comprehensive view of the appraised property and proposed acquisition. If buildings of greater than nominal value are to be acquired, a picture of the interior is required. Each shall be identified by a number, parcel number, "D" number, if applicable, and project number on the photograph page.

CC. A copy of the plat and/or plan sheet(s) indicating the proposed acquisition(s), with lines on the plan sheets marked in the appropriate colors as referenced below, shall be included. The photograph number and the direction that the photograph was taken from must be shown on the plan sheet or the plat. The color codes are as follows:

| | |
|---|---|
| 1. Proposed Right of Way | Red |
| 2. Existing Right of Way | Red |
| 3. Permanent Drainage Easement | Green |
| 4. All other Permanent Easements | Green |
| 5. Temporary Easement | Orange |
| 6. Limited Access Only | Dark Blue |
| 7. Limited Access & Proposed R/W | Dark Blue and Red |
| 8. Electric | Yellow |

| | |
|---|---|
| 9. Communication (Telephone, cable, etc.) | Brown |
| 10. Sewer | Purple |
| 11. Water | Purple |
| 12. Gas | Light Blue |
| 13. Joint Use VDOT Utility Easement | Pink |

### 4.5.3 Additional Requirements for a Narrative Report

A. When buildings of greater than nominal value are to be appraised, a complete floor plan shall be included in the appraisal report. The floor plan or building layout does not have to be to scale; however, the proper perspective of the number and size of rooms to the overall building area shall be maintained. All exterior dimensions shall be shown to help maintain the proper perspective.

B. Photographs of the property showing all above ground improvements and/or the property features that affect property value must be included. The photographs should also show all major site improvements, general topography of the property, and any unusual features of the property. If buildings are to be acquired or damaged, pictures of the interior are required.

C. Each appraisal shall contain an accurate and legible sketch of the entire property (e.g., tax map, recorded plat, etc.). In addition, the preliminary plat of the acquisition will be included as well as an accurate sketch showing the following:

1. The photograph number and direction shall be shown on the property sketch.

2. Proposed and existing right of way lines and easements shall be clearly designated.

3. Identify all roads, streets, or other means of access that serve the property.

4. The location and dimensions of buildings and/or structures showing distances from the right of way lines will be shown in their approximate location. If the acquisition is very small and the improvements will be unaffected, it will not be

necessary to locate buildings accurately or give measurements from the right of way lines.

5. "D" numbers shall designate buildings, significant signs, underground tanks, and wells within the acquisition.

6. The appraisal sketch does not need to be drawn to scale. However, the proper perspective of land and improvements shall be maintained. A north arrow must be shown.

7. Demarcation lines shall show the land divisions indicated by the appraiser.

8. The acquisition(s) shall be outlined with the proper color-coding.

9. Station numbers shall be indicated along the proposed acquisition for a proper perspective of the property and the established points.

10. The sketch will signify the proposed cut and fill grades, where applicable; otherwise, the data is to be included in the narrative body of the appraisal. Grade change points should normally be established at the ditch line in cut sections and shoulder line in fill sections. Centerline grades are acceptable if the others are not available.

11. It is the responsibility of the appraiser to furnish an accurate and legible sketch of the entire property (e.g., plan sheet that shows entire property, tax map, recorded plat, etc.).

D. If damages are present, an "after value" of the remainder is required that includes an analysis of the impact of the proposed project influences as though completed on the effective date of the appraisal (a hypothetical condition as defined by USPAP).

E. The description of the remainder must be detailed enough to support adjustments in the Sales Comparison Approach (e.g., age and condition), within the Cost Approach (e.g., depreciation), and within the Income Approach (e.g., operating expense ratio).

F. The appraiser must provide adequate market support for all income multipliers, capitalization rates, discount rates, and/or yield rates that are used in the appraisal. If the appraiser elects to use a yield capitalization method (e.g., a discounted cash flow), the appraiser should contact the Regional Manager or the Appraisal Team Leader to discuss its necessity because yield capitalization is seldom relied upon and/or recognized by the courts. Care should be given to ensure that rates extracted from the market are consistent with the development of the income and expense projections for the subject property (e.g., if the income and expense statement includes a line item for replacement reserves, capitalization rates extracted from market sales should have similarly considered this expense as a line item).

G. If applicable, the appraiser should provide expense estimates based upon market support when constructing a property expense forecast. The expense forecast may include replacement reserves as a line item expense.

H. When incurable damages exist, an after valuation of the appraised property is required. When an after value is completed, an allocation that compares the before and after valuation must be provided. The before and after itemization is based on the land and any improvements that are appraised in order to estimate the compensation due. At a minimum the itemization must include:

1. The value of the property appraised prior to the acquisition (A).

2. The value of the land in fee and permanent easements plus any improvements acquired. (B) *(Note: The value of temporary construction easements shall not be included in this calculation.)*

3. The value of the land and improvements remaining after the acquisition (C) but prior to the recognition of the damages and/or enhancements (B subtracted from A).

4. The value of the remainder (land and improvements) including the recognition of damages and/or enhancements (D).

5. The element of damage or enhancement to the remainder (D subtracted from C).

- When two or more approaches are used to establish value in either the before or after situations, a final reconciliation of value must be shown. This final conclusion of value will be itemized to show the allocation of value to land, buildings and site improvements.

### 4.5.4 Review Appraisals

For all appraisal reports completed for VDOT, a licensed Review Appraiser, who possesses the competency as defined by USPAP, prepares a review appraisal. Review Appraisals are completed on a VDOT Technical Field Appraisal Review Form [RUMS AF8]. A PDF Portfolio will be created by the reviewer containing the appraisal report and review appraisal report and uploaded via RUMS. Each review appraisal will meet the minimum requirements of USPAP. The Regional Manager or Appraisal Team Leader is responsible for approving the action recommended by the Review Appraiser for the disposition of an appraisal.

## Section 6 –Report Submission and Review

### 4.6.1 Processing and Reviewing Appraisal Reports

The appraiser will electronically submit the completed, signed appraisal report in PDF format via RUMS. An automatic email will be generated to the Appraisal Reviewer indicating the report is complete and ready for review. Once the review is complete, it is the responsibility of the reviewer to upload a portfolio containing both the appraisal and appraisal review to RUMS. The approver will then be notified by email indicating the appraisal report has been reviewed and recommended for approval. The Approver will then electronically sign page 1 of the appraisal report approving the appraisal report for acquisition.

Appraisal reports may not be co-signed unless there is a supervisory appraiser and an appraiser trainee who sign the report. Otherwise, only one licensed appraiser who is responsible for the contents of an appraisal report may sign the report. Contributions made by other appraisers who may have assisted in the development of an appraisal must be disclosed within the appraisal report.

All reports are required to meet the requirements of this manual. Also, appraisals received from contract or Fee Appraisers must meet the conditions of the appraisal contract. If the Review Appraiser is unable to obtain a report that complies with this manual or with an appraisal contract, when applicable, they will notify the Chief Appraiser in writing (e-mail or memorandum) and describe the circumstances.

### A. Basic Administrative Reports (BARS)

The process for completing the BAR prepared for acquisition purposes shall be left up to the discretion of each Regional Manager or Appraisal Team Leader. A copy of the BAR is required to be submitted to RUMS. The Appraisal Section will include BARs in their quality assurance review.

### B. Appraisal Reports

Appraisal reports are electronically submitted via RUMS unless otherwise specified. Appraisal revisions are made as needed with each submission being uploaded via RUMS. Once an appraisal is submitted and it has been approved for negotiations, it may not be revised. An updated appraisal or a new appraisal is required if conditions change after that point. A VDOT Update of an Appraisal [RUMS AF19] form must be used. Reporting requirements are outlined in Section 4 of this Chapter.

An appraisal checklist [RUMS AF25] is available but not required. The Review Appraiser or other personnel, at the discretion of the Regional Manager, may complete the checklist. The Regional Manager may amend the checklist in RUMS by adding additional items to suit the region's needs. Ultimately, the Review Appraiser must complete a technical review appraisal by using the VDOT Technical Review Appraisal form [RUMS AF8] and is responsible for ensuring that the appraisal is complete and accurate.

Appraisal reports that require specific approval of the Appraisal Section prior to negotiation include any appraisal that is obtained for a reason other than right of way acquisition.

Appraisals obtained for right of way acquisition purposes do not require review and approval by the Appraisal Section. However, the Regional Manager may request that the State Review Appraiser or the Chief Appraiser complete a review of a specific appraisal in order to obtain additional input prior to negotiating for the acquisition of the property. Likewise, the State Review Appraiser or the Chief Appraiser may elect to complete a review of any appraisal prior to it being approved for negotiation at the Regional level upon notifying the Regional Manager. All appraisal reports and review appraisals are subject to review by the State Review Appraiser or the Chief Appraiser at any point in time.

### 4.6.2 Review Appraiser Competency

It is the Regional Manager's responsibility to ensure that the Review Appraiser is appropriately licensed and meets the competency provision of USPAP necessary to complete an appraisal review. If the Regional Manager has a question regarding a Review Appraiser's competency to complete a review of an appraisal, they may contact either the Director or the Chief Appraiser for guidance.

### 4.6.3 Sales Review

The State Review Appraiser, Regional Review Appraisers, Fee and/or Consultant Review Appraisers will at a minimum:

A. Inspect all sales, verify the data as complete, and verify the math calculations.

B. Ensure the accuracy of the information provided for a comparable sale. However, the Review Appraiser may use his or her discretion and complete a judgmental sampling of the comparable sales. Verification of the data for a comparable sale can be made by reviewing courthouse records and/or by using reliable third party data. The Review Appraiser should note the sales that have been verified on the comparable sales data sheet and make any pertinent remarks.

C. Indicate if the comparable sale is approved on the comparable sale data sheet.

D. Accepts responsibility for the accuracy of all information and estimates contained on the comparable data form.

### 4.6.4 Appraisal Report Review

The State Review Appraiser, Regional Review Appraisers, fee and/or consultant Review Appraisers will at a minimum:

A. Ensure that the appraisal meets the minimum standards and the requirements set forth in this manual and complies with the USPAP, state laws and regulations.

B. Ensure that each report contains sufficient information and documentation to substantiate and support the conclusions and value estimates reached.

C. Ensure that each report identify the impact of the acquisition on any remaining property.

D. Ensure that each report identify the property being acquired or affected by the acquisition.

E. Ensure that each report meets the terms of the executed contract or assignment.

F. Ensure that the appraisal contains all compensable items and that non-compensable items are not included.

G. Ensure that the final estimate of value is allocated by land, easements, improvements, cost-to-cure, damages, and enhancements.

H. Ensure that the value conclusion is representative of market value as defined in the appraisal and the appraisal recommends the just compensation due to the landowner.

All technical review appraisals (excluding the exceptions noted in 4.2.3) must be in compliance with USPAP and meet the minimum standards and requirements set forth in this manual, by state law, and by regulations.

### 4.6.5 Appraisal Corrections and Revisions

When completing a review appraisal, the State Review Appraiser, Regional Review Appraisers, Fee and/or Consultant Review Appraisers will:

A. Identify and itemize any deficiencies found in an appraisal report.

B. Itemize deficiencies resulting from non-compliance with the Right of Way and Utilities Manual; the Review Appraiser is required to cite the section of this manual where noncompliance exists.

C. Comment on deficiencies or request further clarification, explanation, justification, and documentation from the original appraiser when needed to support their reasoning and conclusions. The review appraiser, however, may not attempt to influence the independent opinion of the appraiser. If the Review Appraiser determines that sufficient errors of omission or commission exist within a report, they may conclude their own value in the review appraisal report, or they may choose not to accept the report and order an additional appraisal.

D. Make minor corrections to an appraisal that will have no effect upon the estimate of value(s). Prior to doing so, the Review Appraiser must obtain permission from the original appraiser to make specific corrections and document the permission obtained by the original appraiser. Corrections must be based upon factual data, and the Review Appraiser must initial and date changes on all copies of the appraisal report. Otherwise, the Review Appraiser may return the appraisal to the appraiser and request that the appraiser make corrections and resubmit the report.

E. Make requests for revisions, additional data and/or information in writing, or by e-mail, so that proper file documentation of the request is made. Resubmitted reports are due within 15 business days upon request for a revision.

F. Prepare a memo to the Regional Manager and to the Chief Appraiser when the original appraiser does not consent to the requested corrections stating the reason(s) why the appraisal was not accepted. If an appraisal is not accepted because of material deficiencies, payment may be withheld until the matter is resolved. When payment is withheld, the Contracting Manager shall be notified. The Regional Manager will notify the appraiser in writing (e-mail or letter) that payment is being withheld until corrections are made to the report and the report is acceptable. The written notification should explain the material deficiencies in the report and the attempts made to correct them by Regional staff with the original appraiser. The Regional Manager will copy the Chief Appraiser and the Consultant Contract Manager

on the written notification sent to the appraiser. The Review Appraiser may elect to complete a review appraisal and provide their opinion of value or they may order a new appraisal.

G. Complete a signed copy of VDOT's Technical Review Appraisal including a review certification.

### 4.6.6 Appraisal Updates

When a Regional office receives information that may impact an appraised value after an appraisal is submitted, an appraisal update or new appraisal is obtained. Information that may impact the original appraised value after it has been submitted may include new or revised market data, plan revisions, revised cost-to-cure estimates, a change in use, a change in zoning, notification of additional improvements that require consideration, etc. An appraisal update may be appropriate prior to filing a certificate for condemnation if significant time has lapsed since the appraisals were submitted (normally six months). Also, an appraisal update may be needed prior to reopening previously unsuccessful negotiations.

It is the responsibility of the Regional Right of Way Managers to establish the procedure for updating appraisals because of a time lapse between the appraisal date and the commencement of negotiations. This time limit or time lapse is based upon local market conditions and the rate of appreciation and/or fall in property values. The time limit may vary from locality to locality.

When completing an appraisal update, an "Update of a Real Property Appraisal" form [RUMS AF19] is used. This form contains a hybrid Executive Summary indicating the differences in value from the original appraisal report and the updated values, a Appraiser Certification and series of statements to be completed discussing the change in market conditions, property conditions and the reason for the update. A Review Appraiser Summation and Certification shall be completed as described above.

An updated appraisal is due within 30 days of its request unless otherwise negotiated. The review and approval process is the same as that required for the original appraisal. An appraisal report originally submitted to the Appraisal Section for approval will also

require the Appraisal Section's approval for any revisions or updates. A copy of each updated appraisal must be electronically signed (with digital signatures of all parties contributing to the preparation of the update) and submitted to RUMS for review

### 4.6.7 Review Appraisal Conclusions and Actions

A technical review appraisal, as defined by USPAP, is required for each appraisal report that is approved for negotiations. When completing a technical review, the Review Appraiser is required to use a "VDOT Technical Review Appraisal" report [RUMS AF8]. When completing the technical review appraisal, the Review Appraiser may select from three options:

A. **Recommended.** The Review Appraiser concludes the value stated in the appraisal report is reasonable and is considered an adequate basis of compensation for the acquisition.. If the Review Appraiser provides an opinion of value that is not equal to that contained in the original appraisal report, the Review Appraiser must provide sufficient explanation and documentation to support their difference in opinion. By doing so, they incorporate the original appraisal into their review appraisal by hypothetical condition per USPAP.

B. **Accepted (not Recommended).** The appraisal meets all requirements but is not recommended as the most reliable basis of value for the proposed acquisition when there is more than on accepted appraisal, the Reviewer will recommend the report that, in their opinion, best supports the value of the acquisition and provide an explanation for the basis of that decision.

C. **Not Accepted.** The Review Appraiser does not accept the value conclusion stated in the appraisal report. In the event the Review Appraiser finds that the appraisal report submitted and/or as revised does not accurately represent the value of the acquisition and/or its affects on the remainder, then a request for a second appraisal report should be prepared. An explanation must be provided in the review appraisal as to why the report is not being accepted. Requests for second appraisals are submitted to the Appraisal Team Leader.

When the Review Appraiser determines that an appraisal report is accepted or accepted with revisions and it can be approved for negotiations, they check the appropriate disposition on the "VDOT Technical Review Appraisal" [RUMS AF8] and sign it. The review appraisal is attached to the original appraisal. The required information concerning the review will be entered into RUMS.

### 4.6.8 Additional Appraisals

A Review Appraiser may recommend that another appraisal report be obtained versus approving an appraisal under review. Under the following circumstances, an additional appraisal may be obtained:

A. At the Regional Manager's or Review Appraiser's discretion due to the complexity or nature of the appraisal.

B. A question exists with respect to a property's highest and best use.

C. When market data is inconclusive or scarce.

D. When there are significant improvements that are not compatible with the highest and best use of the land and the appraiser was inconsistent in their treatment of highest and best use and their method for valuing the property.

E. When a large portion of the compensation is attributed to damages or enhancement so a second opinion is prudent.

F. When due to mass/major corrections and/or differences in philosophy between the appraiser and reviewer it becomes apparent that the reviewer would be making wholesale changes to the report.

If two appraisal reports are obtained and the Review Appraiser cannot approve either of them, a request for a third appraisal may be made. A technical review appraisal must be completed on each appraisal received. Also, the Review Appraiser may elect to complete a review on an appraisal obtained and incorporate the original appraisal by extraordinary assumption into their review appraisal. In that case, they are to provide an opinion of

value and recommend that the review and original appraisal be approved for negotiation versus ordering an additional appraisal.

When more than one appraisal report is obtained on a property and the Review Appraiser approves one of the appraisals, the reviewer shall provide explanation in the comments section of the Evaluation screen for the specific appraisals which were not recommended.

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**ATTACHMENTS**

Attachment 1 – Option Clauses

# CHAPTER 5 - ACQUISITION

## Section 1 - Introduction

### 5.1.1 Acquisition Policy

It is the policy of the Department to acquire real property by negotiating in good faith such that the result is a voluntary conveyance from the owner(s). While VDOT holds the power of eminent domain, it desires to respect each property owner's authority and control over their property and to reach a fair settlement based on mutual agreement. This policy requires that owners be approached with consideration for their interests and concerns and that they are provided information, as well as a fair monetary offer, that will motivate a timely and a voluntary decision to sell. The emphasis on negotiations, rather than on condemnation, enables the Department to improve the Commonwealth's transportation system while retaining a high level of trust and confidence with property owners and with the general public.

The practice of negotiations requires a high level of knowledge, dedication, and professionalism by acquisition agents. They must be familiar with the right of way process as a whole and be able to explain it to the property owner. The property owner must be informed about the specific effects of the project on each property being acquired. Agents must be familiar with and be able to explain the appraisal process in a clear, understandable way. Agents must be empathetic to each owner's concerns; particularly if there will be displacement from home or business. They must identify and address every one of an owner's objections or concerns. They must be familiar with the complex body of law, regulations, and program rules that control property acquisition. Importantly, they must project the intangible personal qualities of maturity and trustworthiness that will help overcome initial negative perceptions about the right of way process that are occasionally encountered.

This chapter of the *Right of Way Manual of Instructions* contains the administrative and legal requirements that must be followed in acquiring right of way. It addresses the various forms of ownership and property rights that are typically encountered on the project level. It will serve as a reference and a basic guide to negotiators and right of way administrative personnel in the Regions and at the Central Office. It does not provide

exhaustive coverage, however, and any questions arising from unique or complex cases will have to be addressed individually through organizational channels.

### 5.1.2 Clearing A Project In RUMS

It is the responsibility of the Acquisition Team Leader (or right of way project manager if not the Team Leader) to enter into RUMS the date all parcels were cleared. In addition, the individual who makes the RUMS entry will also send an email to: the VDOT Project Manager; the Regional Utilities Manager; the Regional Right of Way Manager; the Project Scheduling and Certification Section; and the State Acquisitions Manager. The email will identify the project by UPC and Project Number and will advise that all parcels are clear, the date they were cleared and that utility relocations may begin.

## Section 2 – Preparation for Negotiations

### 5.2.1 General

The negotiation function extends beyond delivery of the offer amount and processing conveyance documents. It is the agent's responsibility to fully inform the owner in person, if at all possible, of the nature of the project, the construction schedule, the effects of the project on remaining property, and the process for transfer of title and payment. All of the owners' questions must be answered correctly and all objections and concerns must be identified and handled respectfully and resolved or addressed promptly. To be effective, the negotiator must be knowledgeable about all elements related to the acquisition and must be confident of the fairness of the offer amount, as well as the process. Also, the legality and sufficiency of the transfer of needed property rights require that data appearing on documents is accurate and complete.

Success in negotiations requires that the negotiator prepare and plan every detail of the acquisition process before the initial offer is made.

### 5.2.2 Preparation Steps

The following steps, as a minimum, should be completed on receiving a negotiation assignment and before initial meetings are held with property owners:

A. Environmental Clearance

The negotiator will ensure that the parcel and/or project has received an environmental clearance from the Environmental Division.

B. Review Project Plan and Property Plat

The negotiator will be familiar with the project as a whole and its effect on property adjacent to the new right of way line. It is critical that the negotiator understand the project in order to explain confidently to an owner the property interests to be acquired and its effects on remaining land. From prior inspection of the project area by the negotiator and consultation with the right of way representative present at the field inspection, the negotiator will confirm that the plans include all significant land improvements that are affected by the project. Any discrepancies will be resolved before meeting with the owner.

C. Examine the Appraisal and the Appraisal Review Statement

The negotiator must understand the content of the appraisal or Basic Administration Report ("BAR") on which the offer is based. A key factor in securing a signed agreement or option is the negotiator's ability to explain to the owner the consideration of all factors contributing to value and the thoroughness of the evaluation process. It is the familiarity and understanding of the basis for the value that provide the confidence necessary to successfully conclude negotiations. If an error or discrepancy is noted during the examination, it must be resolved before the offer is delivered. If the appraisal review and the approved offer differ from the appraisal or the approved offer differs from the BAR, the negotiator must understand the reasons for the variance. The review appraiser should be consulted as necessary to clarify issues raised in the appraisal review document. Likewise, the person who approved the offer should be consulted where the approved offer differs from the BAR.

D. Secure Ownership Information

The negotiator will verify property ownership information from the date of the Preliminary Title Report to the current date. They will ensure that a complete current owner rundown is performed, as applicable (see Chapter 3 – Legal Considerations).

The certified title report will be reviewed and checked against other documents in the negotiation offer package for consistency of factual information. The negotiator will complete any of the reports required in accordance with Chapter 3 of the Manual.

E. Examine the Title Report (and Title Update, if Done)

The negotiator should review and analyze the Title Report and Title Update if one has been done. The negotiator must understand the origin of the current owner's title, all encumbrances on the property and all liens and other claims. This will prepare the negotiator to explain, in the appropriate situation, why releases must be obtained, why the compensation may be paid to or shared with someone other than the owner, why the closing on a voluntary conveyance might not be scheduled immediately and why it is necessary for the owner to sign our Mortgage Disclosure Authorization form.

F. Prepare Property Descriptions

The acquisition area must be accurately and fully described and entered on the option, agreements, and instruments of conveyance. All property rights, fee simple or easements, must be listed within the conveyance document to assure that intended property rights are acquired.

On limited access projects, including the acquisition of entire takes, it will be necessary to describe the line along which the rights of access are to be extinguished. Forms RW-10(LA) [RUMS DO3] and RW-16(LA) [RUMS DO7] will be used for this purpose. The lines along which access rights are to be secured are to be shown in blue on the plan prints. If access rights only are being acquired, use Form SF-1(LA) [RUMS D25].

G. Enter Standard Succession in Title Acquisition Clause (also called Source of Title or Being Clause)

The following clause should be included at the end of each description as a separate paragraph:

> *"and being *part/all of the same land acquired by the landowner from _____ by deed dated _____ and recorded in deed book _____, page _____, in the office of the Clerk of the Circuit Court of said County"*
>
> **- use **part** if partial take: use **all** if entire take*

H. Enter Special Clauses in the Option

Special clauses should be added to the option as appropriate to the circumstances that pertain to individual acquisitions. Several clauses relate to choices that the owner will make as to retention of buildings on the right of way. The applicable clauses reflecting the owner's available choices will be explained to the property owner during negotiations and the selected clauses entered in the option as agreement is reached.

The clauses are summarized on Table 5-1 on the next page. The full texts of the clauses are in Attachment A following this chapter.

Table 5-1 will be used as a guide to determine the clause number(s) applicable to the options for each parcel.

**TABLE 5-1**
**Special Option Clauses**

| CLAUSE NO. | PRIMARY PROVISIONS | APPLICABLE |
|---|---|---|
| 1 | Property owner retains building(s), consideration reduced, and performance bond posted. Owner to remove building(s) by specified date. | Building totally on RW and owner decides to retain |
| 2 | Vacation of property and removal of personal property by a specific date. Added provision for extension if a family or business occupies property. | Owner decides not to retain building |
| 3 | VDOT may remove building(s) within right of way at any time after notice of acceptance of option. | Building vacant |
| 4 | Permission granted by owner of remaining property to allow VDOT to enter to remove entire building(s). | Building partially on RW |
| 5 | Owner agrees to grant easement to a utility company or to VDOT for installation of facilities and for ingress and egress across remaining lands. | Acquisition includes utility easement |
| 6 | Owner agrees that when building(s) is vacated no realty is to be removed from property. | Items of realty in building which could be removed |
| 7 | Owner agrees to compensate tenant(s) for compensable damages suffered as a result of the conveyance and will save VDOT harmless from any related claims. | Building is tenant occupied. |
| 8 | Owner retains building(s) that are partially on right of way; agrees to remove or demolish entire building(s). | Building crosses right of way line. Owner will retain the land. |
| 9 | Owner agrees to relinquish all real property interest, including income rights, to building(s). VDOT to serve vacation notice to occupants. (90 day assurance). | Building tenant occupied. Owner will not retain building |
| 10 | Owner agrees to relinquish all real property interest, including income rights, to building(s). Owner has option of retaining building(s) at time VDOT determines vacation date. Retention value and bond amount are specified. (90 day assurance). | Building tenant occupied, owner to retain |
| 11 | Owner grants right to VDOT to enter remaining lands to remove partially encroaching building(s). | Building crosses RW line. VDOT will remove. |

**NOTE:** Instructions on applicability of clauses with regard to building retention is found at Section 4.3 of this chapter, and the related Table 5-4.

I. Mark Plan Sheets

Unmarked sets of plans (plan, profile, and entrance profile) and the preliminary plats are to be colored to indicate the type of acquisition in accordance with the following table:

**TABLE 5-2**
**Plan Marking Code**

| | |
|---|---|
| Proposed Right of Way | Red |
| Permanent Easement | Green |
| Temporary Easement | Orange |
| Limited Access Only | Dark Blue |
| Power Easement | Yellow |
| Communication (Telephone, Cable, etc.) | Brown |
| Gas Easement | Light Blue |
| Water & Sewer Easement | Purple |
| Joint Use VDOT Utility Easement | Pink |

Initially two sets of plans will be colored, one of which is to be provided to the property owner at or before the initial meeting. Other color sets may be necessary depending upon whether or not a voluntary conveyance is obtained.

J. Check for Negotiation Offer Package Consistency

The negotiation offer package will be reviewed thoroughly for factual consistency. In particular, there should be no conflicts in factual information between the plans, plat, the appraisal or BAR, and the option or agreement.

K. Negotiation Offer Package will include:

1. Offer letter, Form N-1 [RUMS N01]
2. Option or agreement (2 copies).
3. Utility agreement (if needed).
4. Preliminary plat, plan, profile, entrance profile sheet (full sized.)
5. Copy of all appraisals (whether “Recommended”, “Accepted but not Recommended”, or “Not Accepted”) or BARs performed in approximately the same time frame (within six months) and for the same areas of acquisition/easements .
6. Copy of Title Report and, if applicable, Title Report Update.

7. Complete copy of IRS Form W-9.
8. Mortgage Disclosure Authorization Form
9. Right of Way and Utilities brochure (A Guide for Property Owners and Tenants), if available.
10. Right of Way Survey Form, (01), if appropriate.

## Section 3 - Initial Negotiations

### 5.3.1 The Negotiations Atmosphere

A personal meeting, at a time of the owner's convenience, is the most effective means to reach settlement. Owners who live in the Commonwealth will be contacted in person, if at all possible. Personal contacts will be made if relocation assistance is required and when an estate is involved. It is a firm policy that negotiations with owners by mail are not allowed except under certain specific circumstances discussed in this Manual.

It is appropriate to call the owner by phone to schedule the initial offer meeting. If, during the conversation, the owner requests that the information be mailed in advance of the initial offer meeting, the negotiator may honor this request. However, the negotiator may not suggest that the information packet be mailed to the owner. Such a request must originate with the landowner without any prompting by the negotiator. If such a request is made, the negotiator must emphasize the importance of a subsequent meeting so that he/she may explain the documents and the impact of the project. This is a legal requirement pursuant to Section 33.1-89, E of the Code of Virginia. Without the explanation being given, an offer may not be legally considered a bona fide offer

The initial offer meeting is the most important contact the negotiator will have with the owner. It is the point at which the acquisition is described and the offer delivered. The initial meeting sets the tone for communications and allows for establishing an atmosphere of trust that is necessary for any successful business relationship. It is critical that the negotiator represents the Virginia Department of Transportation (VDOT) in a professional manner and is well informed about the project, the acquisition, and the effect of the acquisition on remaining property. It is important that the negotiator be able to explain the

forms and legal documents and the process for receiving compensation. If there is initial resistance or objections are raised to the acquisition, the project, or the amount of the offer, the negotiator must strive to keep communications open and address all areas of disagreement or concern in a respectful and persuasive manner.

### 5.3.2 Circumstances where Personal Negotiations Contact Not Feasible

It is not feasible or appropriate in every case to initiate or continue personal meetings with property owners.

Section 25.1-204. provides that an effort to make a bona fide offer is not required when "...consent cannot be obtained because one or more of the owners is a person under a disability or is unable to convey legal title to such property, (ii) is unknown or (iii) cannot with reasonable diligence be found within the Commonwealth."

Following are circumstances where personal negotiation meetings are not usually conducted:

A. The owner resides out of state.
B. A corporation or institution owns the property, and the responsible officer or authorized representative is not available to meet.
C. The owner is not legally competent to contract for the sale of real estate and no guardian, committee or other representative has been legally designated.
D. The owner refuses to meet or specifically requests (without any prompting by the negotiator) to transact by mail.
E. The property owner is unknown, or address is unknown and cannot reasonably be discovered.
F. Owners are minors and no guardian or other representative has been legally designated.

This is not an exhaustive list. Other circumstances might reasonably prevent a face-to-face meeting with the owner(s). The negotiator should always secure the approval of the Acquisition Team Leader to conduct the transaction by mail. A statement indicating that the Acquisition Team Leader has approved a transaction by mail should always be included in the RW-24 Report.

When transacted by mail, it is the responsibility of the negotiator to adequately describe in writing to the owner: the type and amount of foreseeable damage and/or enhancement to the property; and, an explanation, in lay terms, of all changes in profile, elevation and

grade of highways and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property. The Initial Offer Letter should be sent Certified Mail – Return Receipt Requested.

In the case of absentee or unknown owners, a notice will be posted on the property not less than 10 days prior to preparation of the final RW-24 report and Certificate. The notice will state the Commissioner of Highway's intent to acquire title to the property. A photograph clearly showing the sign posted on the property should be placed in the file. An example of the posted notice follows:

*DATE_____*

***TO WHOM THIS MAY CONCERN:***

*Representatives of the Commissioner of Highways of Virginia have made a diligent search in order to contact or locate the whereabouts of the owner or owners of this property. Having been unable to locate the owner or owners, and in order for the Commissioner to gain title to the land for the construction of Route_____, Project _____ , a Certificate will be filed with the Clerk of the Circuit Court of _____County for the benefit of the owner or owners.*

*(Signed)_____, Regional Right of Way Manager*

*(Office address)*

### 5.3.3 Special Ownerships

Procedures for acquisition of right of way must accommodate a variety of owner entities and ownership forms that have a special status in law. The special ownerships that are most frequently encountered are as follows:

A. Estate ownership
B. Infants and incompetent owners
C. Corporations
D. Non-profit Corporations
E. County Boards of Supervisors
F. School Boards

Special legal considerations and processes for acquisition of property in the ownership classes listed above are contained in Chapter 3 – Legal Considerations, Section 4. The complication presented requires that such ownerships be identified at the earliest possible time and that experienced personnel be assigned to those acquisitions.

Following are specific negotiation considerations. The negotiator should also read Section 3.4 for a complete understanding of the process for special ownerships.

1. Estate Ownership

   The negotiator must assure all heirs are identified as discussed in Section 3.4 of this manual. Close coordination with the staff attorney is important to assure that ownership is properly reflected on acquisition documents.

2. Infants and Incompetent Owners

   When the title examination discloses persons who cannot convey a property right because of age or legal incompetence and no legal representative has been properly designated, VDOT must condemn for those rights. However, if title is held by competent as well as incompetent parties, an option will be presented to the competent owners. If a legal representative has been properly appointed, the option will be presented to them as well.

   The negotiator will contact the properly appointed legal representative, if one has been appointed, who has the legal authority to handle the incompetent or infant owner's affairs. The facts of the acquisition and the process will be explained, including the take and its effects on the remainder. The negotiator will then present the offer of approved market value.

   If during negotiations it is discovered that one or more owners are without the right to convey, the Staff Counsel will be consulted about the need to file a Certificate. If the decision is made to file, the necessity for condemnation will be explained to all parties. If a Certificate is to be filed, in addition to the other necessary documents, the RW-24 report will be sent to the Acquisitions/Legal Section setting forth the circumstances that require condemnation. Any options or agreements executed by competent co-owners

will also be transmitted. These will be presented to the court as indication that the competent owners agree with the compensation offered.

3. Corporations

Negotiations with corporations should be conducted at the earliest possible date since it is often necessary to await infrequent Board of Directors' meetings to confirm an option. Negotiations should be initiated with the president or other authorized officer of the corporation.

If any corporate officer prefers a special form of option or proposes to draft an option, a copy should be obtained and reviewed by VDOT's staff attorney before the document is executed.

Options and forms that pertain to corporate ownership are as follows:

a) Form RW-10 Corp [RUMS DO2].
b) Form RW-10 Corp LA [RUMS DO4].
c) Form RW-16 Corp [RUMS DO6].
d) Form RW-16 Corp LA [RUMS D08].
e) Form RW-28 Corp [RUMS D10].
f) Form RW-29 Corp [RUMS D12].
g) Form SF-10 Corp [RUMS D35].

4. County Boards of Supervisors

The County Board of Supervisors must hold a public meeting before conveying land in fee or granting an easement. Negotiations should be initiated as early as possible to allow for the required hearing.

If after the hearing the Board of Supervisors refuses the offer, the property must be acquired under the eminent domain statutes.

5. School Boards

School Boards have power to convey easements without restrictions but do not have such authority to convey title in fee. Refer to Section 3.4.5 for detailed information on

how to proceed with the acquisition process. It is important to begin the process as early as possible.

6. Non-Profit Corporations (Includes Churches)

   Normally, it is necessary to have a meeting of the governing body of the organization to approve a conveyance. Also, normally the Circuit Court must enter an order authorizing the trustees to execute an instrument. Refer to Section 3.4.6 for detailed instructions on how to proceed with acquisition from a non-profit organization.

### 5.3.4 Prioritizing Offers

It is important to prioritize the order in which offers are made on the project. The Regional Manager or the Acquisition Team Leader must prioritize the order in which the offers are to be made prior to the first negotiation contact with any of the owners on the project. This is necessary to make effective use of available lead time before construction and to allow for the required advanced notice prior to requiring property to be vacated. ON some projects a specific sequence of construction may have been developed and may affect the order of acquisitions.

In general, the following priorities should be followed:

A. Acquisitions involving non-residential displacement.
B. Acquisitions involving residential displacement.
C. Parcels involving utility relocations.
D. Acquisitions from corporations, school boards, county board of supervisors, churches or other non-profit organizations.
E. Partial acquisitions, remainder damaged.
F. Full acquisitions, vacant land.
G. Strip acquisitions, no damages.

The above priorities may be affected by the complexity of the acquisition, the availability of plans, title information, and the appraisal report or BAR. Also, consideration should be given to owners who express the need for an expeditious offer. These factors will affect a strict adherence to offer priorities. However, it is good project management practice to consider acquisition priorities in planning offers.

### 5.3.5 The Initial Negotiations Meeting

The meeting should be held at the time and place preferred by the owner. However, the negotiator may propose an alternative if the proposed location is not feasible or not conducive to business. If legal counsel represents the owner, the attorney must be included in all communications and meetings and should be the sole contact if the attorney so requests and refuses permission for contact directly with the landowner. If the owner(s) is elderly or has a condition such as impaired hearing, the presence of a family member or close friend at the meeting should be welcomed. If the owner does not speak English as a first language, consideration should be given to arranging for an interpreter to be present.

The order and pace of the initial meeting is entirely a matter for the professional judgment of the negotiator. The negotiations discussion will be influenced by, and adapted to, the temperament and needs of the owner and other dynamics of the situation. The negotiator should remain sufficiently in control of the discussion to assure that all essential information is conveyed accurately and completely. Some owners may not concentrate fully on what is said until they know the offer amount. Some may have difficulty listening to information that does not conform to preconceived ideas. The negotiator should be patient and flexible, adjusting the presentation to the needs and reactions of the owner. Repetition of key points may be necessary and should be done without any indication of impatience or annoyance.

The proposed construction and the effects on the property should be explained in lay terms including all proposed changes in alignment, profiles, and grade changes. In addition, the negotiator will furnish the property owner copies of all appraisals (whether “Recommended”, “Accepted but not Recommended”, or “Not Accepted”) or BARs performed in approximately the same time frame and for the same areas of acquisition/easements. This does not apply to appraisals/BARs performed six or more months prior to the initiation of negotiations or appraisals/BARs based on different areas of acquisition. A copy of the title report on the property is to be given to the landowner also.

When offers between $10,000 and $25,000 are based on waivers, the agent must inform the landowner that the purchase offer is based on a BAR/waiver and that they are entitled to a formal appraisal if they so desire.

If the owner presents new information or asks questions that the negotiator cannot answer with certainty, it is proper to defer an answer until the negotiator can research the matter. It is not expected that the negotiator will have an answer to every question. It should also be understood that an owner's attachment to home and land might be deeper than can be addressed by a rational explanation of the public's need for improved transportation. Such feelings should be acknowledged, and a rebuttal is not appropriate.

The Code of Virginia, 1950 as amended, requires agencies to provide certain information to the owner of real property during the first meeting where price is discussed. This is a written statement and summary of the basis for the amount that has been established for the right of way being acquired. This requirement is satisfied by Form N-1 [RUMS NO1], along with the agreement (option, etc.) and a print of the plans outlining the areas to be acquired and the applicable profile sheets.

Many owners will sign the option or agreement at the initial meeting. Others will be reluctant to sign. They may object to the offer amount, the acquisition, or not clearly state the reason for dissatisfaction. The owner's initial reaction should not be taken as an unalterable attitude. An initial negative reaction may be a bid for time. The owner may wish to consider the offer in privacy, to consult with advisors and family, or to try to find what neighbors have been offered. Communications should be kept alive and the possibility raised for a contact at a later date. The reaction at the initial meeting should not be considered a refusal unless the owner unequivocally states that no further contacts are desired or that there are no other offers that would be acceptable.

### 5.3.6 Acquisition of Outdoor Advertising Signs (Owned by Sign Companies), Buildings, Structures, and Improvements Owned by Others of Record

Prior to initiating negotiations with the owner of an outdoor advertising sign that is owned by a sign company, or the owner of structures, buildings, and improvements or with the owner of the land upon which the sign, structure, building or improvement is located, it

must be determined whether or not the owner of such signs, structures, buildings, and improvements qualifies as an owner under the definition of "owner" in the following section of the Code of Virginia. If the owner of the signs, structures, buildings or improvements does not meet the requirements of an "owner" under the Virginia Code, then that owner will be treated as a tenant.

> *Virginia Code, Section 33.1-89 subsection G provides: For the purposes of this article, "owner" means any person owning land, buildings, structures or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. Owner shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. In proceedings instituted by the Commonwealth Transportation Commissioner under Title 25.1 or this title, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings, structures or improvements under existing law.*

Negotiating for buildings, structures and improvements owned by persons of record other than the fee owner should not present any unusual difficulties. However, the offer letter is to be prepared in both the fee owner's and improvement owner's name. Both should receive a complete negotiation package including a copy of the appraisal, title report, plans, profiles, offer letter, conveyance documents and Right of Way brochure. It will not be necessary to secure a disclaimer from either the owner of the land or the owner of the sign, building, structure or improvement where such ownership is a matter of record. If not a matter of record, a written disclaimer in the sign, building, structure or improvement should be obtained.

Form SF-28 (RUMS D-48) is to be used for the purpose of purchasing the sign, building, structure or improvement. Form SF-29 (RUMS D-49) is applicable when the owner of the sign, building, structure or improvement retains it. If the owner of the sign, building, structure or improvement does not wish to retain it, VDOT will dispose of it in the same manner as any other purchased building, structure and improvement.

Should it become necessary to file a certificate to include the owner of the building, structure or improvement, the certificate should name both the owner of the land and the owner of the building, structure or improvement, "as their interests may appear." VDOT's Fee Counsel should be consulted on the actions being planned as soon as possible and the Chief Appraiser notified to ensure concurrence in the planned process and clarification of the valuation issues involved.

The Code of Virginia Section 33.1-95.1 requires that VDOT notify every owner of a building, structure or other improvement, if the Department intends to exercise the power of eminent domain over such building, structure or other improvement.

**TABLE 5-3**
**Tenant Owned Improvements – Forms**

| Improvement Status | Form Number |
|---|---|
| Building is situated wholly within proposed right of way and building to be vacated by tenant. | SF26 [RUMS D46] |
| Building is situated wholly within proposed right of way and tenant elects to retain and remove building. | SF-27 [RUMS D47] |
| Improvement other than a building is acquired. | SF-28 [RUMS D48] |
| Tenant elects to retain improvement (other than buildings) and to remove improvements from proposed right of way | SF-29 [RUMS D49] |

### 5.3.7 90 Day Assurance Notice

The construction or development of a highway project must be scheduled so that no person lawfully occupying real property will be required to move from a dwelling, business, farm or non-profit organization in less than 90 days from the date the written offer is made by VDOT. In accordance with Section 33.1-120 of the Code of Virginia, as amended, VDOT can not force relocation on improved, owner-occupied property until a Certificate is filed with the court and the owner is permitted to withdraw the funds represented by the certificate. If the owner does not possess clear title to the property or refuses to withdraw

the funds, or if ownership of the property is disputed or certain owners can not be located, VDOT may petition the Court to request authority to force relocation.

Refer to Relocation Chapter 6, Section 3.4 of the Manual for specific instructions on when to issue written assurance notice and final written notice to displaced persons required to move from a dwelling, business, farm or non-profit organization.

## Section 4 – Continuing Negotiations and Acceptance

### 5.4.1 General

It is the commitment of the Department to make every effort to acquire property by voluntary conveyance. This commitment requires that negotiations extend beyond the initial delivery of the offer. Negotiators are encouraged to facilitate an open dialogue so all issues and objections are revealed by the owner, acknowledged and addressed by the negotiator and, if at all possible, successfully resolved.

An effort should be made in subsequent contacts to determine what is preventing an agreement from being reached. If the obstacle to settlement is the amount of the offer, the negotiator might discuss the appraisal process and factors contributing to value. Other issues may involve retention of buildings, concerns about grade changes, landscaping, entrances, utility of remainder, or disruption during construction. These concerns might be relieved by factual information presented by the negotiator.

A minimum of thirty (30) days is to be allowed an owner to consider the offer before a certificate is filed. If the owner states that: no further offers will be considered; or that no further contacts are wanted; or displays threatening conduct; or if unknown owners, incompetent owners, minors or title problems exist, then the filing of a Certificate is within the discretion of the Regional Manager and may occur in less than 30 days. Should other extenuating circumstances require less than the minimum 30 day time period, the Regional Manager or designee must notify and seek concurrence from the Acquisitions/Legal Section before proceeding. In any case where less than 30 days are allowed, the RW-24 Report is to be documented accordingly.

### 5.4.2 Counteroffers

The Department acquires real property based on the offer in the amount of its estimate of just compensation. The appraisal or BAR, appraisal or BAR review, and the offer process assures that owners are treated equitably and all elements of value are fully considered in VDOT's offer. The negotiator should not solicit a counteroffer unless the owner specifically indicates a belief that the offer is unacceptably low. Immediately soliciting a counteroffer detracts from the credibility of the Department's offer. Notwithstanding this position, it is a fact that some owners will counteroffer immediately.

When a counteroffer is made, the negotiator should ask the owner for the basis of the counteroffer. The negotiator should proceed to explore the owner's reasoning on value with open-ended questions without indicating either agreement or rejection. The negotiator should reinforce the documentation and support that was relied upon to develop the Department's offer. If progress towards the acceptance of the offer is lacking, soliciting a counteroffer may be appropriate. This is a judgment to be made by the negotiator.

Any counteroffer and the basis and reasoning offered by the owner should be noted in the RW-24 Report and, if required, reported to the Acquisition Team Leader. If the counteroffer is based on a legitimate value factor not previously considered and an administrative settlement would otherwise be appropriate, the counteroffer should be seriously considered.

### 5.4.3 Errors and Discrepancies

Discussion with the owner and on-site observation of the property may occasionally lead to discovery of a discrepancy or omission in the plan or in the appraisal. For instance, a well may have been obscured by vegetation. This can occur in spite of a thorough process that included an opportunity for the owner to accompany the appraiser in an inspection of the property. The owner should be advised that the matter will be fully reviewed by the appraiser and the offer will be modified if it is an item that affects value.

### 5.4.4 Retention of Improvements

A property owner will be given the option of retaining a building in the acquisition area in exchange for a reduction in the compensation reflecting the predetermined retention value.

An amount will be withheld at settlement as a performance bond to guarantee the removal of the building from the right of way. This is a preference that must be exercised by the owner before VDOT has accepted an option or filed a certificate. Thereafter, the owner will be treated as any other party interested in purchase of the building for removal.

Most of the option clauses referred to in Section 5.2.2, which are contained in Attachment A, address the owner retention status of buildings wholly or partially on the acquired right of way. Table 5-4 below clarifies the applicability of these clauses to the occupancy status of the building.

**TABLE 5-4**
**Option Clause Applicability**
**Owner Retention**

| CODE | RELEVANT CLAUSES | APPLICABILITY |
|---|---|---|
| A-1 | 1 | Always applicable |
| | 8, 11 | Applicable only if building is on proposed R/W line |
| A-2 | 2, 6 | Always applicable |
| | 4 | Applicable only if building is on proposed R/W line |
| B-1 | 10 | Always applicable |
| | 7 | Applicable if building contains tenant owned property |
| | 8 | Applicable only if building is on proposed R/W line |
| B-2 | 6, 7, 9 | Always applicable |
| | 4 | Applicable if building is on proposed R/W line |
| C-1 | Same as A-1 | Same as A-1 |
| C-2 | 3 | Always applicable |
| | 4 | Applicable only if building is on proposed R/W line |

**Code explanation:**
A = Building owner occupied, or having only owner's personal property stored therein
B = Building tenant occupied, or having only tenant's personal property stored therein
C = Building Vacant
1 = Owner to retain building
2 = Owner will not retain building

The RW-24 report will be marked to indicate the retention status of buildings on all property acquired. A suggested note will read: *"The building, D-_, was offered to the owner at the retention value and the offer was accepted (declined)."*

The property owner may be interested in retaining landscaping or site improvements, such as sheds, above ground pools, or decks. It should be determined whether such items were considered real property and included in the just compensation offer. If they were regarded as real estate, a reasonable retention value will be assigned. If the appraisal does not indicate a contributing value for the landscaping or site items, no reduction is made in compensation to the owner. The property owner must agree to remove items from the proposed right of way within 30 days from the date of recordation of the option or deed or the filing of a Certificate, whichever applies. The owner should be advised that anything not removed within the agreed upon period will become the property of VDOT and may be removed or destroyed. The option must include a provision that requires the owner to backfill any holes or depressions that may become a hazard. The Regional Manager or designee may agree to extend the 30 day period for removal of property. The justification for such extension will be included in the entry in the RW-24 Report noting the extension. If an extension is granted, the extension must be described and addressed in the option and the option must be recorded.

### 5.4.5 Successful Negotiations Procedure

If the offer is acceptable, the agreement is to be executed by all parties named on the acquisition deed, and each signature notarized. If the instrument is an option, the source of title is to be incorporated in the appropriate clause, which is to follow the description. Every Option Agreement should also include a clause containing a right of entry that is effective upon execution of the option. This will allow VDOT to go on the property for construction before the conveyance is complete. If entry for construction must be made prior to closing, the Option Agreement should be recorded.

The negotiator will inquire as to the existence of a tenancy, either written or oral, unless this has previously been determined. If there is a tenancy, but no tenant occupied buildings within the right of way, the following note will be entered into the RW-24 Negotiations Report:

*"It has been determined that the land hereby reported is subject to a tenancy; however, no tenant occupied buildings are to be acquired."*

If tenant occupied buildings are within the right of way, the sections of the RW-24 reserved for “Buildings” and “Relocation” are to be completed.

### 5.4.6 Rights of Entry

Whenever a right of entry is obtained, the right of entry should be “cleared” within ninety (90) days from the date it was executed (except when dealing with Special Clients – see Section 6 of this Chapter – these provisions do not apply in those cases.)

If the right of entry is contained in an Option Agreement, it is considered “cleared” when the deed of voluntary conveyance is recorded. For all such Option Agreements, the ninety (90) day time limit does not apply.

For rights of entry contained in other documents, they must be “cleared” within ninety (90) days either by obtaining an Option Agreement for a voluntary conveyance or by filing a certificate. It is the negotiator’s responsibility to “clear” every right of entry they obtain.

In extraordinary circumstances, the Regional Manager may extend the clearance date for up to an additional nine (9) months or until construction. In such event, a memo explaining the justification for the extension must be placed in the file and an entry made in RUMS to the same effect.

### 5.4.7 Terminating Negotiations

The negotiator will afford a **reasonable** opportunity to each owner to consider the offer and settle by signing an option or agreement. The decision to terminate negotiations and recommend filing a Certificate of Take or Certificate of Deposit should be made after reviewing all circumstances, including the prospect for success if there is further contact. In no instance will a project schedule be a reason for terminating negotiations.

Following are some of the reasons that may justify termination of negotiations:

a) Owner or attorney unequivocally states that no further contact is wanted or that no further offers will be considered.
b) Owner displays menacing or threatening conduct.
c) No progress on settlement after repeated personal contacts.

d) Owner becomes unavailable, or whereabouts unknown.

e) Owner fails to respond to repeated attempts to contact them by telephone and mail and the receipt of the 10 day advisement letter.

Sufficient time will be allowed for an owner to fully consider an offer and to consult with other parties before VDOT considers the offer refused.

Negotiations may be resumed at any time on the initiative of VDOT or the owner. Negotiations may be resumed after the filing of a certificate. Such negotiations, however, will be conducted only by or with the concurrence of Fee Counsel.

In exceptional circumstances where it appears reasonably likely that a voluntary conveyance can be obtained within 60 days after a certificate has been filed, the Regional Manager or designee may request permission from the Director or State Acquisitions Manager to continue to negotiate with the owner(s) and retain jurisdiction over the case for up to 60 days after the certificate is filed. If granted, the Region will delay sending the Appointment Package to Fee Counsel and may continue negotiations for the 60 day period but not longer. If unsuccessful in obtaining an option during the 60 day extension period, the Region must immediately send the Appointment Package to the appointed Fee Counsel.

## Section 5 - Donations, Proffers & Dedications

### 5.5.1 Donations

An owner may not be required to donate property and is entitled to payment of just compensation for property acquired by the Virginia Department of Transportation (VDOT) for a public improvement. However, VDOT may accept voluntary donations of real property offered by property owners who are fully advised of their rights under Section 25.1-417, A, 10 of the Virginia Code.

Unless otherwise provided in this Manual, it is irrelevant whether other owners on the project agree to donate property. Once an owner has been advised of their rights under Section 25.1-417, A, 10, and thereafter has agreed to donate, it is not necessary to renegotiate with them for the acquisition. If another owner does not agree to donate and

asks for compensation, this has no impact on other owners who have previously agreed to donate.

Owners may be motivated to donate property for a variety of reasons. It may be a civic minded gesture to contribute an asset that will serve a community need. Others may desire to take a tax deduction (property or income) that will result from a donation. An owner may wish to expedite construction of a project that will enhance the value of their remaining property. Quite often a combination of these motivations may be applicable.

On Secondary System projects it is appropriate to inquire whether the owner would consider a donation of needed right of way. This should only be done, however, after the owners have been advised of their right to receive just compensation. VDOT is responsible for assuring that an appraisal of the property is obtained, unless the owner releases VDOT from this obligation. If an appraisal has been secured and the market value has been established for the property, the inquiry as to donation should follow the presentation of the market value offer in writing. If the owner decides to donate the property, they should be required to execute a Donation Acknowledgement Form which can be found in RUMS under the Negotiations tab.

It is critical that the negotiator confirms that the person offering the donation is the fee owner of the property, rather than a tenant or other person having a lesser interest. This is basic to any form of acquisition. However, donations are generally offered for lower value acquisitions on Secondary projects, and ownership confirmation might easily be overlooked.

For more information and procedures for securing donations of right of way see Section 5.5.4, Secondary System Donations - General.

### 5.5.2 Steps in the Donation Process

Normally, the following steps are followed when obtaining a donation for right of way purposes:

1. The negotiator explains the project or acquisition to the owner, the need to acquire a portion of the owner's property, describes the acquisition and the probable impact to the owner's property.

2. The negotiator advises the landowner of their right to just compensation for their property under Section 25.1-417, A, 10 (This statute is consistent with the 5th Amendment to the U.S. Constitution and Article 1, Section 2 of the Virginia Constitution.). NOTE: An owner must always be advised of this right before we ask for a donation under any circumstances.

3. The negotiator asks for a donation.

4. If the owner agrees to donate, the negotiator explains that the Department will determine the value of the donation and provide it to the landowner in writing. The owner is also advised that they may waive this valuation. If they waive the valuation, they may, if they wish, have the value determined by someone of their own choosing.

5. Once the explanations are made, the owner is asked to execute an option and a Donation Acknowledgment Form. On the Acknowledgement Form, they will have to check the box that indicates whether or not they waive the valuation.

### 5.5.3 Proffers and Dedications

Once plans and authorizations to proceed have been received, an inquiry the right of way agent responsible for preparing the right of way estimate should contact the appropriate county, town or city officials and ask about the existence of enforceable proffers or other commitments to convey land (inside or outside the proposed right of way) for road purposes. If enforceable proffers or commitments exist, a list of those properties involved should be obtained.

An inquiry should also be made about dedications, donations, zoning variances and special use permits where, as a condition for approval, the owner is required to convey property to local or state governments for public use or highway/transportation purposes. If such situations exist, a list of those properties should be obtained.

Where such information is obtained during preparation of the estimate, it should be shared with the assigned title examiner(s) and appraiser(s). The appraiser has to make an independent search for this information prior to beginning the appraisal and address it in

the appraisal. If the appraiser finds such information he/she should share it with the assigned title examiner(s).

Although others may be searching for information concerning conditions attached to proffers, donations, dedications, zoning variances and land use permits, the primary responsibility for finding or confirming this information belongs to the title examiner and is mentioned in the Title Report The information should be shared with the Regional Manager and the appropriate Acquisition Team Leader so they may determine how to proceed with the acquisition.

When the property owner is initially contacted, the existence or non-existence of proffers, dedications, donations, zoning variances and special use permits should be confirmed. The information provided by the landowner concerning these matters should be recorded in the appraisal and brought to the attention of the assigned negotiator. The person making the initial contact will most likely be the appraiser. The compensation should reflect whatever effects these matters may have on the value. It may be necessary for the appraiser to consult with Staff Counsel if the legal status of certain land is questionable. The review appraiser will also review this information and consider its effects on value.

If, as a result of one of the conditions above, it is determined that there is an enforceable obligation to convey property for highway/transportation purposes or public use and the conveyance has not been made, negotiations will normally be suspended and the locality will be asked to enforce the obligation to convey. Normally, negotiations will not resume until the conveyance is completed.

It is acceptable, however, at the discretion of the Regional Manager, to attempt to acquire by voluntary conveyance or certificate any remaining property not required to be conveyed. This should be discussed by the Regional Manager with Staff Counsel and the State Acquisitions Manager or designee before the final decision is made.

When the negotiator makes the first contact with the landowner, they should, where appropriate, confirm the information given to the appraiser at the initial contact concerning the existence or non-existence of a proffer, dedication, donation, zoning amendment or

special use permit and any conveyance requirements that apply. The question and landowner's response should be recorded in the RW-24 Report.

### 5.5.4 Secondary System Donations - General

There are two classifications of Secondary System roads. Class I roads serve local traffic and provide access to property adjoining the road. Class II roads, in addition to serving local needs, also serve through traffic and connect to the primary highway system.

Class I roads have minimal right of way width (usually 40 feet or less). Additional right of way acquisition needed for construction or maintenance is usually minor. Right of way has historically been acquired by donation. Conveyance should be by a single deed from all the owners of a single parcel. Formerly, Omnibus Deeds were used but are no longer acceptable.

Class II roads usually have right of way widths of 40 feet or greater with higher design and construction standards. Donations of needed right of way are not precluded, but acquisition of additional right of way is generally by purchase.

Whenever acquisition by donation is contemplated, property owners shall be fully informed of their right to receive just compensation. This information will be provided before the property owner is asked to donate property. Owners who agree to donate will be asked to execute a Donation Acknowledgement Form which will be made a part of the project file. The fact that all affected owners were so advised will be documented by an entry in the RW-24 Report and the execution by every owner of a Donation Acknowledgment form.

The final decision on whether to proceed with certain Secondary System projects may depend on the donation of needed right of way. Owners should be advised that a decision will be made on proceeding with the project at a level that controls funding and project priorities. They should be advised that the decision as to whether or not to proceed may be contingent on all or a majority of the needed parcels being acquired by donation

### 5.5.5 Class I Project (local traffic) Right of Way Donations

Surveys will normally not be secured or plans developed until a decision is reached as to whether or not the project will be contingent on right of way donations. If the project is

donation contingent, the District Director of Transportation and Land Use, or designee will approach property owners on that basis. Plans and surveys will not be developed.

After confirming ownership, the District Director of Transportation and Land Use, or designee will contact affected owners to explain the project and its effects on adjoining property. This might best be accomplished by inviting effected owners to a community meeting for a full explanation and discussion. It should be explained at the meeting that, while owners have the right to receive just compensation for acquisition of their respective properties, inability to obtain needed right of way by donation may result in deferral or abandonment of the project.

It should also be explained that, while donation of land is requested, compensation for adjustment of buildings or other improvements within the proposed right of way will be paid by VDOT. Also, payment would be made for any damage that may result from the taking. Replacement of fencing would be handled by a cash payment to enable each effected owner to re-fence or by re-enclosure by state forces, or by including it as a work item in the construction contract.

It must also be explained at the meeting that when estates hold title, and when title is difficult to secure, court action may be necessary that could result in compensation for land, as well as payment for improvements and damages.

Owners agreeing to convey property will execute the option, Form RW-210 [RUMS D19] and a Donation Acknowledgment form.

After obtaining sufficient commitments of donated rights of way, the surveys and plan development for the project will be authorized. After the right of way plats are available, the District Director of Transportation and Land Use, or designee should arrange for another meeting with property owners for the purpose of executing deeds and to provide current information about the project. This meeting will be attended by the right of way agent assigned to the project who will have the proper deed of gift prepared for each parcel where the owner has signed an option.

Individual contacts with owners may be made on projects with relatively few owners or where individual contacts are judged by the Regional Manager to be more expedient.

Follow up contacts by right of way staff with all owners who do not attend scheduled meetings or who do not sign options or deeds at the meetings will be conducted at the earliest possible time.

The execution of deeds shall be under the guidance and direction of the Staff Counsel. The District Administrator will submit a full and complete narrative report to the Local Assistance Division Director of the results of meetings and individual contacts with owners. A copy will be sent to the Director. This report will summarize right of way status, particularly with regard to property not donated or owners who did not follow through with earlier commitments to donate. It will also include a cost estimate of right of way and damages for the entire project. It will include recommendations from the District Director of Transportation and Land Use, or designee, the Regional Manager and the District Administrator with regard to proceeding with the project. The Local Assistance Division Director will subsequently decide to proceed with, defer, or abandon the project.

The deeds, agreements, options, Donation Acknowledgment Forms and RW-24 Negotiations Reports will be held by the Regional Manager until it is decided whether to proceed with the project. If the project is approved, the documents will be forwarded and processed in the routine manner.

If there is a decision to defer or abandon the project, affected property owners will be promptly notified by the District Director of Transportation and Land Use, or designee. All executed instruments will be retained locally for twelve months after their execution and then destroyed or returned.

### 5.5.6 Class II Project (Serving Through Traffic) Right of Way Donations

Higher design standards pertain on Class II Secondary Roads. The right of way will be 40 feet or greater and the alignment and grade will be to a higher standard. It is likely that abutting property will have been developed to a greater degree than on roads serving local traffic. More land may be taken and greater damage caused than on Class I projects. In view of these considerations, projects on Class II roads are normally not contingent on donations of right of way. However, donations are not precluded when property owners wish to support the project in this manner.

When donated right of way is available, the District Director of Transportation and Land Use, or designee will designate a project at the preliminary field study stage and lay the groundwork for negotiations by the Right of Way and Utilities Division. This will prevent retracing of procedural steps and resultant delays.

Payment for land, site improvements, and damages will be supported by approved individual appraisals or estimates.

The District Location and Design Section will furnish the Regional Manager with plans and request that a lump sum Right of Way and Utility Estimate be prepared. Preparation of title reports will be conducted in accordance with Table 3-1 in Section 3.5.4 of this Manual.

The Regional Manager will furnish the estimate to the District Administrator with copies to the District Director of Transportation and Land Use, or designee, the Director, and the Local Assistance Division Director The estimate data will be entered into RUMS at this time. The District Director of Transportation and Land Use, or designee will review the estimate and submit it with a recommendation to the District Administrator, who will in turn submit it to the Local Assistance Division Director with a recommendation. If the Director of the Local Assistance Division concurs, the District Administrator will be notified to proceed.

The Regional Manager will order individual estimates or appraisals upon receipt of approved plans and Notice To Proceed. If during this process it becomes clear that there will be a substantial increase in right of way cost over the initial estimate, the estimate will be updated. The updated estimate will then be distributed in the same manner as the initial estimate. A decision will be made by the Local Assistance Division Director as to whether to continue to advance the project prior to starting negotiations..

### 5.5.7 Secondary “No Plan” Project Procedures - Donations

“No plan” projects are advanced on the basis of a title sheet containing informal design information and showing the location and nature of each acquisition and a typical cross-section sheet. “No plan projects” are used when minimal survey work is required to accomplish the design engineering; and right of way and construction stakings; and there are no major hydraulic or river mechanics studies required.

The District Director of Transportation and Land Use, or designee is responsible for securing right of way with the assistance of the regional right of way office. Right of way should usually be secured by donations and individual deeds of gift. However, when reasonably necessary and approved by the Director in advance, VDOT will pay just compensation up to $5,000 per parcel for each acquisition.

On no plan projects, the District Director of Transportation and Land Use, or designee will enter the necessary information, including a correct property description of each property being acquired on the appropriate deed of gift form and submit all of the deeds, along with any accompanying sketches, to the Regional Manager. The regional right of way office will assist in preparing the property descriptions and deeds, upon request.

After review, and securing advice and approval from the Staff Counsel, the Regional Manager will return the deed form to the District Director of Transportation and Land Use, or designee who will proceed to secure owner signatures on the deeds and on a Donation Acknowledgment Form for each donation. After all owners have executed their deeds and the Donation Acknowledgment Form, they will be returned to the Regional Manager for review and recordation.

If an agreement for a voluntary conveyance of the needed rights cannot be obtained and it becomes necessary to acquire the rights by eminent domain, Location and Design will develop a detailed set of plans for each parcel upon which a certificate is to be filed.

Right of Way will issue a “Notice To Proceed” when incidental costs such as those to compensate the landowner for fencing or landscaping are incurred or when it becomes apparent that a certificate of take or deposit must be filed in order to acquire the property, whichever occurs first.

### 5.5.8 Use of Forms – “No Plan” Projects

Individual deed forms (available in RUMS) should be used when right of way is to be acquired on the basis of no plans or incomplete plans. Formerly, a deed referred to as an Omnibus Deed was used for this purpose. Use of these forms is no longer approved.

When using a deed for acquisitions on No Plan projects, the following requirements apply:

1. Each owner of record must execute the deed followed by the word "Seal" using their name as it appears in the courthouse record. All persons named on records having an interest in the parcel must sign the deed, including joint tenants and co-owners. Each signature must be acknowledged before a Notary Public.

   Before being asked to sign the deed, each owner should have the details of the proposed work fully explained. A proposed right of way or easement plat should be provided to the owner.

2. For deeds securing Permanent Easements for Small Additional Areas for Curve Widening, Extending Slopes, etc., a plat must be prepared showing sufficient detail and dimensions to enable the conveyed land to be located on the ground.

3. For deeds securing Permanent Drainage Easements, a plat of the drainage easement including its dimensions and centerline of the ditch will be attached to the deed. Also, the instructions pertaining to Form RW-201 apply.

   All plats prepared to accompany deeds will include a title block showing route, county, location, description, scale, and date. The District Director of Transportation and Land Use, or designee will sign the plat approving the acquisition.

   The District Director of Transportation and Land Use, or designee is authorized to enter into agreements with property owners providing for monetary payment not exceeding $2,500 for the loss of minor site improvements that are within the right of way. Estimates from local nurseries, surveyors, etc., should be used to support the payment amount. Appraisals will be required for all other takings of improvements where the compensation is to exceed $2,500.

   The District Director of Transportation and Land Use, or designee may enter agreements with owners whereby the Commonwealth will do such work as restoring entrances, moving and resetting fencing, etc.

   A Special Provision Agreement, Form SF-31, will be used as a guide in preparing agreements where monetary consideration is to be paid and/or work is to be performed by

the Commonwealth. The District Director of Transportation and Land Use, or designee will use the following procedure:

1. Prepare the agreement inserting the appropriate consideration and present it for the owner's signature. Leave the owner a copy of the agreement.
2. Prepare a voucher (if monetary consideration is due) identifying item(s) for which payment is being made.
3. Forward the executed deed, agreement, and voucher to the Regional Manager for processing of these items.

Upon receipt of these documents from the District Director of Transportation and Land Use, or designee, the Regional Manager will determine that a payment is justified and have the appropriate entry made in the financial system as a land acquisition payment. The Regional Manager will then send the original invoice directly to the Central Office Fiscal Division for payment.

The parcel should be referred to the Regional Manager for evaluation and negotiation if securing the right of way is by any of the following means:

1. Purchase due to damage to remainder or taking of an improvement valued at over $2,500
2. Condemnation due to a minor, incompetent, or unknown owner
3. Ownership by a corporation or non-profit corporation (such as a church, etc.).
4. If ownership by School Boards, county or city owned properties.

In the event of a refusal or a hold out, the District Director of Transportation and Land Use, or designee should attempt to obtain a counteroffer and make a definite decision whether to proceed with, defer, or abandon the project. If the decision is to proceed, the Regional Manager will evaluate the property and complete negotiations.

If condemnation is required on no plan projects, the District Director of Transportation and Land Use, or designee will request the District Administrator to have the necessary survey made and plans prepared showing alignment, profile, entrance grades, right of way taking lines, property lines, ownership, and pertinent topography. The Regional Manager will,

upon receipt of approved Right of Way and Utility plans, plat and a Notice to Proceed, complete the necessary transaction and processing.

The District Director of Transportation and Land Use, or designee, in making arrangements for acquiring by negotiations, will ensure that the party that is contacted is in fact the fee owner of the property. The regional right of way office can assist in making such determinations upon request. Each owner will also be advised of the right to just compensation and asked to execute a Donation Acknowledgement Form. All such forms are to be forwarded to the regional right of way office.

## Section 6 – Special Clients

### 5.6.1 General

Special clients are property owners having unusual operating circumstances and/or organizational structures. They include federal and state agencies, companies including CSX Transportation Inc. (CSX) and subsidiaries, Norfolk Southern Corporation (NS) and subsidiaries, other privately owned railroads, Dominion Virginia Power (DVP), and certain authorities including the Washington Metropolitan Area Transit Authority (WMATA), the Metropolitan Washington Airports Authority (MWAA), the Northern Virginia Regional Park Authority (NVRPA) and property owners which are required by law to have their property mitigated with replacement property. Because of the Virginia Department of Transportation's (VDOT's) repeated involvement with these organizations, their singular organizational structures, and the need to maintain consistency and regular lines of communications, the Acquisitions/Legal Section (Special Negotiations) negotiates with these entities. The Regional Offices will negotiate with individuals, corporations, municipalities, political subdivisions, churches, school boards, cemeteries and other organizations except as noted above.

### 5.6.2 Transfer Documents and Plans – Special Clients

The procedures for negotiations discussed in this chapter of the manual are followed for special clients; however, the use of standardized forms, option agreements, and standardized deeds are generally not used. Most special clients decline to sign option

agreements. Rights of entry are occasionally granted if it is not possible to convey easements or fee simple title before the project advertisement date. State agencies convey by instruments called Interagency Transfer Agreements utilizing the Department of General Services, Division of Engineering and Buildings, Division of Real Estate Services (DGS/DRES), format for such instruments. The DGS/DRES approves such transfers (Division of Engineering and Buildings Directive No. 1, June 20, 1984). In the case of federal lands, the Federal Highway Administration's Division Administrator (Attorney's Manual for Federal Condemnation and Public Land Transfers under Title 23, U.S.C.) effects property transfers in the form of highway easements. VDOT prepares the instruments for transfer. Certain federal agencies effect their own transfers under their specific statutory authority. Such agencies include the Department of Interior, the Department of Agriculture (except Forest Highway Projects), the Bureau of Land Management, the Department of the Army, the Department of Veterans Affairs, and others. These agencies usually insist on preparing their own documents using their preferred format. The railroad companies prepare their own documents as well. Regardless of the format used, the Special Negotiations Section reserves the right to review and make changes and provide plans and narrative descriptions for all fee simple right of way acquisitions and for all permanent and temporary easements.

### 5.6.3 Negotiating with the Special Client

As much lead-time as possible is to be reserved for acquiring real property from special clients. For corporations, final action often rests with a real estate office located outside Virginia that covers other states as well. Colleges may grant property under the authority of Boards of Visitors or Rectors and Visitors, which meet infrequently. In the case of governmental agencies, there may be multiple levels of administrative review and engineering and environmental reviews to assure they are exercising proper stewardship of lands under their control. It is not uncommon for transactions with certain railroad companies and federal agencies to span nine months or more. The Commonwealth may initiate eminent domain procedures for land it needs to acquire from private corporations, but an acquisition in this manner is not an option with regard to federal and state agencies.

Plans and plats will include sufficient survey data necessary to describe, in a narrative format, the right of way and the permanent easements by metes and bounds. It is most

important that a point of beginning be included on the plats for Special Clients so that the written description can be prepared. When National Forests are involved, the survey must be extended for the distance the roadway transverses the entire federal tract. This is the mutually agreed practice whereby old right of way permits are gradually being replaced by permanent easements in a systematic way.

The Regional Right of Way Office will provide appraisals (or BAR's if allowed and appropriate) on all railroad, Dominion Virginia Power, Washington Metropolitan Area Transit Authority, Washington Metropolitan Airports Authority, Northern Virginia Regional Park Authority and state agency acquisitions unless notified otherwise. Appraisals are generally not required for federal acquisitions. The United States Postal Service (USPO), the Department of the Navy (NAVY), and the National Park Service (NPS) are some exceptions to that rule due to compensation requirements that may involve cash or replacement land of equal value.

When replacement utility easements are needed for utility relocations over land of special clients, the Regional Utilities Office will provide a copy of the utility easement form with a sketch as normally provided by the individual utility companies. Although the special clients rarely use the utility company form, these instruments provide details relating to the specific use of the easements. The Regional Utilities Office will make the initial RUMS entries. Assignments to Special Negotiations will be entered into the system. Contact by the Project Manager is helpful and invited through the course of the project. For additional information or details concerning the acquisition of utility easements, consult the VDOT Utility Manual.

### 5.6.4 Functional Replacement

Functional Replacement is the replacement of real property-either land, facilities or both—proopsed to be acquired as a result of a highway or highway related project with land or facilities, or both, that provide equivalent utility. Under State law (Code of Virginia 2.2-1152) functional replacement, as a means of compensation, would only be available to state institutions or public corporations whose funds and property are owned solely by the Commonwealth.

During the early stages of project development, VDOT should contact and/or meet with the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement procedures.

At the earliest practicable time, the property should be appraised to establish an amount VDOT believes to be just compensation and advise the agency of the amount established. The agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. The agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

If the agency desires functional replacement, it should initiate a formal request to VDOT and fully explain why it would be in the public interest.

If VDOT agrees that functional replacement is necessary and in the public interest, an agreement shall be entered into setting forth the rights, obligations, and duties of each party in regard to the facilities being acquired, the acquisition of the replacement site, and construction of the replacement facility. Construction associated with this activity will have to be included as part of the project estimate.

Upon completion of the functional replacement, a statement shall be signed by an appropriate official of the agency and VDOT certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement. The statement shall also certify that a final inspection of the facility was made by VDOT and the agency and that VDOT is released from any further responsibility.

### 5.6.5 General Acquisition Procedures

The following procedures are basic to all negotiations; however, the procedures vary with each entity to conform to the special requirements of each real estate office. Few entities accept the Virginia Department of Transportation's (VDOT's) deed form and rely on their legal staff to develop the final deed. At this time, VDOT only furnishes deeds and/or inter-agency land transfer documents to the Federal Highway Administration, other state agencies, and Dominion Virginia Power. In addition, eminent domain can be used only for private corporation acquisitions since state and federal agencies have sovereign immunity.

The following are significant steps in the acquisition process:

1. Notification of a project may be in the form of preliminary plans, notice of parcel assignment by Regional Right of Way staff, Notice to Proceed for Right of Way and Utilities letter from the Project Scheduling and Certification Section, receipt of appraisal, and through shared information with other divisions.

2. The file is created, special negotiation information is entered into RUMS and pertinent data is logged onto the Special Negotiations Workload Projections Report (developed to keep track of all special negotiations, noting current status and project advertisement data).

3. The first notice letter (goodwill) is mailed to the landowner within ten (10) working days of receipt of first notification. A call may have to be made to an agency infrequently encountered in order to establish the proper name and address of the real estate contact person.

4. The preparation of plats is routine and need not be requested. However, if necessary, an appraisal (or BAR if allowed and appropriate), title work, are requested in writing, as a conveyance requirement of state and federal agencies, Dominion Virginia Power, CSXT, Norfolk Southern, MWAA, WMATA and others. Some state and federal agencies may not require an appraisal, since compensation is unnecessary and/or if the road improvement is an enhancement to the owner's property.

5. Environmental concerns are considered, especially when the impacted property is or has been the site of a power substation, a railway yard, a military installation, etc. Contact the District Environmental Section to determine if the site has been tested for contamination. If contamination was found, request copy of test report.

6. Should any improvements be involved with the parcel, especially buildings, the regional relocation agent's assistance is secured for the inspection and disposition of the improvements.

7. The survey data for each described parcel shall be collectively checked to confirm proper mathematical closure by using Greenbrier Graphics Software.

8. Narrative descriptions and fully marked plats are prepared and stamped as "Exhibit," ready for use with the ultimate deed or transfer document.

9. If Notice to Proceed for Right of Way and Utilities has been issued, an offer letter is mailed to facilities/real estate heads of each agency or corporation. The offer letter includes the previously mentioned exhibits and full-size prints of the plans, marked as they affect the owner's property, including the title sheet, construction plan, plat and profile sheets. The letter also includes pertinent information about the project, impact to the property, and a time frame for a response to the offer. An offer to meet the landowner or representative on the site is made in the offer letter or in subsequent telephone conversations.

10. If a response is not received within the time frame noted in the offer letter, a follow-up letter will be mailed to ensure progress in negotiations.

11. Whenever possible, a right of entry will be secured in the interest of meeting the project advertisement/construction dates. Also, if necessary, a certificate can be filed on the private company landowner (Dominion Virginia Power or railroad companies). The recordation of a certificate will also protect the integrity of these scheduled dates. Either of these actions will allow for the continuation of negotiations to a satisfactory resolution. Upon the certificate recordation or the right of entry signing, this information is entered into RUMS and on to the status report. All contacts made during negotiations, along with the initial offer, are to be entered into RUMS under the RW24 Report. Print the RW24 Report upon receipt of formal acceptance or refusal of the offer and obtain the necessary signatures to certify the RW24 Report.

12. Upon receipt of an executed deed from the landowner, a review is required to ensure its accuracy. The deed information, along with the final offer, consideration statement, and acquisition type, is then entered into RUMS. The instrument is sent to the respective Staff Counsel, by certified mail, along with the appropriate marked plats for the State Highway Plat Book to be recorded in the circuit court. If a certificate has previously been filed, the Staff Counsel shall be instructed to invalidate same prior to recording the deed.

13. When applicable and upon confirming availability of funds, a check for the agreed upon amount is ordered in the name of the landowner.

14. Upon receipt of the recorded instrument, enter recording information into RUMS and forward, by certified mail, the check, if applicable, and copies of the recorded deed to the respective landowner's office.

15. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

### 5.6.6 Federal Acquisition Procedures

Most federal acquisitions are handled in accordance with VDOT's normal acquisition procedures; however, there are exceptions to these procedures, primarily in the information furnished and the conclusion of the transaction. The most notable of the exceptions are in the Department of Agriculture - U. S. Forest Service (George Washington National Forest and the Jefferson National Forest); Department of the Interior - National Park Service; Department of the Army covering such military bases as Fort Lee, Fort Belvoir, Fort A.P. Hill, etc.

## A. United States Department of Agriculture – United States Forest Service

1. Upon any notice of the project and a possible acquisition affecting the United States Department of Agriculture (USDA) - United States Forest Service (i.e., the George Washington National Forest and the Jefferson National Forest), which may be in the form of preliminary plans, Notice to Proceed for Right of Way and Utilities, notice of RUMS parcel assignment from the Regional Right of Way Office, or a variety of personal contacts, the plans are collected affecting this parcel, reviewed, and a file is made. Also at this time, all appropriate fields are completed in RUMS.

2. A first notice letter (goodwill) is mailed to the Engineering, Lands and Staff Officer, USDA Forest Service, in Roanoke, Virginia. Recent consolidation within the Virginia office of the USDA has placed real estate matters in both the George Washington National Forest and the Jefferson National Forest under the one office. If it is determined that the project is a federal aid secondary or primary, then all correspondence will be directed to the Federal Highway Administration, attention: Division Administrator, in Richmond, Virginia, with copies to the USDA.

3. A telephone contact about the project may be made.

4. Confirm with the District Environmental Section that the appropriate environmental investigations are being conducted as required by the USDA and will be forwarded to the Special Negotiations Section.

5. No appraisal is ever necessary; however, a plat is always required incorporating all permanent easement features within the proposed right of way. Inasmuch as the ultimate rights conveyed to VDOT will be in the form of a permanent roadway easement, it is not important that a distinction be made between drainage easements and roadway easement areas. It is important that the beginning and end points be referenced to tract corners (by number) of existing properties owned by the USDA. One other very important requirement of the USDA is that conveyances to VDOT be made through entire tracts rather than in segments. The rationale for this is that the USDA and VDOT are involved in a conversion of rights process (converting permits to easements) whereby this is seen as a systematic way of accomplishing this goal over time. This requirement does not mean that VDOT has to improve the entire length of roadway beyond the scope of its project, but it does require additional survey data.

6. Upon receipt of the survey data incorporated into the plans, metes and bounds narrative descriptions and half-size plats are prepared by this office fully marked and stamped as “Exhibit” ready for use with the ultimate deed of easement or right of entry. In addition, for informational and processing purposes, one set of pertinent full-size plan sheets are marked as necessary including the title sheet, profile sheets, the construction plan sheets, and the metes and bounds sheets (if different). If the FHWA is involved, then two additional complete sets of pertinent full-size plan sheets, two marked sets of half-size “Exhibit” plats, and two copies of the metes and bounds narrative descriptions stamped “Exhibit” are prepared.

7. When Notice to Proceed for Right of Way and Utilities has been issued, the plan sets, along with appropriate environmental survey results, are packaged with the letter of explanation and request to the USDA or to the FHWA as the case may be. It is important that both the FHWA and the USDA work with each other to allow the project to go forth. Since the FHWA may take as long as six months to a year to execute a deed, a right of entry in the form of a Stipulation Agreement received from the USDA is an acceptable means of allowing work to progress on schedule for both the FHWA and VDOT.

8. Check on progress of the USDA and/or FHWA review.

9. Assuming any and all problems during the review process are resolved, a Stipulation Agreement is received requiring an acknowledgment of the stipulations by signature of the Director. Inasmuch as many of the stipulations are construction considerations, a copy is forwarded to the Scheduling and Contracts Division, the District Construction Engineer and the Project Manager administering the project for review and comments prior to signature by the Director.

10. When the Stipulation Agreement has been fully signed by all parties, return the original to the USDA with a thank you, forwarding copies to the Director of Transportation and Land Use, or designee, the Regional Manager and the Project Manager so that all may heed the conditions listed therein. Log into RUMS as right of entry.

11. Upon receipt of the executed permanent roadway easement deed from the USDA or the FHWA, read it over for accuracy, log it into RUMS, and send it, by certified mail, to the Staff Counsel along with the appropriate plats, marked and punched for State Highway Plat Book purposes.

12. If the USDA should charge for loss of timber, and upon confirming availability of project funds, a check for the agreed upon amount is ordered in the name of the landowner.

13. Upon receipt of the recorded deed, input the pertinent recording information into RUMS.

14. Forward copies of the recorded deed to the USDA and/or the FHWA and the appropriate regional and residency offices for their information. Thank parties for bringing the matter to a conclusion.

15. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

### B. United States Department of Interior – United States National Park Service

1. Upon any notice of the project and a possible acquisition affecting the Department of Interior – National Park Service (NPS) (ex.: Prince William Forest Park, Fredericksburg-Spotsylvania National Military Park, Appomattox Courthouse Historical Park, Colonial National Historical Park, Shenandoah National Park,

Richmond National Battlefield Park etc.), which may be in the form of preliminary plans, Notice to Proceed for Right of Way and Utilities, notice of parcel assignment from the Regional Right Of Way Office , or a variety of personal contacts, the plans affecting this parcel are collected, reviewed, and a file is made. Also at this stage, an initial entry is made in RUMS.

2. A first notice letter (goodwill) is mailed to the current Park Superintendent for the park affected by the project, with a copy to Chief of Land Resources Division, National Park Service, Mid-Atlantic Region in Philadelphia, Pennsylvania, or National Capital Region in Washington, D. C., or Southeastern Region in Atlanta, Georgia and to the FHWA office.

3. Given that NPS transfers (under United States Code, Titles 23 and 16) must be exchanged for lands of equal value lying adjacent to the affected park or other parks in the State of Virginia, a meeting is usually called whereby the Park Superintendent and other park employees, FHWA personnel if U.S.C. 23 is involved, and VDOT personnel including Special Negotiations, and, if necessary, Environmental Quality, Location and Design, and District staff may discuss the project and its impacts to the park and possible means of mitigation.

4. A variety of plan revisions typically evolves from contact with the National Park Service. On the plat, it is important that at least one survey point in each parcel to be acquired has a reference by course and distance to an existing NPS tract corner. Fee appraisals of both the acquisition area and the proposed mitigation site, if known and agreed to by NPS, are also requested in writing at this time.

5. Upon review of the survey data incorporated into the plans, narrative metes and bounds descriptions are prepared by this office along with half-size plats fully marked and stamped as “Exhibit” ready for use with the ultimate deed of easement or a Letter of Authorization or Letter of Consent (Right of Entry). In addition, full size copies of the plans including the title sheet, profile sheets, construction plan sheets, and plats are marked as necessary to depict the areas affected by the project.

6. With the letter of request formalizing the offer, one copy of each attachment consisting of the plans, plats, and descriptions shall be sent to the NPS Chief of Land Resources Division, forwarding one copy each to the Park Superintendent and two each to the FHWA. On behalf of VDOT, the FHWA will make the formal request to the NPS for the Right of Entry and the Deed..

7. Check on progress of the review.

8. Assuming any and all problems during the review process are resolved, a deed conveying the park land to VDOT in fee simple or permanent easement is received in exchange for a deed from VDOT granting the agreed mitigation land. Occasionally, in the interest of starting the project on time, a Right of Entry is granted by the NPS Region Office or local Park Superintendent allowing VDOT a right of entry for a limited time. It requires acknowledgment of the conditions cited therein by signature of the Director; however, since the conditions relate

mostly to construction issues, it is normally reviewed initially by the Director of Transportation and Land Use, or designee, the District Construction Engineer and the Project Manager responsible for administering the construction contract.

9. When the Right of Entry, if granted, has been fully signed by all parties, return the original to the NPS with a copy to the FHWA with a thank you, forwarding copies to the Director of Transportation and Land Use, or designee, the Regional Manager and the Project Manager so that all may heed the conditions cited therein. Log the Right of Entry onto RUMS..

10. The Deed prepared by VDOT and certified by the designated VDOT Staff Counsel will be submitted to FHWA for review and execution. Upon receipt of the executed deed from the FHWA, it will be read over for accuracy, logged onto the databases and sent, by certified mail, to the Staff Counsel for recordation, along with the appropriate plats, marked and punched for State Highway Plat Book purposes.

11. Upon receipt of the recorded deed, input the pertinent recording information into RUMS.

12. Forward copies of the recorded deed to the FHWA, the NPS and the appropriate regional and residency offices for their information. Thank parties for bringing the matter to a conclusion.

13. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

## C. Department of the Army

1. Upon any notice of the project and a possible acquisition affecting the Department of the Army, (Fort A.P. Hill, Fort Belvoir, Fort Lee, etc.), which may be in the form of preliminary plans, Notice to Proceed for Right of Way and Utilities, notice of parcel assignment from the Regional Right of Way Office, or a variety of personal contacts, the plans affecting this parcel are collected, reviewed, and a file is made. Also at this time, the initial entry is made in RUMS.

2. A first notice letter (goodwill) is mailed to the current Director of Public Works for the facility affected by the project, with a copy to the Army Corps of Engineers District office overseeing real estate matters for that particular installation. (The Army Corps of Engineers has five districts that deal with Virginia installations - Norfolk, Wilmington, Baltimore, Savannah, and Huntington).

3. A telephone contact about the project may be made.

4. Confirm with the District Environmental Section that the appropriate environmental investigations are being conducted and coordinated with the installation as required by the Department of the Army, the Army Corps of Engineers. Special consideration should be made when dealing with Fort Belvoir concerning their two-for-one tree replacement policy that requires a landscape plan covering the actual tree replacement.

5. No appraisal is generally required if the highway project is of benefit to the Army insofar as traffic movement is concerned. All transfers by the Department of the Army are in the form of permanent roadway easements, and there may be no distinction between the proposed right of way and such features as drainage easements or utility easements. They may all be incorporated within the proposed right of way. The utility areas needed for relocation of public utilities are acquired as a part of the roadway easement and later granted by VDOT to the utility companies as permits, copying the Director of Public Works at the Army facility. Improvements, such as buildings, security fencing, lighting, and installation communication and power facilities, are special considerations that may require replacement and/or relocation. As with other federal agencies, care should be taken that the plat has references by course and distance to the nearest installation tract corner.

6. Upon receipt of the plans, and plats, metes and bounds survey narrative descriptions are prepared by this office along with half-size plats fully marked and stamped as "Exhibit" ready for use with the ultimate deed of easement or Right of Entry. In addition, full-size copies of the plans including the title sheet, profile sheets, construction plan sheets, and metes and bounds sheets (if different) are marked as necessary to depict the areas affected by the project.

7. With the letter of request formally making application for the property, one copy each of the plans, plats, and descriptions shall be sent to the Director of Public Works with one full set of all of the above sent as a copy to the appropriate Army Corps of Engineers district office.

8. Continually check on progress of the Army's review, which is an extensive circulation process through various departments at the installation.

9. Assuming any and all problems during the review process are resolved, a recommendation called the Report of Availability is forwarded from the installation with the plans, etc. for further review to the Washington Military District and then to the appropriate district of the Army Corps of Engineers where the deed and/or Right of Entry is prepared and granted.

10. This office works closely with the Army Corps district office when the offer package and recommendation reaches that level, answering questions about the plat or the description, and furnishing any additional plats as may be necessary. If all problems are resolved and the Corps is satisfied with VDOT's mapping and descriptions, a Right of Entry is granted by the Department of the Army in the interest of allowing the project to progress on schedule. The Right of Entry requires the acknowledgment signature of the Director or the Chief Engineer of VDOT as acceptance of the conditions cited therein, as well as all the conditions enumerated in the draft form of the deed of easement attached as a part of the Right of Entry.

11. When the Right of Entry, if granted, has been fully signed by all parties, return the original to the Army Corps District office with a thank you, forwarding copies to the Director of Transportation and Land Use, or designee, the Regional Manager,

and the Project Manager so that all may heed the conditions cited therein. Log the Right of Entry onto RUMS.

12. Upon receipt of the executed deed from the appropriate Army Corps District office, read it over for accuracy, log it onto RUMS and send it, by certified mail, to the Staff Counsel along with the appropriate plats, marked and punched for State Highway Plat Book purposes. In addition, another document that may arrive much later than the deed is the Retrocession Agreement prepared by the Army Corps that transfers police power from the Department of the Army to the Commonwealth of Virginia.

13. Upon return of the recorded deed, input the pertinent recording information into RUMS.

14. Forward copies of the recorded deed to the installation's Director of Public Works, the appropriate Corps district office, and the appropriate regional and residency offices.

15. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

### 5.6.7 State Agency Acquisition Procedures

As a preface to the procedures for state agency acquisitions, agreement must be reached through negotiations with other agencies since condemnation of another state agency is not possible. Any impasse has to be resolved between the Governor and the Secretary for the agencies involved. Furthermore, rights of entry are no longer a practical interim device since as many signatures are required for this document as an inter-agency transfer agreement. The Department of General Services, Division of Real Estate Services (DGS/DRES) reviews and approves all inter-agency transfers of real estate, which undergo intense scrutiny. Currently, the procedures are as follows:

1. Upon any notice of the project and a possible acquisition affecting another agency of the Commonwealth of Virginia, which may be in the form of preliminary plans, Notice to Proceed for Right of Way and/or Utilities, notice of parcel assignment from the Regional Right of Way Office or a variety of personal contacts, the plans concerning this parcel or parcels are collected, reviewed, and a file is made.

2. A first notice letter (goodwill) is mailed to the Agency head and/or the Real Estate or Facilities office with a copy forwarded to the Director of the Division of Real Estate Services of the Department of General Services.

3. A telephone call may be made to establish the name of the current contact person, address, and phone number. This is also a good time to broach the nature of the project and to identify yourself to the agency as necessary.

4. Appraisals should be requested for all state agencies in order to establish the valuations of the impact of the highway project on the state agency. When projects are considered to be a direct benefit to the agency and/or the agency is funded by general funds, the property can be donated to VDOT or compensation can be in a form other than monetary payments. Special fund agencies are more likely to require some type of compensation, monetary or other. If improvements are involved, such as buildings, some form of compensation, possibly in the form of replacement may be involved. The most extensive method is the federally funded replacement program referred to as Functional Replacement.

5. Concerning the plans themselves, a determination must be made as to the way in which VDOT will acquire utility easements. VDOT will acquire a permanent utility easement in the name of the utility company when the utility company provides a copy of the document evidencing ownership of a current existing permanent utility easement being impacted by the project. A DGS "Deed of Easement" (DOE) form will be used by VDOT to transfer the permanent utility easement directly from the owning agency to the utility company. For utility companies with existing rights other than a permanent easement, the utility relocations will either be included in the project as a VDOT permanent utility easement or be included within an expanded proposed right of way. In this case, the utility company will be granted a permit through the VDOT lDistrict Transportation Land Use Planning Section.

6. Upon receipt of the plans and plats the description is prepared and half-size plats are fully marked and stamped as "Exhibit" by the Special Negotiations Section for use with the transfer document. DGS/DRES does not require narrative descriptions of the survey data. The transfer document or "Inter-Agency Transfer Agreement" (IAT), a DGS form, is also drafted by this office at this time. In addition, full-size copies of the plans, including the title sheet, profile sheets, construction plan sheets, and metes and bounds sheets (if different), are marked as necessary to depict the areas affected by the project.

7. With Notice to Proceed for Right of Way and/or Utilities having been issued, a package including a letter of request for the property, which includes an offer if compensation is involved, one copy each of the plans, plats, a draft copy of the IAT, and any additional pertinent information is sent to the agency head or the agency's real estate contact person (with a copy to the agency head). DGS is also advised of the upcoming transaction by copy of the letter and the draft IAT with a request to complete a preliminary review. DGS is requested to provide VDOT a written notice that the reviewed IAT is acceptable to use in the transfer. Any improvements, particularly buildings, require consideration and vacation of the building and inspection of the building should be coordinated with VDOT's regional relocation agent. The request letter will also advise DGS and the agency of the time constraints for the upcoming project.

8. Check on progress of DGS and the agency review.

9. When DGS and the agency have a thorough understanding of the proposed project and VDOT's property needs and both have agreed to the transfer of the property and

compensation, if any, then generally they will confirm in writing that the proposal is satisfactory.

10. At this stage, the original IAT package is sent to the state agency's Assistant Attorney General (AAG) for legal review and signature for "Approved as to form," which initiates the signature process.

11. With legal approval having been secured and having been returned to VDOT, the Commissioner of Highways will sign the IAT.

12. VDOT will submit the original IAT to the DGS/DRES, which will then create a brief summary of the transaction and send the IAT through various offices collecting signatures from the Directors of the Department of Real Estate Services and the Division of Engineering and Buildings and ending with the Secretary of Administration. Once all DGS signatures are secured, the original IAT will be submitted to the transferring agency for the final signature completing the execution of the IAT agreement and returning to VDOT for recordation. DGS/DRES will submit an invoice to VDOT for payment of the administrative costs involved in their review and execution of the IAT and/or DOE.

13. Upon execution of the IAT, an invoice is created to initiate the transfer of any required funds, either by check or wire transfer, for any compensation due. It should be noted that some universities and other state agencies require that payment only be made by state warrant.

14. Upon return of the recorded deed, input the pertinent recording information into RUMS.

15. VDOT thanks the agency for its cooperation and forwards, by certified mail, the signed IAT to the appropriate Staff Counsel for recordation.

16. Always forward a copy of the recorded IAT to the appropriate regional office and District Transportation Land Use Planning Section, to the transferring agency and to the DGS/DRES for updating its fixed asset records.

17. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

### 5.6.8 Dominion Virginia Power Acquisition Procedures

1. Upon any notice of the project and a possible acquisition affecting Dominion Virginia Power (DVP), which may be in the form of preliminary plans, Notice to Proceed for Right of Way and Utilities, notice of RUMS parcel assignment from the Regional Right of Way Office, notice from Regional Utility Section, or a variety of personal contacts, the plans pertinent to the acquisition on the parcel are collected and reviewed.

2. A file is created and information is entered into RUMS.

3. A first notice letter (goodwill) is mailed to the property owner in order to establish contact and to inform them of an upcoming project that impacts their property. Our current contact is with the Real Estate Coordinator of the Dominion Resources Services, Inc. of DVP.

4. An appraisal report and plat are always required when negotiating with this property owner and are requested in writing through the appropriate regional office. Dominion Virginia Power policy requires a plat with metes and bounds survey data and payment for a conveyance of property by fee or easement.

5. Environmental concerns are considered, especially when the impacted property is or has been the site of a power substation. Confirm with the district environmental section that the site has been inspected for the type and extent of contamination, if any.

6. Should any improvements be involved with the parcel, especially buildings, then regional relocation agent's assistance is secured in the inspection of and disposition of the improvements.

7. Upon receipt of projects' plans and plats, metes and bounds narrative descriptions and half-sized marked plats are prepared by the Special Negotiations Section and are stamped as Exhibits "A" and "B", respectively, and are ready for use with the ultimate right of entry and/or deed.

8. In addition, for informational and processing purposes, one set of pertinent full-size plan sheets are marked as necessary including the title sheet, plan and profile sheets and plat. Also, a copy of any needed utility easement agreement is forwarded in the offer package.

9. The appropriate items as listed in #7 and #8, above, are packaged with the offer letter that details the contents, VDOT's position, and a request for a deed. Should the integrity of the advertisement date/construction schedule be in jeopardy due to the date of the offer or time needed to process the offer, a request will be made for a right of entry agreement. This will allow the project to continue as scheduled while the transfer is completed by a deed.

10. If Dominion Virginia Power executes a right of entry, a reading is required to ensure its accuracy. Upon acceptance, the Director will also sign the document, with a copy for each party. This will then be logged into RUMS as a right of entry. Negotiations will then continue until a satisfactory resolution is reached.

11. The circulation process of evaluating an offer package within Dominion Virginia Power generally tends to be very involved and time consuming. The offer must be reviewed and approved by their engineering, real estate, and legal sections. The submitted plans and descriptions are scrutinized very closely for accuracy with respect to their own records. It should be noted that Dominion Virginia Power will not consider entering into an option agreement. Special Negotiations may prepare the deed of conveyance on behalf of Dominion Virginia Power based on the submitted offer package documentation or DVP may provide the deed instrument.

12. While past negotiations with Dominion Virginia Power have resulted in the execution of a right of entry or deed agreement within the project advertisement date constraints, VDOT does have the right to file a certificate on Dominion Virginia Power. The RW-24 report, marked plats, and the descriptions are supplied by Special Negotiations, while the Acquisitions/Legal section will process the proper documentation for the filing. The recordation of the certificate will protect the integrity of the scheduled advertisement and construction dates. Upon recordation in the appropriate circuit court, this information is entered into RUMS. Negotiations will then continue until a satisfactory resolution is reached.

13. Upon receipt of an executed deed from Dominion Virginia Power, a reading is required to ensure its accuracy. The deed information is then entered into RUMS as a deed and is sent, by certified mail, to the respective Staff Counsel along with the appropriate marked plan sheets for recordation in the State Highway Plat Book in the local circuit court. Whenever a certificate is filed, it is imperative that the staff attorney be instructed to invalidate the same prior to recording the deed.

14. If necessary, the appropriate check for the amount of consideration is ordered in the name of Dominion Virginia Power.

15. Upon return of the recorded deed, input the pertinent recording information into RUMS.

16. Forward the check and copies of the recorded deed to the Dominion Virginia Power office and the appropriate regional and residency offices, and thank the parties for their assistance and cooperation in bringing the matter to conclusion.

17. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

### 5.6.9 Railroad Property Acquisition Procedures

Most railroad acquisitions are handled in a similar procedural fashion regardless of the railroad organization. While the vast majority of acquisitions involve transfers from Norfolk Southern Corporation (NS) and CSX Transportation, Inc., (CSXT), there are a number of small railroads and their subsidiaries which exist under the corporate umbrella of the two main parent firms of NS and CSXT.

For example, Norfolk & Western Railway, Southern Railway, Southwestern Railway, and Virginia Railway Companies, etc., exist under Norfolk Southern Corp. Chesapeake & Ohio Railroad and Seaboard Coast Line Railroad Companies, etc., exist under CSX Transportation, Inc. Norfolk Southern real estate firms include Virginia Holding Corp., Southern Region Industrial Realty, Inc., and Georgia Industrial Realty Co., Inc., etc., while

CSXT firms include Atlantic Land & Improvement Company, etc. Other small local railway lines exist but are rarely encountered.

While the VDOT Rail Section (located in the Scheduling and Contracts Division) has significant responsibilities on projects that impact operating railroad property, their involvement is often limited when the property is a non-operating railroad line or when the railroad firm requires payment for the acquired rights. The Rail Section's objective is to enter into a VDOT/Railroad Agreement with the railroad property owner. Railroad organizations will not complete right of way negotiations until a VDOT/Railroad Agreement is executed. FHWA will not authorize a project for advertisement until this agreement is executed. This agreement provides a right of entry establishing a specific period of time to complete negotiations, usually 90 to 180 days from agreement date. In addition, this agreement can establish and/or exchange easements, and in such cases, it is not necessary for the Right of Way and Utilities Division to become involved. The agreement effectively clears the right of way for the project negating the need for any appraisals, parcel number assignments, or negotiations.

Whenever non-participating railroad right of way is needed or an acquisition for compensation is required, the following procedures apply:

1. Upon any notice of the project and a possible acquisition affecting a railroad property, which may be in the form of Notice to Proceed for Right of Way and Utilities, notice of parcel assignment from the Regional Right of Way Office, notice from the Rail Section, or a variety of personal contacts, the plans pertinent to the acquisition on the parcel are collected and reviewed.

2. The Special Negotiations Section and the Rail Section work closely together from the initial stage of recognizing railroad properties on the plan sheets. Each section has determined it is effective to contact the other whenever such a client is located on a project. This relationship assists in the identification of the railroad properties on projects and establishes the degree of responsibilities for each section.

3. A file is created and information is entered into RUMS. A general file is also maintained to accumulate basic parcel information for the projects with railroad parcels being handled entirely through the Rail Section. A notice confirming the Rail Section's actions and negating any Special Negotiation involvement is filed for future reference.

4. A first notice letter (goodwill) is mailed to the property owner in order to establish contact and to inform them of an upcoming project that impacts their property.

5. An appraisal report is requested through the appropriate regional office. The railway companies require that the plat references a railroad milepost marker or track centerline station. Railroads will not convey any fee right of way within operating railroad existing right of way areas. Utility easements are not acquired by VDOT on behalf of the railway companies within operating railway property as the utility companies negotiate directly with the respective railroad property owners acquiring rights in the form of a permit.

6. Environmental concerns are considered, especially when the impacted property is or has been the site of a railway yard or station. Confirm with the district environmental section that the site has been inspected for the type and extent of contamination, if any.

7. Should any improvements be involved with the parcel, especially buildings, then regional relocation agent's assistance is secured in the inspection and disposition of the improvements.

8. Upon receipt of the plat, a metes and bounds narrative description and half-size marked plats are prepared by the Special Negotiations Section and are stamped as Exhibits "A" and "B", respectively, and are ready for use with the ultimate deed.

9. In addition, for informational and processing purposes, one set of pertinent full-size plan sheets are marked as necessary, including the title sheet, plans and profile sheets and plats and submitted. Also, should a utility easement be involved, a copy of the agreement is forwarded in the offer package.

10. The appropriate items as listed in #8 and #9, above, are packaged with the offer letter detailing the contents, VDOT's position, and a request for a deed. If the Rail Section completes the VDOT/Railroad Agreement establishing a right of entry, this is entered into RUMS as a Right of Entry, which subsequently clears the right of way. Since the railroads generally will not grant a right of entry through their real estate office, it is highly unusual that Special Negotiations can obtain such an agreement. The process to secure a right of entry is as long and complicated as acquiring an executed deed.

11. Due to the difficulty in securing a right of entry, if a deed cannot be executed within the established time frame limitations, VDOT may exercise its power of eminent domain by filing a certificate. While a RW-24 report, marked plats and the description will be supplied by Special Negotiations, the Acquisitions/Legal Section will process the proper documentation for the filing. The recordation of a certificate will protect the integrity of the scheduled advertisement and construction dates for a railroad parcel without an active railroad line. A certificate filed on a railroad parcel with an active railroad line will not clear the parcel for advertisement or construction schedules without the execution of a railroad agreement. Upon recordation in the appropriate courthouse, this information is entered into RUMS. Negotiations will then continue until a satisfactory resolution is reached.

12. The circulation process of evaluating an offer package within a railroad company generally tends to be very involved and time consuming. The offer must be reviewed

and approved by their engineering, construction, real estate, and legal sections. The railroad companies' legal section prepares the deed of conveyance based on the submitted offer package documentation. In addition, railroad properties are often used as loan collateral, requiring deeds of release to be executed prior to any conveyance of rights to VDOT. Upon reaching a resolution on a certificate filed property, the railroads expect to enter a deed agreement rather than execute an agreement after certificate.

13. Upon receipt of a copy of an executed deed from the railroad, a reading is required to ensure its accuracy. The original deed instrument is either not supplied to VDOT or is held by VDOT in trust until a check for the agreed upon amount of consideration is supplied, by certified mail, to the respective railroad company. Hence, the appropriate check for the amount of consideration is ordered in the respective railroads' name. The deed information is then entered into RUMS as a deed and onto the status report.

14. Upon receipt of the original executed deed, the instrument is sent, by certified mail, to the Staff Counsel along with the appropriate plat for recordation in the local circuit court and in the State Highway Plat Book. Whenever a certificate is filed, it is imperative that the Staff Counsel be instructed to invalidate the same prior to recording the deed.

15. Upon return of the recorded deed, input the pertinent recording information into RUMS.

16. Forward a copy of the recorded deed to the railroad property owner's real estate office and the appropriate VDOT regional office and District Transportation Land Use Planning Section, and thank the parties for their assistance and cooperation in bringing the matter to conclusion.

17. Ensure all required RUMS fields are completed, including the assignment completion field for Special Negotiations.

## Section 7 – Easements

### 5.7.1 General

An easement is a right to *use* property for a designated and limited purpose. The Commonwealth acquires easements when it is not necessary to have absolute ownership and control over property. Generally, it is necessary to have absolute control over operating highway right of way, and fee simple title is acquired for this purpose. Easements are acquired for such purposes as drainage, slope maintenance, detours, channel changes, sidewalks, and construction staging areas that are outside the highway

right of way. Permanent easements are required, for example, where there is a permanent transportation improvement or a continuing need for maintenance. The decision as to the need for easements is made at the field inspection stage and the approved plans will reflect whether temporary or permanent easements are required and their purpose.

VDOT also acquires utility easements to replace or install utilities parallel to the highway right of way. VDOT may acquire utility easements for re-conveyance to the utility owner, the property owner may agree to convey an easement directly to the utility company or VDOT may acquire a utility easement in its own name and allow occupation by utility companies pursuant to a permit. For complete instructions and policy for the acquisition of utility easements, see the VDOT Utility Manual.

### 5.7.2 Permanent Easements

If the plans indicate a permanent easement for slopes, drainage or other purpose is required, in addition to a fee acquisition, the following clause is to be incorporated in the option:

> *"together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of [state the specific purpose, for example, 'cut and/or fill slopes'], containing _____acre more or less"*

Another example would be a permanent channel change easement. It should be worded in the following manner:

> ***"****Together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of a channel change, containing _____acre, more or less"*

If the plans indicate that a permanent easement for sloping or other purpose is all that is required, the standard form agreement available in RUMS should be utilized. This instrument is to be prepared with much care, as it will be recorded without change. The names of all record owners will be entered as parties of the first part, and all will sign the instrument and have their signatures notarized. The standard consideration is $1.

The space between the body of this instrument and the covenants of title is to show any special work to be done for the property owner or any additional monetary consideration.

The words "*additional consideration*" will be typed followed by the agreed consideration. For example: "*Additional consideration: $20.*" Staff Counsel should be consulted about changes to the standard form easement document when the changes are substantive in nature.

### 5.7.3 Temporary Easement*s*

Temporary easements are effective for the duration of the construction project and normally terminate upon the completion of construction (if not sooner.) Temporary easements of a shorter or longer duration should be separately identified. Temporary easements should never be used when there is any possibility that VDOT, for any purpose, will have to go back on the property covered by the easement in the future. For example, when the property subject to the easement is needed for a high slope or other significant grade change, a temporary easement should not be used. If a temporary easement is used, the owner has the right, after expiration of the easement, to go back on the property and may alter the grading providing it does not affect the stability of the adjacent roadway.

If the property covered by the temporary easement is obtained simply to allow access to the property where the grade is to be changed, a slope installed, or other work to be done, a temporary easement may be used for the access area.

Temporary easements are not normally used around entrances when the only construction work to be done is to tie the entrance into the road.

When a temporary easement is required in addition to a fee acquisition or permanent easement, the following clause is to be incorporated into the option:

> *"Together with the temporary right and easement to use the additional areas shown as being required for [state the purpose/use of the temporary easement -- for example, the proper construction of cut and/or fill slopes], containing _____acre, more or less. Said temporary easement will terminate at such time as the construction of the aforesaid project is completed"*

The negotiator should explain the project schedule and the expected duration of the construction period but should also state that the time periods are approximate and that circumstances can cause unexpected delays.

The owner should also be advised that the property may be affected by a grade change or other construction feature but, if allowed under VDOT's access policy, that the access entrance will be restored to full function.

If the plans indicate a temporary easement is required, the standard form easement agreement should be used. In any case where the form is being modified, Staff Counsel should be consulted for advice..

### 5.7.4 Utility Easements

VDOT will limit the replacement utility easement being acquired in the name of a utility company to only those parcels which have an existing, recorded, utility easement in that company's name (utility has prior rights.) If that easement is being encroached upon by the proposed right of way, VDOT will obtain a replacement easement in that utility's name.

For the purpose of acquiring the replacement utility easement in the name of the utility company, VDOT will not recognize the apparent acquiescence of the landowner. (The apparent acquiescence will be recognized in cost responsibility determinations between VDOT and the utility.)

Where a utility company has existing facilities on highway right of way without prior rights and needs a utility easement in order to relocate its facilities as a result of the highway project, VDOT will acquire a "VDOT Joint-Use Utility Easement" in the name of the Commonwealth. Land Use permits will be issued by the District Director of Transportation and Land Use, or designee to allow occupancy of VDOT's "Joint-Use Utility Easement" area as well as the fee area.

The form "VDOT Joint-Use Utility Easement" in RUMS should be used when acquiring area for utility relocation in situations where the utility has no prior, recorded utility easement. The form "VDOT Joint-Use Utility Easement" is intentionally broad. If there are issues about including some uses that may never occur, such as gas lines, the document may be modified to list only the actual utility requirements for the current project. Before modifying the form easement, the Utility Section and Staff Counsel should be consulted and approve the modifications.

When a "VDOT Joint-Use Utility Easement" is used for the acquisition, the normal property description section of the form easement should include that permanent right and easement. A plat reference should be used to identify the easement.

If the Utility Relocation Team has been provided documentation of a prior recorded utility easement that is being taken as a part of the roadway right of way then the plans will indicate each utility company's name and each utility company will provide an easement agreement and plat for the negation.

If a certificate includes any type of utility easement, VDOT Joint-Use or a named company, the entire terms and conditions section of the easement is to be included in the certificate. Forms are available in RUMS.

Where VDOT will be acquiring a replacement utility easement, appraisers should consider the language in the existing utility easement, compare it with the new easement language and determine what, if any impact, this new language or type of easement may have on just compensation.

For additional information or details concerning the acquisition of utility easements, consult VDOT's *Utility Relocation Policies and Procedures Manual* (10th Edition).

## Section 8 – Negotiations Report – RW-24

### 5.8.1 General

The RW-24 Negotiations Report is the main administrative record of the acquisition, and it is the vehicle for processing the acquisition through the closing and payment of compensation. It is also a critical record used by Fee Counsel in pursuing condemnation and it is used extensively by the Central Office to evaluate administrative settlements and Agreements After Certificate. It is also an important document for the road contractor and construction inspector in dealing with the owners as the project is being constructed.

If prepared properly, the report will allow a person with no knowledge of the acquisition to read and understand every step taken, any and all changes to the plans, appraisal or BAR

and all significant decisions (including the justifications for such decisions) made at the regional level during the course of the acquisition.

It is imperative that the negotiator finalize, sign, date, and submit the report for processing within five business days following the last landowner contact. However, entries in the RW-24 may be made well after the report is submitted. The necessity to record important events and contacts does not end when the report is submitted for processing. It remains the responsibility of the negotiator to continue to update the report as necessary.

The RW-24 Report must be thorough, accurate, and complete. All applicable spaces are to be completed by entering the appropriate data in RUMS, including all records of landowner contacts and any other pertinent remarks. Before submitting an RW-24 Report for processing as complete, a quality assurance check will be conducted to confirm that the report is complete, accurate and free from errors. This applies as well to instruments, plans and descriptions. This is normally done by having someone else review the report, normally a senior agent or the Acquisition Team Leader.

The RW-24 Report is a detailed record of every important activity and contact that relates to the acquisition. When related to the parcel, it should include not only contacts with the owner but with other sections within VDOT and with third parties outside VDOT where appropriate. It should chronicle all of the efforts made to identify, address and, if possible, resolve the owners' concerns and objections. It should also record any promises made to the owner during the course of the negotiations. If an owner has asked for certain concessions and has been refused, this should also be noted so that in the future there will be a record of the refusal.

The comments in the report should be concise yet in sufficient detail to reflect the main points in the negotiations that have been concluded. Extensive use should be made of the "standard verbiage" provided in the comments section of the Negotiation tab in RUMS. The "standard verbiage" comments can also be used as an informal check list by the negotiator. The negotiator should consider the use of the "Notes To Contractor" feature for recording observations or information that would be of particular use to the road contractor or construction inspectors.

Comments are to be entered into RUMS as contacts are made (normally within 3 days), rather than at one time. The report will contain standard language to reflect that the offer package, which included a copy of the signed and dated offer letter, option/agreement, utility easement agreements, plans, profiles, entrance profiles, cuts/fill information, title report, approved appraisal/basic administration report (BAR), the IRS Form W-9, a Mortgage Disclosure Authorization Form and Right of Way Brochure, was presented to the owner. The report will also reflect the date that the negotiation offer package was hand delivered or, if permission was obtained in advance, mailed.

The report must show attempts to obtain the owner's Social Security Number (SSN) or Tax Identification Number (TIN). The attempt to acquire this information must be made by presenting the owner with IRS Form W-9 with the request that it be completed and returned. If the SSN or TIN is obtained, it is the responsibility of the negotiator to enter this information into RUMS. If the SSN or TIN is not obtained, a statement is required to be entered in the report explaining why the information is not available. One of the last entries in the report prior to recommending filing a certificate or processing for a voluntary conveyance should be a statement that the negotiator has confirmed that the W-9 has or has not been returned. There are a number of clauses in the "standard verbiage" that address this issue with the W-9 and those should be used where appropriate.

If there are 900 series items (parcel clearance items) that must be removed from the proposed right of way, they will be specified in the comments, and the time limits for their removal stated. If there are cost to cure items, such as wells, septic systems, irrigation systems, etc., within the proposed right of way, they are to be identified in the remarks and the time limit for discontinuance of their use specified.

It is not necessary to include a copy of the Executive Summary (also known as the RW-45B) with the appropriate activity codes listed as long as the activity codes are shown on the Appraisal Evaluation Screen in RUMS. Normally, such information is automatically populated in the appropriate place in the RW24. Any changes made on the Executive Summary (RW-45B) are to be initialed by the appraiser or the reviewer. However, an explanation must be included in the negotiator's comments in the report as to what changes were made, why the changes were necessary and a statement that the appraiser or reviewer concurs. The number of appraisals prepared for the subject parcel, the names

of the individuals prepared them and the dates of valuation, as well as the value conclusions, will be listed in the RW-24 report. Again, normally, this information is automatically populated in the appropriate place in the RW24.

### 5.8.2 Processing Voluntary Conveyances

The Regional Manager or designee is responsible for processing RW-24 Reports for voluntary conveyances (options, easement agreements, etc.) and for processing agreements for oil company equipment, off premise signs, fencing, property pins, etc., on no plan projects.

The procedural steps for processing voluntary conveyances are as follows:

1. The Regional Manager or designee will review, sign and approve the RW-24 Reports. They will then be processed by a member of the regional staff.

2. All original plans will be revised to reflect any necessary changes. A conveyance requires the marking of Xerox prints of the plans for the Regional file and the Central Office file, plus providing plats for each deed of trust and recording.

3. The vouchers will be signed and processed in accordance with current instructions issued by the Central Office Fiscal Division or Right of Way and Utilities Division. After payments are authorized, vouchers are to be submitted directly to the Central Office Fiscal Division for processing. The checks, when drawn, will be transmitted directly from the Treasurer's office to the regional right of way office. Copies of vouchers, along with the closing documents should be submitted to the Central Office Reimbursement Section for auditing and filing once the voluntary conveyance has been completed.

4. The standard RUMS forms will be used in preparation of deeds and construction easement agreements, when applicable. If the standard RUMS forms are inadequate for the particular situation, Staff Counsel should be consulted for assistance in drafting an acceptable document.

   NOTE: When it is necessary for the Commonwealth to acquire a utility easement by deed for later conveyance to a utility company, the Property Management Section is to be notified.

5. Preparation of correspondence to tenants, non-profit organizations, etc., is to be based on the form letters found in RUMS. These letters are to be sent certified mail with return receipt requested, when appropriate at the discretion of the Acquisition Team Leader.

6. The regional right of way office will advise the property owner(s) by mail of the acceptance of the option using the appropriate form letter available in RUMS. After the owner(s) have been notified, the original instruments will be forwarded to the designated closing agent. The signed and approved original RW-24 Report, copies of the options and/or easement agreements and other related papers will be submitted to the Reimbursement Section. The Central Office's right of way files must be as complete as the files in the local office. The RW-24 Reports and attachments will be accompanied by a memorandum listing the cases by project, parcel number, and name and state that the closing papers have been referred to the designated closing agent.

Voluntary conveyances are to be closed in accordance with Chapter 3 of this manual. A closing agent, other than the negotiator who obtained the voluntary conveyance for the parcel being closed on, may conduct the closing. The following section addressees the procedure for this process.

### 5.8.3 Closing by Right of Way Staff

When a monetary consideration for a voluntary conveyance is involved, the regional office will forward the following items to the designated closing agent:

a) Instrument of conveyance
b) Plat to be inserted in the Highway Plat Book and a plat with the deed

The designated closing agent will:

a) Order the warrant(s) in amount of the consideration and any withholding for specific performance under a building retention contract.
b) If appropriate, prepare the owner's reimbursable closing cost form (Form RW-40 [RUMS D58])
c) Prepare the closing statement (Form RW-206 [RUMS D57])

The designated closing agent will consult with Staff Counsel about the closing and then will schedule the closing with the owner(s) at a time and place that is mutually convenient. If Staff Counsel elects to review the closing package, the review must be completed promptly.

The designated closing agent will review all information on the status of the property and will determine if additional information is necessary and available to assure that all existing encumbrances on the property and remaining clouds on the title have been identified and, if necessary, released or resolved.

The Department will accept a conveyance without a release from a deed of trust providing the following conditions are present:

1.) The residue retains sufficient value to satisfy the outstanding loan balance;

2.) It has been determined with certainty that the mortgage holder cannot demand full payment of the outstanding loan balance.

All judgments or liens must be satisfied before closing in accordance with the instructions set out in Table 3-1. Where required, releases will be obtained and recorded in advance of or immediately before recordation of the deed conveying the rights to the Department.

The closing agent will be guided by the above guidelines and by consultation with Staff Counsel, as necessary, in determining if there are encumbrances on the property that must be cleared. The agent must take required action to clear the encumbrances and note on the closing statement the costs of all clearances that are to be deducted from the consideration. The subsequent actions in effecting a closing will be performed as discussed in Chapter 3, with the exception that formal, written certification of title is not required. A current owner run down with no new encumbrances, liens or clouds on the title must, however, be performed before the deed is recorded. If encumbrances, liens or clouds are found, Staff Counsel must be consulted before recordation as outline in Chapter 3.

### 5.8.4 Processing Refusals

The regional office has the responsibility of processing refusals. The procedure for processing refusals is as follows:

1. RW-24 Reports will be reviewed, signed, and approved by the Regional Manager prior to processing. The approved reports will then be assigned to staff in the regional right of way office for further processing.

2. If Certificates of Take are to be filed, the assigned staff member will examine the vouchers in FMS II, have them approved by the Regional Manager and transmit them electronically to the Fiscal Division. The State warrants will then be prepared by the Fiscal Division. The Certificate number must be obtained from RUMS and included on the voucher.

3. All plats required to accompany the Certificate will be reviewed to ensure the surveyor's seal is affixed to the plats.. The prints of plans that accompany the condemnation papers are also to be prepared and marked.

4. The assigned staff member will prepare either a Certificate of Take or Certificate of Deposit and prepare condemnation authorization forms. These forms will then be sent to the Acquisitions/Legal Section for the Director's signature. Not less than ten (10) days prior to sending these documents to the Central Office, the right of way agent will send the owner a letter advising them that a certificate will be filed. A form letter for this purpose is available in RUMS. The letter will be sent by Certified Mail – Return Receipt Requested and a copy included in the certificate package sent to the Acquisitions/Legal Section.

5. The Acquisitions/Legal Section will review all of the documents for accuracy and completeness and will have the Director execute the appropriate documents. Upon execution, all of the original documents will be returned to the regional office.

6. The Certificate and a plat for recordation will be taken to the Clerk of the Circuit Court for recordation, along with a check in the amount of the estimated value if a Certificate of Take is being filed. Prior to recording the Certificate and plat, a current owner rundown title update will be performed to ensure nothing has transpired since the last title update that would place a cloud on VDOT's title. If such activity is found, the examiner will discuss the information with Staff Counsel and be guided by his/her advice with respect to whether or not to record the Certificate and plat.

7. On the date the Certificate is recorded, condemnation authorization papers will be sent, to the assigned Fee Counsel, if any. Such Fee Counsel will be selected by the Regional Manager (or designee) in consultation with the Staff Counsel.

   NOTE: In some instances, a case may be assigned to Staff Counsel for monitoring only or where the Region is retaining jurisdiction for sixty (60) days in a final attempt to settle the case before proceeding to condemnation. See Section 5.4.6.

8. The assigned staff member will prepare the letter to the owner notifying them of the filing and the transmittal letters to the Clerk and Fee Counsel accompanying the Certificate and condemnation papers. All such correspondence will be over the signature of the Regional Manager or designee.

9. The assigned staff member will enter the following information into RUMS:

   a) Date Certificate delivered to Clerk of the Court
   b) Type of Certificate
   c) Amount of the Certificate
   d) Date the Condemnation Authorization was sent to Fee or Staff Counsel.
   e) Name of the Fee or Staff Counsel assigned to the case

The following standard forms will be used:

a) Standard Certificate of Deposit: Form RW-35 COD [RUMS COD104].
b) Standard Certificate of Take: Form RW-35 COD [RUMS COT100].
c) Certificate of Deposit, Limited Access: Form RW-39(LA) [RUMS COD105].
d) Certificate of Take, Limited Access: Form RW-39(LA) [RUMS COT101].
e) Standard Condemnation Authorization: Forms RW36 [RUMS COT102], and RW-36(LA) [RUMS COT103]. If property is a cemetery, use RUMS COT104.

Section 33.1-132 of the Code of Virginia as amended provides a remedy for landowners. If the Commonwealth has not instituted condemnation proceedings within 180 days after the recordation of the Certificate, (whether the construction of a highway has been completed or not,) If a condemnation action has not been instituted within that time, then the property owner may petition the court to determine just compensation.

## Section 9 – Special Property Elements

### 5.9.1 General

Acquisition for right of way often involves property with characteristics that require special procedures or provisions to assure that the Department has sufficient rights, that owners are properly compensated, and that remaining land is reasonably restored to optimum utility and function. These special features include the following:

a) Entrances
b) Fencing
c) Landscaping
d) Timber
e) Minerals
f) Conduits or other structures under highways

In addition to the above, VDOT may be asked to pay damages by owners with no physical take but who claim their property has or will suffer damages as an indirect consequence of highway construction.

The above property items will be separately considered in this Section. Outdoor advertising signs are also a special property feature. They are addressed in Section 5.3.6 of this chapter, as tenant-owned improvements.

### 5.9.2 Entrances

Section 33.1-199 of the 1950 Code of Virginia, as amended, requires that the "Commissioner shall review the existing access to any parcel of land having an entrance destroyed…[during construction] and provide access to…[the highway] in a manner…[that ensures] efficient and safe highway operation," This amendment changed the law that previously existed. Previously all entrances removed had to be replaced. With the amendment VDOT is no longer obligated to replace every entrance that is removed. Therefore, the right of way agent on the field inspection team should inspect all existing entrances. Replacement of existing entrances will depend upon the application of VDOT's Access Standards in effect at the time of acquisition.

If an entrance is not to be replaced with an equivalent entrance, this fact should be noted by the appraiser and, appropriate adjustments made to the amount of just compensation.

At the field inspection stage, a letter of agreement will be secured from all parties who share an interest in a common entrance and desire to maintain a common entrance after construction. They should be advised, however, that VDOT's Access Standards may prohibit a common entrance after construction but their preference will be communicated to the project designers.

In areas where right of way is to be obtained and entrance grading is necessary, a profile showing the approximate grade of the proposed entrance will be included in the plan assembly of all projects, both regular and minimum plan. An explanation of the grade change is a requirement of the code when negotiations are conducted. A copy of the entrance profile is to be a part of the offer package and is to be included in the certificate if a refusal is encountered.

### 5.9.3 Fencing

It is VDOT's responsibility to provide for fencing when an existing fence will be removed by construction or to compensate the owner for fencing acquired. In some cases VDOT may be installing fencing as a part of its highway construction. Normally, the owner arranges with a contractor to have the fence moved or replaced and VDOT compensates the owner for the costs as a cost to cure item in the compensation. This avoids any possible dispute

between VDOT and the landowner as to the quality, location or nature of the fencing. In rare circumstances, the Regional Manager may agree to having VDOT construct the fencing. If so, a note to this effect must be entered in RUMS by the negotiator along with an explanation of the basis for the decision. The Project Manager must be advised that VDOT will construct the fencing so that the cost of fencing can be included in the construction bid

If there is a refusal to the general right of way acquisition offer, a separate agreement may be reached for payment for re-enclosure only or for VDOT to construct the fencing. When a fencing agreement calling for either separate payment or for VDOT to provide fencing is reached, the amount determined in the appraisal will be deducted from the total consideration. A fencing agreement after refusal of the general acquisition offer will specify that in condemnation proceedings the attorneys for both sides will stipulate to the court that fencing has been settled and the judge/jury/Condemnation Commission is not to consider the cost of fencing.

When an owner refuses the total offer or agrees to handle fencing either by option or by separate agreement, the negotiator will advise that it is the owner's responsibility to protect all livestock. This will be confirmed in writing when advising the owner of the acceptance of an option, agreement, or the filing of a Certificate. Appropriate comments must be made in RUMS by the negotiator.

Cattle guards may be reinstalled on the owner's remaining property. This normally occurs during construction and the negotiator will make the owner aware of this fact.

A portion of a security fence around a commercial and/or industrial property may fall within the proposed fee or easement acquisition where the fence is necessary to the use of the property. It is appropriate to consider relocating the existing fencing rather than paying for the fence on a cost new less depreciation basis.

Fencing may be relocated for a temporary easement and then reinstalled on the right of way line after construction. Both installations are compensable and are normally treated as cost to cure items in the appraisal or BAR.

The negotiator will insert a note in the RW-24 Report to indicate the method for handling fencing.

### 5.9.4 Landscaping

A property owner may retain landscaping that is within the proposed right of way provided that the landowner agrees to remove it from the right of way. A provision will be inserted in the option that the owner will remove the items from the proposed right of way within 30 days after an option, deed or certificate is recorded. The negotiator or closing agent (as appropriate) is responsible for notifying the owner when this occurs. This period may be extended at the discretion of the Regional Manager but, if so, a note must be made in the RW-24 Report by the negotiator indicating the deadline by which the landscaping must be removed and a statement of the reasons for the extension. If not removed in the allotted time, the landscaping will be treated as abandoned and becomes the property of VDOT. No additional compensation will be paid. Where landscaping is to be retained, there will also be a provision in the option or landscaping agreement that the owner will backfill all holes to grade, so as not to create a safety hazard.

When the owner desires to retain landscaping but there is a refusal of the general acquisition offer, a separate landscaping agreement will be entered into, when possible. Conditions on the retention will be the same as stated above.

A notation must be made in the RW-24 report to indicate the retention status (i.e. “will retain” or “will not retain”) of landscaping

### 5.9.5 Disposal of Timber

The normal disposition of standing timber on proposed right of way is for the construction contractor to cut and clear as provided in the plans. Timber beyond construction limits may remain standing as a required environmental protection measure if it does not interfere with safety. This includes areas in the medians of divided highways.

The negotiator should make clear to the owners of timberland that the appraiser made allowance for acquisition of marketable timber. The timber will not be cut and laid aside for the property owner’s use but will be disposed of by the contractor. The property

owners may be advised that they can deal with the contractor about the timber after the construction contract has been awarded.

In acquisition areas where there is a substantial stand of marketable timber, the owner may strongly desire to retain and remove the timber. This may be done only if approved by the Director or his designee on recommendation of the Regional Manager. In no case will the owner be allowed to remove timber beyond construction limits even though it may be within approved right of way.

If approval is given for owner removal of timber and the owner is willing to sign an option, the consideration set out in the option will be the value of the right of way less the contributing value of the timber actually to be retained. A clause will be included in the option that provides for the property owner to retain and remove the timber within a specified period but not to exceed 60 days after recordation of the option or deed.. This period may be extended at the discretion of the Regional Manager but, if so, a notation of the extension and removal deadline must be made in the RW-24 Report along with the reason for the extension

If there is a refusal of the general acquisition offer but the owner desires to retain the timber, the Regional Manager may recommend approval of the retention to the Director or his designee. If approved, an agreement for the removal of timber may be entered into that provides that the owner will remove the timber within sixty (60) days after the date a certificate is recorded. This period may be extended at the discretion of the Regional Manager but, if so, a notation of the extension and removal deadline must be made in the RW-24 Report along with the reason for the extension.

The option or agreement will provide for the timber removal area(s) to be outlined in color on a print of the plan sheet(s) to be attached and made a part of the option or agreement. In addition, it will provide that all rights, title, and interest in timber not removed in the established time period will vest in VDOT. The option or agreement will also provide that in such case, VDOT will dispose of the timber as it sees fit without payment of additional compensation to the property owner.

### 5.9.6 Minerals

Acquisition of mineral rights in proposed right of way is usually not required for the construction, operation, and maintenance of the highway. The interest of VDOT is that the transportation facility be protected during any future mining operations. The following clause is to be used as a guide for placement in options and deeds to acquire right of way when mineral deposits are known to exist, the mineral rights are vested in the fee owner, and VDOT intends **not** to acquire the mineral rights:

> *"There are hereby excepted and reserved unto the (landowner) (grantor) his (her) heirs and assigns, of the oil, gas, ores and rocks of any kind situated, lying on or being under the surface of the strip or parcel of land herein above described to be conveyed, together with the right to explore, develop mine and remove from under the same said oil, gas, ores, and rocks of any kind, and the right to haul and transport under the surface of the said strip or parcel of land all oil, gas, ores or rocks of any kind which may be under said land or which may be adjacent to said land provided that all the said rights and privileges shall be exercised in accordance with usual and approved mining practices and shall not interfere with or damage the public highway or its facilities or appurtenances constructed or to be constructed upon said strip or parcel of land, and so as to not interfere with public travel upon and use of said road and that there shall be no rights reserved or implied to enter upon or use the surface of the land for the foregoing purpose."*

When the above clause is incorporated into the deed the words "*to be conveyed*" should be deleted.

If the mineral rights are not vested in the fee owner, the following clause with selection of applicable wording appearing in parenthesis is to be incorporated in the options and deeds:

> *"Those certain mineral rights enjoyed within the confines of the above described lands and which rights are not vested in the (landowner) (grantor) are excepted from the conveyance provided for (herein) (this conveyance)."*

When it is determined that the fee owners do not enjoy the mineral rights, this fact is to be so stated in the RW-24 Reports.

When applicable, clauses similar to the ones quoted above will be incorporated in the certificates when the offers are refused.

Whenever any option, deed or certificate includes any of the provisions above related to mineral rights, the advice and assistance of Staff Counsel should be sought.

### 5.9.7 Conduits and Other Structures

Under certain circumstances it is in the best interest of VDOT for property owners to retain usage of drainage structures, bridges, or conduits for the passage of vehicles, livestock, and water and sewer lines under the highway. This is sometimes done to protect the unity of farmland that will be bisected by a limited access highway. This does not apply to features that allow direct access to the traveled way. In all such cases, the advice and assistance of Staff Counsel should be sought.

The negotiator must add an appropriate clause in the options and deeds that properly set forth rights and limitations regarding the conduit or structure.

1. When VDOT is to construct the conduit and line for transmission of water, sewer, etc., the following clause will be used:

   *"Excepting and reserving, however, unto the (landowner) (grantor), his heirs and successors, as a covenant running with the remaining lands of the (landowner) (grantor), the permanent right and easement to pass beneath said highway with the _____inch conduit and ___inch water line shown on the plans at approximate _____centerline station for the transmission of water; said conduit and water line to be constructed by the (Commonwealth) (Grantee). Said facilities to be operated and maintained by the (landowner)(grantor) his heirs or successors in title, such construction, operation and maintenance to be effected from beyond the limits of the limited access highway, no entry from or disturbance of the surface of the highway will be permitted.*

   *"Nothing herein contained shall be construed as preventing the (Commonwealth) (grantee) from widening, lengthening, altering or reconstructing the said means of passage or the said highway within the limits of its rights of way as in the opinion of the Commissioner of Highways the necessity or convenience of the public may require without payment of further compensation."*

2. When the conduit only is constructed by VDOT and the line for transmission of water, sewer etc. is to be constructed by the property owner, the following clause will be used:

*"Excepting and reserving, however, unto the (landowner)(grantor) and all heirs and successors, as a covenant running with the remaining lands of the (landowner)(grantor), the permanent right and easement to pass beneath the said highway with a pipe conduit and pipe installed within the said conduit for the transmission of water, said conduit being located at approximate survey station _____ and to be constructed by the (Commonwealth)(grantee) the said pipeline for transmission of water itself to be constructed by the (landowner)(grantor). The facilities are to be operated and maintained by the said (landowner) (grantor), and all heirs or successors in title, with such construction, operation and maintenance to be effected from beyond the limits of the limited access highway, no entry from or disturbance of the surface of the highway will be permitted.*

*Nothing herein contained shall be construed as preventing the (Commonwealth) (Grantee) from widening, lengthening, altering or reconstructing the said means of passage or the said highway within the limits its rights of way as in the opinion of the Commissioner of Highways the necessity or convenience of public travel may require without payment of further compensation."*

3. When the property owner is to be permitted passage beneath a bridge or through a box culvert, the following clause is to be used:

*"Excepting and reserving, however, unto the (landowner) (grantor), all heirs and successors as a covenant running with the remaining lands of the (landowner) (grantor), the permanent right and easement to pass with (animal) (foot) and (vehicular traffic) (beneath) (through) the (bridge) (box culvert) located between approximate survey station _____and to be constructed by the (Commonwealth) (grantee) in conjunction with the said highway. The (landowner) (grantor), all heirs or successors in title, in the exercise of said right and easement are not to enter from or disturb the surface of the said highway nor perform construction within the right of way limits of said highway. The (landowner) (grantor) may be permitted to perform necessary maintenance work to the passageway leading to and (beneath) (through) the (bridge) (box culvert), upon obtaining permission from the* District Director of Transportation and Land Use, or designee.

*"Nothing herein contained shall be construed as preventing the (Commonwealth)(Grantee) from widening, lengthening, altering or reconstructing the said means of passage or the said highway within the limits its rights of way as in the opinion of the Commissioner of Highways the necessity or convenience of public travel may require without payment of further compensation, provided that subsequent alteration or reconstruction will not reduce the width or height of the opening in the proposed structure."*

The above clauses should be modified (and approved by Staff Counsel) as needed to conform to specific situations.

In appraising the required acquisition area the appraiser is to take into consideration the fact that the usage of the structure is being reserved to the property owner. The damages, if any, will normally be appraised on this basis. In determining whether or not to agree to allow such reservation, one of the factors to be considered should be the cost of not allowing retention versus the reduction of damages if retention is allowed.

VDOT may do certain grading within the right of way limits to enable safe passage by the property owner. The plans should reflect any additional work to be performed. As noted in the above clauses, the property owner may be permitted to perform maintenance work to the passageway leading to and beneath the bridge or box culvert.

The following special notes have been developed to fit specific situations. The Location and Design Division should be requested to place a special note on the plans as applicable to the specific situation.

1. *"The adjoining landowner is to have the right of passage beneath the bridge at or near station _____, without access to the traveled roadway."*

2. *`"Passageway of livestock of the adjoining landowner is to be allowed through (____' X ____') box culvert to be constructed at or near station _____without any access to the traveled roadway."*

3. *"The _____inch conduit to be installed at or near station _____is provided for the adjoining landowner's use for the installation of a water line under the right of way, without access to the traveled roadway."*

4. *"The _____ inch conduit and ____ inch water line to be installed at or near station _____is provided for the adjoining landowner's use in the transmission of water under the right of way, without access to the traveled roadway."*

The proper note should be shown on the field inspection plans in pencil so both the Right of Way and Utilities and the Location and Design Divisions can review it. Any additional grading needed to afford safe passage should also be noted on the plans.

The Regional Manager or designee is responsible for requesting the Location and Design Division to have any work as discussed above and related note made a part of the permanent plans.

The outcome of discussions with property owners about providing service facilities will be summarized on the RW-24 Report.

### 5.9.8 Consequential Damages

Some properties adjacent to the proposed right of way may suffer damages as a result of a grade change or other effects of construction. An agreement may be made to settle such damages. Form SF-15 [RUMS D39] is used for this purpose.

It is not intended that such agreements will be necessary very often. No damages will be paid for simple shifting of a highway alignment farther from a property or building. Many consequential damages, where there is no physical take, are not compensable in eminent domain cases. Normally the property owner will initiate contact with VDOT in these situations.

If consequential damages are to be paid, they should be supported by an appraisal that complies with the same standards and requirements as an acquisition apprais

## Section 10 – Acquisition of Uneconomic Remnants and Residues

### 5.10.1 General

The Commissioner is authorized by statute (Va. Code §§33.1-91, 1-219.1, and 25.1-417) to acquire residual parcels in certain situations.

According to Va. Code §33.1-91:

The Commissioner is authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way, or a purpose incidental to the construction, reconstruction or improvement of a public highway, to acquire by purchase, gift or by the exercise of the power of eminent domain the entire tract of land or any part thereof, whenever

- the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized,
- or a portion of a building is to be taken or the cost of removal or relocation of the buildings, or other improvements on the remaining portion, necessitated by the taking, would exceed the cost of demolition of such buildings or other improvements,

- or the highway project will leave the remaining portions without a means of access to a public highway,
- or whenever in the judgment of the Commissioner the resulting damages to the remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction or improvement of a public highway, will approximate or equal the fair market value of such remaining lands.

All of the above-referenced conditions can be used as a basis for acquiring a residue parcel. In the case of voluntary acquisitions or conveyances, 33.1-91 appears to limit acquisition of residues for the above reasons to ten acres. However, the provisions of §25.1-417(9) can be interpreted to authorize an unlimited number of acres that can be voluntarily acquired if acquisition of only part of the property would leave the owner with an uneconomic remnant. In the case of condemnation, § 33.1-91 limits the number of residue acres that can be acquired by eminent domain to two. However, §1-219.1 (G) also provides that, in those cases where an uneconomic remnant is being acquired by condemnation, the condemnor cannot acquire the uneconomic remnant if the landowner objects to the acquisition of the uneconomic remnant and wishes to maintain ownership of the excess property. An uneconomic remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the condemning authority determined has little or no value or utility to the owner. (See Va. Code §25.1-400)."

In the event a question arises regarding VDOT's authority to acquire a particular uneconomic remnant or residue parcel, the Acquisition/Legal Section and Staff Counsel handling the acquisition, if any, should be consulted.

### 5.10.2 Procedure

Land areas outside the right of way may be identified for potential acquisition during the field review stage of a project or during negotiations for the right of way acquisition. The Regional Manager is the approval authority for acquisition of residues and uneconomic remnants consistent with this policy and will document the determination with a memorandum to the project file. The Regional Manager will assure that the residue/uneconomic remnant being acquired has had the proper environmental assessment completed and the results documented in the memorandum.

The acquisition of a residue/uneconomic remnant will also be noted by the negotiator in the RW-24 Report.

Occasionally it may be in the interest of the property owner and VDOT to acquire a residue on which a building is located. The Regional Manager must confirm that there is reasonable justification for the acquisition. A written copy of this justification must be included in the local parcel file and a copy sent to the Acquisition/Legal Section. An appropriate note should also be placed in the RW-24 Report by the negotiator. A relevant consideration is that relocation benefits are to be provided to persons displaced regardless of the conditions under which the property is acquired.

Buildings on residue parcels to be acquired will be assigned "D" numbers under the following conditions:

1. The property owner retains the building(s) or
2. The building does not contribute to the value of the residue parcel and VDOT will dispose of it by sealed bid, auction, negotiated retention sale, negotiated sale, demolition contract, road contract, or state forces.

A hazardous material (HAZMAT) assessment must be made on all projects for the areas included within the proposed right of way. Oftentimes, the area outside of the proposed right of way not originally intended to be acquired is not included in the assessment. Properties to be acquired (to include fee simple, lease, or easement), in whole or in part, shall be assessed for the potential presence of hazardous materials and cleared by the District Environmental Section prior to initiating final acquisition negotiations. Property contamination and associated clean-up costs shall be considered as a factor in determining market value for the property or in deciding to proceed with purchase.

## Section 11 – Advanced Acquisition

### 5.11.1 General

Property may be purchased in advance of normal project acquisition under two very limited sets of conditions. The first, ***hardship acquisition,*** is to alleviate a special hardship caused to an owner who is unable to sell the property on the private market

because of the fact that a future highway project that may affect the property has become a matter of public knowledge. The second, ***protective purchase*** is to preclude development of a property that would make acquisition much more expensive if acquisition were to occur at a later date.

Under federal rules and regulations hardship and protective purchase acquisitions must satisfy a very specific set of criteria and must occur before approval of the NEPA document. After NEPA approval, the FHWA considers the project to be in the normal acquisition phase. However, within VDOT, any acquisition is considered an advanced acquisition if it occurs before plans for right of way are complete and funding for right of way. If the acquisition occurs before these two events, it must meet the criteria outlined below.

It is very important that the necessary criteria be met before initiating either form of advanced acquisition. Premature acquisition of property should be avoided because of the need to maintain equity among citizens who are affected by the right of way acquisition. Acquisition of property before completion of environmental evaluations, design elements and project phase approvals might result in the unnecessary purchase of property.

### 5.11.2 Hardship Acquisition

Advanced acquisition because of hardship pertains principally to owner occupants of real property who have a special need to sell their property but are unable to do so because the pending highway project has become a matter of public knowledge. Infrequently, an owner of income producing property or vacant property may be eligible for hardship acquisition.

The Regional Manager will secure the following from hardship acquisition applicants:

1. A written request for hardship acquisition from the property owner setting forth the nature of and reason for the hardship.
2. Documentation of an inability to sell the property at a fair and reasonable price consistent with the current market as a result of the pending highway project.

Hardship cases will generally be based upon one or more of the following:

A. Health

1. Advanced age, debilitating illness, injury, or disability or handicap of a nature causing present housing to be inadequate to meet needs and cannot be maintained by the owner.

2. Other extraordinary conditions that pose a threat to health, safety, or welfare of members of the household. An example would be a serious structural fault that poses a safety threat and is very expensive to repair.

B. Financial

1. Loss of employment or job transfer

2. Probate litigation requiring sale of property

3. Retirement, causing reduced income and inability to afford present home, including maintenance expenses

4. Pending mortgage foreclosure

5. Any other documented situation, similar in effect to the above

It is critical that claimed hardships be fully documented and supported. Examples of acceptable support would include the following:

1. Doctor's statement clearly describing the condition and recommending a change in housing.

2. Real estate broker's sworn statement indicating that the property is not marketable at a fair and reasonable price consistent with the current market and that it would not be practical to list it on the market. The reason(s) should be clearly stated.

3. Financial statements. Where financial hardship is claimed, the applicant should be asked to provide copies of relevant support, such as income tax returns, certified financial statement, pay vouchers, etc.

4. Letter from the employer confirming a transfer, layoff, etc. of the applicant.

5. Court records relating to any legal action affecting the applicants housing that indicate a hardship.

The above is not a complete list. It illustrates the type and nature of the information that is required as support for applications for hardship advance acquisition.

### 5.11.3 Protective Purchase

Substantial development of property before commencement of normal project acquisition might restrict or block a preferred highway location or cause an extraordinarily high cost to VDOT. A protective purchase is used to avoid imminent development and thus protect a needed right of way corridor. The purpose of protective purchase is to prevent imminent development and to avoid excessive future costs. A review of the circumstances and documentation concerning the scale and imminence of the proposed development, its limiting effect on highway location, and the degree of probability that it will occur must offered to support the use of protective purchase. Verification of approved site plans and building permits are examples of documents that support the need for protective purchases. Protective purchase should not be performed if proposed development is possible but highly speculative and not likely to occur.

### 5.11.4 Procedure for Advanced Acquisition

All requests for advanced acquisition will be submitted to the Director. Each request will include the required documentation, as discussed above, along with a good faith estimate of the acquisition cost of the property. The relocation effects and estimated costs for all residential and business displacements should also be addressed. The recommendation of the Regional Manager will be stated in the transmittal memorandum.

If the acquisition will be a partial take, it is imperative that appropriate utility easements be included in the acquisition.

If the Director approves the advanced acquisition, appropriate funding will be requested. When funding availability is confirmed, the Location and Design Division will be requested to prepare a plan sheet and plat to show the acquisition. Location and Design will provide the Right of Way and Utilities Division with a plan sheet approved for acquisition and signed by the Chief of Policy and Environment, along with supporting data. A Notice to Proceed will be issued authorizing the Regional Manager to purchase the property. If the project is federally funded and federal monies are to be utilized in the purchase of an “advanced acquisition” property, authorization must first be obtained from the Federal Highway Administration before Notice to Proceed is issued by the Scheduling and Certification Section.

## Section 12 – Administrative Settlements

### 5.12.1 General

Administrative authorization for purchase of property for a higher consideration than the approved BAR or appraised value may be granted under certain limited circumstances. Administrative settlements are undertaken only after reasonable effort has been made to settle based on the approved BAR or appraised value. In addition, all administrative settlements must be properly documented and authorized.

Administrative settlement normally implies that the amount of consideration agreed to is greater than the originally approved valuation. However, in many situations a settlement may be reached where the compensation is less than the original approved valuation but VDOT agrees to specific construction concessions or changes in the nature of the acquisition. A proposed administrative settlement must be measured against the responsibility of VDOT to treat all owners equitably and fairly in regard to payment for property acquired for the project.

An administrative settlement may be reached any time after the initial offer has been made to the owner. If settlement is reached after filing a Certificate, the process is termed an “Agreement After Certificate”.

### 5.12.2 Justification for Administrative Settlements

The following factors may be considered in evaluating potential administrative settlements:

1. Legal complications
2. Trend of condemnation awards in similar recent cases
3. Range of probable testimony as to market value
4. Probable expert testimony other than appraisers as to the impact on the property
5. Treatment of other landowners on the project who are similarly situated
6. Opinion of legal counsel as to outcome of condemnation case
7. Estimate of trial cost

8. Other factors which would increase cost to the Commonwealth

In considering potential administrative settlements, consideration should be given to assure consistent treatment of all property owners on the project and statewide, to assure public confidence in land acquisition practices, and to assure that expenditure of public funds is in the best interest of the Commonwealth.

### 5.12.3 Administrative Settlement Justifications

The justification for all administrative settlements must be noted in the RW-24 report or must be contained in a separate written document signed by the Regional Manager or, where appropriate, the Director or his designee. If a separate written document is prepared, it should be noted in the RW-24 report and a copy attached.

### 5.12.4 Agreements After Certificate

An Agreement After Certificate is an instrument executed by the owner and the Director, or designated representative, setting forth a settlement reached after filing a Certificate. For additional information on this process see the Chapter 11 - Eminent Domain in this Manual.

## Section 13 – Industrial & Recreational, Historical Access Roads; Environmental Mitigation, Transportation Enhancement Projects

### 5.13.1 Industrial & Recreational, Historical Access Roads – Procedure

Designated Industrial Access roads, when constructed or improved, become a part of the Secondary System of State highways or of the locally owned road system. Recreational or Historical access roads become a part of the Secondary or Primary systems.

Industrial and Recreational or Historical access funds are to be used only for the engineering and construction of the facility. Such funds may not be used for the acquisition of right of way or adjustment of utilities. Right of way and utility adjustments are normally provided by resolution of the local governing body or by donations or grants.

The regional right of way office provides assistance and guidance to the local government or private property owner to facilitate the transfer of property rights. This may include the preparation of necessary instruments including deeds and review of completed documents.

When funds other than access funds are available for right of way acquisition or utility adjustments, the regional right of way office will proceed in accordance with the procedure for Secondary System – No Plans Projects. See Section 5.5.6 of this Chapter.

Industrial and Recreational or Historical Access projects usually have a high priority and urgency. The regional right of way office should assist and cooperate with the District Director of Transportation and Land Use, or designee and the industry, developer, and the local governing body in order that these projects can proceed expeditiously. The Special Negotiations Section is responsible for securing the rights of way needed from state and federal agencies for recreational access roads.

The Regional Manager may be asked to report on the right of way status of Industrial and Recreational or Historical Access projects that are not in RUMS. Such requests may come from the Local Assistance Division Director through the Director. If the right of way status is such that the project can be advertised, this is communicated by a memorandum from the Director to the State Scheduling and Contract Engineer with a copy to the Local Assistance Division Director. If the project is not on the advertisement schedule, requested information will be provided by memorandum from the Director to the Local Assistance Division Director.

### 5.13.2 Environmental Mitigation and Wetland Banking

Property to be acquired for environmental mitigation and wetland banking will be done in accordance with right of way acquisition procedures and the Uniform Act. Property of this nature is typically identified, programmed, and inventoried by the Environmental Quality Division.

### 5.13.3 Acquisitions and Relocations for Transportation Enhancement Projects

Acquisitions and relocations for transportation enhancement projects are subject to the normal right of way acquisition procedures and the Uniform Act. Property acquired with TEA (Transportation Enhancement Authorization) funds shall be managed in accordance with VDOT's property management requirements. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, VDOT shall assure that the market value or rent is charged and the proceeds reapplied to the projects eligible under Title 23 of the United States Code. This applies only to VDOT projects utilizing this funding as localities typically are involved in holding property acquired with this funding and managing projects of this nature.

## Section 14 – Acquisition Review - Quality Assurance Review (Acquisition)

### 5.14.1 General

The purpose of the Quality Assurance Review (Acquisition) is to annually review the performance of the acquisition staff of each Region to assure that their work meets the minimum standards required by VDOT's procedures and to identify good performance and practices. The review will focus on a sampling of projects negotiated in each of the Regions. These reviews are intended to identify areas of strength as well as weakness. The review process will assure statewide uniformity in acquisition practices and achieve a higher quality of negotiations.

The reviews will enable employees to be recognized for their skill and efforts and for good practices to be more widely known and implemented throughout the Right of Way and Utilities Division.

Similar review procedures will be used for Locally Administered Projects.

### 5.14.2 Procedure – Regional Office Reviews

The Program Manager of the Acquisition/Legal Section will be responsible for the annual Quality Assurance Review (Acquisitions) in each Region. The Program Manager or designee will act as Team Leader and will select a team composed of an appropriate number of reviewers from outside the region to be reviewed. The team will examine the recorded information in RUMS, particularly RW-24 Reports, and select projects for detailed review. The review sample will include a cross section of cases and types of acquisition. Included will be vacant land as well as improved property, residential and non-residential uses. The RW-24 Reports for the selected projects will be reviewed in detail to confirm proper processes were followed and all activities were conducted in accordance with established policies. Discussions may be conducted with persons in VDOT who interacted with the negotiator in carrying out his/her responsibilities. The Team Leader may also decide to contact randomly selected landowners to obtain feedback on their experience.

The reviewers will record findings and conclusions in the Quality Assurance Review Worksheet. Supporting information and documents will be attached to and referenced in the worksheet. The Team Leader will retain the original records and any correspondence generated from the reviews for later discussions with the Regional Manager and other personnel.

If there are particular problems, weaknesses, or procedural errors disclosed from the initial sample review, the reviewers may examine additional work or expand the scope of the review to the extent needed to come to a fair and sound conclusion on the various aspects of work performance.

After the review is completed, the review team will prepare a draft report. A post-review meeting will then be held by the Team Leader or designee with the Regional Manager or designee to review and discuss the findings and conclusions. The work skills, strengths, and instances of superior performance will be discussed, as well as areas that need improvement or change. The need for training or changed assignments will be discussed, if appropriate.

The review team will prepare a final report after this meeting to reflect new information, agreements reached, and any remaining issues needing resolution. A copy of the report will be forwarded to the State Acquisitions Manager and the Director. The Regional Manager and appropriate Acquisition Team Leader will also be provided a copy of the report.

The Regional Manager, after consultation with the Director or designee, will determine the manner and time at which the report will be discussed with employees whose work has been reviewed.

### 5.14.3 Quality Assurance Review (Acquisitions) Follow-Up Activities

A key to the success of the Quality Assurance Review (Acquisitions) is to ensure that action is taken to correct deficiencies that are noted and beneficial practices are recognized and widely implemented. Responsible parties should agree to specific corrective measures at the post review meeting. At that meeting a time period should be established for the corrective actions to be performed. A follow-up process will be established by the Team Leader to evaluate corrective actions after they have been implemented.

Favorable review findings should be reflected in appropriate recognition for responsible employees. The manner and form of recognition should be discussed at the post review meeting but is solely within the discretion of the Regional Manager.

The review may identify opportunities for achieving a higher level of performance of certain employees. This might involve expanding work experiences, new assignments, training, transfer to another unit or function, or employee counseling. At the post-review meeting, these actions should be clearly identified and responsibility assigned for implementation.

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**NOTE: The following clauses will be entered on options in accord with the applicability column on Table 5-1 (Chapter 5, Section 2.2F)**

**Clause No. 1**

"Consideration: $_____, ("Total Consideration") in full for land, all improvements thereon, and any and all damages. The Commonwealth shall deduct from the payment of Total Consideration at Closing the sum of $_____ (the "Retention Value") representing the retention value of the Retained Buildings (as defined below) and the sum of $_____ (the "Cash Bond") representing a cash bond to be deposited to induce the landowner to remove the Retained Buildings from the right of way by the Removal Deadline (as defined below.)"

"The landowner shall retain possession of building(s) No(s). D-_____, ("the Retained Buildings.") The Retained Buildings shall be removed by the landowner on or before the date which is ____ days after the effective date of notice of acceptance of this option by the Commonwealth (the "Removal Deadline.") The Retained Building(s) is (are) to be completely removed down to the non-combustible portion of the foundation(s) thereto, leaving the real estate in a neat and presentable condition satisfactory to the Commonwealth. Nothing herein contained is to be construed as guaranteeing the issuance of a permit for moving said building(s) on or across streets or highways.

If the Retained Building(s) is(are) not removed by the landowner by the Removal Deadline, the landowner shall forfeit the Retention Value and Cash Bond together with all retained rights in said building(s). The Commonwealth will then have the right of remove and dispose of said building(s) without any further responsibility or obligation to the landowner."

**Clause No. 2**

"The landowner agrees to vacate the property and remove all personal property from the building(s) within or encroaching upon the proposed right of way herein described. Upon settlement for the property, the landowner will be given a written notice that will specify the actual date by which the property must be vacated. This notice will be issued at least thirty (30) days prior to the date specified."

**NOTE 1: If a family or a business occupies the property, the following is to be made a part of Clause No. 2.**

"An extension of the above established vacation date may be permitted by the Commonwealth on a rental basis, provided conditions are such that an extension of time will not cause a delay in the advertisement of the project for construction."

NOTE 2: If the established vacation date is extended by the Commonwealth, there may be leasehold issues such as rent (if any), tenancy, liability and holdover – all of which should be considered. Assistance from Staff Counsel should normally be sought in these situations.

**Clause No. 3**

"The building(s) within or encroaching upon the proposed right of way herein described may be removed by the Commonwealth or her agents at any time after settlement for the property."

**Clause No. 4**

"The landowner acknowledges that building(s) No.(s) _____ (**here briefly describe the buildings**) is (are) located partially on the remaining property of the landowner. The landowner agrees to allow the Commonwealth or her agents or contractors to remove the entire building(s) and hereby grants permission for such temporary encroachments on his remaining property as may be necessary for the removal of said building(s)."

**Clause No. 5**

"The landowner, by his signature to this instrument, agrees to grant unto the **(Name of utility company**) an easement for the construction, operation and maintenance of its facilities across his remaining lands, (adjacent to the proposed right of way) (approximately adjacent to the proposed right of way) or (as indicated on the BW Prints), (together with the right of ingress and egress thereto over and upon the remaining lands of the landowner). Upon the acceptance of this option by the Commonwealth as herein provided, said utility company, its employees, agents or contractors shall have the right to enter upon the lands of the landowner in order to proceed with the relocation of such facilities, pending completion of the grant called for herein."

**NOTE: The wording appearing in parenthesis in the above clause pertaining to ingress and egress is to be included in the option only when applicable, such as when a limited access line or the ultimate construction will not permit direct entry upon the easement from the roadway**

**Clause No. 6**

"It is specifically understood and agreed that when the building(s) is (are) vacated, the following items are to remain with the property and are not to be removed: (**here insert a list of the items that are not to be removed.**)"

**NOTE: Clause No. 6 will be inserted in all options covering items paid for that could be reasonably removed from the premises prior to possession by the Commonwealth. In order to eliminate any questions as to what items are being acquired, options should enumerate those that are to remain including items of doubtful nature such as fixtures or personal property**.

**Clause No. 7**

"The landowner further agrees that he will compensate the tenant(s) of said land for his (their) interests and any and all legally compensable damages said tenant(s) may suffer and sustain by reason of the conveyance agreed to herein and by reason of said proposed construction, and agrees to save the Commonwealth harmless from any and all claims that may be made by such tenant(s) for the taking and/or damaging of the property by reason of such conveyance and/or construction."

**Clause No. 8**

"The landowner is retaining possession of the building(s) designated as D-_____, which is (are) located partially on the proposed right of way, at its (their) Retention Value (as defined herein), and the landowner agrees to remove the entire building(s) or demolish it (them). The landowner shall not cut the building(s) off at the right of way line and leave the remainder(s) of the building(s) in place."

**Clause No. 9**

"The landowner shall relinquish all real property interests, including income rights, to building(s) No. (s) _____ within or encroaching upon the proposed right of way herein described at the end of

a period of _____ days (**not to exceed 90 days for non-commercial property**) after settlement for the property or as of the date on which the property is vacated, whichever occurs first. The Commonwealth will serve vacation notice on the occupant(s) to vacate the aforesaid buildings."

**Clause No. 10**

"The landowner shall relinquish all real property interests, including income rights, to building(s) No. (s) _____ within or encroaching on the proposed right of way herein described at the end of a period of _____ days (**not to exceed 90 days for non-commercial property**) after the notice of acceptance of this option by the Commonwealth or as of the date of vacation, if earlier. The Commonwealth will serve vacation notice on the occupant(s) of the aforesaid building(s). At such time as the Commonwealth has determined the date the building(s) will be vacated, a retention sales agreement will be presented to the landowner to be executed at his discretion, said agreement to provide for a retention value payment of $_____ and the posting of a cash bond of $_____ which bond shall be returned or forfeited in accordance with the terms of such retention sales agreement. Provided he first signs such retention sales agreement, the landowner has the privilege of retaining the aforesaid building(s)."

**Clause No. 11**

"The building(s) No. (s) _____ is (are) located partially on the right of way described herein and partially on the remaining property of the landowner. The landowner hereby grants unto the Commonwealth, its agents or contractors, permission to enter on the remaining lands subsequent to his removal of aforesaid building(s) for the purpose of doing work deemed necessary by the Commonwealth to eradicate the physical evidence as to the prior existence of the building(s). The landowner does also hereby grant unto the Commonwealth, its agents or contractors, permission to enter upon his remaining lands for the purpose of removing the aforesaid building(s) without payment of additional consideration or damages if closing under this Option fails to occur due to no fault of the Commonwealth.

Chapter 6 and the accompanying attachment have not undergone any changes since the last printing of the previous edition of the Right of Way Manual (Volume I, 2nd Edition). This chapter has only been reformatted to conform to the header and footer format of the 3rd edition, including adding this Table of Contents. Sections of this chapter were last revised as follows:

| | |
|---|---|
| Sections 1-4, 7, 10 & 12 | February 3, 2005 |
| Sections 5, 6, 8, 9 & 11 | July 1, 2006 |

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# Chapter 6

*CHAPTER 41 of the Virginia Register*

**RULES AND REGULATIONS GOVERNING RELOCATION ASSISTANCE**

## Section 1

*PART 1 of the Virginia Register*

**GENERAL PROVISIONS AND ADMINISTRATION OF PROGRAM**

### 6.1.1 General

*24 VAC 30-41-10. (Virginia Register)*

In order to acquire the rights of way necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth, it is often necessary for individuals, families, businesses, farms, and nonprofit organizations to be displaced. A comprehensive program of services and benefits has been established to ensure, to the maximum extent possible, the timely and successful relocation of displacees and reestablishment of businesses. These regulations guide the administration of the relocation program in a manner that is equitable, consistent, and cost effective. They will ensure effective relocation services, and will provide moving reimbursement, replacement housing payments and other cost reimbursements so that individuals displaced will not suffer disproportionate injuries as a result of the Virginia Department of Transportation's (VDOT's) highway improvement program.

### 6.1.2 Applicability

*24 VAC 30-41-20.*

The provisions of this chapter are applicable to any person who is displaced by any project on which state or federal funds are or will be utilized. This includes persons displaced from rights of way acquired by any city, county or town where right of way is to be furnished as a required contribution incidental to a state or federal assisted highway project.

### 6.1.3 Definitions

*24 VAC 30-41-30.*

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

**"Business"** means any lawful activity, except a farm operation, that is conducted:

1. Primarily for the sale of services to the public; or

2. Primarily for the purchase, sale, lease, rental or any combination of these, of personal or real property, or both, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

4. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

**"Comparable replacement housing"** means a dwelling that is:

1. Decent, safe and sanitary (defined below).

2. Functionally equivalent to the displacement dwelling in that it performs the same function and provides the same utility. While every feature of a displacement dwelling need not be present, the principal features must be provided. Functional equivalency reflects the range of purposes for which the various physical features of a building may be used. Special

consideration will be given to the number of rooms, and area of living space. VDOT may consider reasonable trade offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

3. Adequate in size to accommodate the displacee.

4. In a location generally not less desirable than the displacement dwelling with respect to public utilities, commercial and public facilities, and is reasonably accessible to the displacee's place of employment.

5. On a site typical in size for residential use, with normal site improvements (The site need not include features such as swimming pools or outbuildings).

6. Currently available to the displaced person on the private market. However, a publicly owned or assisted unit may be comparable for a person displaced from the same type of unit. In such cases any requirements of the public housing assistant program relating to the size of the replacement dwelling shall apply.

7. Within financial means of the displaced person.

Comparable replacement housing is the standard for replacement housing that VDOT is obligated to make available to displaced persons. It also is the standard for establishing owner and rental purchase supplement benefits.

**"Contributes materially"** means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as VDOT determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least $5,000; or

2. Had average annual net earnings of at least $1,000; or

3. Contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

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

**"Decent, safe and sanitary housing"** means that a dwelling:

1. Meets local housing and occupancy codes, is structurally sound, weather tight and in good repair;

2. Has a safe electrical wiring system adequate for lighting and appliances;

3. Contains a heating system capable of maintaining a healthful temperature;

4. Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;

5. Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;

6. Provides unobstructed egress to safe open space at ground level; and

7. Is free of barriers to egress, ingress and use by a displacee who is disabled.

This is the qualitative and safety standard to which displacees must relocate in order to qualify for replacement housing payment benefits provided by VDOT. Decent, safe and sanitary is also an element in the definition of comparable replacement housing defined above.

**"Displaced person"** means any person who moves from real property or moves personal property from real property as a direct result of the initiation of negotiations for the acquisition of the property; the acquisition of the real property, in whole or in part, for a project; as a direct result of rehabilitation or demolition for a project; or as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. If the move occurs after a written order to vacate is issued, the occupant is considered a displaced person even though the property is not acquired.

**Persons who do not qualify as a displaced person under these regulations include:**

1. A person who moves before the initiation of negotiations, unless VDOT determines that the person was displaced as a direct result of the project;

2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;

3. A person who is not required to relocate permanently as a direct result of a project. VDOT, after weighing the facts, shall make such determination on a case-by-case basis;

4. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments (42 USC § 4601 et seq.);

5. A person who, after receiving a notice of relocation eligibility, is notified in writing that it would not be necessary to relocate. Such notice shall not be issued unless the person has not moved and VDOT agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

6. An owner-occupant who voluntarily conveys a property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, VDOT will not acquire the property. In such cases, tenants who are displaced are eligible for relocation benefits;

7. A person whom VDOT determines is not displaced as a direct result of a partial acquisition;

8. A person who is determined by VDOT to be in unlawful occupancy or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property; or

9. A person determined to be not lawfully present in the United States.

Only parties designated as “displaced persons” are eligible for relocation benefits.

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

**"Dwelling Site"** means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

**"Family"** means two or more individuals, one of whom is the head of a household plus all other individuals, regardless of blood or legal ties, who live with and are considered part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of household, they shall be treated as one family for replacement housing payment purposes.

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

**"Financial means"** of the displaced person means:

1. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all eligible incidental expenses.

2. A replacement dwelling rented by an eligible displaced person is considered to be within their financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

3. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if VDOT pays that portion of the monthly housing costs of a replacement dwelling which exceeds the

person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under last resort housing.

**"Increased interest payment"** means the amount which will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

**"Nonprofit organization"** means an organization that is incorporated under the applicable laws of a state as a nonprofit organization and exempt from paying federal income taxes under § 501 of the Internal Revenue Code (26 USC § 501).

**"Owner"** means any person who purchases or holds any of the following interests in real property:

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition;

2. An interest in a cooperative housing project which includes the right to occupy a dwelling; or

3. A contract to purchase any of the interests or estates described in the preceding two descriptions of interests in real property.

**"Person"** means any individual, family, partnership, corporation or association.

**"Purchase supplement"** means the amount which, when added to the acquisition value, equals the cost of comparable replacement housing.

**"Rent supplement"** means the amount which equals 42 times the difference between base monthly rental of a displacement dwelling including utilities and the monthly rent of a comparable dwelling including utilities.

**"Small business"** means any business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites operated solely by outdoor advertising signs, displays or devices do not qualify as a small business eligible for reestablishment expenses.

**"State agency"** means any department, agency, or instrumentality of the Commonwealth; public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; person who has the authority to acquire property by eminent domain under state law; or two or more of the aforementioned, which carries out projects that cause people to be displaced.

### 6.1.4 Duplication of payment

*24 VAC 30-41-40.*

A person is not eligible to receive relocation payments if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as payments under these regulations.

### 6.1.5 Withholding of relocation payment

*24 VAC 30-41-50.*

When a displacee is advanced any relocation payment, that amount should be withheld from the relocation payment to which the displacee is otherwise entitled. No relocation payment shall be withheld to satisfy an obligation to any other creditor or for any other purpose.

### 6.1.6 Relocation payments not considered as income

*24 VAC 30-41-60.*

No relocation payment received by a displaced person shall be considered as income for the purpose of the Internal Revenue Code or for the purpose of determining the eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low-income housing.

### 6.1.7 Civil rights and equal opportunity requirements

*24 VAC 30-41-70.*

A. All aspects of the relocation assistance program of VDOT shall be conducted without regard to race, color, religious creed, ancestry, national origin, age or sex. VDOT, through its field representatives, should advise all claimants of this policy of nondiscrimination. Displacees who feel that they have been discriminated against because of any of the factors listed shall be advised to write the district right of way and utilities manager (district manager) and explain their situation.

B. Replacement housing listings referred to persons displaced shall be available without regard to race, color, religion, ancestry, national origin, age or sex. Each right of way and utilities office (referred to in this regulation as a district office) shall make parties providing listings aware of this requirement. If any instance of discrimination against displacees by listing agencies or other parties providing listings is reported, the district shall attempt to ascertain the facts of the case. If the charges of discrimination are valid, the listing agency shall be so notified and the listing will no longer be used.

C. Independent contractors employed by the displacee for the purpose of moving the personal property, or to perform any other services related to the relocation, will be expected to observe nondiscrimination statutes and policies. If any incidence of discrimination is observed or reported, the contractor involved shall be asked to explain actions taken involving the particular displacee. Appropriate further action will be taken as required by relevant laws and policies.

D. Availability of financing and access to social services, which may be required by the displacee, shall be on a nondiscriminatory basis.

E. Relocation activities will comply with the applicable federal laws and implementing regulations listed in 54 FR 8932, § 24.8.

### 6.1.8 Administration of relocation program

*24 VAC 30-41-80.*

A. Central office organization and responsibility.

The right of way and utilities division's relocation section administers the relocation program at the central office level. The primary functions of the relocation section are to promulgate policies and procedures, to monitor program implementation, and to coordinate administrative responsibilities necessary to successfully carry out the provision of the relocation program. The relocation section is staffed with skilled personnel to enable it to monitor program activities in district offices to assure delivery of consistent, fair and high quality services to displacees. It provides advice and policy interpretations to district right of way and utilities offices (referred to in this regulation as district offices) in the administration of complex or unique relocation cases. It monitors the relocation status on all projects, assuring that resources are available and problems are resolved so transportation projects can proceed to construction on schedule. The relocation section maintains close coordination with the district offices to assure adequate levels of staffing and to perform training needed to inform relocation personnel in changing and evolving relocation policy and practices.

B. District organization and responsibility.

1. It is the responsibility of the district office to carry out the relocation program in accordance with the provisions of this policy in a manner which assures timely, orderly and humane treatment of all displaced persons. The district office will perform the program in an efficient and orderly manner, so as to clear right of way needed for scheduled transportation project construction.

2. The district manager is responsible for assigning personnel to perform the relocation function and for managing and coordinating their activities.

3. The district office will monitor relocation assistance activities conducted by any other agencies or by consultants performing the relocation function for VDOT projects. Such monitoring will be by whatever means and extent necessary to assure compliance with the provisions of policy, procedures and instructions.

### 6.1.9 Appeals

*24 VAC 30-41-90.*

A. It is anticipated that from time to time persons affected by VDOT's relocation program will be dissatisfied with VDOT's determination as to their eligibility or with the amount of payments or services offered. It is the policy of VDOT to provide an opportunity to all persons to have their dissatisfactions heard and considered on an administrative level, without the expense, delay or inconvenience of court adjudication. VDOT's appeal procedure is promulgated to all potentially interested persons through the right of way brochure distributed at public hearings and provided to all displacees.

Persons making the appeal may be represented by legal counsel or any other representative at their expense. However, professional representation is not necessary for an appeal to be heard. The appellant will be permitted to inspect and copy all materials relevant to the matter appealed, except materials which are classified as confidential by VDOT or where disclosure is prohibited by law.

The appeal process consists of two levels. An interim appeal is heard in the district office. If the appellant is not satisfied on completion of the interim appeal, a final appeal may be addressed to the Commonwealth Transportation Commissioner.

B. Interim appeal.

When displacees are dissatisfied with VDOT's determination of eligibility, or the amount offered under the relocation assistance and payments statutes, they may appeal in writing. The appeal must be submitted to the district manager within 90 days after receipt of VDOT's written determination. The district manager will schedule an informal hearing. A decision will be made following the hearing. A written copy of the decision, also stating the basis for the decision, will be provided to the appellant. A copy of such decision, along with all pertinent information involving the case, is to be submitted to the director of the right of way and utilities division. The central office relocation manager, or a designated representative, will be present at all interim appeals to provide technical program advice.

C. Final appeal.

Upon notification of the district manager's decision, if the displacee is still dissatisfied, an appeal in writing may be submitted to the Commonwealth Transportation Commissioner within 10 days. Upon receipt by the commissioner, the appeal will be referred to a review board consisting of the director of the right of way and utilities division or a designated representative as chairman, a district manager selected by the chairman and not functioning in the area where the displacee resides, and a district administrator or a designated representative. The district administrator serving on this board will be the one functioning in the area where the appellant resides. Legal counsel for VDOT may also be present. The review board will schedule a hearing at a time and place reasonably convenient to the appellant. At the hearing all parties will be afforded an opportunity to express their respective positions and submit any supporting information or documents. A Court Reporter will be present to record and provide a transcript of all information presented at the hearing. Upon conclusion of the hearing, the review board will furnish the commissioner a written report of its findings. The commissioner or a designated representative will review the report and render a decision, which shall be final. The appellant and his attorney, if applicable, will be advised of the decision in writing, by certified mail, and will be provided a summary of the basis for the board's decision. If the full relief requested is not granted, the displacee shall be advised of the right to seek judicial review, which must be filed with the court within 30 days after receipt of the final appeal determination.

## Section 2

*PART II of the Virginia Register*

## RELOCATION PLANNING AND PUBLIC INFORMATION

### 6.2.1 Relocation planning at conceptual stage

*24 VAC 30-41-100. (Virginia Register)*

A. A project will be considered to be in the conceptual stage from the time preliminary plans are issued by the location and design division showing alternate roadway location alignments, until the final location is approved.

B. Upon receipt of location study plans, the district office will perform a review to compile right of way and relocation costs and estimates for each proposed alignment. The information will be secured from visual observations and secondary sources and compiled into a Relocation Assistance Report. Potential displacees will normally not be contacted at this time.

The Relocation Assistance Report will contain the following information:

1. An estimate of households to be displaced, including the family characteristics (e.g., minorities, approximate income levels, tenure, elderly, large families).

2. Divisive or disruptive effect on the community such as separation of residences from community facilities or separation of neighborhoods.

3. Impact of displacement on housing availability where relocation is likely to take place.

4. The number of businesses, nonprofit organizations and farms that would be acquired and the estimated number of employees affected.

5. An assessment of the effect the nonresidential displacements will have on the economy and stability of the community.

6. Major businesses being displaced that will require advance coordination and planning are to be contacted and advised of the studies being made by VDOT and of the opportunities for their input through public hearings and meetings.

7. A description of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact should be made with local real estate firms, listing services, newspapers, housing agencies, local community organizations, etc.

8. A description of special relocation advisory services that will be necessary for identified unusual conditions, such as a concentration of elderly displacees.

9. A description of the actions proposed to remedy insufficient relocation housing, including, if necessary, housing of last resort. In the event it is found that there is an insufficient supply of housing, inquiries should be made of real estate developers, construction firms, public officials and interested parties to determine their willingness to assist in providing the necessary replacement housing and the conditions under which they would be willing to render this service.

10. Outcome of consultation with local officials, service agencies and community groups regarding the impact on the community affected.

11. An estimate of relocation costs, separated as follows:

a. Cost of moving personal property for residential units, businesses, farm operations and nonprofit organizations;

b. Cost of replacement housing payments for displaced individuals and families, including typical mortgage interest differentials and closing costs incident to the purchase of replacement facilities;

c. Cost potentially incurred by businesses, farms and nonprofit organizations in searching for replacement facilities; and

d. Reestablishment costs for small businesses, farms and nonprofit organizations.

### 6.2.2 Relocation planning at acquisition stage

*24 VAC 30-41-110.*

A. Prior to the initiation of negotiations the district relocation section will conduct a pre-acquisition survey of the project. The pre-acquisition survey is primarily a data gathering function to provide an inventory of relevant characteristics, circumstances and relocation needs of all residential and non-residential displacees. It should also include a survey of available comparable replacement housing and replacement sites.

B. The district relocation staff will conduct interviews with individuals, families, businesses, farms and nonprofit organizations within the proposed right of way. It is important that accurate and detailed information be obtained that fully reflects the housing needs of each potential displacee.

When the relocation agent visits the potential displacee, the agent should explain that VDOT is conducting a data-gathering survey and that the visit in no way should be construed as a notice to move, or qualification for any relocation benefits. The following points should be explained to the occupant at the time this contact is made:

1. The persons involved must be in occupancy of the subject property when VDOT makes the written offer for the parcel (unless a notice of Intent to Acquire is issued) to qualify for relocation payments; and

2. The potential displacee should not make any financial commitments concerning replacement housing at this time. The property has not yet been acquired and a premature move could result in disqualification for benefits they would otherwise receive.

C. The survey should include the following information for each displacement unit:

1. The name, home address, home and work telephone numbers of the displacee and the best time to call.

2. The number of people residing in the dwelling, indicating each person's gender, age, and social security numbers for all adults (an adult is anyone age 18 or older).

3. A description of all buildings on the property and a list of all rooms in the dwelling unit. If a mobile home is situated on the parcel, state the exterior dimensions.

4. Any disabilities of the occupants which could affect relocation needs.

5. A statement as to whether or not the dwelling meets decent, safe and sanitary standards. If the dwelling doesn't meet standards, an explanation should be included.

6. The type of displacee, (owner or tenant) and identification of the type of dwelling unit now occupied, (house, apartment, room or mobile home). If the displacee is a tenant, determine if the unit is furnished or unfurnished.

7. The gross family income from all sources including wages, interest, social security, welfare (excluding food stamps), disability payments and other untaxed income.

8. The date the family occupied the dwelling. Care should be exercised in completing this item as it establishes eligibility for various relocation benefits. For tenants, an outside source, owners' rental records, etc., should verify the date of occupancy. Conflicting information about occupancy status must be resolved if they affect eligibility. Rent paid and the cost and type of utilities included in the rent should be secured. Also, determine if a special tenant-landlord relationship exists (son-father, etc.) and determine if the tenant performs any services in lieu of rent.

9. If an owner-displacee has an outstanding mortgage, the monthly payment, interest rate, original amount, term, and the unpaid balance should be secured.

10. The displacee's replacement housing intentions and preferences (specific school district, location, etc.).

### 6.2.3 Public meetings and hearings

*24 VAC 30-41-120.*

A. General requirements.

The district office will present information on real estate acquisition and displacement impacts and relocation services and benefits, at public meetings and hearings. An opportunity will be provided for public comments and questions. Copies of the right of way brochure will be available at all public meetings and hearings and distributed to interested individuals and organizations upon request.

B. Corridor (location) public hearing.

The district office will present a summary of relocation program services, benefits and important qualification criteria, and a summary of the following relocation information compiled for the Relocation Assistance Report:

1. The estimated number of displacements of each classification that would be caused by each of the alignments under consideration;

2. The availability of relocation assistance and services, eligibility requirements and payment procedures.

3. A summary of the process and the methods that will be employed to assure that the housing needs of the displacees will be met.

C. Highway design or combined location and design public hearings.

A presentation including the following information will be made at all design or combined location and design public hearings for projects on which the displacement will occur:

1. That no person shall be displaced from a residence unless a comparable replacement dwelling is available.

2. The services available under VDOT's relocation assistance advisory program, the address and telephone number of the local relocation office and the name of the relocation agent in charge.

3. The estimated number of individuals, families, businesses, farms and nonprofit organizations to be displaced.

4. The estimated number of dwelling units presently available that meet replacement housing requirements.

5. An estimate of the time necessary for relocation and the number of dwelling units meeting the replacement housing requirements that will become available during that period.

6. VDOT's replacement housing program need not be recited in detail because the brochure adequately covers these topics and a reference to secure answers to specific questions has been provided. It is important to selectively present items of special importance, such as the need to be in occupancy at initiation of negotiations to be eligible for benefits.

## Section 3

*PART III of the Virginia Register*

## WRITTEN NOTICES

### 6.3.1 General

*24 VAC 30-41-130. (Virginia Register)*

Written notices must be furnished each displaced person to ensure full understanding of the benefits and services available. A copy of the notices referred to in 6.3.2 (24 VAC 30-41-140), 6.3.3 (24 VAC 30-41-150), and 6.3.4 (24 VAC 30-41-160) must be placed in the project files after delivery to each recipient.

### 6.3.2 Notice of intent to acquire

*24 VAC 30-41-140.*

A. The purpose of the notice of intent to acquire is to establish eligibility for relocation benefits prior to the initiation of negotiations for the parcel. It is utilized in exceptional circumstances to relieve hardship to displacees. It is primarily applicable to residential owners who are prevented from selling a home because of the knowledge in the area of an impending project. It is also applicable to tenants and to owners of unimproved property.

B. The Virginia Department of Transportation (VDOT) must determine that a hardship exists for the occupants of the property in order to utilize the notice of intent to acquire. Such hardship may arise from a change in employment requiring a move; illness or infirmity making it difficult to live in and maintain the occupied property; or financial inability to pay costs of ownership or rental.

C. When the notice of intent to acquire is furnished to an owner, it must also be furnished to any tenants within 15 days. When the notice is furnished a tenant, the owner must simultaneously be furnished with a copy of such notice.

D. The notice letter will include a statement of eligibility, the anticipated date of initiation of negotiations for the acquisition of the parcel and how additional information on relocation assistance benefits and services can be obtained.

E. The notice of intent to acquire will be issued only after authorization is received to initiate negotiations on the project, or authorization of acquisition of individual parcels solely for protective buying or because of hardship. When the notice is issued, every effort should be made to acquire the property as soon as possible, to prevent possible subsequent tenant occupancy and to minimize rental vacancy loss for the owner.

### 6.3.3 Notice of replacement housing payment

*24 VAC 30-41-150.*

A. Residential owners and tenant occupants will be advised in person or by certified mail of the amount of the maximum replacement housing payments for which they are eligible. This notice will also provide the specific comparable dwelling which was used as the basis for the purchase or rental supplement and which is referred to as available for occupancy.

B. When feasible the Replacement Housing Payment Notice should be delivered at the time of the initiation of negotiations for the parcel.

C. If the maximum purchase or rent supplement payment cannot be established prior to the initiation of negotiations due to unusual circumstances which exist, such as large household size, low family income, unusually large number of rooms in the existing dwelling, absence of available comparable dwellings, or any combination of these, the owners will be fully advised of the entitlement to benefits during the first negotiations contact. They will also be advised that they will not be required to move until at least 90 days after the date when comparable housing is offered and they are informed of the maximum replacement housing benefit amount for

which they are eligible. Tenants for whom payment amounts are not yet established will be similarly advised.

### 6.3.4 90-Day assurance notice

*24 VAC 30-41-160.*

A. The construction or development of a highway project must be scheduled so that to the greatest extent practicable assurance will be made that no person lawfully occupying real property will be required to move from a dwelling, business, farm or nonprofit organization for at least 90 days from the date the written offer for the property is made by the department.

B. A 90-day assurance notice will be issued when a written offer for the property is made. In the case of a residential displacee, the 90-day assurance notice will be issued on or after the date a written offer for the property and the replacement housing payment offer have been made. The 90-day assurance notice will state that the displaced person will not be required to move from a dwelling, business, farm or non-profit organization before 90 days from the date of the notice. The 90-day assurance notice will further state the displaced person will be given a specific date by which the property must be vacated in a final written notice to be issued at least 30 days in advance of the specific date.

C. The final written notice may be given to the displaced person at the time the department has legal possession of the property, provided the specific vacation date is at least 90 days after the date the written offer for the property was made and at least 30 days in advance of the date the property must be vacated. No final written notice will be required where a displaced person moves prior to the time such notice should be given. The file should indicate that the displaced person moved prior to the final notice being issued.

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**Section 4**

*PART IV of the Virginia Register*

**RELOCATION ADVISORY SERVICES**

### 6.4.1 General

*24 VAC 30-41-170. (Virginia Register)*

The relocation advisory services program will be carried out so that displacees will receive uniform and consistent services and payments regardless of race, color, religion, sex, or national origin. The services provided under this section are intended to assist displacees in relocating to decent, safe and sanitary housing that meets their needs. The services will be provided by personal contact. If personal contact cannot be made, the district office will document the file to show that reasonable efforts were made to achieve the personal contact.

Relocation advisory services shall be offered to:

1. Any displaced person as defined in 6.1.3 (24 VAC 30-41-30).

2. Any person occupying property immediately adjacent to the real property acquired when VDOT determines that such person or persons are caused substantial economic injury because of the acquisition.

3. Any person who, as a result of the project, moves, or moves personal property from real property not being acquired for the project.

### 6.4.2 Relocation offices

*24 VAC 30-41-180.*

A. The need for the establishment of a relocation office to service the displacees located on a project will be determined on a project-by-project basis by the district manager. The main

criteria for establishing a project office will be whether such an office would be efficient and responsive to displacee needs and an efficient use of staff resources. An adequate sign clearly visible to the public will identify all project site offices.

B. A local relocation office must be easily accessible to project area residents and business operators and shall be open during normal work hours and during evening hours when necessary to serve the project displacees. The office should be arranged so as to afford privacy during meetings with project residents and other persons having business at the office. At least one relocation agent will be assigned to the office with the primary responsibility of providing relocation assistance. The agent will be required to maintain regular contact with the project's displacees and be available for evening appointments at the convenience of the displacees.

The following information should be available:

1. Local ordinances pertaining to housing, building codes and open housing.

2. Consumer educational literature on housing, shelter costs and family budgeting.

3. Copy of VDOT's relocation brochure.

4. A current and continuing list of decent, safe and sanitary replacement dwellings, both for rent and for sale. The list will contain only fair and open housing available to persons without regard to race, color, religion, or national origin.

5. A similar list of commercial properties and locations for business.

6. Current data for such costs as security deposits for utilities, leases and closing costs, typical down payments, interest rates and terms, taxes, assessments, etc.

7. Maps showing location of schools, parks, playgrounds, shopping areas and appropriate public transportation routes, schedules and costs.

8. Any other important information of value to displacees.

### 6.4.3 Minimum advisory assistance service requirements

*24 VAC 30-41-190.*

A. Advisory assistance service will be provided by personal face to face contact with displacees whenever possible. Services will include measures, facilities or services necessary or appropriate to:

1. Determine the relocation needs, preferences and intentions of each person to be displaced.

2. Explain the relocation eligibility requirements and the procedures for obtaining such assistance. This will include a personal interview with each person. These actions are taken in the normal course of the pre-acquisition and negotiations phases.

3. Advise displacees that payments are not considered income for tax purposes.

4. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings. Explain that no one can be required to move unless a comparable replacement dwelling is available.

5. Inform the person of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of relocation payments. The basis for the determination should be explained.

6. Provide reasonable opportunity to minority persons to relocate to decent, safe and sanitary replacement dwellings, not located in areas of minority concentration, that are within their financial means. This policy, however, does not require VDOT to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

7. Offer all displacees, especially the elderly and disabled, transportation to inspect housing to which they are referred.

8. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial properties and locations for businesses.

9. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location. Obtain information pertaining to the business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

10. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available and such other help as may be appropriate.

11. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans and other similar programs administered by federal and state agencies.

12. Determine if a business has a need for outside specialist required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

13. For businesses, every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

14. Determine an estimate of the time required for the business to vacate the site and the anticipated difficulty in locating a replacement site.

15. Plan for any advance relocation payments required for the move and the required documentation to receive advance payments.

Advisory services will be offered on a basis commensurate with the displacee's needs. This may require only minimum assistance when displacees are involved who are well informed, mentally, physically and financially able to manage their displacement and who neither need nor desire VDOT's assistance. A much greater degree and intensity of services and assistance will be provided to those who are elderly, infirm, immobile or otherwise unable to cope with their displacement or economic problems.

B. The relocation agent must offer relocation assistance to every displacee. The displacee may specifically state that there is no need for assistance, other than providing payment offers and processing claims. Even then, the agent must make a subjective judgment as to the ability of the displacee to competently locate, acquire and occupy a decent, safe and sanitary replacement dwelling. If the relocation agent does not feel the displacee possesses the ability to relocate without help, the agent should make efforts to furnish assistance or refer other service providers having specialized knowledge, skills and programs.

C. The relocation agent will notify the displacee in writing of the availability of comparable replacement housing, even though the displacee may have no intention or desire to relocate into the specific dwelling units being referred. The relocation agent can fulfill this requirement by informing the displacee of the comparable replacement housing utilized in the supplemental evaluation and other lower priced comparables. The agent can then tailor continuing relocation efforts to locating replacement housing that meets the particular desires of the displacee.

D. The relocation agent should develop a multitude of sources for replacement housing. These sources will include, but are not limited to the following:

1. Real estate brokers and boards of realtors;
2. Multiple listing agencies;
3. Real estate developers;
4. Housing and Urban Development (HUD) and Veterans Administration (VA) area and region offices;
5. Builders and construction associations;
6. Real estate management firms;
7. Public housing agencies;
8. Newspaper advertisements;
9. Mobile home dealers; and

10. Banks and other lending institutions.

E. The relocation agent should maintain contact, exchange information and coordinate its relocation activities with other displacing agencies and with community organizations rendering services useful to displaced persons. Such agencies should include, but not be limited to: Social Welfare Agencies, Urban Renewal Agencies, Redevelopment Authorities, Federal Housing Administration, Veterans Administration, Small Business Administration, Farmer's Home Administration, Department of Community Affairs, Department of Housing and Urban Development and local Chambers of Commerce. Local private nonprofit housing service organizations and other community organizations should also be contacted and informed of general displacement activities and needs.

F. Once the displacee locates replacement housing, the agent should be sufficiently knowledgeable in real estate practices to guide the displacee through the procedures necessary to obtain this housing. It is not the responsibility of the agent to assume the role of the various real estate professions. The agent should however counsel the displacee concerning lease and purchase agreement provisions, security deposits, earnest money, mortgages and other forms of financing, closing costs and settlement procedures. The agent should advise the displacee to enter a decent, safe, and sanitary inspection clause in any lease or purchase agreement for replacement housing.

G. It is the duty of the agent to ensure that the displacee receives all payments and benefits to which the displacee is legally entitled. In order to facilitate the payment process, the agent shall assist the displacee in completing all required forms, as well as obtaining any necessary supporting documentation for the payment.

H. Immediately after each contact with the displacee, the agent shall enter on the contact record (Library Form RW-68A) a summary of topics discussed and conclusions or agreements reached. The record should indicate:

1. Date of the contact;

2. Person contacted;

3. Topics discussed;

4. Displacee's attitude and opinion;

5. Notation of available replacement housing offered, if any; and

6. Any other pertinent information obtained during the contact.

## Section 5

*PART V of the Virginia Register*

## MOVING COSTS - RESIDENTIAL MOVES

### 6.5.1 General

*24 VAC 30-41-200. (Virginia Register)*

A. A displaced individual or family is entitled to receive a payment for moving personal property. The displacee has the option of a payment based upon the actual reasonable moving expenses (commercial move or self-move), a fixed payment that is based on VDOT's room count schedule, or, in unusual circumstances, any combination of the above. An example of such a circumstance would be to have a commercial mover that will move the household items, but will not move certain personal property stored in a shed. The displacee can remove the items from the shed as a self-move.

B. The displacee is required to file a written application, Form RW-60A with VDOT and obtain approval prior to the date on which the move is to be accomplished. After the move has been completed, the displacee must complete and submit a relocation certification claim, Form RW-67A, within 18 months after the later of the following dates:

1. The date the displacee moves from the real property, or moves personal property from real property; or
2. The date of acquisition.

C. For relocation program purposes, a "family" is defined as two or more persons who share the same dwelling unit. Two or more occupants who share the same dwelling unit before displacement may relocate into separate units. If the move to separate units results from unavailability of units that will accommodate all persons, the occupants may each be reimbursed either on an actual cost basis or on a schedule move, which includes a dislocation allowance for each family. When the move into separate dwelling units is a voluntary decision

and a single comparable dwelling unit is available, they may be reimbursed on a prorated share of the estimated cost of a single move as determined by VDOT. Alternatively, schedule move payments will be based on the number of rooms actually occupied by each family plus community rooms utilized by each family.

### 6.5.2 Actual reasonable moving expenses

*24 VAC 30-41-210.*

A. Move performed by commercial mover.

1. If a displaced individual or family desires to have a move performed by a commercial mover, the assigned relocation agent will obtain bids or estimates from two reputable moving companies. VDOT may pay the cost of obtaining bids or estimates, if approved by the district manager. VDOT will retain the right to reject any and all bids. The agent will also assure that all bids or estimates received are based upon the same move specifications and personal property inventory. The maximum payment will be the amount of the lowest acceptable bid or estimate. Since the displaced individual or family has the right to engage the services of any company, VDOT will pay the amount of receipted bills, but not to exceed the amount of the approved low bid or estimate.

2. If the actual cost of the move exceeds the estimated amount, the excess amount may be paid, if sufficient documentation is presented with the claim and the district recommends payment.

3. The displacee may present an unpaid mover's bill, along with the moving cost claim form, to VDOT for direct payment to the mover.

B. Self-move. An actual cost move may be carried out by the displacee in a self-move for actual, reasonable, and necessary costs expended. The relocation staff should work with the displacee to determine an amount necessary to move the personal property. The displacee may be reimbursed for time spent in moving. The hourly rate of the displacee's time should be reasonable and should not exceed the rates paid to skilled packers and movers of local moving

firms. Receipts or other evidence of expenses are necessary for reimbursement. Displacees may not move themselves based on the cost of a commercial move.

C. Reimbursable costs include:

1. Transportation of personal property not to exceed 50 miles.

2. Transportation of persons up to 50 miles, at a mileage rate determined by VDOT, or actual reasonable cost. Special transportation, such as an ambulance for infirm displacees, may also be approved.

3. Packing, crating, unpacking and uncrating of the personal property.

4. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.

5. Storage of the personal property for a period not to exceed 12 months, unless the district office determines that a longer period is necessary. Storage costs cannot be paid if the storage site is a part of the acquired property or other property owned, leased or controlled by the displacee.

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

7. The replacement value of property lost, stolen or damaged in the process of moving (through no fault or negligence of the displaced person, or an agent or employee of the displaced person) when insurance covering such loss, theft or damage is not reasonably available.

D. The following costs are ineligible for reimbursement as residential move expenses:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

2. Interest on a loan to cover moving expenses;

3. Personal injury;

4. Expenses for searching for a replacement dwelling;

5. Additional expenses of living in a new location; and

6. Refundable security and utility deposits.

### 6.5.3 Moving expense schedule

*24 VAC 30-41-220.*

A. In lieu of a payment for actual costs, a displaced person or family who occupies the acquired dwelling may choose to be reimbursed for moving costs based on a moving expense schedule established by VDOT based on a room count. The schedule is revised periodically, based on a survey of movers, to reflect current costs. The schedule is used by all acquiring agencies throughout the state by agreement coordinated by the Federal Highway Administration.

The room count used will include occupied rooms within the dwelling unit plus personal property located in attics, unfinished basements, garages and outbuildings, or significant outdoor storage. Spaces included in the count must contain sufficient personal property as to constitute a room.

B. A person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or if the move is performed by VDOT at no cost to the person, shall be limited to $50.

C. The cost to move a retained dwelling, any other structure, or any item determined to be real estate prior to the move, is not a reimbursable moving cost. However, if an owner-occupant retains the dwelling, including a mobile home, and chooses to use it as a means of moving personal belongings and furnishings, the owner-occupant may receive a moving cost payment based upon the moving expense schedule.

D. A discussion of residential move reimbursement options is contained in the "Guidance Document for Determination of Certain Financial Benefits to Displacees" (effective November 21, 2001; Rev. July 1, 2006).

## Section 6

*PART VI of the Virginia Register*

## MOVING COSTS - BUSINESSES, FARMS AND NONPROFIT ORGANIZATIONS

### 6.6.1 General

*24 VAC 30-41-230. (Virginia Register)*

A. The operator of a displaced business, farm or nonprofit organization is entitled to receive payment for the following categories of actual costs associated with moving:

1. Moving costs for relocating all personal property including machinery, equipment and fixtures and disconnect/reconnect costs;
2. Search costs for a replacement location not to exceed $2,500; and
3. Reestablishment expenses not to exceed $25,000.

All moving expenses will be actual and reasonable. To assure this, the district office will monitor the process of conducting inventories, developing move specifications, securing commercial moving bids and estimates and observing the conduct of the move. Emphasis will be directed toward moves that are of a complicated nature or involve a substantial expenditure.

B. As an alternative to the actual cost reimbursement as explained above, the displaced business, farm or nonprofit organization that meets certain criteria may choose to receive a fixed payment in lieu of actual moving expenses not less than $1,000 or more than $75,000. The specific amount is based on the net income of the displaced business, farm or nonprofit organization.

The reimbursable actual moving expenses and the fixed payment in lieu of moving expenses are explained in detail in the remainder of this part.

C. The displaced business, farm, or nonprofit organization is required to file a written application, Form RW-60B with VDOT and obtain approval prior to the date on which the move

is to be accomplished. After the move has been completed, the displacee must complete and submit a relocation certification claim, Form RW-67B, within 18 months after the later of the following dates:

1. The date the displacee moves from the real property, or moves personal property from real property; or
2. The date of acquisition.

### 6.6.2 Certified inventory

*24 VAC 30-41-240.*

A. The owner of the displaced entity will prepare an inventory of the items to be actually moved. The inventory will be certified as true and correct as of a specific date by the person making it, as well as the owner of the business. The inventory will be provided to the district office along with the moving cost application, Library Form RW-60B.

B. The inventory will be checked against VDOT's approved appraisal for the real estate to preclude the possibility of paying to move items which have been classified as real estate. This inventory will also be furnished to all interested bidders in order to ensure that all bids are based on moving the same personal property.

In a complex or expensive move the assigned relocation agent will visually confirm the accuracy of the inventory as an element of monitoring the move.

### 6.6.3 Actual reasonable moving costs

*24 VAC 30-41-250.*

A. Eligible and ineligible moving costs.

The following items are eligible for reimbursement as moving costs if they are reasonable and are actually incurred during the moving process:

1. Transportation costs for moving the personal property. The transportation charges will normally be reimbursed for up to the first 50 miles of travel. When the move exceeds 50

miles, all estimates should be prepared based upon a move of 50 miles. Similarly, the mover's bill must be detailed to show transportation costs for the first 50 miles as well as the cost for the remainder of the distance. When VDOT determines that the business cannot be relocated within a 50-mile limit, reimbursement will be allowed to the nearest adequate and available site.

2. Packing, crating, unpacking and uncrating the personal property.

3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property. This includes connections to utilities available nearby. It also includes modification of the personal property necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.)

4. Storage costs not to exceed 12 months, including moving in and out of storage. Storage costs for a longer period may be approved if the district manager determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased or controlled by the displaced person are not eligible.

5. Insurance for replacement value due to the loss, theft or damage to the personal property in connection with the move and necessary storage. Where insurance is not reasonably available, the replacement value of property lost, stolen or damaged in the process of moving may be paid, unless the loss results from fault or negligence of the displaced person, their agent, or employee.

6. Any license, permit or certification required at the replacement location. The payment may be based on the remaining useful life of the existing permit, license or certification.

7. Professional services necessary for planning the move, moving and installing personal property at the replacement location. This can include the displacee's time, provided the claim is well documented.

8. The relettering of signs and the cost of replacing stationery on hand at the time of the move that are made obsolete by the acquisition.

9. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

10. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the district office a reasonable pre-approved hourly rate may be established.

11. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

12. Other moving related expenses that are not listed as ineligible in 6.6.3 (24 VAC 30-41-250) B as determined to be reasonable and necessary.

B. The following items are ineligible for reimbursement as moving costs:

1. Any additional expense incurred because of operating at a new location except as provided as a business reestablishment expense;

2. Cost of moving structures, improvements, or other items of realty retained by the owner;

3. Physical changes to the real property at the replacement location of a business, farm or nonprofit organization except as provided for in subsection A of this section and 6.6.9 (24 VAC 30-41-310);

4. Interest on loans to cover moving expenses;

5. Loss of goodwill;

6. Loss of trained or skilled employees, or both;

7. Loss of business or profits, or both; and

8. Personal injury.

### 6.6.4 Moves performed by a commercial mover

*24 VAC 30-41-260.*

The district office will secure two independent bids or estimates from reputable and qualified moving companies, which VDOT may pay for if necessary. The movers will be provided with the certified inventory of the personal property to be moved. Arrangements will be made for an inspection of the site from which property will be moved. Bids will be solicited with the understanding that VDOT has the right to reject any and all bids. It is incumbent upon the district office to see that all bids received are based on the certified inventory and move specifications. The maximum payment will be limited to the lowest acceptable bid. The displacee has the right to engage any moving company to accomplish the move, and VDOT will pay the amount for the move supported by receipted bills not to exceed the amount of the approved low bid.

### 6.6.5 Self-moves

*24 VAC 30-41-270.*

A. Businesses, farms and nonprofit organizations have the option of performing a self-move. When the district office can obtain two acceptable bids or estimates from qualified moving firms based on the certified inventory, the owner may be paid the actual reasonable moving cost, not to exceed the amount of the low bid.

B. If such bids or estimates cannot be obtained, the business may submit a bid based on the actual, reasonable, and necessary expenses for a self-move. Labor is to be charged at the actual rates paid by the business, but not to exceed the rate charged by local moving firms for the same services. Receipts or other evidence of expenses must be submitted before payment is made to support actual cost.

C. In the case of a low-cost, uncomplicated move, a moving cost finding, not to exceed $2,500, may be prepared by qualified district office staff.

D. It is possible to have a business move in which part of the move is a self-move and another part is a professional move.

### 6.6.6 Low value, high bulk personal property

*24 VAC 30-41-280.*

When personal property which is used in connection with the business to be moved is of low value and high bulk, such as firewood, sand, gravel, etc., and the estimated cost of moving would be disproportionate in relation to its value, the district office may negotiate with the owner for an amount not to exceed the lesser of:

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

However, the owner retains the right to have the property moved if desired.

### 6.6.7 Actual direct losses of tangible personal property

*24 VAC 30-41-290*.

A. Actual, direct losses of tangible personal property are allowed when a person who is displaced from a business, farm or nonprofit organization is entitled to relocate such property but elects not to do so. This may occur if an item of equipment is bulky and expensive to move, but is obsolete and the owner desires to replace it with a new item that performs the same function. Payments for actual, direct losses can be made only after an effort has been made by the owner to sell the item involved. When the item is sold, payment will be determined in accordance with subsection B or C of this section. If the item cannot be sold, the owner will be compensated in accordance with subsection D of this section. The sales prices and the cost of advertising and conducting the sale, must be supported by copies of bills, receipts, advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale.

B. If an item of personal property which is used in connection with the business is not moved but is replaced with a comparable item at the new location, the payment will be the lesser of:

1. The replacement cost minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds of sale where applicable; or

2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

C. If the item is not to be replaced in the reestablished business, the payment will be the lesser of:

1. The difference between the market value of the item in place for continued use at its location prior to displacement less its net proceeds of the sale; or

2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees" (effective November 21, 2001; Rev. July 1, 2006) for example.)

D. If a sale is not effected under subsection B or C of this section because no offer is received for the property and the property is abandoned, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the cost of the attempted sale, irrespective of the cost to VDOT of removing the item.

E. The owner will not be entitled to moving expenses or losses for the items involved if the property is abandoned with no effort being made to dispose of it by sale, or by removal at no cost. The district manager may allow exceptions to this requirement for good cause.

F. The cost of removal of personal property by VDOT will not be considered as an offsetting charge against other payments to the displaced person.

### 6.6.8 Searching expenses

*24 VAC 30-41-300.*

A. A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed $2,500, as VDOT determines to be reasonable, which are incurred in searching for a replacement location, and includes expenses for:

1. Transportation. A mileage rate determined by VDOT will apply to the use of an automobile.
2. Meals and lodging away from home.
3. Time spent searching, based on reasonable salary or earnings.
4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
5. Time spent in obtaining permits and attending zoning hearings; and
6. Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

B. Documentation for a move search claim will include expense receipts and logs of times, dates and locations related to the search. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees" (effective November 21, 2001; Rev July 1, 2006) for example.)

### 6.6.9 Reestablishment expenses

*24 VAC 30-41-310.*

A. A small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed $25,000, for expenses actually incurred in reestablishing operations at a replacement site. A small business, farm or nonprofit organization that elects a fixed payment in lieu of actual moving expenses is not eligible for a reestablishment expense payment.

B. Eligible expenses.

Reestablishment expenses must be reasonable and actually incurred. They may include the following items:

1. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance;

2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

3. Construction and installation costs for exterior signing to advertise the business;

4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;

5. Licenses, fees and permits when not paid as part of moving expenses;

6. Advertisement of replacement location;

7. Increased costs of operation during the first two years at the replacement site for such items as:

a. Lease or rental charges;

b. Personal or real property taxes;

c. Insurance premiums; and

d. Utility charges, excluding impact fees.

8. Other items that VDOT considers essential to the reestablishment of the business.

A discussion of business reestablishment costs is contained in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees" (effective November 21, 2001; Rev. July 1, 2006).

C. Ineligible expenses.

The following is a nonexclusive listing of ineligible reestablishment expenditures.

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation;

3. Interest on money borrowed to make the move or purchase the replacement property; and

4. Payment to a part-time business in the home which does not contribute materially to the household income.

### 6.6.10 Fixed payment in lieu of actual costs

*24 VAC 30-41-320.*

A. A displaced business, farm or nonprofit organization, meeting eligibility criteria may receive a fixed payment in lieu of a payment for actual moving and related expenses. The amount of this payment is equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than $1,000 nor more than $75,000.

B. Criteria for eligibility.

For an owner of a displaced business to be entitled to a payment in lieu of actual moving expenses, the district office must determine that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, it vacates or relocates from its displacement site.

2. The displaced business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless VDOT determines, for a stated reason, that it will not suffer a substantial loss of its existing patronage.

3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by VDOT and which are under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, any remaining business facility that did not contribute materially to the income of the displaced person during the two taxable years prior to displacement shall not be considered “other entity.”)

4. The business is not operated at displacement dwelling or site solely for the purpose of renting such dwelling or site to others.

5. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. However, VDOT may waive this test for good cause. A part-time individual or family occupation in the home that does not contribute materially to the displaced owner is not eligible.

C. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled;

3. The entities are held out to the public and to those customarily dealing with them, as one business; and

4. The same person, or closely related persons own, control, or manage the affairs of the entities.

The district office will make a decision after consideration of all the above items and so advise the displacee.

D. A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than $1,000 nor more than $75,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if VDOT determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

2. The partial acquisition caused a substantial change in the nature of the farm operation.

A displaced nonprofit organization may choose a fixed payment of $1,000 to $50,000 in lieu of the payments for actual moving and related expenses if VDOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless VDOT demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

Gross revenues for a nonprofit organization include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are for administrative support, such as rent, utilities, salaries, advertising and other like items, as well as fund raising expenses. Operating expenses are not included in administrative expenses.

E. Payment determination.

The term “average annual net earnings” means one-half of all net earnings of the business or farm before federal, state and local income taxes, during the two tax years immediately preceding the tax year in which the business or farm is relocated. If the two years immediately preceding displacement are not representative, VDOT may use a period that would be more representative. For instance, proposed construction may have caused recent outflow of business customers, resulting in a decline in net income for the business.

The term “average annual net earnings” include any compensation paid by the business to the owner, spouse, or dependents during the two-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their children shall be treated as one unit.

If the business, farm or nonprofit organization was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate.

F. Information to be provided by owner.

For the owner of a business, farm or nonprofit organization to be entitled to this payment, the owner must provide information to support the net earnings of the business, farm or nonprofit organization. State or federal tax returns for the tax years in question are the best source of this information. However, certified financial statements can be accepted as evidence of earnings. The tax returns furnished must either be signed and dated or accompanied by a certification from the business owner that the returns being furnished reflect the actual income of the business as reported to the Internal Revenue Service or the State Department of Taxation for the periods in question. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of $1,000.

A more complete discussion of this benefit is contained in the "Guidance Document for Determination of Certain Financial Benefits for Displacees" (effective November 21, 2001; Rev. July 1, 2006).

**Section 7**

*PART VII of the Virginia Register*

**GENERAL PROVISIONS FOR REPLACEMENT HOUSING PAYMENTS**

### 6.7.1 General

*24 VAC 30-41-330. (Virginia Register)*

Individuals and families displaced from a dwelling are eligible for purchase or rental supplement payments in accordance with the provisions of this part. The purpose of the purchase or rental supplement is to enable the displaced household to relocate to decent, safe and sanitary replacement housing that is within financial means. The specific type of payment will depend on the status as owner or tenant and length of occupancy at the displacement dwelling. There are also conditions for payment including the requirement that the displacee occupy replacement housing that meets decent, safe and sanitary standards and submit a claim within the required period. The key terms used in this part are defined as follows:

"Incidental expenses" mean closing and other costs incidental to the purchase of a replacement dwelling.

"Increased interest payment" means the amount which will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

"Purchase supplement payment" means the amount which, when added to the acquisition value, equals the cost of comparable replacement housing.

"Rent supplement payment" means the amount which equals 42 times the difference between base monthly rental of a displacement dwelling and the monthly rent of a comparable dwelling.

"Replacement housing payment" means the total of the amounts established for a displacee under the definitions listed in this section.

### 6.7.2 Fully eligible occupants

*24 VAC 30-41-340.*

A. A fully eligible owner-occupant of 180 days or more may receive either a purchase supplement payment plus increased mortgage interest costs and incidental costs not to exceed $22,500 or a rent supplement not to exceed $5,250.

A fully eligible owner-occupant of between 90 and 180 days or a tenant-occupant of at least 90 days may receive either a down payment supplement including closing costs, not to exceed $5,250 or a rent supplement, not to exceed $5,250.

B. The above limits of $22,500 and $5,250 do not apply if a displacee's circumstances with regard to available replacement housing require the use of Last Resort Housing provisions. It is VDOT's obligation to enable the displacee to relocate to comparable replacement housing while retaining original status as either an owner or a tenant. This obligation overrides any monetary limit, which would otherwise apply. Refer to Section 11 (24 VAC 30-41-650 et seq.) for last resort housing provisions.

### 6.7.3 Partially eligible occupants

*24 VAC 30-41-350.*

A person who occupies a dwelling prior to its acquisition by VDOT, but who did not occupy it long enough (90 days) to gain full eligibility, may still qualify for a last resort housing rent supplement when a comparable rental is not available within their financial means.

When length of occupancy places a person in this category, a rent supplement computation using the base rent must be computed and offered. Regardless of the amount, an offer under these circumstances must be documented using last resort housing procedures (see 6.11.2 (24 VAC 30-41-660).

### 6.7.4 Requirements to receive payment

*24 VAC 30-41-360.*

A. In addition to length of occupancy provisions, the displaced person must occupy a decent, safe and sanitary dwelling, as defined in 6.1.3 (24 VAC 30-41-30), within one year, beginning on the following dates:

1. Owner-occupant of 180 days or more. The date on which the owner received payment of the entire consideration for the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the certificate was filed and the amount set forth in the certificate was made available for the benefit of the owner.

2. Tenant-occupant of 90 days or more. The date on which the move occurs. An occupancy affidavit (Form RW-62C) shall be secured as evidence of occupancy.

A displaced person who cannot occupy the replacement dwelling within the one-year time period because of construction delays beyond reasonable control, will be considered to have purchased and occupied the dwelling as of the date of the contract to purchase. The replacement housing payment under these conditions may be deferred until replacement housing is actually occupied.

B. Upon relocating, the displacee must properly complete the appropriate application, Library Form RW-65A(1), RW-65B(1), or RW-65C(1) to receive a replacement housing payment and submit them to the district manager. The application must be filed no later than six months after the expiration of the one-year period specified in subdivisions A 1 and A 2 of this section. In condemnation cases the one-year period is extended to six months after final adjudication. The district office must stamp the application to show the date of its receipt. Where husband and wife both hold title to the property, or there is more than one owner-occupant, each owner must sign the application for payment. In the case of tenant-occupants, each must sign the application for payment.

C. The payment may be made directly to the displaced persons whose names are on the application for payment. On written instruction from a tenant-displacee, payment may be made to the lessor for rent. For an owner, payment may be made to the seller or lending agency at

closing on the replacement property. If payment is made at closing, it will be personally delivered by a district office employee who will remain present to assure that the full purchase supplement amount is credited to the purchase of the replacement dwelling. If this is performed, the occupancy requirement will be considered met at the completion of closing, providing an occupancy agreement has been signed.

### 6.7.5 Inspection for decent, safe and sanitary housing

*24 VAC 30-41-370.*

Before submitting the displacee's claim for payment, a district relocation agent must inspect the replacement dwelling and determine that it meets the standards for decent, safe and sanitary housing. This inspection is to be made to the extent necessary to obtain the information to accurately complete Library Form RW-69B. A copy of Library Form RW-68A showing the dates and substance of all contacts with the displacee must accompany this completed form. This inspection is made solely for the purpose of determining the eligibility of relocated individuals and families for payment under this section and is not a representation for any other purpose.

### 6.7.6 Multiple occupancy of same dwelling unit

*24 VAC 30-41-380.*

A. If eligible multiple occupants occupy the same dwelling unit, they will be considered to constitute a family for relocation purpose if a comparable replacement dwelling is available. The occupants are entitled to only one replacement housing or rent supplement payment. If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each occupant will be based on housing which is comparable to the quarters privately occupied by each occupant plus community rooms which have been shared with other occupants.

B. When all individuals displaced from one dwelling do not relocate into decent, safe and sanitary housing, those individuals who do relocate into decent, safe and sanitary housing will be paid the pro rata share of the appropriate payment they would have received if all

individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

C. If eligible multiple occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by VDOT, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling.

D. If VDOT determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

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## Section 8

*PART VIII of the Virginia Register*

## REPLACEMENT HOUSING PAYMENTS FOR OWNER-OCCUPANTS FOR 180 DAYS OR MORE

### 6.8.1 General

*24 VAC 30-41-390. (Virginia Register)*

A displaced owner-occupant of a dwelling may receive a replacement housing payment, the elements of which will not exceed $22,500 except when last resort housing has been authorized. The elements included in the replacement housing payment are: additional costs necessary to purchase replacement housing (purchase supplement); compensation to the owner for the increased interest cost and other debt service costs which are incurred in connection with a mortgage or mortgages on the replacement dwelling; and reimbursement to the owner for expenses incidental to the purchase of replacement housing when such costs are incurred as specified by the provisions of this chapter.

The purchase supplement is the amount, if any, which when added to the amount for which VDOT acquired the dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary dwelling or, if lesser, the amount determined by VDOT as necessary to purchase a comparable decent, safe and sanitary dwelling.

### 6.8.2 Eligibility

*24 VAC 30-41-400.*

An owner-occupant is entitled to a replacement housing payment when:

1. The owner is in occupancy at the initiation of negotiations for the acquisition of the property, or is in occupancy at the time a written notice of intent to acquire is delivered by VDOT;

2. Such ownership and occupancy has been for at least 180 consecutive days immediately prior to the earlier of the initiation of negotiations, or the date of vacation if a notice of intent to acquire has been issued;

3. Purchase and occupancy of a decent, safe and sanitary dwelling has occurred within the specified time period; and

4. If otherwise eligible, the owner-occupant can receive these payments if the move was a result of the initiation of negotiations, even though VDOT did not acquire the property.

### 6.8.3 Purchase of replacement dwelling

*24 VAC 30-41-410.*

A. For the purpose of this section, a displaced person "purchases" a dwelling when:

1. An existing decent, safe and sanitary dwelling is acquired.

2. A life estate in a retirement home is purchased. The actual cost will be entrance fee plus any other monetary commitments to the home, except periodic service charges may not be considered. The replacement housing payment is limited to the reasonable cost of purchasing a comparable replacement dwelling less the acquisition cost of the acquired dwelling.

3. A dwelling previously owned or acquired is relocated or rehabilitated, or both. The basis for determining the purchase supplement will be the current value of the dwelling at the time of relocation.

4. Construction is completed or contracts have been executed for the construction of a new dwelling on a site owned or acquired. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling comparable to the one acquired. The costs of adding new features that clearly exceed comparable features in the displacement dwelling are not eligible for reimbursement. Eligible costs of the site will be limited to the current residential fair market value of the replacement site rather than what the displaced person actually paid for it.

5. Any person who has obtained legal ownership of a replacement dwelling or land upon which the replacement dwelling is located, constructed or relocated to, either before or after displacement and occupies the replacement dwelling after being displaced, but within the time limit specified in 6.7.4 (24 VAC 30-41-360) is eligible for a replacement housing payment if the replacement dwelling meets the decent, safe and sanitary standards. The current fair market value of land and dwelling will constitute the "actual cost" in the replacement housing determination.

B. When the replacement dwelling has decent, safe and sanitary deficiencies, the cost to correct such deficiencies may be added to the current fair market value of a previously owned dwelling, or the purchase price of the acquired replacement dwelling.

### 6.8.4 Advance replacement housing payments in condemnation cases

*24 VAC 30-41-420.*

An advance replacement housing payment may be paid to a property owner if the payment of the acquisition price for the displacement dwelling is delayed pending the outcome of condemnation proceedings. A provisional replacement housing payment may be determined by using the amount of the Certificate as the acquisition price.

Payment can be made upon the owner-occupant signing the agreement included on Library Form RW-65A(1) that:

1. Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court.

2. If the amount awarded by the court for the value of the residential unit exceeds the Certificate amount, the displacee will make a refund for any excess replacement housing payment resulting from the court judgment. The difference in the replacement housing payment will be deducted from the court award before final payment is made. However, in no event will the refund be more than the amount of the replacement housing payment advanced. If the property owner fails to execute the Provisional Replacement Housing

Payment Clause on Library Form RW-65A, the replacement housing payment will be deferred until the case is adjudicated.

### 6.8.5 Purchase supplement payment computation

*24 VAC 30-41-430.*

A. Method.

1. The probable selling price of a comparable dwelling will be determined by the district office by analyzing at least three dwellings from the inventory of available housing, Library Form RW-69B, which are available on the private market and which meet the criteria of a comparable replacement dwelling. Less than three comparables may be used for this determination when fewer comparable dwellings are available. The relocation agent performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than one comparable. One comparable, from among those evaluated and considered, will be selected as the basis for the purchase supplement determination. The selection will be made by careful consideration of all factors in the dwellings being considered which affect the needs of the displacee with reference to the elements in the definition of comparable replacement housing.

Refer to the "Guidance Document for Determination of Certain Financial Benefits for Displacees" (effective November 21, 2001; Rev. July 1, 2006) for a step-by-step summary of the determination process, and an example of the purchase supplement payment computation.

2. If comparable decent, safe and sanitary housing cannot be located, after a diligent search of the market, available non-decent, safe and sanitary replacement dwellings may be used as the basis for the maximum amount of the purchase supplement. In these cases, the maximum payment will be established by obtaining cost estimates from persons qualified to correct the decent, safe and sanitary deficiencies and adding this amount to the probable selling price of the available replacement housing.

A displacee will not be required to vacate the displacement dwelling until decent, safe and sanitary housing has been made available.

B. Major exterior attributes.

When the dwelling selected in computing the payment is similar, except it lacks major exterior attributes present at the displacement property such as a garage, outbuilding, swimming pool, etc., the appraised value of such items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the payment. No exterior attributes are to be added to the comparable. However, the added cost of actually building an exterior attribute at the replacement property occupied, may be added to the acquisition cost provided major exterior attributes having the same function are found in the displacement property and in the comparable used to determine the maximum payment.

The following calculation shows how a purchase supplement is determined when a major exterior attribute is present:

| Example<br>Major Exterior Attribute (swimming pool) | |
|---|---|
| The appraiser assigned $5,000 contributing value for the pool, and a total property value of $100,000. A comparable house, not having a pool, is listed for sale at $105,000. After a 3% adjustment, a probable selling price of $101,850 is determined for the comparable property. The purchase supplement amount is computed below: | |
| Comparable Dwelling (adjusted) | $101,850 |
| Less: | |
| Displacement property value | $100,000 |
| Less value of the pool | $ 5,000 |
| Adjusted displacement property value | $ 95,000 |
| Purchase Supplement Amount | $ 6,850 |

C. Comparable housing not available.

1. In the absence of available comparable housing upon which to compute the maximum replacement housing payment, the district office may establish the estimated selling price of a new comparable decent, safe and sanitary dwelling on a typical home site. To accomplish this, the district office will contact at least two reputable home builders for the purpose of obtaining firm commitments for the cost of building a comparable dwelling on a typical home site.

2. If the only housing available greatly exceeds comparable standards, a payment determination may be based on estimated construction cost of a new dwelling which meets, but does not exceed, comparable standards.

### 6.8.6 Highest and best use other than residential

*24 VAC 30-41-440.*

When the acquired dwelling is located on a site where the fair market value is established on a use higher and better than residential, the purchase supplement maximum amount will be determined by deducting the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for the area from the probable selling price of the most comparable listing. The following calculation shows how this amount is determined:

| Example<br>Acquired Dwelling on Commercial Zoned Site | |
|---|---|
| The acquired house (whole take) is on a five-acre site zoned commercial. The typical residential lot in the area is one acre. The land is appraised at $50,000/acre and the dwelling is valued at $10,000 as an interim use.<br>A comparable house on a residentially zoned lot is available for $70,000 (after adjustment). The maximum purchase supplement amount is determined below: | |
| Comparable property | $70,000 |
| LESS: Value of the house acquired on one acre | $60,000 |
| Maximum Purchase Supplement Amount | $10,000 |

### 6.8.7 Mixed-use properties

*24 VAC 30-41-450.*

A. When the acquired dwelling unit is part of a structure which also includes space used for nonresidential purposes, the amount of the purchase supplement offer will be determined by using only that part of the fair market value that is attributable to the residential use of the acquired property. The following calculation shows how this amount is determined:

| Example<br>Displacement Property in Residential and Commercial Use | | |
|---|---|---|
| A grocery store owner lives in a two-bedroom, one-bath apartment above the store. The residential unit has 1,200 sq. ft. of habitable living space. The property is appraised at $150,000. The appraiser allocated 40% of total property value to the residence.<br><br>There are several two-bedroom, one-bath units available for sale. They are: (i) a duplex with two identical units - $125,000; (ii) a single-family house - $75,000; (iii) a condo unit in a sixplex - $50,000. | | |
| Most comparable property: a) duplex unit. | Value | $62,500 |
| LESS: Displacement dwelling. | Value | $60,000 |
| Maximum Purchase Supplement Amount | | $ 2,500 |

When the replacement property is a structure which includes space used for nonresidential purposes, only that part of the total cost that relates to the value of the owner's living unit will be used when determining the purchase supplement payment.

B. When the replacement property contains buildings other than the residence which are used for nonresidential purposes, the value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value. The residential use value will represent the amount paid for replacement housing when determining the purchase supplement payment amount. The following calculation shows how this amount is determined:

| Example<br>Displacee Purchases Mixed Use Replacement Property |
|---|
| A family displaced from a single-family house (acquisition value $80,000, purchase supplement $10,000) contracts to purchase an operating chicken farm for $250,000. They will live in the farmhouse, which has an estimated value separate from the farm of $85,000. The displaced family submits a claim for the full $10,000 maximum purchase supplement amount. |
| The family is eligible to receive $5,000, not $10,000, as a Purchase Supplement Payment.<br><br>Before processing the claim for payment, the district office must determine the value of the farmhouse on a lot normal for residential use in the area. This will determine the payment ceiling. The part of the purchase price attributable to the farm operation ($165,000) is not to be considered in the claim. This should have been explained to the displaced family members before they search for replacement property. |

C. When the acquired property consists of a multi-family structure of which one unit is owner-occupied, the amount of the supplemental offer will be the difference between the value of one unit of a multi-family comparable and the value of the owner occupied residential-use portion of the acquired property. When the replacement property is a multi-family structure, only the value of the owner's living unit can be used to determine the supplemental payment, not the entire purchase price. The purchase supplement amount will be the price of one unit of a multi-family comparable or the price of one unit of a multi-family replacement, whichever is less, minus the residential use portion of the acquired property.

The following calculation shows how this amount is determined:

| Example<br>Owner Displaced from Condominium Unit |
|---|
| The acquired dwelling is a condominium unit in a building containing three stores and six residential units. The appraised value of the building is $1 million. The value of the displacee's unit is $120,000. |
| The purchase supplement is the cost of a comparable condo unit in a similarly configured building having residential and commercial units, less the $120,000 attributed to the displacement unit. |

There may not be a condominium unit on the market in a mixed use, six residential unit building. Look for units in buildings having five, four, three, or two units. Use the "most comparable" unit considering the ownership form and configuration of units, as well as other factors.

### 6.8.8 Partial take of a typical residential site

*24 VAC 30-41-460.*

A. Remaining buildable site.

If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential site, VDOT will offer to purchase the entire property. If the owner refuses to sell the remainder which is a buildable site to VDOT, the fair market value of the remainder will be added to the acquisition cost of the acquired property for the purposes of computing the maximum purchase supplement payment.

B. Remaining uneconomic remnant.

If the owner refuses to sell the residue that is an uneconomic remnant to VDOT, the value of the take and damages to the remainder will be used in computing the replacement housing payment.

C. Larger tract than normal.

If the acquired property is a dwelling on a significantly larger site than typical for residential use in the area, the maximum replacement housing payment is the asking price of a comparable replacement dwelling on a tract typical in size for residential use, less the acquisition price of the acquired dwelling and the portion of the site which represents a typical size residential lot in the area. The following calculation shows how this amount is determined:

| Example<br>Partial Take From Larger than Typical Residential Site | |
|---|---|
| The displacement dwelling is on a five-acre site. One-acre lots are typical in the area. The house and three acres are being acquired. Appraised value: $125,000 (no remainder damage). The appraiser valued land at $5,000/acre. A comparable house on one acre is available. It is estimated it will sell for $120,000 (adjusted listing price). | |
| Comparable property | $120,000 |
| LESS: Displacement property* | $115,000 |
| Maximum Purchase Supplement Amount | $ 5,000 |
| * $10,000 value of two acres of acquisition area excess to typical lot has been deducted. | |

### 6.8.9 Payment to occupant with a partial ownership

*24 VAC 30-41-470.*

A. When a displacement dwelling is owned by several persons and occupied by only some of the owners, the replacement housing payment will be the lesser of:

1. The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement; or,

2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by the district as necessary to purchase a comparable dwelling.

Generally, the circumstance of partial owner occupants arises when the ownership comes from a family inheritance, where one or more, but not all the heirs, occupy the property.

B. If the displaced partial owner-occupants rent rather than purchase a replacement dwelling, they will be entitled to receive a rent supplement payment if they rent and occupy a decent, safe and sanitary dwelling in accordance with the provisions of 6.8.13 (24 VAC 30-41-510) of this chapter.

C. If unusual circumstances would create an unintended hardship on the occupants with a partial ownership, the full facts along with a recommended solution are to be submitted to the central office for consideration.

### 6.8.10 Revisions to replacement housing amount

*24 VAC 30-41-480.*

Housing must be offered which is available for purchase within the offered amount. When comparable housing is no longer available within the amount initially established, the district office will review the housing market and establish a revised replacement housing amount. In no event will a purchase supplement amount previously offered be reduced as the result of this review.

### 6.8.11 Increased interest payments

*24 VAC 30-41-490.*

A. General. Increased interest payments are provided to compensate a displaced person for higher increased interest costs required for financing a replacement dwelling. The increased interest payment will be allowed only when the dwelling acquired by VDOT was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days before the established eligibility date under Section 7 (24 VAC 30-41-330 et seq.) (usually date of initial offer to purchase). All bona fide mortgages on the dwelling acquired by VDOT will be used to compute the increased interest portion of the replacement housing payment. Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less. When the property is secured with an adjustable rate mortgage, the mortgage interest rate that is current on the property as of the date of acquisition will be used in the computation. The displaced person will be advised of the approximate amount of this payment as soon as the facts relative

to the person's current mortgages are known. The payment will be made at the time of closing on the replacement dwelling, so that the new mortgage can be reduced.

B. Payment computation. The computation of the payment for increased interest costs will be the amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage or mortgages on the displacement dwelling. The amount of the increased interest payment will be computed by the district office, utilizing Library Form RW-66, based on:

1. The unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly.

2. The remaining term of the mortgage or mortgages on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3. The interest rate on the new mortgage which shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

C. To whom payment is made. The increased interest amount can be paid to the displaced individual or family. On written instruction from the displacee, it can be paid to the mortgagee of the replacement dwelling. Upon specific request, VDOT can make an advance payment into escrow prior to the displacee moving.

The following calculation shows how this increased interest cost is determined:

| Example<br>Increased Mortgage Interest Payment | |
|---|---|
| FACTS: | |
| 1. Outstanding balance – acquired dwelling mortgage | $43,210 |
| 2. Outstanding balance – replacement | $47,000 |
| 3. Remaining term, in months, acquired dwelling mortgage | 212 |

| | |
|---|---|
| 4. Term, in months, replacement dwelling mortgage | 360 |
| 5. Interest rate – acquired dwelling mortgage | 7.5% |
| 6. Interest rate – replacement mortgage | 8.0% |
| DETERMINATION: | |
| 1. Monthly payment required to amortize a loan of $43,210 in 212 months at an annual rate of 7-1/2% | $368.38 |
| 2. Amount of reduced loan having a monthly payment of $368.38 for 212 months at interest rate of 8% | $41,749 |
| 3. Increased Mortgage Interest Payment: $43,210 - $41,749 | $1,462 |

D. Partial acquisition.

1. When the displacement or the replacement dwelling is located on a tract larger than normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the respective acquisition price bears to the value of the part of the property normal for residential use property, except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

2. Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance will be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction will apply whether or not it is required that the entire mortgage balance be paid.

E. Multi-use properties.

The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

F. Other highest and best use.

If the dwelling is located on a tract where the fair market value is established on a higher and better use than residential and if the mortgage is based on residential value, the interest

payment will be computed as provided in the appropriate sub-section above. If the mortgage is obviously based on the higher use, however, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

### 6.8.12 Incidental expenses (closing costs incurred in purchase of replacement dwelling)

*24 VAC 30-41-500.*

The incidental expenses payment is the amount necessary to reimburse the homeowner for the reasonable costs actually incurred incidental to the purchase of the replacement dwelling, but not for prepaid expenses such as prepaid real estate taxes, fire insurance, etc. Such costs include the following items if normally paid by the buyer:

1. Legal, closing and related costs, including those for title search and mortgage insurance, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

2. Lender, Federal Housing Administration (FHA) or Veterans Administration (VA) appraisal fees;

3. FHA or VA application fee;

4. Professional home inspection or certification of structural soundness;

5. Credit report;

6. Owner's and mortgagee's evidence of title, e.g., title insurance, (not to exceed the cost for the comparable replacement dwelling);

7. Escrow agent's fee;

8. State and local revenue or documentary stamps, sales or transfer taxes charged to record deed (not to exceed the costs for a comparable replacement dwelling);

9. Loan origination or assumption fees that do not represent prepaid interest;

10. Purchaser's points, but not seller's points, normal to similar real estate transactions; and

11. Such other costs as VDOT determines to be incidental to the purchase.

No fee, cost, charge or expense is reimbursable as an incidental expense when it is determined to be part of the debt service or finance charge under the Truth in Lending Act. Except when the replacement housing amount is paid into escrow, the combined total of the payments under this section will be claimed and paid in a lump sum.

### 6.8.13 Owner-occupant for 180 days or more who rents

*24 VAC 30-41-510.*

A. An owner-occupant eligible for a replacement housing payment under this section who elects to rent a replacement dwelling is eligible for a rental replacement housing payment. The amount of a rent supplement will not exceed the amount the displaced family would have received had the family purchased replacement housing.

B. The payment is to be computed and disbursed in accordance with the provisions of 6.9.1 (24 VAC 30-41-520), except that the present rental rate for the displacement dwelling will be the economic rent.

C. An owner-displacee retains eligibility for a replacement housing payment if replacement housing is purchased and occupied within one year after the date of final payment is received for the acquired property. Further, eligibility to submit a claim for relocation benefits extends for 18 months from the date of final payment for the acquired property. An owner who initially rents replacement housing may later purchase and qualify for a replacement housing payment. The total amount of the rent and the purchase supplements, however, will not exceed the amount that would have been received if the displacee had initially purchased replacement housing.

## Section 9

*PART IX of the Virginia Register*

## REPLACEMENT HOUSING BENEFITS FOR TENANTS, AND OWNERS WHO CHOOSE TO RENT REPLACEMENT HOUSING

### 6.9.1 General

*24 VAC 30-41-520. (Virginia Register)*

A. A residential tenant who was in occupancy at the displacement dwelling for 90 days or more before the initiation of negotiations for the property is eligible to receive a rent supplement to provide for relocation to comparable replacement housing. An owner-displacee who was in occupancy from 90 - 179 days before the initiation of negotiations is eligible for the same benefits as the tenant-displacee of 90+ days.

B. A displaced owner or tenant eligible under this category can receive a replacement housing payment not to exceed $5,250 to rent a decent, safe and sanitary replacement dwelling. A tenant may be eligible for a down payment supplement up to $5,250. The monetary limit of $5,250 for a rental replacement housing payment, or a down payment supplement, does not apply if provisions of Last Resort Housing are applicable (see Section 11 (24 VAC 30-41-650 et seq.)).

C. A discussion of rent supplement determination is found in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees" (effective November 21, 2001; Rev. July 1, 2006).

### 6.9.2 Payment computation

*24 VAC 30-41-530.*

A. The rental replacement housing determination is 42 times the amount obtained by subtracting the base monthly rental including utilities (heat, electric, water and sewer) for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling as defined in 6.1.3 (24 VAC 30-41-30); or

2. The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.

B. The district office will determine the rental rates of comparable housing by use of the three comparable methods (6.8.5 (24 VAC 30-41-430)), except with regard to the adjustment of asking price. Less than three comparables may be used for this determination when it is concluded, after a diligent search, that fewer comparable rental units are available. If the determination is based on fewer than three comparables, the project file will be documented as to the efforts to locate comparable housing.

C. The base monthly rental for the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities at the displacement dwelling during the last three months. For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent unless its use would result in a hardship because of the person's income or other circumstances; or

2. Thirty percent of the average gross household income from all sources if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development (HUD). Income must be supported by tax documents, employer verification, etc. If the district manager determines that income is not disclosed or the amount is not adequately supported, the benefit will be based on rent and utilities in subdivision 1 of this subsection.; or

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

D. Utility costs of heat, electricity, water and sewer must be included in both the displacement and selected comparable rent. Reasonable efforts should be made to secure accurate information. The displacee's utility bills or a statement from the utility company is best. If actual

costs are not available, a reasonable estimate should be made based on size and type of unit and other factors. The basis for the utility estimate should be documented in the project file.

E. If the displacee receives public assistance that allocates an amount for housing costs and the displacee has been informed of such allocation, the payment will be considered within the individual's financial means and the rent supplement will be computed in accordance with this section.

### 6.9.3 Disbursement of rental replacement housing payment

*24 VAC 30-41-540.*

The rental payment, in the amount of $5,250 or less, as determined in 6.9.2 (24 VAC 30-41-530) shall be paid in a lump sum, unless the district manager determines that it should be paid in installments.

### 6.9.4 $5,250 limit on offers

*24 VAC 30-41-550.*

A rent supplement payment offer is limited to $5,250 under normal program authority. VDOT has an overriding responsibility, however, to enable tenant displacees to rent replacement housing within their financial means. See 6.1.3 (24 VAC 30-41-30) for the definition of "financial means." If the payment computation exceeds $5,250, last resort housing provisions are applicable. See Section 11 (24 VAC 30-41-650 et seq.) for last resort housing provisions.

### 6.9.5 Change of occupancy

*24 VAC 30-41-560.*

If a tenant, after moving to a decent, safe and sanitary dwelling, relocates within the one-year period specified in 6.7.4 (24 VAC 30-41-360) to a higher cost rental unit, another claim may be presented for the amount in excess of that amount which was originally claimed, but not to exceed the total rent supplement originally computed.

### 6.9.6 Down payment benefit - 90-day tenants

*24 VAC 30-41-570.*

A. A displaced tenant eligible for a rental replacement housing payment who elects to purchase a replacement dwelling in lieu of accepting such rental assistance payment may elect to apply the entire computed payment to the purchase of a replacement dwelling. This payment may be increased to any amount, not to exceed $5,250, for the purchase of a replacement dwelling and related incidental expenses.

B. VDOT has a responsibility to enable a displacee to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made through advisory assistance and the down payment benefit to assist a tenant to move to ownership, but the achievement of ownership by tenants is not a program requirement.

### 6.9.7 Section 8 Housing Assistance Program for low income families

*24 VAC 30-41-580.*

A. Program features.

1. Section 8 is a rent subsidy program funded by the U.S. Department of Housing and Urban Development (HUD), to enable low-income families to rent privately owned decent, safe and sanitary housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between 30% of an eligible tenant's adjusted gross household income, and reasonable housing rent as determined under program rules.

   There are three types of Section 8 housing:

   a. A certificate based on the income of the recipient and the rent paid;

   b. A voucher, which pays a specific amount toward the recipient’s rent; and

   c. Market rehab unit.

The first two program types are portable, meaning the benefit moves with the recipient. The market rehab form stays with the housing facility.

2. Section 8 assistance has a feature that is superior to the relocation rent supplement in that it is not limited to 42 months, but continues as long as the recipient household is income eligible. The district office should make every effort to relocate existing Section 8 recipients to units in which their Section 8 benefits will continue. If a normal relocation rent supplement is paid, the local housing agency may consider this income, and disqualify the displaced household from eligibility for Section 8. It may be difficult to reenter the program, as there is usually a long waiting list. The district office should closely coordinate with the administering local housing agency.

B. Replacement housing payment computation.

In order to transfer Section 8 benefits the recipient must relocate to a decent, safe and sanitary unit in which the owner agrees to participate in this program. Local housing agencies generally maintain current lists of participating owners and properties.

The criteria below will apply, corresponding to the type of Section 8 program the displacee is receiving:

1. For the certificate program, rent must be less than the ceiling set as fair market rent in the HUD schedule for the local area. Housing agencies will provide a copy of the current HUD established local schedule.

2. For a recipient in the voucher program Section 8 will pay up to the housing authority approved payment standard for the area. This is usually 80-100% of the fair market rent in subdivision 1 of this subsection. The recipient may pay the landlord the difference if actual rent is higher than the standard.

3. Market rehab Section 8 recipients may remain in Section 8 on concurrence of the local housing agency and the landlord.

In determining the rent supplement amount, assume utility costs are the same as before relocation. An effort should be made to use comparable dwellings meeting Section 8 criteria. The standard of base monthly rent should be used, which is the lower of the following: existing rent before subsidy, market rent, or 30% of income. Under the Section 8 certificate program, rent paid should be the same as 30% of income. However, this will not always be the case in the Voucher program. An example is provided below:

Example
Rent Supplement – Section 8 Voucher Program

FACTS BEFORE RELOCATION:

| | |
|---|---|
| Displacee household income | $1,000/month |
| 30% of income | $ 300/month |
| Fair market rent and contract rent | $ 550/month |
| Actual rent paid (Section 8 voucher = $225) | $ 325/month |

AFTER RELOCATION:

Displacee moves to comparable housing at $550/month and retains Section 8 voucher paying $225 to landlord. VDOT pays rent supplement on incremental difference between 30% of income ($300) and actual replacement rent ($325).

($325 - $300) X 42 months = $1,050

C. Displacee options.

The agent will inform the displacee of the replacement housing payment, both with and without Section 8 participation and advise of the following options:

1. Accept VDOT conventional rent supplement, which is limited to 42 months, and may disqualify the displacee for Section 8 in the future.

2. Receive down payment subsidy of $5,250 to assist in purchase of a replacement dwelling. or

3. Retain Section 8. VDOT will pay rent supplement only to the extent of any difference between Section 8 subsidy and base monthly rent (as in above example). In most cases, the

VDOT payment will be $0. Tenants should be encouraged to accept this option if they plan to continue to rent and have no prospects of significant increase of income.

D. Tenant not on Section 8 before displacement.

Determine rent supplement based on comparable unsubsidized housing, and the lesser of existing rent, market rent or 30% of income if classified as low income by HUD. This is a conventional rent supplement situation. If the tenant moves to Section 8 housing as a replacement, recalculate based on the net increase (if any) in monthly housing cost to the displacee after applying the Section 8 subsidy.

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## Section 10

*PART X of the Virginia Register*

## MOBILE HOMES

### 6.10.1 General

*24 VAC 30-41-590. (Virginia Register)*

A. Mobile homes have special legal and physical characteristics as opposed to conventional housing types. Mobile home occupants are entitled to the same relocation benefits as apply to all other displacees. However, certain policy adjustments and special benefit determination methods need to be employed because of the following unique characteristics:

1. Eligibility - personalty vs. realty.

A mobile home may have legal status as either real estate or personalty depending on factors such as the permanency of its fixture to the ground, its condition, and the intention of the owner in placing the mobile home on its present location.

An initial presumption should be made that a mobile home located on proposed right of way is personalty, and that the present owner will retain ownership and move the mobile home from the right of way. However, in some cases it will be clear that the unit is part of the real estate. For instance, the mobile home that is on a concrete foundation with basement and is on a professionally landscaped site would be considered real estate. In many cases the distinction is not clear. Legal advice may be secured from the assistant attorney general. Also, the district manager should monitor mobile home personalty/realty determinations to assure that they are made on a fair and consistent basis.

A mobile home determined to be real estate will be acquired and the occupant, if the owner, will be provided relocation benefits as an owner-occupant-displacee.

A mobile home considered as personalty and not real estate may be acquired and relocation benefits provided as an owner occupant under the following circumstances:

a. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost;

b. The mobile home itself is not and cannot economically be made a decent, safe and sanitary dwelling;

c. The mobile home cannot be relocated because there is no available comparable replacement site; or

d. The mobile home cannot be relocated because it does not meet mobile home park entrance requirements.

The determination as to whether to acquire an owner-occupied mobile home considered to be personalty should be made promptly after the first relocation contact has been made with the occupant. In making this determination, consideration must be given to whether the mobile home itself is not a decent, safe and sanitary unit because of its physical condition or its size. Under the procedures outlined in this section, it is not intended that an offer be made by VDOT to acquire a mobile home simply because of required utility deficiencies such as hot and cold running water and septic system. Considering the above, if it is determined by the district manager that VDOT has an obligation to offer to acquire the mobile home, the relocation agent is to contact several reputable mobile home dealers in the area to establish the amount that the mobile home would bring if offered for sale on the open market (salvage value or trade-in value, whichever is higher, shall be used when computing the price differential amount). Once this value is established and approved by the district manager, the approved amount will be used for comparison against the amount established as necessary for the displacee to purchase and relocate into comparable decent, safe and sanitary replacement facility. Upon approval of the maximum replacement housing payment, an offer is to be made for the purchase of the mobile home. Simultaneously, the displacee will be advised of the approved maximum replacement housing payment and the basis for establishing that amount. In the event the displacee refuses VDOT's offer, the district files are

to be so documented and no further attempt made to acquire the mobile home. This being the case, the mobile home occupant is to be advised of the Replacement Housing Payment which is the difference between the established value of the mobile home and that amount necessary to acquire a comparable decent, safe and sanitary facility as computed above. Under these conditions the cost to move the mobile home is not an eligible expense.

If VDOT's offer to acquire the mobile home is accepted, the district must have the owner execute an agreement of sale. Upon delivery of the check to the owner, the district will obtain title to the mobile home, a bill of sale, an affidavit, or other proof of ownership. Upon relocation of the occupants, the disposal of the mobile home will be handled in the same manner as other acquired buildings.

2. Owner/tenancy status; mobile home and site.

A characteristic unique to the mobile home payment computation is that there is often a divided ownership of the dwelling unit and its site. A mobile home occupant may own the dwelling but rent the site. Conversely, an occupant may own the site and rent the dwelling unit. Relocation benefits will conform to this feature by treating the site and the dwelling separately for purposes of determining replacement housing benefits. This is discussed more fully in 6.10.5 (24 VAC 30-41-630).

### 6.10.2 Mobile home park displacement

*24 VAC 30-41-600.*

The proposed right of way may include a portion of a mobile home park. VDOT will determine whether a sufficient portion of the park is taken to cause the owner-operator of such park to discontinue business because of not having an economic remainder to conduct operations. If the remainder is not an economic unit as a mobile home park, all occupants of mobile home units will be considered displaced persons eligible for appropriate relocation benefits, whether or not the residue on which any of the mobile homes are located is acquired by VDOT. The owner-operator may qualify for benefits as a business displacee, as well a residential displacee, if the owner-operator resides in a unit on the property.

### 6.10.3 Moving expenses

24 VAC 30-41-610.

A. A nonoccupant owner of a rented mobile home can be paid for actual, reasonable cost of moving the mobile home or other personal property, or both, under provisions of 6.5.2 (24 VAC 30-41-210).

If a displaced mobile home owner files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving and reassembling attached items such as porches, decks, skirting and awnings, anchoring of the unit and utility "hook-up" charges are reimbursable. The cost of repairs or modifications to enable the unit to be moved to a replacement site may be paid. VDOT must determine in advance that it is necessary and practical to do so. Payment will be limited to the reasonable costs of moving the mobile home and making necessary repairs or modifications.

B. Nonreturnable entrance fees are reimbursable as part of actual cost moving expenses to an owner- or tenant-occupant, unless comparable mobile home parks are available which do not require entrance fees.

C. If the mobile home is not moved, the owner- or tenant-occupant may be paid for moving personal property in accordance with the moving expense schedule referred to in 6.5.3 (24 VAC 30-41-220), or actual reasonable expenses in accordance with 6.5.2 (24 VAC 30-41-210).

D. If the owner is reimbursed for the cost of moving the mobile home under these procedures, the owner is not eligible to receive a replacement housing payment, or rent supplement to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for a rent or purchase supplement to enable the displacee to secure a replacement site, as discussed in 6.10.5 (24 VAC 30-41-630).

### 6.10.4 Replacement housing payments; general

*24 VAC 30-41-620.*

A. The ownership or tenancy of the mobile home, not the land on which it is located, determines the occupant's status as an owner or a tenant. The length of ownership and

occupancy of the mobile home on the mobile home site will determine the occupant's status as a 180-day or 90-day owner or tenant.

The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 or 180 days to make the occupant fully eligible for rent or purchase supplement benefits.

B. After the above eligibility determinations are made, the replacement housing payment is computed in two parts:

1. If the mobile home is being acquired, the replacement housing, or rent supplement payment is computed for the mobile home unit in accordance with the same procedures for any other dwelling unit.

2. The replacement housing or rent supplement payment is computed separately for the mobile home site in accordance with normal procedures. The payment amount is limited to the maximums according to the displacee's ownership or tenancy of the land.

The sum of the two parts computed above cannot exceed the maximum limitation of the $5,250 for 90-day owner and tenant-occupants or $22,500 for 180-day owner-occupants, unless last resort housing provisions in accordance with Section 11 (24 VAC 30-41-650 et seq.) are applicable. Replacement housing and rent supplement offers and payments will be computed in accordance with Section 8 (24 VAC 30-41-390 et seq.) and Section 9 (24 VAC 30-41-520 et seq.) of this chapter. The offer will set the maximum limit of the supplemental payment.

When determining the purchase supplement payment for an owner-occupant-displacee from a mobile home, the cost of a comparable is the reasonable cost of a comparable mobile home, including the site. When a comparable mobile home is not available, the supplement may be determined using a conventional dwelling.

If a mobile home requires repairs or modifications to permit its relocation to another site and the district office determines that it would be practical to make the repairs or modifications, the cost of a comparable dwelling is the value of the displacee's mobile home plus the cost to make the necessary repairs or modifications.

### 6.10.5 Replacement housing payments; 180-day owner-occupant

*24 VAC 30-41-630.*

A. General. A displaced owner of a mobile home who has occupied the home and site for at least 180 days is eligible for the following as a replacement housing benefit:

1. The additional cost necessary to purchase replacement housing as specified in subsections B, C, D, and E of this section, and in accordance with the provisions of Section 8 (24 VAC 30-41-390 et seq.) of this chapter;

2. Compensation for the loss of favorable financing on the existing mortgage in the financing of such replacement housing, under the provisions of 6.8.12 (24 VAC 30-41-500); and

3. An amount to reimburse the owner for incidental expenses incident to the purchase of such replacement housing in accordance with the provisions of 6.8.13 (24 VAC 30-41-510).

A displaced owner-occupant of a mobile home eligible for a replacement housing payment as shown above who elects to rent is eligible for a rental replacement housing payment, not to exceed $5,250, in accordance with 6.8.13 (24 VAC 30-41-510).

B. Acquisition of mobile home and site from owner-occupant.

1. The purchase supplement payment will be an amount, if any, which when added to the amount for which VDOT acquired the mobile home and site equals the lesser of:

a. The amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home and site in accordance with the provisions of 6.8.5 (24 VAC 30-41-430).

2. Rental replacement housing payment.

If the owner elects to rent, the rent supplement will be determined by subtracting 42 times the economic rent of the mobile home and site from the lesser of:

a. The amount determined by the district office necessary to rent a comparable mobile home and site for a period of 42 months; or

b. Forty-two times the monthly rent paid for the replacement mobile home and site.

C. Acquisition of site only - owner-occupant retains mobile home.

1. Upon acquisition of the site but not the home situated upon the site and the mobile home is required to be moved, the replacement housing payment will be the amount, if any, which when added to the amount for which VDOT acquired the mobile home site equals the lesser of:

a. The amount the owner is required to pay for a comparable site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home site.

2. If the owner elects to rent, the rent supplement shall be determined by subtracting 42 times the economic rent of the mobile home site from the lesser of:

a. The amount determined as necessary to rent a comparable mobile home site for 42 months; or

b. Forty-two times the monthly rent paid at the replacement mobile home site.

D. Acquisition of mobile home only - owner-occupant rents site.

1. The replacement housing payment is to be the amount, if any, which when added to the amount for which VDOT acquired the mobile home equals the lesser of:

a. The actual amount the owner is required to pay for a replacement dwelling; or

b. The amount determined as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the district office as necessary to rent a comparable mobile home site for a period of 42 months and 42 times the rent being paid on the site acquired.

The entire computed amount may be applied toward the purchase of a comparable mobile home site, if so desired.

2. If the owner elects to rent a replacement mobile home, the rent supplement payment shall be determined by subtracting 42 times the economic rent of the mobile home and the actual rent of the site from the lesser of:

a. The amount determined by the district office as necessary to rent a comparable mobile home and site for 42 months; or

b. Forty-two times the monthly rent paid for the replacement dwelling.

E. Acquisition of rental site only - mobile home not acquired. When the site is acquired but not the mobile home, which must be moved, the owner-occupant of the mobile home is eligible for up to $5,250 as a rent supplement for a comparable replacement site. This rent supplement payment shall be the difference determined by subtracting 42 times the rent on the site being acquired from the lesser of:

1. The amount determined as necessary to rent a comparable home site for 42 months; or

2. Forty-two times the monthly rent paid for the replacement site.

The entire computed amount may be applied toward the down payment and incidental expenses on a comparable home site.

### 6.10.6 Replacement housing payment to tenants of 90 days or more and owner occupants for 90-179 days

*24 VAC 30-41-640.*

A displaced owner or tenant of a mobile home or site, or both, under this category can receive a replacement housing payment not to exceed $5,250 (except under last resort housing) to rent a comparable decent, safe and sanitary mobile home or site, or both, or make a down payment on either or both computed as follows:

1. The rental replacement housing payment is to be determined in accordance with the provisions of 6.9.2 (24 VAC 30-41-530).

2. If a purchase decision is made, the entire computed rental payment may be applied towards the purchase, including related incidental expenses for a replacement mobile home, site, or both.

3. An owner-occupant under this category is entitled to the same replacement housing payments as the tenant-occupant, except economic rent of the acquired mobile home and site will be used.

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## Section 11

*PART XI of the Virginia Register*

## LAST RESORT HOUSING

### 6.11.1 General

*24 VAC 30-41-650. (Virginia Register)*

A. No displaced persons will be required to move until a comparable replacement dwelling is made available within their financial means. Comparable replacement housing may not be available on the private market or does not meet specific requirements or special needs of a particular displaced family. Also, housing may be available on the market, but the cost exceeds the benefit limits for tenants and owners of $5,250 and $22,500, respectively. If housing is not available to a displacee and the transportation project would thereby be prevented from proceeding in a timely manner, VDOT is authorized to take a broad range of measures to make housing available. These measures, which are outside normal relocation benefit limits, are called collectively last resort housing.

B. It is the responsibility of VDOT to provide a replacement dwelling, which enables the displacee to relocate to the same ownership or tenancy status as prior to displacement. The displacee may voluntarily relocate to a different status. The district office may also provide a dwelling, which changes a status of the displacee with their concurrence, if a comparable replacement dwelling of the same status is not available.

A more complete discussion of last resort housing appears in the "Guidance Document for Determination of Certain Financial Benefits for Displacees" (effective November 21, 2001; Rev. July 1, 2006).

### 6.11.2 Utilization of last resort housing

*24 VAC 30-41-660.*

Last resort housing is applicable when:

1. Comparable replacement housing is not available on the housing market; or

2. Comparable replacement housing is available, but:

   a. The computed replacement housing payment exceeds the $22,500 limitation; or

   b. The computed rent supplement exceeds the $5,250 limitation.

3. Comparable housing is not available within the financial means of a displaced person who is ineligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements.

### 6.11.3 Last resort housing plan

*24 VAC 30-41-670.*

If the analysis of the characteristics and needs of a displaced family indicates that the provision of last resort housing may be necessary, the district office will develop a plan to determine the method of producing comparable replacement housing. In the development of the plan, innovative approaches and methods for the provision and financing of replacement housing will be considered. The plan shall include:

1. Consideration of requirements of local zoning and building codes with reference to methods proposed to provide comparable housing;

2. Discussion of how, when and where housing will be provided;

3. Consideration of environmental suitability of the location of the proposed housing, including consideration of environmental justice;

4. How housing will be financed and the amount of funds to be used for such housing from all funding agencies and private sources;

5. Prices for the housing to be rented or sold is within the financial means of the families and individuals to be displaced;

6. Arrangements for maintaining rent levels appropriate for the persons to be relocated;

7. Arrangements for rental housing management;

8. Disposition of the proceeds from rental, sale, or resale of such housing;

9. How the construction will be monitored; and

10. Any other comments pertinent to providing replacement housing.

The central office relocation section may perform the approval of Last Resort Housing Plans when the computation exceeds an amount determined by the director of the right of way and utilities division.

Last resort housing cases are often identified during the process of providing relocation services and benefits. They may arise from unique circumstances that affect a displaced household. The relocation plan in these cases will consist of a summary of the specific relocation problems, a discussion of methods considered and a detailed statement of the method, estimated cost and time required to implement the recommended solution. The method will be implemented on approval of the district manager or an assistant district manager.

### 6.11.4 Last resort housing alternative solutions

*24 VAC 30-41-680.*

A. VDOT has broad latitude in the methods used and the manner in which it provides housing of last resort. After consideration of all practical options, a method should be selected which provides comparable housing at the most reasonable cost, within the time constraints of roadway project scheduling and urgency of the displacee's need. Methods for providing this housing include, but are not limited to:

1. Making an offer and payment greater than $22,500 for a displaced owner or $5,250 for a displaced tenant;

2. Rehabilitation, modifications or additions to an existing replacement dwelling to accommodate displacee needs;

3. The construction of a new replacement dwelling;

4. The relocation and, if necessary, rehabilitation of a replacement dwelling;

5. The purchase of land or a replacement dwelling, or both, by VDOT and subsequent sale, lease to, or exchange with a displaced person;

6. Acting as mortgagee in financing a displacee's purchase of housing; and

7. The provision of features such as entrance ramps, wide doors, etc., which will make a dwelling accessible to a disabled displacee.

B. Under special circumstances, consistent with the definition of a comparable replacement dwelling, consideration will be given to providing replacement housing with space and physical characteristics different from those in the displacement dwelling. This may include upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate families displaced from marginal or substandard housing. In no event, however, will a displaced person be required to move into a dwelling that is not functionally equivalent to the displacement dwelling.

### 6.11.5 Cooperative agreements

*24 VAC 30-41-690.*

VDOT may enter into agreements with any other federal, state or local agency or contract with any individual, firm, corporation or nonprofit association for services in connection with these activities. It is expected that VDOT, to the greatest extent practicable, will utilize the services of federal, state or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

### 6.11.6 Consequential displacement

*24 VAC 30-41-700.*

Any person displaced because of the acquisition of real property for a last resort housing project under VDOT's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all eligible benefits under the relocation assistance provision. This provision is not applicable to an owner-occupant who voluntarily acts to sell the property to

VDOT for last resort housing and owner certifies same in a statement that will be retained in VDOT files.

### 6.11.7 Last resort housing disbursements

*24 VAC 30-41-710.*

A. Rental assistance payments made to displacees who rent replacement housing under this section will be paid in annual installments directly to the displacee. However, when in the district manager's judgment, a direct payment or annual payments would not be prudent and in the public interest, other payment options will be arranged. Whenever special payment options are invoked, the file will be documented with the reasons for invoking these options.

B. Displacees may not be required to accept last resort housing in place of a rent supplement or a purchase supplement for which they may be eligible under normal program provisions. A displacee may choose to accept a conventional purchase or rental supplement in lieu of a last resort housing solution. This is conditioned that all eligibility criteria are met, including rental or purchase and occupancy of a decent, safe and sanitary dwelling.

C. Displacees who receive a housing or financial payment under last resort housing will be required to certify that they accept the housing or benefit in lieu of the rent supplement or purchase supplement for which they would otherwise be eligible.

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## Section 12

*PART XII of the Virginia Register*

## RECORDS, REPORTS AND AUDITS

### 6.12.1 Relocation records

*24 VAC 30-41-720. (Virginia Register)*

The district office will assemble and maintain records on project, parcel and case levels, showing the basis for major decisions and benefit determinations. Copies of all official forms and letters to and from displacees will be retained.

The following specific records will be retained:

1. State and Federal Project and Parcel identification.

2. Date of initiation of negotiations for project.

3. Names and addresses of displaced persons and their complete original and new addresses and telephone numbers (Library Forms RW-69A and 69B).

4. Personal contacts made with each displaced person, including for each:

   a. Date of notification of availability of relocation payments and services (Library Forms RW-69A, RW-59 (1), (2), and (3) and RW-68A);

   b. Name of the relocation agent offering or providing the relocation assistance (Library Forms RW-69A and RW-68A);

   c. Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer (Library Form RW-69B);

   d. Date and substance of all relocation contacts (Library Form RW-68A);

   e. Date on which the relocated person was required to move from the property acquired for the project (included in the confirmation or acceptance letter in the parcel file);

   f. Date on which actual relocation occurred (Library Forms RW-67A or B); and

g. Type of tenure before and after relocation (Library Forms RW-69A and 69B).

5. For displacements from dwellings:

a. Number in family (Library Form RW-69A);

b. Type of property (Library Form RW-69A);

c. Monthly rental (Library Form RW-69A); and

d. Number of rooms occupied (Library Form RW-69A).

6. For relocated businesses, farms and nonprofit organizations:

a. Type of business (Library Form RW-69A);

b. Whether continued or terminated (Parcel File); and

c. If relocated, approximate distance moved (Library Form RW-67B).

### 6.12.2 Moving expense records

*24 VAC 30-41-730.*

The district office will maintain records containing the following information regarding moving expense payments for each displacee:

1. The date the removal of personal property was accomplished (Library Form RW-67A or B);

2. The location from which and to which the personal property was moved (Library Forms RW-69A, RW-67A or RW-67B);

3. If the personal property was stored temporarily, the location where the property was stored, the duration of such storage and justification for the storage and storage charges. (Library Form RW-67A or B);

4. Itemized statement of the cost incurred supported by receipted bills or other evidence of expense (Library Form RW-67A or B);

5. Amount of reimbursement claimed, amount allowed and an explanation of any difference (Library Form RW-67A or B);

6. Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that it is not part of a commercial enterprise having more than three establishments not being acquired (Parcel File); and

7. When an in lieu of payment is made to a business, nonprofit organization, or farm operation, data showing how the payment was computed (Parcel File).

### 6.12.3 Replacement housing payment records

*24 VAC 30-41-740.*

The district office shall maintain records containing the following information regarding replacement-housing payments for each displacee:

1. The date of receipt of each application for such payment (Library Forms RW-65A(1), RW-65B(1) and RW-65C(1));

2. The date on which each payment was made or the application rejected (Parcel File);

3. Supporting data showing how the amount of the supplemental payment to which the applicant is entitled was calculated (Library Form RW-62A or RW-62B);

4. A copy of the closing statement to support when replacement housing is purchased (Parcel File);

5. A copy of the Truth in Lending Statement and other data, including computations to support the increased interest payment (Parcel File and Library Form RW-66);

6. The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement setting forth:

   a. The amount of the replacement housing payment (Library Forms RW-62A and B);

   b. An understanding that the determined amount is to be used in connection with a federal-aid highway project (Library Forms RW-62A and B);

   c. There is no direct or indirect present or contemplated personal interest in this transaction nor will any benefit be derived from the replacement housing payment (Library Forms RW-62A and B); and

7. A statement that the relocated person has been relocated into decent, safe and sanitary replacement housing (Library Form RW-69B).

### 6.12.4 Reports

*24 VAC 30-41-750.*

VDOT will submit the following reports as scheduled or requested by the Federal Highway Administration:

1. Annual Federal Uniform Act Statistical Report. An annual Uniform Act Statistical Report will be submitted for the period ending September 30 each year. The report shall be prepared by the central office relocation section and submitted to the Federal Highway Administration.

2. Periodic Report of Residential Moving Cost Schedules. Periodically, the district office will be requested to initiate a survey to determine the adequacy of the current residential moving cost schedules.

Local, reputable movers shall be contacted in order to determine their charges for moving unfurnished dwellings and furnished dwellings.

Requests to the districts to provide information will be issued by the central office as necessary.

### 6.12.5 Relocation audits

*24 VAC 30-41-760.*

A. In order to ensure consistency in the implementation of the relocation program, relocation audits will be performed on a periodic basis by the central office relocation section. The projects selected for audit should include residential occupants (both owners and tenants) and businesses.

B. Audits will include review of district and central office files and interviews with some of the displacees. Upon completion of the audit, a written report detailing the audit findings will be provided to the appropriate district right of way and utilities manager for review. A meeting will be held with the central office relocation auditor or auditors and the district manager to discuss details and recommendations.

# Guidance Document for Determination of Certain Financial Benefits For Displacees

Effective November 21, 2001
Rev. July 1, 2006
Issued by VDOT's
Right of Way and Utilities Division
to accompany Chapter 6
24 VAC 30-41-10 et seq.
(*Rules and Regulations Governing Relocation Assistance*)

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# Introduction

This document provides guidance in the determination of various types of financial benefits for residential and non-residential displacees. It will help the experienced relocation agent to resolve questions that are encountered in administering the program on the project level. It also provides a reference to assist newly assigned relocation personnel to become familiar with basic financial benefit concepts.

The content of this document augments and expands on information presented in 24 VAC 30-41-10 et seq. To assist the reader, references to the regulation are prominently located before the discussion of each benefit.

There is only limited coverage in this attachment of eligibility criteria, and no coverage of advisory services or program administration. These topics are addressed in the text of 24 VAC 30-41-10 et seq.

This guidance focuses on basic benefits and typical relocation situations, not on unusual cases. One of the features of relocation is the incidence of cases where the facts “fall between the cracks” of existing policy. Unusual or unique case situations should be brought to the attention of management as soon as identified. Decisions may require special interpretation of policy, while recognizing the importance of consistent and equitable administration of the relocation program on a statewide basis.

## 1. REIMBURSEMENT FOR MOVING PERSONAL PROPERTY - RESIDENTIAL

**Related Procedure:** Part 5 – Moving Costs - Residential Moves

The two move options, **actual cost** and the **moving expense schedule**, each have features that a displacee should carefully consider before making a choice. The relocation agent should explain the options on the initial meeting at which relocation benefits are discussed. The agent should not expect a decision until the displacee has been advised of the amount of the payment under the schedule, and has had an opportunity to secure an estimate for a commercial move.

### The Moving Expense Schedule

The schedule payments are based on a room count of the dwelling and other storage areas, such as basements and attics, containing personal property. The schedule is developed by VDOT. It is compiled with schedules of other states and published on a national basis by the Federal Highway Administration. It is updated as requested by the Federal Highway Administration. The relocation agent should be sure of using the latest schedule update when working on a project.

### Features of Schedule Move

1. Administratively simple for displacee and VDOT. No support required for claim beyond the room count, and performance of the move.
2. Allows maximum flexibility to displacee. Move can be performed by family, or a commercial mover may be hired.
3. No additional reimbursement if actual move cost exceeds schedule.
4. No added reimbursement for storage of personal property, packing, unpacking or incidental costs such as appliance hook up. These items are all included in the schedule.

## Features of Actual Move Expense Reimbursement

1. All reasonable costs are paid, including those specified in last bullet above.
2. Requires close coordination of agent with movers to secure estimates
3. Storage costs paid up to maximum of 12 months See 24 VAC 30-41-210 C(5).
4. Move reimbursement limited to 50 miles (unless special approval)

## Steps in the Process

1. Explain the options to the displacee, and the features of each (see above).
2. Take a count of all rooms and storage areas containing personal property.
3. Advise displacee of the room count, and the schedule amount.
4. Secure move bids or estimates, if displacee has not made a decision to accept the schedule move reimbursement. See 24 VAC 30-41-210.
5. Ask displacee for final decision on move reimbursement method.
6. Displacee moves with own resources, or contracts with a commercial mover to perform the move.

## Schedule – (for illustration purposes only)

| | 1st Room | 2nd Room | Additional Rooms |
|---|---|---|---|
| **Occupant Owns Furniture** | $300 | $500 | +$100 |
| **Occupant does not own furniture** | $225 | $260 | + $35 |

## Important Points

1. The schedule is revised periodically. The **current** schedule should be used.
2. A displacee who does not own furnishings is reimbursed less. Look for the "Occupant does not own furniture column". This column is not included above.
3. A "room" may include outside storage, garage or basement that contains personal property.

**Example**
**Move Expense Reimbursement**

An elderly couple has a lifetime of possessions including antiques, and mementos from travels. There are 6 rooms in the house plus basement and garage. A commercial mover has submitted an estimate of $2,000. They ask your advice.

Agent should suggest an actual cost commercial move. Schedule will only yield $1,100 (8 rooms). Higher commercial move estimate reflects needed packing, unpacking and insurance. Elderly may not desire to perform move themselves. However the decision is with displaced couple.

## 2. OWNER PURCHASE SUPPLEMENT

**Related Procedures:**
24 VAC 30-41-30 – "comparable replacement housing" defined
24 VAC 30-41-340 through 370 - Eligibility
24 VAC 30-41-430 through 480 – Payment Determination

The owner purchase supplement is the amount which, when added to the amount of the acquisition price of the displacement dwelling, equals the cost of a comparable dwelling.

It is very important, before determining or processing a claim for any relocation benefit, to verify that necessary eligibility criteria have been met. For consideration for the owner purchase supplement, the displaced family must have been in occupancy for 180 days before the first offer by VDOT to purchase the displacement property. To qualify to submit a claim, the owner occupant displacee must purchase and occupy a dwelling meeting decent, safe, and sanitary (DSS) standards. These requirements are specified in detail in 24 VAC 30-41-30 ("Definitions").

### Steps in the Process

1. Determine displacee eligibility for benefits.
2. Identify characteristics of the home and the family being displaced, by interview, and inspection of the premises. Use form RW–69A to record information.
3. Determine essential requirements of comparable replacement housing for the displaced household, in terms of number of bedrooms and baths, and type of dwelling, location characteristics, special needs, such as one floor plan to accommodate elderly or disabled etc. Refer to the definition of "comparable replacement housing" in 24 VAC 30-41-30 ("Definitions").
4. Conduct a search for comparable replacement housing, using resources such as contacts with brokers, published listings and personal observations. At least three dwellings meeting comparable criteria should be located and inspected to select the most comparable dwelling. Use form RW-69B.
5. Compute price differential as in the following example on the following page, using form RW-62A.
6. Displacee is advised of **maximum** Purchase Supplement amount, and the address of the most comparable dwelling through form letter RW-65A(1).

7. Displacee locates and contracts for purchase of a replacement dwelling and arranges with assigned agent for a DSS inspection.
8. Relocation agent performs DSS inspection. Any deficiencies must be corrected before a claim for Purchase Supplement is submitted.
9. Displacee closes on purchase of replacement dwelling and executes claim for payment on form RW-65A(1) or RW-65B.

**EXAMPLE**
**Owner Purchase Supplement**

| | |
|---|---|
| Estimated adjusted* cost of comparable ..... | $105,000 |
| LESS: Acquisition price VDOT pays for displacement dwelling..... | $95,000 |
| Maximum Owner Purchase Supplement (price differential) ..... | $10,000 |

If displacee purchases a replacement for $100,000, the actual Owner Purchase Supplement will be $5,000. The payment claim is based on the lower of the estimated cost of comparable housing as determined by VDOT, or the actual cost of the replacement actually purchased.

* the selected comparable house asking price is adjusted to reflect the difference between asking and selling price in the local area

**Discussion**

Note that the VDOT determined purchase supplement is a maximum amount. The actual claim will be based on amount the displacee actually pays for a replacement dwelling, if lower. This is known as the "spend to get" rule. It is important that displacees understand provision at the time they are searching for replacement housing.

The basic concept of the owner purchase supplement as presented above is quite simple. However, actual cases are often complicated by the infinite variety of displacee circumstances and living arrangements that are encountered. In addition, the statutory model for the owner purchase supplement is the whole take of a dwelling on a typical size site. In reality, there is great variety in the types of acquisitions, forms of ownership, and in the physical characteristics of properties acquired. Some of these special situations are discussed in Part 8 of the regulation. Situations that are not addressed in the regulation should be brought to the attention of the District Manager or the Assistant Manager for Relocation. There should also be close coordination with the Central Office to resolve policy questions quickly, in a fair and consistent manner.

The owner purchase supplement is one of several items in the total replacement housing benefit package for which long term owners (over 180 days) are eligible. The other items are reimbursement of incidental expenses incurred in purchase of replacement housing, and payment for increased interest costs. This benefit package is referred to collectively as the replacement housing payment. There is a program limit of $22,500 imposed by law on the total amount for the replacement housing payment. However, there is an overriding provision of law that requires comparable replacement housing be made available to displacees. The apparent conflict is resolved by considering claims over $22,500 under the special authority and controlling rules of Last Resort Housing. Refer to Part 11 of the regulation for a full explanation of Last Resort Housing.

Displacees must relocate to DSS housing to qualify for payment. The agent should encourage the displacee to place a clause in any purchase contract that states: *"This contract is subject to the house passing an inspection by the Virginia Department of Transportation for compliance with decent safe and sanitary standards".* If an inspection discloses DSS deficiencies, they must be corrected before a claim is accepted by VDOT. The cost of correcting DSS deficiencies, if paid by the displacee, may be included in the total cost of the dwelling.

Displacees eligible for an owner purchase supplement may choose to rent, rather than purchase replacement housing. They are eligible for consideration for a rent supplement payment as presented in 24 VAC 30-41-510 ("Owner-Occupant for 180 Days or More Who Rents").

## 3. RENTAL REPLACEMENT HOUSING PAYMENT

**Related Procedure:** Part 9

Th

e rental replacement housing payment (rental supplement) is simple in its basic concept. It is the difference in rent before and after relocation (if any) for a period of 42 months. A maximum amount is determined by VDOT based on the rent for a comparable available unit. The tenant is advised of this maximum amount and the specific dwelling on which it was based. The tenant displacee then rents a replacement unit and the actual amount claimed is based on the lower of the rent on the VDOT identified comparable unit, or the unit the displacee actually rents and occupies.

**EXAMPLE**

**Rental Assistance Payment (basic)**

Determination of Maximum payment:
Rent on available comparable rental unit, including utilities……. $600
LESS: Displacee monthly rent including utilities …….. $550
Monthly rent difference…… $50

X 42 months
**Maximum Rent Supplement amount ……$2,100**

Rent of replacement unit actually occupied (including utilities) = $575
**Actual Rent Supplement amount ($25 X 42 months) = $1,050**

The rent supplement amount actually paid is subject to the same "spend to get" limitation as applicable to owner purchase supplements. The tenant displacee should be advised of this provision.

The relocation program assures that housing will be available within a displacee's financial means. For tenants whose gross household income is classified as "low income" by HUD , housing within financial means is 30% of gross household income. Thus, for tenants paying 30% or more of income in rent and utilities before relocation the rent supplement determination will be based on monthly income, not rent paid.

**EXAMPLE**

**Rent Supplement (low income)**

Same facts as above example except 30% of displacee gross monthly household income from all sources = $510 (income = $1,700)

Determination of maximum payment:

…. Rent on available comparable rental unit, including utilities ..... $600

Less: 30% of displacee income …… $510

Monthly rent difference…… $90

X 42 months

Maximum Rent Supplement Amount ..... $3,780

The displacee rented a $575 replacement unit as in above example. The actual amount claimed is thus $2,730 because of the "spend to get" provision ($575-$510 =$65 X42 months = $2,730)

The term "base monthly rent" is used to express the lower of 30% of income, or the actual amount paid for housing before displacement.

### Steps in the Process

The steps in the process to be performed by the relocation agent are essentially the same as for the owner purchase supplement. However, two additional data items must be determined for a tenant displacee. Monthly gross income must be identified, to determine if it is classified as "low income" to provide housing within their financial means. In addition, utility costs (heat, water, sewer, and electric) must be determined if they are not included in stated rent.

### Income

The agent should explain the relevance of income and ask for verification, by way of pay stubs, W-2 statements etc. If the displacee declines to provide verification, the rent supplement should be based on rent actually paid.

### Utilities

Utilities are a necessary cost of housing and thus part of the determination of the rental benefit. Utility costs (heat, water, sewer, and electric) are to be added to the rent for the displacement determined comparable, and the replacement dwellings to the extent they

are not included in the stated rent. Information may be secured or verified by billing statements or utility company records. If actual billings cannot be determined, the utility company may provide average costs for units of different types and sizes.

**Special Rules**

If the tenant displacee is paying little or no rent because of a family relationship with the owner, the market rent may be used to determine the rent supplement. However, if the low rent favorable to the displacee merely results from long tenancy the actual rent will be used.

The rent supplement is subject to a limit of $5,250. However, just as with the Owner replacement housing payment, a higher computed payment will be paid under authority of Last Resort Housing.

The full amount of a rent supplement may be used as a contribution to a down payment for a tenant displacee who purchases replacement housing.

A tenant who receives a Section 8 subsidy may usually transfer that subsidy to a replacement dwelling. See 24 VAC 30-41-580 ("Section 8 Housing Assistance Program").

## 4. FIXED PAYMENT IN LIEU OF ACTUAL COST (In-Lieu Payment)

| |
|---|
| **Related Procedure:** 24 VAC 30-41-320 |

### Discussion

The In-Lieu Payment, as indicated by its name, is an exclusive alternative to all other payments for which a business (also farms and non-profits) may be eligible. It is a payment based only on income of the enterprise and has no relationship to the cost of relocation.

This payment has a maximum $75,000 and minimum $1,000.

The eligibility criteria for the In-Lieu payment are summarized below.

1. Business is not part of an entity having more than 3 other locations engaged in the same activity.
2. The business must contribute materially to the operator's income.
3. The business must have property on the site acquired, which would be eligible to be moved.
4. Business cannot be relocated without a substantial loss of patronage.
5. The business is not operated at a dwelling or site solely to rent such dwelling or site to others.

The above is a summary. Refer to 24 VAC 30-41-320 ("Fixed Payment In Lieu or Actual Costs") for a complete discussion. The application of the above criteria sometimes presents difficulty, particularly items 2 and 4.

The term "contribute materially" has a specific definition found at 24 VAC 30-41-30. Note that the 4 part definition is very specific and sets a low threshold of eligibility. Only minor economic activities would not qualify as contributing materially to income.

The "substantial loss of patronage" requirement is to be assumed to be satisfied unless there is a specific reason evident for loss of patronage not to occur. This is an acknowledgment that involuntary displacement is bound to cause disruption of a business clientele and income.

In-Lieu payment eligibility is based solely on the above stated criteria. Eligibility is not dependent on any relationship of the amount of the In-Lieu payment to the amount of relocation expenses that would otherwise be eligible for reimbursement.

### Benefit Determination

The amount of the payment is the average annual income for the business for the 2 tax years preceding the year displaced, as in the following example:

**EXAMPLE**
**Fixed Payment In-Lieu Of Actual Cost**

Joe's Barber Shop – displaced July 1998
Income: 1998 (1/2 year) ..... $7,000
1997 ..... $17,000
1996 ..... $22,000

Payment: $\frac{\$17,000 + \$22,000}{2 \text{ years}}$ = $19,500

Joe is eligible for the $19,500 In-Lieu of determination even if he does not relocate the business. If the business is relocated and actual move cost is greater than $19,500, the claim will not be changed. The displacee has accepted this payment option "in lieu of" all other benefits.

### Income

The displacee must provide documentary verification of income to be eligible for any In-Lieu claim over the $1,000 minimum level. The agent should ask for certified copies of State or federal tax returns or CPA certified financial reports. Other support may be acceptable on approval of the District Manager.

In determination of net income, include income <u>before</u> taxes. Also, include any salary paid to the owner, the owner's spouse, and dependents. Many specific questions can arise in determining income, and these should be resolved in consultation with the Central Office to assure consistency in administering the program.

### Steps in the Process

1. Interview the business operator. Determine the critical relocation needs, including site, special permits, clientele. Determine the intentions of the operator to relocate, or discontinue operations. (Use RW-69A(1))

2. Tour the site with the business operator. Note specialized or complex equipment, inventory storage, offices.

3. Explain the full range of benefits including move expenses, reestablishment cost reimbursement, search expense reimbursement, etc.

4. Explain the In-Lieu payment benefit. If there is interest, secure information necessary for an eligibility determination (1-5 above)

5. If eligible and displacee is interested, secure income facts and necessary documentary verification for income.

6. Advise the displaced business operator of the preliminary determination of In-Lieu amount.

7. Ask for commitment after business operator has had opportunity to consider benefit options.

8. Assemble claim documentation. Send moving cost approval letter.

The Fixed Payment In-Lieu of Actual Cost will be particularly attractive to displaced businesses in the following circumstances:

1. Operator is contemplating retirement, or otherwise has decided to discontinue operations.
2. In-Lieu payment amount significantly exceeds cost of moving business.
3. Operator desires administrative simplicity of not having to support actual move costs
4. Operator faces loss of clientele, and cash payment will help sustain business after relocation.

**Farms and Non-profits are Eligible**

A farm operation must be determined to be displaced, if the acquisition is a part take (See 24 VAC 30-41-320 ("Fixed Payment In Lieu of Actual Costs")). A non-profit organization income, for purposes of the In-Lieu benefit, is gross revenues (fees, donations etc.), less administrative expenses.

## 5. BUSINESS REESTABLISHMENT EXPENSES

**Related Procedure:** 24 VAC 30-41-310

This benefit is a limited ($25,000 maximum) reimbursement of actual costs incurred by a displaced business (also farm or non-profit) in any of 12 categories. The relocation agent should fully explain the benefit, with particular attention to those items that seem applicable to the specific displaced business. To aid the practical application of this important benefit the reestablishment categories are presented below with examples of cost items that are reimbursable.

### Reestablishment Expenses

1. Repairs or improvements required by law.

   Is the business subject to health and safety regulations that require that the building be modified? For example: employee shower facilities; sprinkler system; handicap access.

2. Modification to accommodate business operation.

   Does the relocation property need renovations to satisfy business needs? For example: Installation of customer counters; office layout; reception area.

3. Construction or installation of exterior signage.

   New signage not relocated and paid as a moving cost can be reimbursed as a reestablishment expense.

4. Redecoration or replacement of worn surfaces.

   New carpet, paint or wallpaper may be a legitimate need for any business that serves a clientele on site, such as a real estate office, or retail store.

5. Licenses, fees or permits.

This may include transfer of existing, or newly required business licenses, or permits. It will benefit the business to claim permit transfer costs as a moving expense since there is no claim ceiling.

6. Advertisement of replacement location.

   Any business having a public customer base will have a need to advertise a new location, to some degree. Even a business serving a specialized small clientele will need to print and send notices, as a minimum.

7. Increased Cost of operation for the first two years.

   Rent, taxes, insurance, utilities or other operating costs may be reimbursed to the extent they individually exceed what had been paid before displacement.

8. Other items considered essential.

   Other legitimate costs proposed for reimbursement should be discussed with the Central Office Relocation Section before approval.

**General Discussion**

It should be evident from the inclusive list and examples that it is not difficult for many displaced businesses to qualify for the maximum claim amount of $25,000. Note that there are no individual item limits, so the claim ceiling may be reached with one or two of the eligible expense categories. The Department has a responsibility to administer this benefit in a manner that is equitable, consistent and in compliance with authorizing legislation. Therefore, all claims for the reestablishment need to be supported by receipted bills, and clearly referenced to one of the above categories.

Note there is overlap in several of the categories. Repairs and modifications may be performed under items 1,2 or 4.

Note that reinstallation of signage (3), and transferring Licenses, fees and permits (5) may be paid as a moving expense. It is best to use this option as they are not subject to the $25,000 ceiling as moving expense items.

Following items are specifically not eligible for reimbursement: a) purchase of capital assets, b) purchase of raw material or inventory, c) interest on loans. See 24 VAC 30-41-310 C ("Reestablishment Expenses") for a complete discussion of ineligible items.

The Business reestablishment expense benefit can be an essential help to displaced small businesses, most of which will incur many other unreimbursable direct and indirect costs. The relocation agent should assist the business operator in identifying legitimate expenses that can be paid with this benefit.

## 6. ACTUAL DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY

**Related Procedure:** 24 VAC 30-41-290

A displaced business (also farm or non-profit organization) owner may choose not to move certain business personal property to the relocation site. Items may be obsolete, not functional, or be very bulky. The cost to move such items may exceed their value. The actual direct loss claim allows the business owner to dispose of such property, and be reimbursed for any resulting costs or loss, up to the estimated cost to relocate the item. This payment has two forms, corresponding to whether or not the item not moved is replaced with an item serving the same function at the replacement business site.

### Item is Replaced. (Substitute Equipment Payment)

Under this option the business replaces obsolete equipment with new items serving the same function.

**EXAMPLE**

**Direct Loss of Tangible Personal Property**

**Item Replaced (Substitute Equipment Payment)**

Speedy Printing Co.
Item not moved – old printing press

| | | |
|---|---|---|
| Cost of Substitute Item | $30,000 | |
| **PLUS:** Installation Cost | $1,000 | |
| Total Cost | $31,000 | |
| Proceeds from sale of old printing press | $15,000 | |
| **LESS:** Cost of the sale | $1,500 | |
| Proceeds of sale | $13,500 | |
| Net Loss ($31,000 - $13,500) | | $17,500 |
| Estimated cost to move and reinstall the old printing press | | $8,000 |

Speedy Printing Co. is paid $8,000. The payment cannot exceed the estimated cost to move the old printing press.

If the item replaced is traded-in rather than sold, the trade in value is used.

### Item is Not Replaced

The Speedy Printing Co. has an obsolete collating machine. They have kept it primarily as a back up for a newer machine. They do not need it at the relocation site and want to sell it before they move. The payment would be as follows:

**EXAMPLE**
**Direct Loss of Tangible Personal Property**
**Item Not Replaced**

**Speedy Printing Co.**
**Item not moved – collating machine**

| | |
|---|---|
| Market value in place for continued use ..... | $5,000 |
| LESS: Net proceeds of sale from site (after selling expenses)... | $3,000 |
| Net Loss ..... | $2,000 |

Estimated cost to move and reinstall the item …… $3,000

Direct Loss claim: $2,000

Note that the direct loss claim is the lower of the cost to move, or the net loss on sale.

The direct loss of tangible personal property option allows the business to modernize equipment, or regain cash value for unneeded equipment. The cost to VDOT is no more, and may be less, than if the items were moved.

A program vulnerability in the direct loss benefit is that it is based on estimated, rather than actual cost to move. This can be highly speculative. A specialist should be engaged, and paid, to perform move estimate of equipment that is complex, bulky or otherwise expensive to move.

Another often speculative element is the estimated value for continued use at the existing location (see above example). This will usually be the same as salvage value for equipment that is obsolete and not functioning. However an item not relocated or replaced may have significant value for continued use if it is in use and in good condition. A specialist should be employed to perform the estimate.

## Steps in the Process

1. Interview the business operator. Determine the critical relocation needs, including site, special permits, clientele. Determine the intentions of the operator to relocate, or discontinue operations. (Use RW-69A(1))

2. Tour the site with the business operator. Note specialized or complex equipment that appears older or not operational. Ask about function of equipment, if it is not obvious.

3. Explain the full range of benefits including move expenses, reestablishment cost reimbursement, search expense reimbursement etc.

4. Explain the direct loss option *if it is relevant* to the move situation. Ask the business owner to identify specific items that might be sold from the site, or traded in on newer equipment in the process of moving.

5. Obtain all identifying information on direct loss items including make, model, function, age, and condition. Take photos of items.

6. Secure estimates of the cost of relocating the specific identified items, including detach and reinstall costs.

7. Determine value of items for continued use at the displacement site. This may require specialist appraisal.

8. Coordinate with business to sell property from the site in the manner likely to yield the highest net proceeds. Obtain all documents and receipts reflecting cost of sale.

9. Secure data on purchase of substitute equipment including function, cost, delivery, setup and installation charges. If item is traded in, obtain trade in value. Ask for copies of receipted invoices.

10. Determine direct loss amount using information gathered in above steps, and applying formula in above examples.

11. Advise displacee of amount, complete forms and documentation.

# 7. LAST RESORT HOUSING

**Related Procedures:** Part 11 – Last Resort Housing
24 VAC 30-41-30 Key Terms ("comparable replacement housing")

Last Resort Housing (LRH) is the legal and administrative authority to provide comparable housing when it is not otherwise available. Unavailability may arise because of the lack of housing supply of the type needed, or because the cost exceeds the displacee's financial means, even with the maximum replacement housing payment of $22,500 (owners), or $5250 (tenants).

LRH can be very costly in terms of benefit amounts, project lead time, and staff resources. It is particularly costly if project advertising dates have to be deferred while housing solutions are planned and implemented. This can delay a needed transportation improvement or cause higher construction cost. Two strategies can be employed to limit the need for LRH, or expedite the provision of housing when it is needed. These are Comparability Review, and Early Identification of Need.

## Comparability Review

VDOT is obligated to enable every displacee to relocate to comparable replacement housing. This term might be described as an "as good or better" standard with regard to housing characteristics. However, care should be taken to ensure that the flexibility that is provided in the definition of comparable replacement housing is utilized and that unnecessary upgrading is avoided, particularly in potential LRH situations.

Before determining a benefit under LRH the relocation agent should review the comparability requirements in reference to the specific displacee needs, and available housing resources.

Special attention should be given to the concept of "functional equivalency". This key term in the definition allows for consideration of a range of housing that differs in some physical

aspects from the displacement house. The important point is that the comparable replacement dwelling perform the same function, and provide the same utility. as the house acquired. It is not necessary that the comparable dwelling must meet a tape measure comparison to the property acquired. Reasonable tradeoffs may be made in specific features when the dwelling is “as good or better’ on an overall basis and satisfies basic needs as to bedrooms and living space. For instance, a garage work area may substitute for basement workshop. Generally, a comparable dwelling should have an equivalent number of rooms and living area. However, a smaller decent safe and sanitary dwelling (which by definition must be “adequate to accommodate” the displacee), may be considered functionally superior to a larger dwelling in substandard condition. The emphasis is on functional, not physical, equivalency.

Several of the elements of comparable replacement housing deal with the specific needs of a displaced person or family, including financial means, access to employment and access to public and commercial facilities. The needs of potential LRH displacees should be identified and critically evaluated. For instance, a displacee that has a car and presently commutes 15 miles to work, has a greater range of potential “comparable housing” than a neighbor next door who does not have a car and relies on public transit. A displaced family may need to remain in the same school district.

The essential point is that the LRH should be considered applicable only after a careful review is made of the specific requirements of comparability.

## Early Identification

The best approach is to identify the potential need for it early in the relocation process, and intensify efforts to identify and provide housing under normal program parameters.

Most Last Resort Housing cases involve unusual displacee circumstances or needs such as large family, very low income, disabled or elderly displacee. These conditions are always identifiable at the initial displacee contact. Initial interviews should be performed as early as possible and explore all conditions relevant to housing needs.

Potential LRH cases identified in the initial contact should be set aside from the overall caseload and marked for priority service. Early identification and action will enable the broadest possible range of housing alternatives to be considered. It will also provide the greatest opportunity for the housing market to produce an existing dwelling meeting displacee's needs, and avoid the need to select upgraded housing, or to construct new housing.

The example on the following page contrasts the replacement housing alternatives considered for a specific LRH case situation, under high priority service vs. normal relocation service.

## EXAMPLE

### Last Resort Housing Options

| **Facts:** Family of 7; 2 (f), 3(m) ages 7,9,11,13,16; youngest autistic-receiving spec. ed. Family income $15,000; 4br home in poor condition, only $10,000 equity. Need 4-5 br replacement; tight housing market. Project ad date – June 1999 | |
|---|---|
| **Options – LRH Need recognized 9/97** | **Options – LRH Need recognized 6/98** |
| ➢ Explore market(21 months listings)<br>➢ Rehab HUD repossession<br>➢ Good spec. ed. Available in adjacent school district. Find listings<br>➢ Build new house (expensive)<br>➢ Add br to existing 3br house.<br>➢ Purchase upscale 4br(expensive)<br>➢ Community housing assistance Corp. offers low int. mortgages | ➢ Explore market( 12 months listings)<br>➢ Purchase upscale 4br(expensive)<br>➢ Build new house (expensive) |

## 8. RELOCATION FORMS

The following is a list of all relocation forms and their corresponding reference numbers for the RUMS Library:

| RUMS # | RUMS LOCATION | FORM # AND DESCRIPTION |
|---|---|---|
| R15 | Alignment | Relocation Assistance Report (No Relocation |
| R16 | Alignment | Relocation Assistance Report (With Relocation |
| R16A | Alignment | Relocation Assistance Report - Cost Summary |
| R01 | Relocation-General Tab | RW59A Notice of Intent to Acquire Owner-occupied |
| R02 | Relocation-General Tab | RW59B Notice of Intent to Acquire-Tenant Occupied |
| R03 | Parcel | RW59C Notice of Intent to Acquire-Owner w Tenant |
| R04 | Relocation-General Tab | RW59-1 Relocation Assistance (Residential) |
| R05 | Relocation-General Tab | RW59-2 Relocation Assistance (Personal Property) |
| R06 | Relocation-General Tab | RW59-3 Relocation Assistance (Business) |
| R06V2 | Relocation-General Tab | RW59-3 Relocation Assistance (Business) |
| R21 | Relocation-General Tab | (RW62C) Occupancy Affidavit - Tenants |
| R25 | Relocation-General Tab | RW66 Incidental Exp & Mortgage Interest Differential |
| R25V2 | Relocation-General Tab | RW66 Incidental Exp & Mortgage Interest Differential |
| R29 | Relocation-General Tab | RW69A Char & Needs of Displaced Individual or Family |
| R29A | Relocation-General Tab | Page 2 RW69A |
| R30 | Relocation-General Tab | RW69A1 Char & Needs of Displaced Business,Farm,NPO |
| R90 | Relocation-General Tab | Ninety Day Assurance Notice |

| | | |
|---|---|---|
| R91 | Relocation-General Tab | Final Vacating Notice |
| R92 | Relocation-General Tab | 30 Day Personal Property Only |

| RUMS # | RUMS LOCATION | FORM # AND DESCRIPTION |
|---|---|---|
| R10 | Relocation-Moving Tab | Moving Cost Approval - Residential Fixed |
| R11 | Relocation-Moving Tab | Moving Cost Approval - Commercial Move |
| R12 | Relocation-Moving Tab | Moving Cost Approval - Business Fixed Pa |
| R13 | Relocation-Moving Tab | Moving Cost Approval - Moving Cost Finding |
| R17 | Relocation-Moving Tab | (RW60A) Moving Cost Application - Family-Individual-PP |
| R18 | Relocation-Moving Tab | RW60B Moving Cost Application - Bus Farms NPO |
| R26 | Relocation-Moving Tab | RW67A Moving Cost Payment Claim-Family,Individual, PP |
| R27 | Relocation-Moving Tab | RW67B Moving Cost Payment Claim-Business,Farms,NPO |
| R27V2 | Relocation-Moving Tab | RW67B Moving Cost Payment Claim-Business,Farms,NPO |
| R07 | Relocation-RHP Tab | RW65A Offer of RHP (180 days or more) |
| R08 | Relocation-RHP Tab | RW65B Offer of RHP (Less than 180 days) |
| R09 | Relocation-RHP Tab | RW65C Offer of RHP Owner-Occupant to Rent |
| R14 | Relocation-RHP Tab | Occupancy Agreement (Purchase) |
| R19 | Relocation-RHP Tab | (RW62A) Determination of Purchase RHP |
| R20 | Relocation-RHP Tab | (RW62B) Determination of Rental RHP |
| R20V2 | Relocation-RHP Tab | (RW62B) Determination of Rental RHP |
| R22 | Relocation-RHP Tab | RW65A1 Application for Purchase RHP OwnerOcc 180+ |

| | | |
|---|---|---|
| R23 | Relocation-RHP Tab | RW65B1 Application for Purchase RHP OwnerOcc 90-180 |
| R24 | Relocation-RHP Tab | (RW65C1) - Application for Rental RHP |
| R31 | Relocation-RHP Tab | Available or Acquired Replacement Housing |
| R28 | Relocation-Contacts Tab | (RW68A) Contact Record |

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# CHAPTER 7 – PROPERTY MANAGEMENT

## Section 1 – General

### 7.1.1 Introduction

The Property Management Section functions within the Right of Way and Utilities Division (RWUD). Property Management activities occur at different stages of and following project construction.

(1) During project development identifying buildings and improvements that will be affected; and (2) Post acquisition, being the control and disposition of buildings and improvements and the management and conveyance of State owned real estate.

The Property Management Section is organized under the State Utilities and Property Manager with staff located in the Regions and Central Office. The Program Manager for Property Management (PM Program Manager) has responsibility and control of program policies and procedures, management, implementation and day-to day operations of the Property Management staff. This includes review and processing requests for conveyance and lease, as well as preparation and processing of various legal documents, closings, securing any Commonwealth Transportation Board approvals, etc.

The Regional Right of Way Manager has responsibility for identifying, acquiring and taking possession of improvements and real property as part of the acquisition and relocation processes and for their management until the improvements are released for demolition or upon completion of the Right of Way acquisition phase, at which time the project is turned over to construction. In the event of significant project schedule changes delaying release to construction, properties and improvements are turned over to the Property Management Section until the project proceeds or is removed from the long range transportation improvement plan.

There are no forms included in this Chapter. All forms and instrument templates are found in the Right of Way and Utilities Management System (RUMS) or on the Property Management Team site located on the VDOT portal.

The inclusion of references to manual sections is to assist with encouraging familiarity with the Program and its processes and should not be considered as an all inclusive listing of areas of this manual that may apply. Familiarity with the overall contents of Chapter 7 will produce the most efficiency and should be reviewed prior to commencing with any work within the scope of the Program.

### 7.1.2 Scope of Property Management Functions

The Property Management Function within the RWUD involves taking possession of, controlling, managing and ultimately disposing of real and personal property acquired by VDOT incidental to transportation purposes. It typically includes the following elements:

1. Providing assistance in the identification of hazardous contamination on proposed or acquired VDOT property and reporting it to the Environmental Division/Section for management.
2. Management through good, accepted general business practices, lease, sale, salvage, removal or demolition of improvements prior to and after project construction.
3. Management, lease and/or sale of real property.
4. Inventories, record keeping and fiscal management.
5. Review for non-highway use of operating right of way.

The RWUD is responsible for all residue and surplus property, improved and unimproved, and all improvements thereon. This includes property within the operating right of way (surplus property by definition) up to and prior to the start of construction.

The District Administrator is responsible for the continuing management and control of operating right of way during and after the completion of construction. Typically, the Residency Area Maintenance Manager, in accordance with the Land Use Permit Manual, handles permitted non-highway use of operating right of way during and after the completion of construction. The RWUD should be involved in reviewing and approving proposed uses. There should be close communication and coordination among the District Administrator, the Residency Area Maintenance Manager, the Local Assistance Division and the RWUD in the management of operating right of way.

**VDOT Capital Outlay Property** is Capital Facilities (real estate used for offices, maintenance, storage, etc.), managed and controlled by the Administrative Services Division (ASD). The RWUD provides logistical support to ASD in the acquisition and disposal of capital outlay property. The process for the disposal of capital outlay property differs from the RWUD process and is governed by Title 2.2, Chapter 11, Article 4, of the Code of Virginia, as amended. The ASD should, when needed, formally request in writing RWUD assistance in acquiring and disposing of Capital Outlay Property. All necessary approvals should be in place prior to the request for assistance. Typically, the District Facilities Manager secures the approvals. All manpower and resources expended in Capital Outlay work shall be charged against an appropriate capital outlay code provided by ASD through the District Facilities Manager.

### 7.1.3 Property Management Goals

VDOT is one of the larger governmental real property holders in the Commonwealth. This imposes a great responsibility to assure that property is managed in a manner consistent with the overall public interest and benefit. The RWUD has established the following guiding principles for effective management of property:

1. Assure timely, efficient, cost effective removal of improvements on property being cleared for construction.
2. Prevent neighborhood blight arising from vandalism, theft or illegal use of property.
3. Protect public safety through the removal or control of environmental hazards and attractive nuisances (swimming pools, etc.) on acquired property.
4. Assure that fair and equitable rent is set and collected for extended occupancy on property acquired as right of way or residue before construction and on formally leased property.
5. Take preventative measures to preclude unauthorized use and/or encroachment on VDOT property.
6. Dispose of property in a manner that is in the best interest of the Commonwealth.
7. Establish reasonable and uniform policy and operate within accepted good, established business practices throughout the Commonwealth.
8. All necessary and due diligence shall be paid and afforded throughout the entire Property Management Program to ensure fair and equitable treatment and all necessary

action for compliance with Title VI requirements in the Code of Federal Regulations as defined in 49 CFR 21.9(b).

### 7.1.4 Basic Terms and Concepts

**Property** is that space located above, at, or below any point lying within right of way and surplus or residue lands, and includes air rights under and over highway structures and over sections of highway, as well as surface rights of any right of way from the traveled way improvements. This modified Federal Highway Administration (FHWA) definition is important in that VDOT is governed by the Code of Federal Regulations and is subject to FHWA oversight.

**Real Property** is land and buildings, structures and other improvements located thereon which are permanently affixed to the land. This can be residue or surplus property as defined.

**Personal Property** is that general category of property that is portable in that it is not permanently attached to the land and has function and use separate from the land. The Property Management Program becomes involved with personal property in a limited respect. Determinations must be made to distinguish personal from real property, normally at the appraisal stage. Also, personal property is occasionally abandoned on acquired real property and must be disposed of in an efficient and economical manner at the time possession is taken or at any time thereafter.

**Residue property** is typically identified on plans as land between the "proposed right of way (R/W) line" and the "proposed acquisition line" and does not require Commonwealth Transportation Board (CTB) approval for disposal. Typically, residue land results from VDOT's acquisition of property where the owner would otherwise be left with an uneconomic remnant. (See Section 5.10 for further clarification on partial acquisitions.)

Residue land, and surplus land (formerly operating right of way), is within the jurisdiction of the Director. It is important, however, to understand the distinction between residue and surplus property or land.

**Surplus property (formerly operating right of way)** is typically identified on plans as land within the "proposed or existing right of way lines" and was, at one time, necessary

for the operation, safety and maintenance of the transportation facility, and requires CTB approval for disposal. It is in this limited context that such property is considered surplus.

Strict controls are imposed on non-highway uses of operating right of way in accordance with the Land Use Permit Manual, usually at the Residency Office level. Non-transportation uses are occasionally allowed under circumstances in which they do not interfere with the operation, safety or maintenance of the highway.

The term "excess right of way" is sometimes used to describe property that is not needed and may be available for disposition. Use of this term is discouraged, as it tends to confuse the distinction between residue and surplus property.

## Section 2 – Early Project Stage

### 7.2.1 General

Property Management activity begins with the corridor location phase of project development. At this early stage, the Regional Manager assigns a representative to the scoping team with the objective of identifying potentially contaminated land or land uses and improvements and facilities that could impact corridor location and may require further environmental or other evaluation.

Property Management continues, with a changing focus, through right of way acquisition and project construction until ultimately the property is disposed. This section will focus on the responsibilities and activities that occur <u>before</u> the notice to proceed with right of way acquisition.

### 7.2.2 Corridor Selection and Field Inspection

At the corridor phase, there may be multiple alignments under consideration. These alignments must be reviewed and analyzed from a multidisciplinary perspective in order to identify social, economic and environmental impacts that will influence highway location. RWUD is one of the disciplines that typically participates in the field review inspection team to identify improvements to be acquired and potential Property Management issues. The

composition of the field review team will vary with the characteristics of the corridors being studied.

Property Management issues in the corridor review and field inspection phase should include the following areas:

1. Identification of potentially contaminated improvements, particularly with asbestos or lead.
2. Identification of possible illegal or contaminating lands uses, including dumps, chemical spill areas, etc.
3. Location of wells, septic systems, drain fields, storage tanks, foundations, etc. that may not be recorded on preliminary plans.
4. Presence of safety hazards or attractive nuisances that will need to be specifically controlled if acquired, such as foundations retaining water, unfenced pools, etc.
5. Identification of improvements that may be suitable for possible owner retention or resale once acquired.

Property Management observations and findings contribute to overall environmental evaluation of the location corridor study. They also provide background and insight that is valuable during the active right of way phase of project development, such as the following:

1. Encroachments on existing right of way, such as porches, building additions, etc.
2. Improvements that will need asbestos inspection and removal before disposal.
3. Properties and improvements that have revenue return potential.

All encroachments on existing right of way or unauthorized breaks in limited access lines should be reported to the PM Program Manager.

### 7.2.3 Regular Demolition "D" Numbers.

At field inspection, all manmade improvements located on property being acquired require the assignment of "D" numbers, with the exception of some Parcel Clearing items (Section 7.3.2) and are to be shown on plans. The assignment of "D" numbers to the improvements is required for inventory and entry of the improvements into RUMS. The Location and Design Division's Road Design Manual, Chapter 2F, governs the format for assignment and use of "D" numbers.

All buildings, significant signs, wells, in-ground pools, or other significant improvements must be assigned a regular "D" number in the series of 1 – 499. This is done upon receipt of field inspection prints. The "D" numbers are assigned consecutively starting with the lowest available number (D-1, D-2, etc.) without duplication and running successively starting at the lowest project centerline station number. "D" numbers added later are assigned the next lowest available number for the project.

**Significant improvements** are those that typically require specialized equipment for demolition beyond that normally required for project construction (such as a crane, air hammer, etc.) and are usually bid on an individual item basis as part of the highway contract.

Wells, when identified, will be assigned "D" numbers. The diameter and depth of the well should be entered on the plan adjacent to the "D" number when this information can be reasonably obtained or is readily available. Any well house to be demolished is to be assigned a separate "D" number, although it may be attached to the well.

**Non-significant** items/improvements require no specialized equipment for removal beyond that normally required for project construction and are typically included as either Special "D" Numbers (Section 7.2.4) or as clearing of parcels (Clearing of Parcels Section 7.3.2.) or regular excavation pay items. The "D" Number is entered into the RUMS Improvement Screen and "0" is entered into the Estimated Cost of removal field. The costs for removal are then added to the Parcel Clearing field.

This is in accordance with the Location and Design Division's Road Design Manual Chapter 2F and the Scheduling and Contracting Division's Road and Bridge Specifications Section 516 (http://www.virginiadot.org/business/resources/const/2007SpecBook.pdf).

### 7.2.4 Special "D" Numbers

Special "D" numbers will be assigned to underground storage tanks, non-significant advertising signs, non-significant items/improvements, and personal property (such as mobile homes) within the "proposed R/W", "proposed acquisition" and construction limits.

Signs deemed "non-significant" by the Right of Way Division are assigned "D700" series numbers (D700, D701, etc.) with the costs summarized under "Parcel Clearing ".

Non-significant improvements or personal property will be assigned “D900” series numbers (D900, D901, etc.), with the costs summarized under "Parcel Clearing ".

The assignment process and rules are the same as referenced in Section 7.2.3 beginning with the first number (500, 700, or 900) in the respective series.

The special “D” number series for each class of items is identified in the following table:

**TABLE 7-1**
**ASSIGNMENT OF SPECIAL D NUMBERS**

| IMPROVEMENT TYPE | D SERIES NUMBER | SPECIAL INSTRUCTION |
|---|---|---|
| Underground storage tanks | D-500 Series | Location to be plotted and capacity shown adjacent to the “D” number. |
| Non-significant outdoor advertising signs | D-700 Series | Locate and describe. Show permit (OA) numbers adjacent to the item. |
| Non-significant items for individual pay item consideration; mobile homes, specialized fencing, etc. | D-900 Series | Show in or adjacent to the item identified with the D number. |

## Section 3 – Property Management Reports

### 7.3.1 General

The Property Management process is critical in clearing right of way for the bidding process for transportation projects through the Virginia Department of Transportation's (VDOT's) Scheduling and Contract Division and their ultimate construction. **A complete and accurate accounting of all improvements on a project is critical**. That is, they are to be completely inventoried and their disposition fully and accurately reported prior to the advertisement of the project for construction bids.

The Property Management Program includes responsibility for the continuing, prudent stewardship over real and personal property assets held and controlled by VDOT. The assets and all revenue generated from them must be reported in a consistent and timely manner within the Fiscal Division's policy and procedure.

### 7.3.2 Building Data in the Right of Way and Utilities Management System (RUMS)

The Regional Right of Way Office will enter building data into RUMS on the appropriate Improvements Screen(s) on a continuing basis, beginning with the assignment of "D" numbers (See Sections 7.2.3 and 7.2.4). The RUMS database will be updated as buildings and improvements are removed, demolished, sold, removed by unknown parties or disposed of otherwise. The following specific data entry instructions for classifications of improvements are offered:

#### A. Buildings

In the initial stage of a right of way project the "D" numbers, improvement type, use, etc. are to be entered into RUMS on the appropriate Improvement Screen. Each individual "D" number should have an individual Improvement Screen. When a building is vacated, the vacation date should be entered on the Relocation Screen.

## B. Clearing of Parcels

Items such as fencing, sidewalk, landscaping, septic system, drain fields etc., between the construction limits and the right of way line should be considered as parcel clearing. Non-significant items in and out to the temporary construction easement line should be treated as parcel clearing. An Improvement Screen will be established for each parcel for which there will be parcel clearing costs incurred. If "parcel clearing" is required for a parcel with no other types of improvements, a D-900 series number should be assigned and "0" is entered into the Estimated Cost of removal field. The costs for removal are then added to the Parcel Clearing field. Determination of current costs for parcel clearing items can be made through viewing actual project costs on bids in the various Districts through the Scheduling and Contract Division's external web site: http://www.virginiadot.org/business/const/resources-bidtabs.asp.

Under *Type* the item(s) to be cleared (fencing, sidewalk, landscaping, septic system, drain fields, etc.) should be entered. The term "parcel clearance only" may also be used. When this *Type* is utilized, the items included in "parcel clearance" should be identified under the comment section of the Improvement screen with the removal cost attributed to each item. The total cost for these items should be entered in the Parcel Clearing Field. Under *Use,* select Parcel Clearance. The *Method* of removal should be selected and entered on the Removal tab of the Improvement Screen.

## C. Mobile Homes

Mobile homes are considered real property if their method of fixture to the ground appears intended to be permanent or a deteriorated condition renders its relocation unsafe and/or unfeasible. They are to be assigned regular "D" numbers.

Mobile homes which are considered to be personal property should be set up and shown on an Improvement Screen and assigned a D-900 series number. Mobile home should be indicated in the improvement *Type* field and *Personal Property Only* should be selected in the *Use* field. *Owner Retention* should be selected in the *Method* field on the Removal tab of the Improvement screen.

When a mobile home has been removed from the right of way, the date of removal will be entered into the *actual removal date* field on the Improvements Removal Screen.

## D. Personal Property

Personal property, such as a boat, an auto, stacked wood, etc., located within the "proposed right of way" and intended to be/or actually left within the "proposed R/W" must be identified in RUMS. These items will be set up on an Improvement Screen using D-900 number series. The improvement *Type* field should describe the item that is to be removed and the improvement *Use* field should indicate Personal Property Only. An appropriate entry should be made in the *Method* field on the Removal tab of the Improvement screen.

When the personal property has been removed, the date of removal will be entered in the *Actual Removal* date field on the Removal tab.

## E. Underground Tanks

All underground storage tanks (UST) will be entered on the RUMS Improvement Screen using the D-500 number series. Multiple tanks on the same parcel will be assigned individual numbers. The capacity of each tank will be entered into the improvement *Type* field and Tank (Underground) selected in the *Use* field. An appropriate entry should be made in the *Method* field on the Removal tab of the Improvement screen. Small above ground tanks (home heating oil type) that are attached or in service to buildings should not be assigned a "D" number. Any small above ground tanks that are not attached or in service to buildings should be treated as personal property. Large above ground tanks (tank farm type) should be assigned a regular "D" number.

## F. Contamination

The RUMS Parcel General Tab Screen contains "Contamination" data entry fields to identify environmental contamination on parcels. The necessary information is to be entered depending on the contamination status, etc. The Environmental Division shall

be notified of any contamination or situation involving environmental concerns (Sections 7.4.5, 7.5.2, and 7.5.6).

### 7.3.3 Building Data Report

The Building Data report (also formerly known as the B-2 Report) is **critical** to, and used in the project pre-advertisement phase of project development. The Regional Right of Way Office is responsible for complete data entry. All data should be checked and updated beginning 180 days prior to the project advertisement date and continuing as required. This report is generated by the Project Scheduling and Certification Section and sent to the Location and Design Division and the Scheduling and Contract Division for use in the development of the bid item for the contract proposal. It is resubmitted to both divisions as changes are made by the Regional Office on an "as needed basis" until the project is advertised. The Regional Right of Way Office should notify the Project Scheduling and Certification Section if changes are made within 180 days of project advertisement.

The report identifies all parcels with improvements that have been assigned "D" numbers. Any outstanding, unaccounted for improvement(s) could cause construction delays and additional project costs if not vacant, or possession has not been gained and/or removal accomplished by the time the contract is awarded. The Building Data Report shall account for all buildings/improvements, reflecting that all are vacant (all displacees' relocated/personal property moved), in the possession of VDOT and have/have not been removed from the right of way. The Building Data Report is generated through RUMS Reports.

### 7.3.4 Property Management Forms

**Right of Way Improvement Record –Form RW–B5 (RUMS Form PM10)**

A Form RW-B5 will be completed for each **individual** building on the project once it is vacant and possession has been taken. A copy of the Form RW-B5 will be placed in the Regional Office file and a copy forwarded for inclusion in the Central Office file.

All personal property should be removed before possession is taken of the building and appropriate entry made in RUMS. Items (cabinets, air conditioners, water heaters, etc.) in

or on buildings having real property value should be accounted for as needed. If it is determined that real property items have been removed, a reasonable effort should be made to identify and recover the item or have VDOT compensated for the item. This should be reported on the RW-B5.

**Credit and Transmittal of Monies–Forms PM15 – RW-80 Excel SALES ONLY-Check Transmittal Form and PM15A RW-80 Excel LEASE AND OTHERS – Check Transmittal Form.**

All monies received and accepted for deposit to initiate the sale of Class II property to an adjoining landowner and Class 1 property as part of the sealed bid and negotiated sale processes shall be processed by the Property Management agent receiving them. The requestor of Class II property and under special circumstances the purchaser of Class I property and deposit information shall be set up in the Land Use and Permit System (LUPS) and will require the tax identification or driver's license number of the requestor and their address and RUMS PMI number and information to create the permit. Once this is complete the deposit is transmitted to the Reimbursement Section and credited to the designated revenue account utilizing the RW-80 (PM15A) with a copy of the LUPS permit screen and PMI screen sent with the check. The Reimbursement Section will process the deposit to the Fiscal Division and receive a line item number which will be entered into LUPS on the respective permit screen and provided to the Property Management agent, who will in turn enter the permit number and the line item number information into the RUMS contact screen for the PMI. Transfer of deposit resulting from retention will be transferred to the revenue account by providing copies of the original documents to the Reimbursement Section or when transmitting the monies from sale of the property.

All monies generated from the sale or lease of real or personal property shall be credited to a designated revenue account code unless otherwise specified. Monies received will be credited to the appropriate revenue account code as selected on the RW-80 (Form PM15 and PM15A) to reflect proper project fiscal transaction status (open or closed) and federal funding status in acquisition of the property (participating or non-participating). **All revenue generated from the sale or lease of property acquired with federal funding participation shall be credited to the proper account so as to ensure identification for use on future Title 23 Code of Federal Regulations eligible**

**projects, including Transportation Enhancement projects (see Section 5.13.3).** These monies are to be transmitted to the District Fiscal Section for lease revenues or Central Office Right of Way Division Reimbursement Section for conveyance, purchase deposits and sales proceeds via Form RW-80 within 24 hours of their receipt. These forms are found on the Property Management Team Site as PM15 - RW80 Excel SALES ONLY-Check Transmittal Form and PM15A RW80 Excel LEASE AND OTHERS – Check Transmittal Form. All proceeds transmitted should be in the form of a cashier's/certified check or money order made payable to the **Treasurer of Virginia, Department of Transportation.** In unusual instances where cash is accepted for payment, it should be promptly delivered to the District Fiscal Section for proper credit. Proper credit of proceeds is further described under the Section which applies to the sale or lease of property or improvements under **Credit of Proceeds (Sections 7.4.7 and 7.5.9 and 7.6.8)**.

**Retention Value of Improvements –Form RW-B6 (RUMS Form PM32)**

Any buildings that will be retained by the owner must be addressed during negotiations phase of the acquisition (Sections 7.5.1 and 7.5.9). A retention value for each building a landowner wishes to retain and remove from the right of way shall be established and recorded using the Form RW-B6. The retention value should be established using acceptable methodology. In many cases, and as a "rule of thumb", 10% of the appraised value of the building or improvement can be used as a beginning point, provided the building or improvement contributes value to the property. The Appraisal Section should be consulted as needed. Buildings or improvements with high sale potential require special attention.

**No Trespassing Sign – (Old Form RW-70)**

Upon inspection of a building and after possession has been taken, the building will be posted with a No Trespassing sign (Old Form RW-70) (See Section 7.5.1). Typically, the sign should be placed inside the building where it cannot be seen through the windows but can be seen upon entry into the building. This is intended to temper the obvious "vacant building" created by placing it outside.

Consideration should be given to posting the signs inside and out when there is obvious trespass and/or vandalism, and the legal issue of police intervention is needed. Most law enforcement is predicated upon having the property posted for their view and enforcement. Local law enforcement should be notified in writing by the Regional Right of Way Office when possession of the property has occurred.

## Section 4 – Lease of Property

### 7.4.1 General

The Virginia Department of Transportation (VDOT) purchases real property primarily for the expansion and upgrading of Virginia's transportation system. Lease of property is subordinate to this purpose. Property purchased incidental to project construction, improved or unimproved, can be leased prior and subject to project construction. Residue property not needed for transportation purposes can generally be leased for a longer term. Leasing of residue property should be secondary to efforts to sell the property.

Allowing continued use of property beyond the expiration of the original vacation date through formal or informal extensions, lease or otherwise, shall not conflict with project advertisement date or utility adjustments. Any use should be extinguished at least 90 days prior to project advertisement or, in the case of utility relocation conflicts, no later than the timeframe established by the Regional Utility Manager for utility adjustments to meet project advertisement. In all cases of utility relocation conflicts, the Regional Utility Manager will be consulted.

Non-highway use of operating right of way after project construction is allowed under limited circumstances if consistent with highway safety, operation and maintenance. A public agency or public service use (such as a utility or a short term temporary use) is generally addressed through VDOT's permit process through the Residency Area Maintenance Manager's Office (Section 7.1.2). When the use is by a private (for profit) purpose or in other circumstances, a lease agreement is appropriate for use of operating right of way. A land use permit will still be required to document said use. The RWUD

serves in a review and advisory role in the permit process and is typically the lead section in leasing of operating right of way.

Leasing of operating right of way for any private sector advertising purpose is not allowed (Section 33.1-373 of the Code of Virginia, as amended). Situations where signs and/or other advertising rights are acquired but are being considered for remaining in place until needed for project construction should be addressed on an individual basis in a written request to the Director. Any continued, approved use will be by formal lease at fair market rent.

Lease of real property generates revenue for the Commonwealth. There are other potential benefits to a prudent lease of property:

1. Continued occupancy of property deters vandalism and blight that can occur when vacant.
2. Leasing for commercial uses may promote the economic health of the surrounding area.
3. Leasing to the occupant at the time of acquisition may lend support to the relocation program by solving short-term housing needs.
4. VDOT is relieved of property maintenance and security costs by transfer of these responsibilities to a lessee.
5. Leasing may be a beneficial alternative to disposal by sale if the local real estate sales market is depressed.

The decision to lease property should be made with consideration of the specific circumstances that apply, including the factors listed above.

Leasing of residential property formally places the department in the status of a landlord, and as such, the requirements of the Virginia Residential and Landlord Tenant Act (copy not included in manual) are applicable.

### 7.4.2 Rent By Agreement (Formerly Rent Penalty)

Original tenant and owner occupants of property acquired by VDOT who are being displaced can be allowed to continue to occupy the property at the expiration of the original vacation date as an extension of the vacation date for an additional 30 to 90 days,

with a monthly rent by agreement amount being collected, provided there is no conflict with the project advertisement date or utility adjustments as stated in Section 7.4.1. The rent by agreement amount shall be equal to their current monthly mortgage payment (principle and interest only) or, in the case of a tenant occupant, an amount equal to their existing monthly rent. In the event there is no existing mortgage or monthly rent, fair market rent will be determined and used for the payment amount. (Virginia Code Section 25.1-417.6) If fair market rent exceeds an original occupant's Replacement Housing Payment Determination for monthly rent, the monthly rent amount shall be the amount set forth in the determination. Occupants should continue any insurance they may have had on their personal property and/or liability insurance and provide the Regional Right of Way Office with a copy of the certificate or binder. **The rent by agreement amount cannot exceed the fair market rent for the property.**

Rent by agreement for any period beyond the initial maximum extended 90 day period will be at fair market rent and can continue for no more than a maximum of 180 days beyond the expiration of the original vacation date without a formal lease agreement. Periods beyond 180 days require that the formal rental process as set forth in Section 7.4.3 be followed. The term for leases under these circumstances can be on a month-to-month basis with a typical 60 days notice of cancellation for original occupants currently under VDOT lease when they are constructing a replacement home or other similar circumstance. There has to be a reasonable expectation that they will be vacating the property in the near future.

Hardship cases involving ability to pay rent by agreement or the displacee making satisfactory progress toward vacating the property need to be reviewed on an individual basis and proper consideration afforded by the Regional Manager with his/her determinations documented in the file.

The rent by agreement will be collected and transmitted to the District Fiscal Section in accordance with the policy discussed in Section 7.3.4 under the heading: Credit and Transmittal of Monies Form PM15A RW80 Excel LEASE AND OTHERS – Check Transmittal Form located on the Property Management Team Site.

When VDOT acquires property with owners or tenants in occupancy, the services (typically water, sewer, etc.) being provided by the owner for themselves or to the occupants as part of leases or agreements are to remain with the former owner as he continues to occupy or collect rent or other agreed upon payments through the expiration on the occupant's original vacation date. The expectation is that all displacees will be relocated as soon as possible.

The Regional Right of Way Office can take over the provision of services and collection of rent immediately from the former owner upon transfer of title or when money is available for "draw down" in the case of acquisition by certificate through eminent domain processes. This is to be used and affected when VDOT acquires occupied property and there is no immediate need to relocate displacees, or the relocation process will be lengthy due to large numbers of displacees, complicated relocations or other circumstance. The Regional Right of Way Office will assume the occupant's lease or agreement and honor it until the expiration of the formally issued vacation date or extension of the vacating date and/or allow the occupant to remain in occupancy under the existing agreement without benefit of a lease agreement as stipulated under rent by agreement. At the end of this time period, the Property Management Agent can enter into a new lease, or other agreement as exists. All necessary and timely notices shall be formally given to both the former owners and occupants of the property as applicable by the Regional Right of Way Office.

Under these circumstances, requirements under Section 55-248.2 of the Code of Virginia, the Virginia Residential and Landlord Tenant Act are in effect. The residential Deed of Lease was prepared, reviewed and is updated as necessary by the Office of Attorney General for conformance with these requirements.

### 7.4.3 Leasing of Property - Deed of Lease

Residue property not needed for and some surplus property not immediately scheduled for highway construction or certain "air rights" may be formally leased through a Deed of Lease. Each situation requires review and approval from the Director through the PM Program Manager. This is for improved or unimproved property and all lease types—residential, business/commercial, non-profit, farm, vacant land, etc.

A request for approval to lease property will be made to the PM Program Manager for review and approval. The request will follow the same basic process as set forth in Section 7.6.3 Verification of Ownership and Circulation under Conveyance of VDOT Real Property (The Locality Notification and Circulation to the Central Office Transportation and Mobility Management Division and Department of Rail and Public Transportation are not required) and include the same review, relevant data, and submission. Once the property has been circulated and approved for leasing, it will typically not require additional circulation for continued leasing unless significant time has elapsed between leases. Approval will be required for subsequent leasing unless waived by the PM Program Manager. The Property Management Section will review the lease request, make a final determination, and advise any prospective tenant of approval, etc.

Approval will be through the review of supporting facts and documentation submitted with the request, including the proposed use, PM 27A or PM 27E Rental Application form located on the Property Management Team Site; any local permits needed for the intended use; marked plan sheet of area to be leased; and evidence of ownership of the property by VDOT. In addition, the necessary circulation to ensure the feasibility of leasing the property; Programmatic Categorical Exclusion if property was acquired with federal funding on an Interstate Project, (even if the property is not part of the Interstate System); the recommended term; rental rate (supported by appraisal of fair market rent); **project advertisement date if appropriate**; the Deed of Lease, Form PM 27 Standard Lease Agreement or Form PM 27F Commercial Lease Agreement located on the Property Management Team Site, etc., will be completed by the Property Management Agent. FHWA approval is required for leasing property acquired as part of an interstate project even if the property is not part of the Interstate System and will be requested from FHWA by the Property Management Section.

Class 1 type property may require a public offering of the property for lease. Commercial property, residential property with dwelling(s) in place, potential high use vacant land, etc. typically require a public offering. Notification to the Department of General Services is not required.

Upon approval and assignment of a lease number by the Property Management agent, the prospective tenant will be notified of the approval, and whether public offering is needed. The lease number will be used on all correspondence.

The Standard or Commercial lease agreement on the Property Management Team site should be modified to fit the parameters of the type and circumstances of property being leased, but all major clauses should remain in the lease, especially the Title VI related clause and reference(s). The lease will typically have a term of twelve months and have an effective date of the first day of the month following 20 days from the lease package being sent in final form to the Program Manager. There is to be no notary block for the Chief of Policy and Environment's signature. The lease will be executed by the lessee and notarized, then submitted to the Program Manager for final review and execution by the Chief of Policy and Environment. He is the sole delegated authority to lease property. No rent is to be accepted, or occupancy be permitted, or leased period commence until the lease has been fully executed.

The prescribed rent will be payable monthly or yearly for telecommunication or other appropriate lease situations, in advance, on the first day of the month or year without demand. The Property Management agent, as assigned, will manage and monitor all leases and promptly send a notice of delinquent rent and collect the rent and any late penalty. Failure to pay by the lessee under terms set forth in the lease should result in cancellation of the lease and proper notification under the terms of the lease. The notice will either be personally delivered by a Property Management agent or delivered by certified mail with return receipt. If the rent delinquency is not corrected in the notice period, the Property Management agent will take steps to cancel the lease, gain repossession of the property, and recover past rent due and costs. **Any outstanding, uncollected rent shall be formally referred to the Office of the Attorney General for action.** All rents will be collected and transmitted to the District Fiscal Section in the manner described in Section 7.3.4, under the heading: Credit and Transmittal of Monies– Form PM15A RW80 Excel LEASE AND OTHERS – Check Transmittal Form located on the Property Management Team Site.

No security deposits will be required for leases. This removes the need to administer escrow accounts, which are not cost effective to manage risk of nonpayment.

Operating right of way or property that is to become operating right of way, that is leased, requires special attention with respect to use, term, conditions of cancellation, time to vacate, etc. If leased prior to project construction, the lease term and other provisions are directly dependent on the advertisement date, utility relocation or proposed VDOT usage. Upon the vacation of the property, the Regional Right of Way Office will inspect and take possession of the property, including any improvements, and post the property with No Trespassing Sign(s) (Section 7.3.4) as appropriate and prescribed.

### 7.4.4 Rent Amount and Renewals

The rental rate will be established as fair market rent through accepted appraisal methodology and reviewed and approved by the Appraisal section. The final rental rate can be a negotiated amount as approved by the Program Manager.

The rental rate will be reviewed every two years to reflect market changes and must be scheduled so that any change in rent or the terms of the lease can be effected within the notification timeframes and other relevant terms of the lease. It will be in accordance with the rent establishment terms as previously set forth.

### 7.4.5 Health, Safety & Environmental Contamination Issues in Leasing

VDOT is subject to the common law warrantee of habitability, as well as specific requirements and lessee protections contained in Virginia and local laws and occupancy codes. It is essential that Property Management staff exercise professional judgment and diligence in leasing property, particularly for residential use.

Agents involved in property management should be familiar with Section 55-248.2 of the Code of Virginia, the Virginia Residential and Landlord Tenant Act. A copy is available on the Property Management Team Site. Advice on application or interpretation may be secured from the Program Manager or the Office of Attorney General.

The assigned Property Management agent will conduct an inspection of Department-owned property, especially of all improvements, prior to offering the property to the public for rent and with the prospective lessee before lease approval is requested. For improved properties, basic safety items should be checked, including presence of smoke detectors

and operation of electrical, mechanical and plumbing features. The results are noted and incorporated into the lease. Inspections will be documented.

Hazardous building materials and contamination have added complexity and a higher level of responsibility and potential liability to property management activities. The assigned Property Management agent should be vigilant in their inspection for any environmental contaminants present in buildings, such as mold (Section 7.5.6) or on the land that are visually or odorously evident. The District Environmental Section should be asked to inspect the premises and provide a determination regarding any suspected environmental contaminations. All buildings acquired by VDOT must be inspected for asbestos contamination. Refer to Section 7.5.2 for asbestos policy and inspection practices. Structures that are retained by the owner at negotiations (Section 7.3.4) are not subject to asbestos inspection, as VDOT does not take title to such buildings.

VDOT has a disclosure and information (but no inspection or removal) responsibility with regard to presence of lead-based paint. VDOT is required to disclose any and all available information, reports, etc., concerning lead-based paint regarding the specific building and complete and execute all appropriate related forms.

Asbestos inspection will be made prior to leasing any building, except when the building remains occupied by the original occupant. Such occupants may enter into a lease agreement, and VDOT will not require them to vacate for performance of an inspection. The lease should contain a "save harmless" clause protecting VDOT from any liability.

Buildings that have been determined **not** to contain **any** asbestos should have the following disclosure and "save harmless" clause inserted in the lease:

*"The Lessee(s) by signature(s) below, understand(s) and acknowledge(s) that the Lessor has no knowledge of asbestos and/or asbestos hazards based upon an asbestos report dated _____ indicating the property contains no friable or non-friable asbestos. Regardless, the Lessee(s) each agree(s) to indemnify, defend, and hold harmless VDOT, the Commonwealth of Virginia, its agencies, institutions, officials, employees, agents and volunteers from any and all liability, claims for damage, injury or loss of every kind and nature, whether relating to person or property, arising on or within the Premises or incident*

*to Lessee's(s') use of the Premises including, but not limited to any liability or claims for damage, injury or loss resulting from contact with any hazardous material, such as asbestos, etc., that may be present on the property. Lessee(s) each further agree(s) that any performance bond or insurance protection provided by Lessee(s) shall in no way limit Lessee(s) responsibility to indemnify, defend, and hold harmless Lessor, its agencies, institutions, officials, employees, agents and volunteers as herein provided. Further, this agreement to indemnify, defend, and hold harmless shall not be terminated by, and shall survive, any expiration or termination of this Lease."*

Buildings containing non-friable asbestos in locations where it is not likely to be disturbed may be leased with full disclosure to the prospective lessee. Non-friable asbestos is that which when dry cannot be crumbled, pulverized or reduced to powder by hand pressure.

The following clause will be inserted in the lease as needed:

*"The lessee(s) by signature(s) below, acknowledge(s) the property to contain non-friable asbestos containing material in good condition. Lessee(s) covenant(s) and agree(s) to hold harmless the lessor from any tort liability claims as provided by law, both personally and those brought by third parties during his/her continued use of the property. This shall include, but is not limited to, injury from contact with any hazardous material, such as asbestos, etc., that may be present on the property. The areas that contain the non-friable asbestos containing material are (insert description from asbestos report)."*

*"The lessee understands and agrees that these areas containing non-friable asbestos are not to be disturbed under any condition so as to cause the asbestos to become friable."*

Buildings containing friable asbestos are not to be leased unless the asbestos is removed in accordance with standards for re-inhabitancy (Section 7.5.2). Any exception to this requires review and approval of the Director.

### 7.4.6 Leasehold Tax Reimbursement

Tenants leasing VDOT owned property, primarily residential property, are subject to any leasehold tax imposed by local jurisdictions. In order to fully inform lessees of this possible obligation, the following clause should be pointed out in all leases of any type:

*"Lessee(s) shall be liable for applicable taxes, fees, and/or assessments levied by the local government. The Lessor is aware that _____ County/City is authorized to collect a portion of the real estate tax from the tenants of tax-exempt properties according to Title 58.1-3203 of the Virginia Code, as amended. Lessee shall pay this tax upon receipt of the bill and deduct the amount from the rent payment for the month the tax is paid. Lessee shall send a copy of the paid tax bill with the check for the remaining month's rent to the Virginia Department of Transportation, Attention: (insert name) Property Management Agent, (insert address), Virginia (insert zip)."*

Since VDOT charges fair market rent as a statewide policy, a locality-imposed real estate tax on the lessee has the effect of a payment over and above market rent. Therefore, VDOT will reimburse the lessee upon presentation of a paid receipt or a cancelled check reflecting payment of the leasehold tax. The lessee must pay the tax to the locality in the first instance as it is imposed on the lessee rather than the owner. Reimbursement will be by means of a credit to rent in the month following the presentation of the receipt of tax payment. RUMS records should reflect this credit as *"leasehold tax reimbursement credit",* so the monthly rental amount is accounted for in full.

At the time a new lease is executed or a lease is renewed, the lessee will be advised by letter of the possible leasehold tax liability located on the Property Management Team site and the process for reimbursement.

### 7.4.7 Financial Controls and Separation of Functions

The lease of property is an activity that is particularly vulnerable to appearance of conflict of interest and misappropriation of funds. The following practices will be followed to protect employees, as well as the agency, from the appearance of mishandling of funds or other assets, or the differential treatment of persons who conduct business with VDOT:

1. The person who establishes or updates the rental amount on a property will not be responsible for rent collection on the same property, unless the appraisal or letter of justification is reviewed and approved by the Appraisal Section or Program Manager.

2. All maintenance and repair services are to be selected in compliance with The Virginia Public Procurement Act as administered through the Administrative Services Division (ASD) Agency Procurement and Surplus Property Manual and the ***Guidelines for Procurement and Management of Professional Services Manual***.

3. A sole source hiring of a service provider should be documented in all files and in accord with item 2 above.

4. **Credit of Proceeds** - All proceeds from rents, rent penalties, etc. shall be promptly and properly credited to the established revenue account(s). **All revenue generated from the lease of property acquired with federal funding participation shall be credited to the proper account so as to ensure identification for use on future Title 23 of the Code of Federal Regulations eligible projects, including Transportation Enhancement projects (see Chapter 5, Section 5.13.3).**

   Payment of rent and transmittal of funds to the District Fiscal Section shall be in strict accordance with the procedure defined in Section 7.3.4 under the heading: Credit and Transmittal of Monies - Form PM15A RW-80 Excel LEASE AND OTHERS – Check Transmittal Form located on the Property Management Team Site.

5. Acceptance of cash payments is not preferred but is be acceptable. Any cash payment accepted should immediately be processed through the District Fiscal Section, not to exceed 1 business day from acceptance.

6. Sale or removal of salvageable parts, fixtures or other property is not to be effected to property that is or will be leased.

### 7.4.8 Lessee Liability Insurance Requirements

The Lessees of any type of property are required to purchase an insurance policy with personal property and broad form liability coverage for personal injury, including medical payments, and property damage indemnifying and holding harmless the Commonwealth, its agents and employees, from all liability, claims for damage, injury or loss of every kind and nature during the term of the lease and any renewals or extensions. The insurance policy shall include the Commonwealth as a named insured and have minimum single limit coverage for personal injury and death of $500,000.00 each for residential property and $1,000,000.00 each for commercial property. On or before initiation of the lease term, the Tenant shall deliver a certificate of insurance with a copy of a paid receipt for the first year's premium. The policy shall provide for notification to the Landlord in the event of cancellation. The Program Manager will consult the Division of Risk Management to determine appropriate amounts of liability insurance as needed.

In the event that the Tenant fails to obtain and maintain the insurance required by this section, the Tenant shall be in default of this Lease. If the Default is not cured within thirty

(30) days, the Lease shall automatically terminate, and the Tenant shall immediately surrender the premises.

## Section 5 – Management and Disposal of Improvements and Buildings

### 7.5.1 General

The timely and efficient removal of acquired improvements, including buildings, etc., from the proposed right of way is important to maintaining a construction schedule and minimizing the cost of roadway construction. Therefore, the planning for improvement removal should take place at the earliest possible time in the right of way phase. However, no action should be taken to remove any improvement until VDOT has title and legal possession, and all improvements (primarily buildings) have been inspected for asbestos, with any utilities connected to the improvement removed prior to inspection.

Once formal possession of an improvement has been taken and no trespassing signs have been posted, the Regional Manager notifies the District Environmental Section, to take the necessary action, to have it inspected. All utility companies providing service shall be notified in writing to have all services discontinued and wires, pipes, etc., removed within a specified period. Removal shall be verified by the Regional Manager's staff prior to asbestos inspection being conducted as a safety precaution. Appropriate action will be taken to initiate closure of any wells or septic systems being affected by the project. Form RW-B5 (RUMS Form PM10 – Improvement Record) will be completed at the time possession and inspection of the property is conducted and sent to the PM Program Manager. Any hazardous conditions or "attractive nuisances" (Section 7.5.4) will be noted at this time and arrangements immediately made by the Regional Manager's staff to remedy the condition. Notifications will be sent by the Regional Manager to the local Police Department, when appropriate, as a preventative measure to deter trespassing and vandalism. The Regional Manager will notify the Residency Area Maintenance Manager of any properties to be added to their mowing list as appropriate, and copy the PM Program Manager. All necessary RUMS entries and updates will be made by the Regional Right of Way Office accordingly.

The first option for the removal of improvements from the right of way lies with the owners of the improvement. They have the option at the time of negotiations of retaining improvements and removing them from the right of way (Sections 7.3.4 and 7.5.9). Sale or removal of salvage parts, fixtures or other property is not to be effected if there is any chance of creating or causing contamination through the disturbance of asbestos (Sections 7.5.2 and 7.5.14), or other possible contaminant.

If improvements are not retained, and **the project construction schedule allows time**, the Regional Manager should notify the PM Program Manager that the buildings are available to be advertised for public sale, typically by sealed bid sale, using the "forms package" (RUMS Forms PM09-PM09C) in the system. If no bids are received, or the cost of public sale including advertising would be excessive in relation to the likely net proceeds, the buildings may be disposed of by negotiated sale (Sections 7.5.10 and 7.5.14).

Any services necessary to affect sale, are to be procured in compliance with The Virginia Public Procurement Act as administered through the Administrative Services Division (ASD) Agency Procurement and Surplus Property Manual, and the Guidelines for Procurement and Management of Professional Services Manual. A sole source hiring of a service provider should be documented in all files and in accord with the ASD procedures above.

Payment and transmittal of funds to the Reimbursement Section shall be in strict accordance with the procedure defined in Section 7.3.4 under the heading: Credit and Transmittal of Monies with Form (PM15) RW-80 located on the Property Management Team Site.

The most effective improvement removal method beyond owner retention or sale is through the highway contract. Improvements requiring removal prior to construction for utility relocation, etc., or that present a danger to the public or are an attractive nuisance should be dealt with expeditiously (Section 7.5.4). An open end demolition contract (Section 7.5.12), secured through the Scheduling and Contract Division, is typically time and cost efficient, provided it can be reasonably utilized in an ongoing basis within a given area and does not interfere with the highway contract. No separate demolition contract should be procured if it overlaps a project advertisement date without the Director's approval. Open end demolition contracts can be shared between and among Districts.

Removal by "State Forces" (Section 7.5.13) is a viable option in an emergency or when the nuisance or safety issue is paramount. Temporary measures, such as boarding, fencing, removal of hazards, etc., may suffice depending on circumstances.

### 7.5.2 Asbestos Contamination

#### A. Policy

Every improvement assigned a "D" number in RUMS acquired by VDOT will be included in the request for inspection for asbestos after vacation or use by the original owner or occupant and before it is leased, sold, used or demolished and the resulting report retained and findings entered into RUMS. Improvements retained by the owner at the time of negotiations do not require inspection (Section 7.3.4). The Commonwealth does not take title to or possession of buildings that are retained by their owners and thus has no responsibility with regard to their condition or use. Notwithstanding this, the retaining owner will be required to relinquish any claim against the Commonwealth for any damage or loss due to the presence of asbestos and is responsible for compliance with applicable law, rules, etc., concerning removal.

Improvements that contain Category I and II non-friable asbestos in good condition may be disposed of with proper disclosure to the prospective buyer who will assume all liability and indemnify the Commonwealth from all future claims. This is further discussed in C. below and Section 7.5.10 of this Chapter.

#### Asbestos Inspection

The District Environmental Section is responsible for performing or contracting for the inspection. The inspection cannot be made until the improvement has been vacated and possession taken, and all utilities connected to the improvement removed/disconnected, thus close coordination is important. The Regional Manager is to request, typically in writing, the asbestos inspection once possession of the improvement has been taken and provide any keys or other pertinent information. All improvements that have been assigned a "D" number shall be included in the request. The qualified professional performing the inspection shall determine any exceptions to the need for inspection and so note in the report. Once the inspection has been

completed, a copy of the report will be provided to the Regional Right of Way Office for retention in the project file.

The Asbestos Inspection Report will indicate the presence of asbestos, its location, amount, type and condition, and the estimated cost of removal. The cost of asbestos removal shown in the inspection report should **not** be added to the estimated removal cost on the RUMS Improvement Screen. All relevant data should be entered on the Asbestos tab on the Improvement screens by the District Environmental Section or Regional Right of Way Office.

### B. Improvements Containing Non-Friable Asbestos

VDOT may sell for removal buildings that contain the following two categories of non-friable asbestos:

Category I: Asbestos containing packing, gaskets, resilient floor covering and asphalt roofing containing more than one percent asbestos as identified on the asbestos report. The material must be non-friable (cannot be crumbled, pulverized, or reduced to powder by hand pressure) and in good condition.

Category II: Any asbestos containing material, excluding Category I above, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure. Further, the asbestos containing material must be in good condition and not have a probability of becoming friable.

Improvements containing non-friable Categories I and II asbestos may be leased or moved without removal of the asbestos but may not be sold for dismantling on site for salvage. This activity may disturb asbestos and render it friable.

All sales agreements for improvements containing asbestos will include the following clause:

*"The purchaser(s), by signature(s) below, acknowledge(s) the property to contain non-friable asbestos containing material in good condition, and acknowledge(s) receipt of a copy of VDOT's asbestos inspection report for the property being conveyed. Purchaser(s) covenant(s) and agree(s) to hold harmless the seller from any tort liability*

*claims as provided by law, both personally and those brought by third parties. This shall include, but is not limited to, injury from contact with hazardous materials, such as asbestos, etc., that may be present on the property. The [new] owner shall assume all personal and property liability associated with any asbestos-containing materials remaining in the structure at the time of sale and shall protect and save harmless the Virginia Department of Transportation (VDOT) from any and all damages and claims associated with these materials. VDOT does not warrant the condition of the asbestos containing material remaining in the structure or the quality of any asbestos inspection or abatement activities performed by VDOT and its contractors.*

VDOT will, as indicated in the above clause, provide the purchaser with a copy of the asbestos inspection report. On request, references will be provided to regulatory agencies and licensed asbestos removal companies. Refer to Section 7.4.5 of this chapter for information on hazardous material disclosure and notification responsibilities with regard to lessees.

### C. Buildings Containing Regulated Asbestos Containing Materials

As agreed upon by the Environmental and Right of Way Divisions, VDOT will not sell under any circumstances improvements that contain regulated asbestos containing material (ACM) identified in the inspection report ~~in place~~. These buildings should be turned over to a demolition contractor for removal of the asbestos and demolition or be placed in the highway contract except in cases where the project schedule will allow sufficient time for abatement of the ACM, followed by marketing and sale of the improvement provided the expected revenue from the sale of the building is sufficient to warrant all costs and sufficient recuperation of funds expended for the purchase.

Regulated asbestos containing material is defined as:

1. Friable asbestos material; or
2. Category I non-friable asbestos that has become friable, or that will be or has been subjected to sanding, grinding, cutting or abrading; or
3. Category II non-friable asbestos containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by forces expected to act on the material in the course of removal or demolition.

In an instance where VDOT is willing to pay the cost to have this category of asbestos removed, the improvement can be sold after abatement and removal by a licensed asbestos contractor and in accordance with the Department's Specifications for Asbestos Removal in Occupied Buildings. In cases where this category of asbestos constitutes weatherproofing materials, provisions shall be made to immediately restore any abated weatherproofing materials with non-asbestos containing materials.

The Right of Way Division shall coordinate with the Environmental Division for contracts for asbestos removal and also notify the Environmental Division at the District level to procure the services of a licensed Asbestos Project Monitor to oversee the abatement, who shall be on site throughout the removal of the asbestos and shall provide a report to the Department verifying removal. To assure proper removal, prospective purchasers may not participate in this process.

The Department shall provide the purchaser(s) with copies of the asbestos inspection and project monitoring reports for each structure.

### 7.5.3 Lead-Based Paint Contamination Policy

VDOT is subject to the requirements of the Federal Department of Housing and Urban Development and the Environmental Protection Agency regulations regarding lead paint hazards in acquired improvements, usually buildings.

VDOT is not required to inspect buildings for lead-based paint, as is required for asbestos. VDOT's responsibility is to provide full disclosure of known lead hazards and the opportunity for a prospective buyer to inspect property to assess any risks. Specifically, VDOT must do the following prior to occupancy or sale and preferably at the time the Lease or Purchase Offer Agreement is signed:

1. Disclose to purchasers and or lessees lead paint hazards that are known to VDOT utilizing form PM29 for lease or PM30 for sale of property.
2. Provide purchasers and lessees with any reports pertaining to the presence of lead-based paint and hazards in or on VDOT owned property handled by and through the Right of Way Division.
3. Provide prospective purchasers a 10-day opportunity to conduct a risk assessment or inspection at the buyer's expense.

4. Provide purchasers and lessees with a copy of a federally approved information pamphlet "Protect Your Family From Lead In Your Home" when leasing and also provide a copy of "Reducing Lead Hazards When Remodeling Your Home" when selling property. These pamphlets are listed in English and Spanish. (Copies are available from Central Office or on line at http://www.epa.gov/epahome/quickfinder.htm and scroll down to "L", select "Lead" and scroll down to Additional Resources at the bottom of the page and select the title of pamphlet).

The federally approved forms to accomplish the above requirements are in RUMS on the Property Management General screen (Forms PM29 and PM30). All parties should attest to the fulfillment of the required disclosures and options. The PM Program Manager or designee will sign on behalf of VDOT.

Note that the policy with regard to lead paint is for notification and disclosure, as opposed to inspection, removal and disposal, which is applicable to asbestos.

### 7.5.4 Hazardous Conditions/Attractive Nuisances Policy

VDOT has a responsibility to protect the public from any hazardous conditions that exist on the property at the time of the transfer of title or that arise after the transfer of title. Thus, it is important that these conditions be noted during the inspection at the time possession is taken of the property, especially of the improvements on a property, and that follow-up steps be taken to eradicate and/or secure the condition. Inspections are to be conducted every 30 days to assess the conditions, risk, etc., so long as they exist. Notice will be made by the Regional Right of Way Manager to the PM Program Manager of any hazardous conditions or attractive nuisances on individual properties and the steps taken to eradicate or manage them. A record will be made of inspections indicating the date and time and any safety related conditions that are found, and this record will be placed in the file.

Special attention should be given in the inspections to the presence of any attractive nuisance on the property. This is a condition, such as a swimming pool, open building foundation, etc., where coming in contact with the improvement could be unsafe and/or that may be particularly attractive to children or other vulnerable persons.

Any condition that imperils public safety must be corrected as soon as it is identified. Correction may require removal by state forces or special contract, or securing the property by fencing, boarding or locking.

### 7.5.5 Rodent Control

Improvements on all projects will be inspected to determine if rodent control measures are needed. Regional Right of Way staff with assistance, if needed, from local health or sanitation departments will do the inspection. Each property should be inspected at the time VDOT takes physical possession, or as soon thereafter as possible, and before demolition of improvements.

Improvements that are retained by the owner need not be treated (Section 7.3.4). Rodent control measures will normally not be necessary on rural projects unless they contain numerous, closely spaced buildings or there are garbage dumps, landfills, etc.

If the inspection reveals conditions on the site that would attract infestation, such as uncontained garbage, trash, un-harvested garden produce, etc., the Regional Right of Way Office will have such conditions removed in the most expeditious means available. This may be done by local sanitation departments or by state forces if necessary.

Rodent control measures or treatment will be by baiting, or baiting and dusting, and will be performed by a properly licensed exterminator. An open end rodent control contract with a licensed exterminator or firm is usually the most economical and effective means to perform this function. Contracts should be made on a yearly basis. The selection and contract process shall conform to requirements of the Virginia Public Procurement Act as administered through the ASD, Agency Procurement and Surplus Property Manual and the Guidelines for Procurement and Management of Professional Services Manual.

After a need for rodent control on certain improvements has been identified, the Regional Manager will give written notification to the contract exterminator, including all pertinent information about the nature and location of the infestation. The notice should be provided in duplicate and the contractor asked to submit one copy attached to the bill for service.

Whenever possible, the Regional Right of Way agent or other assigned representative of the Region should accompany the exterminating company when treatment is applied in order to provide access to the property and to inspect the work.

Should the project be delayed or removed from the Long Range Transportation Plan and management of the property be turned over to the Property Management Section, the assigned Property Management agent with assistance, if needed, from local health or sanitation departments, will continue to monitor conditions until the improvements are disposed of.

### 7.5.6 Other Environmental Contaminants

The assigned Regional Right of Way agent or Property Management Agent as applicable should be vigilant for any environmental contaminants present in buildings or on the land that are visually or odorously evident. The District Environmental Section should be asked to inspect the premises and provide a determination regarding any suspected environmental contaminations.

If investigation by the District Environmental Section has revealed the presence of environmental contaminants on the property or within improvements, the District Environmental Section shall notify the Regional Right of Way Manager and PM Program Manager before they commence or continue with acquiring, leasing, selling or disposing of a property. The significant presence of mold in a dwelling or other building may render the improvement un-salable, nor should it be leased.

Prospective purchasers should be given an opportunity to perform a Phase 1 Environmental Site Assessment at their expense on any property they have offered to purchase. The purchaser shall acknowledge this opportunity on the PM16 Purchase Offer Agreement. If an assessment reveals conditions not previously realized, the purchaser shall have the opportunity to withdraw from the purchase without penalty. If the purchaser elects to proceed with purchase of the property, they shall be required to release the Commonwealth from all claims arising from any condition, which now exists or may hereafter be found to exist in, on, or about the property.

### 7.5.7 Use of Structures for Police or Department Training

The Department periodically receives requests from law enforcement and fire protection agencies to utilize structures acquired as part of the project for training. Structures containing asbestos in any form cannot be utilized for training. On occasion, such requests

involve burning the structures. The Environmental Division has issued an instructional and informational memorandum No. IIM-ED-2004-01/00 titled Environmental Requirements for Burning Structures to establish conditions under which these structures can be burned for training exercises. The Director must approve use of each specific structure and the Project Manager must ensure all aspects of the instructional memorandum are adhered to.

### 7.5.8 Disposal by Owner Retention

**A.** Improvements on the Right of Way

All owners are to be given the option of retaining their improvements during negotiations (Sections 7.3.4 and 7.5.1). The choice must be exercised before VDOT has accepted an option for purchase or a Certificate has been filed. In the case of an owner's refusal of VDOT's offer to purchase the property, a Negotiated Sale's Agreement must be executed prior to or at the time the Certificate is being filed. In any case, the negotiator's report (RW-24) shall reflect the owner's intention. If the owner does not retain the improvement(s) at the time of negotiations, the owner will be treated as any other interested party for the sale of improvements.

Retention of improvement(s) will be reflected on the RUMS Improvement Screen.

**B.** Improvements Located on Residue Parcels

When the residue parcel is large enough to support a self-sustaining use (Class I) and has improvements that contribute to it, the improvements typically are to remain a part of the residue and disposed of with the residue. Improvements located on a non-self sustaining residue may either be retained or sold with the residue or be disposed of separately by sale or demolition. These improvements should be identified during the project field inspection or during the right of way acquisition phase of the project with arrangements made to preserve the integrity of the building prior to sale and when feasible, the building should be offered for sale as soon as possible after possession so not to create an attractive nuisance (Section 7.5.4).

**C.** Retention Value

The retention value will be established at the time an owner indicates a desire to retain an improvement. Form RW-B6 located in RUMS (Section 7.3.4) will be prepared determining the retention value and amount of performance bond. If there is specialized equipment in the improvement, the retention value may be determined and included in the appraisal of real property because of the greater likelihood of retention.

Parcels on which there are groupings of improvements with related uses may be grouped for retention or sale. An owner or purchaser will be offered the group and not individual improvements first.

### 7.5.9 Disposal by Sale

Improvements containing non-regulated asbestos (Section 7.5.2) that are not retained or identified for priority demolition can be sold **provided the sale and removal will not impact project advertisement or construction.**

Improvements having significant value and/or public interest should be offered for public sale first (usually a sealed bid sale, advertised auction, etc.) and then by negotiated sale. As with other major actions in the right of way process, the decision to sell will be recorded in RUMS. As the process progresses, the screens must be updated.

**No Department owned improvements, any of the contents of any improvements, or any property will be sold or given to employees of VDOT or their relatives.**

**Credit of Proceeds and Performance Bonds** - All performance bonds and proceeds from the sale of improvements or property, etc. shall be promptly and properly coded and credited to the established account(s) and processed in accordance with Section 7.3.4. **All revenue generated from the sale of property acquired with federal funding participation shall be credited to the proper account so as to ensure identification for use on future Title 23 of the Code of Federal Regulations eligible projects, including Transportation Enhancement projects (see Chapter 5, Section 5.13.3).** Acceptance of cash payments is not preferred, but acceptable. Any

cash payment accepted should be processed through the District Fiscal Section and meet the tracking requirements set out in Section 7.3.4.

**A.** Auction Sale

The PM Program Manager will select an auctioneer as needed. Selection will be in compliance with the Virginia Public Procurement Act as administered through the ASD Agency Procurement and Surplus Property Manual and the Guidelines for Procurement and Management of Professional Services Manual.

Commonwealth of Virginia auctioneers can be used as a sole source vendor as the policy requirements have usually been met. Counsel should be sought when using this option. Auctioneers should be selected based on consideration of experience, qualifications, and fees. The amount of fee will not be based on the dollar volume but will be set on a fixed fee per unit basis. A ticket system will be used by the auctioneer. VDOT employees may also be used to conduct an auction as the auctioneer as a part of their duties.

Auctions will be advertised in local newspapers with the use of auction sale forms. A print of the advertising copy will be forwarded to the Residency Area Maintenance Manager in whose area the sale will take place. Upon conclusion of the sale, all performance bonds and proceeds will be received and forwarded to the Reimbursement Section in the manner described in Section 7.3.4 under the heading: Credit and Transmittal of Monies - Form PM15A RW-80 Excel LEASE AND OTHERS or Credit and Transmittal of Monies - Form PM15 – RW-80 Excel SALES ONLY- Check Transmittal Form located on the Property Management Team Site. A copy of the completed “sale package” reflecting the results, revenue, costs, etc., will be placed in the Acquisition and/or Property Management files.

**B.** Public Sale

A notice of sale by sealed bid will be published in local newspapers in the area of the project and a sign advertising the property for sale placed on the property simultaneously. Proposal forms, etc., and return envelopes will be prepared and distributed to prospective bidders on request and may be placed on the external VDOT

web page under VDOT Property For Sale. The "sale package" (Forms PM09-PM09C) in RUMS should be used and followed. A copy of the advertisement and proposal forms and a description of the improvements to be sold will be sent to the Residency Area Maintenance Manager in whose area the improvements to be sold are located.

A performance bond for the removal of each improvement will be set and processed in accordance with Section 7.3.4. It will be based on the cost of removal of the building from the right of way and any reasonable costs associated with recovery, redress, and remedy should the successful bidder fail to perform. This bond is not an arbitrarily imposed penalty.

The bids will be opened promptly at the prescribed time and recorded in the witness of at least two Department employees. Immediately after the bids have been opened and the successful bidder selected, all bids will be tabulated, reviewed and/or approved with/by the assigned Property Management agent as needed, and a report will be submitted to the file with notification of the results of the sale sent to the PM Program Manager. All improvements included in the sale will be accounted for in this report.

All bidders will be notified in writing of the results of the sale and provided a copy of the tabulation of the bids. The successful bidder will be advised of the acceptance of the bid and be requested to submit separate certified/cashier's checks or money orders for the purchase price and the performance bond within 5 business days of this notification which will be processed in accordance with Section 7.3.4. On receipt of the payments, the Property Management agent will send a Notice to Proceed to remove the improvement(s), typically within 30 days, along with the building keys.

The payment for the improvement(s) purchase and performance bond will be received and transmitted to the Reimbursement Section in the manner described in Section 7.3.4 under the heading – Credit and Transmittal of Monies - Form PM15 – RW-80 Excel SALES ONLY- Check Transmittal Form or Credit and Transmittal of Monies - Form PM15A RW-80 Excel LEASE AND OTHERS – located on the Property Management Team Site. Performance bonds are not to be held in the Regional Right of Way Office. A "permit number" for performance bonds is to be established in accordance with the

processes outlined in Section 7.3.4, to credit, track, and refund an individual performance bond. After the improvements are satisfactorily removed and the property has been inspected, the performance bond shall be returned to the successful bidder via the accepted Fiscal Division procedure. In the event that the buyer fails to perform, the Reimbursement Section will be notified and the performance bond shall be forfeited and credited to the project (no revenue account) to offset the cost of removal.

**C.** Negotiated Sale

Improvements are normally sold by negotiated sale after efforts to sell by public sale have been unsuccessful or it has been determined the value or public interest do not justify the cost, etc., of a public sale. The PM Program Manager makes the determination and decision to waive public sale. The files should document this waiver.

The Negotiated Sale of Buildings agreement will be used for all negotiated sales. Treatment of the payment and performance bond is described in the preceding Public Sale section above.

### 7.5.10 Acquired Improvements as Replacement Housing

An improvement, primarily a residential building, not retained by its previous owner may be given priority and sold as a replacement facility to any person displaced as a result of a highway project. The sale price will be the determined using Form RW-B6 (RUMS Form PM32) located in RUMS and as referenced in Section 7.3.4. An improvement will only be sold on this basis if it is capable of being economically restored to the condition required for occupancy. In the case of a residential displacee, it must be capable of being brought to a decent, safe, and sanitary condition.

All improvements are subject to the same sale conditions with regard to timelines for the project construction schedule (7.5.1), asbestos inspection and contamination (Sections 7.5.2 and 7.5.6), and the prospects and requirements of removing it from the right of way (Section 7.5.15). Displacee prospective purchasers must agree that the building will be

their replacement facility and must own or hold an option on a suitable replacement site to which the building can be moved.

### 7.5.11 Disposal by Demolition Contract

Improvements that have not been removed from the right of way as a result of the methods discussed in the above sections, or which present a danger to public safety, or are an attractive nuisance (Section 7.5.4), or are a blighting influence to the community, or require early removal for the relocation of utilities may be removed by special demolition contract. The Regional Right of Way Manager will approve the need for a demolition contract and record the decision with explanation in the files.

All demolition contracts will be secured through the Scheduling and Contract Division and its processes.

**A.** For individual buildings and improvements, one set of plans showing all buildings to be demolished outlined in red will be provided. A tabulation of the buildings will be included showing sheet number, station number location, parcel number, "D" number, type of building, street address, former owner's name, work to be done, and estimated demolition cost.

**B.** Each Regional Office may request the procurement of an on-call demolition contractor, which would be available for a one year period, plus renewal terms. The procurement and contract will provide unit cost for common demolition items. The Regional Office will provide calculated units of the required demolition, and will provide the units with marked plan sheets to the on-call contractor in order to receive a firm proposal. If acceptable, the Regional Manager will forward to the Consultant Contracting Section requesting that the Contractor be authorized to proceed. Such notice to proceed will include notice to the District Construction Engineer so that a construction inspector can be assigned to the work.

The demolition contract will specify that the contractor will not lease, sell, or occupy any building included in the contract.

### 7.5.12 Disposal by State Forces

State forces may be used to remove improvements on VDOT property in an emergency or after other means of disposal have been attempted. The emergency nature may be in the nature of a public hazard or attractive nuisance. This would pertain to such items as unsecured swimming pools or structurally unstable buildings that should be removed on an emergency basis (Section 7.5.4). Any removal is subject to requirements for asbestos, etc (Sections 7.5.2 and 7.5.6).

The highway contractor normally removes improvements on or outside of the proposed right of way if they remain at contract award. However, in unusual circumstances state forces may remove improvements that are identified on or outside of the right of way after the award of the road contract.

The Regional Manager will report the cost of the removal of buildings by state forces as a charge against the project.

### 7.5.13 Salvage from Buildings

The value of mechanical or architectural parts that are salvageable from buildings is recovered through the sale of the whole improvement. Therefore, salvageable items, such as furnaces, water heaters, etc., will not be removed and sold separately from the improvement. There are exceptions to this policy. If items of significant value are vulnerable to theft or damage, such as stained glass windows, they may be removed and sold separately by Property Management staff. Also, if a building has been advertised for sale and no bids received, and attempts to negotiate a sale are unsuccessful, it is permissible to sell specific items for removal from the building. **In no circumstances can the removal of any part, attachment, etc., of an improvement be allowed if it will cause any environmental contamination, such as causing asbestos to become friable or have the expectation that it will become friable, or have the potential to cause any type of contamination, such as the release of regulated gases, etc.** Payment and credit of revenue should be handled in strict accordance with the procedure discussed in Section 7.3.4 under the heading Credit and Transmittal of Monies– Form PM15 – RW-80 Excel SALES ONLY- Check Transmittal Form located on the Property Management Team Site.

### 7.5.14 Permits for Moving Improvements

Movement of improvements (buildings) over public roads requires the approval of the Residency Area Maintenance Manager through VDOT's permit process and/or by the local jurisdiction. When necessary in determining the feasibility of moving an improvement over the public highway, the assigned Regional Right of Way or Property Management agent will coordinate with the District Traffic Engineer and the Residency Area Maintenance Manager to determine requirements and limitations. The Investigator's Report (Form MP83) is the best guide available for important considerations and details for building movement. This form must be completed before a building is moved. Pictures, building dimensions, permissible road network movements, along with the assigned Regional Right of Way or Property Management agent's recommendation, will be forwarded to the State Permit Manager with a copy to the PM Program Manager and the Residency Area Maintenance Manager.

If there are special circumstances that may justify exceptions to normal criteria, the Regional Right of Way Manager or Property Management Program Manager may request a special study be performed. However, the overriding considerations in building movement over the public road system will be safety and the effective maintenance of highway operations.

## Section 6 –Conveyance of VDOT Real Property

### 7.6.1 General

VDOT acquires right of way for transportation needs. The transportation network is a dynamic system that changes and evolves over time. Property is acquired incidental to current projects and for future projects, which may not be needed until years later as a result of these changing needs. Typically, VDOT has authority to acquire remnants of up to 10 acres of property through a voluntary conveyance and up to two 2 acres of remnant property through eminent domain (Section 5.10) (Code of Virginia Section 33.1-91). Many of these properties have been determined to be uneconomic to the previous owner.

The Office of the Attorney General has interpreted Section 25.1-417(9) of the Code to not limit the number of acres that can be voluntarily acquired if acquisition of only part of the property would leave the owner with an uneconomic remnant. An uneconomic remnant is defined as land remaining after acquisition which the Commonwealth determines has little or no value or utility to the owner. The acquisition of residue property is also permitted in the public interest and to replace parkland (Code of Virginia Section 33.1-91.1 and 92).

The Regional Right of Way Office will assign a Property Management Inventory (PMI) number and set up newly acquired residue parcels at the completion of negotiations for the property, usually upon the completion of the RW-24 Report. If there are multiple residues as a result of the acquisition of a single property, each one will be assigned a PMI number. The RUMS PMI Rollover feature should be monitored and/or used when assigning a PMI number when practical, and all additional relevant data added and corrections made.

The PM Program Manager is responsible for a proactive disposal program. The efficient, proactive disposal of residue and surplus property, including access rights, not needed for transportation purposes has the following benefits:

1. Provides monetary return to the Commonwealth for unproductive assets.
2. Returns property to the local tax base.
3. Relieves VDOT of maintenance cost and responsibility.
4. Reduces liability exposure.

The disposal process consists of following general steps:

1. Research to verify ownership.
2. Circulation of the proposal for review and approval.
3. Appraisal or valuation, to determine current fair market value.
4. Negotiation.
5. Transfer of Title by deed or agreement.

The following sections will discuss the disposal process in detail. It is not possible to anticipate and develop policy for all circumstances and conditions that may arise. The PM

Program Manager will provide interpretations or extension of this policy as requested or the need arises.

### 7.6.2 Automatic Conveyance with Roadway Abandonment

When VDOT does not hold fee ownership of right of way on which an old road is located, regardless of the highway system, and formal abandonment of the roadway has occurred, the "prescriptive right of way easement" on property once used for roadway purposes is discharged, and these property rights revert to the owner(s) of the underlying fee. Without contrary evidence, the fee ownership is presumed to be the same as the abutting lands. If the right of way is the boundary between two landowners, the reversion to each owner is typically to the center of the road. (Va. Code Section 33.1-153 Case Notes is presumed to apply to prescriptive right of way in both the primary and secondary systems.)

Abandonment action can only be accomplished as follows and by the identified entity:

1. Interstate, Primary and some Urban systems require Commonwealth Transportation Board (CTB) action.
2. Secondary and some Urban systems require action by the locality, usually the County Board of Supervisors or the City Council.

(Reference VDOT's Guide for Additions, Abandonments, and Discontinuances.)

Occasionally an adjacent owner requests a formal conveyance even if the "prescriptive right of way easement" rights have been discharged. This is generally done to reflect VDOT's "release of interests" ownership in the deed records. VDOT conveys these parcels by quitclaim deed for $500 to cover VDOT's costs as an administrative fee. These conveyances require CTB approval at the abandonment.

### 7.6.3 Authorizing Virginia Statutes

The overall authority for the disposal of real property is cited in the VDOT Department Policy Memoranda (DPM) Manual, DPM Number 9-5 (8/7/2001).

Several specific sections of the Code of Virginia (1950) pertaining to disposal of real property or rights acquired in real property are summarized in Table 7-2.

**TABLE 7-2**

**Code of Virginia**
**Disposal of Land Authorizations**

| Section | Applies to | Authorizations |
|---|---|---|
| 33.1-149 | Interstate, Primary and Urban Systems – Surplus Land | Commonwealth Transportation Board (CTB) must approve and authorize execution of deed. |
| 33.1-154 | Secondary System – Surplus Land | CTB must approve and authorize execution of deed. |
| 33.1-93 | Residue Land - not acquired as operating right of way | CTB approval not needed; Commissioner may execute deed. |
| 33.1-96 | Land acquired for relocating railroad or public utility facilities | CTB approval not needed; Commissioner or delegatee may execute deed. |
| 33.1-89 | Operating right of way acquired on Urban projects | To be transferred to the municipality as required. |
| 33.1-90 | Lands acquired for projects not let for contract within 20 years of acquisition | May be reconveyed to original owners, heirs or assigns upon repayment of purchase price without interest. |
| 33.1-140 | Residue Land acquired for advance acquisition | Commissioner may transfer ownership without CTB authorization. |
| 2.2-1150<br>2.2-1151<br>2.2-1156 | Land acquired for capital facilities proposed for sale or transfer to other agencies | Refer to the statute. Section applies to lands of all agencies and has limited application to highway lands. |

The above table serves as a topic reference and is not intended to be all-inclusive. The statute sections should be referred to for more detailed information.

### 7.6.4 Verification of Ownership and Circulation

Disposal of Department-owned real property usually arises from a written request to purchase property or may be initiated by VDOT. Regardless of how the request to purchase is made, it will be acknowledged in writing by the Property Management Section, typically within 5 business days of the receipt of the request and copy the Residency Area Maintenance Manager (RAMM) and the Programming and Investment Manager (PIM). The interested party is informed that a $500 deposit, in the form of a cashiers/certified

check or money order, made payable to the **Treasurer of Virginia, Department of Transportation**, will be required to further initiate the review process.

The requestor will be advised that the $500 deposit will be applied to the purchase price or refunded if the Department decides not to sell the property or forfeited and retained as liquidated damages should the requestor decide not to purchase the property. Only the State Utilities and Property Manager or PM Program Manager or can waive the deposit requirement upon written request, or in the event of a request from a former owner that had donated the land for a road project or a locality demonstrating that the property will be utilized for a public use project. The deposit will be accepted, processed and credited in accordance with Section 7.3.4 following favorable review by the RAMM (verifying ownership, determine future need from a maintenance aspect, initiate any abandonment or other issues, and advise of any permits active on the property) and the PIM (determine future need from a Six Year Improvement Program aspect)..

In those instances where there is monetary consideration involved, the $500 will be collected as the deposit and later credited after the transaction has been consummated as the minimum administrative fee in the appropriate revenue account or as a portion of the consideration as appropriate.

Individual PMI Screens and grouping when necessary are required for each individual parcel included in the request. These Group and/or PMI numbers will be used on all emails and written correspondence in addition to the established and accepted Department format including project/parcel information.

Upon receiving concurrence for conveyance of the property from the PIM and RAMM, required documentation, and ownership verification, the PM Program Manager will accept the deposit from the requestor or notify the requestor the deposit is waived. The PM Program Manager will assign processing of the request to one of the Property Management Team agents who will set up a PMI number in RUMS or update the existing PMI screens with all pertinent data and set up a folder for the PMI number on the Property Management Team Site, and upload all pertinent documentation. The Property Management agent will also make the assignment to themselves in RUMS and on their assignment sheet located on the Property Management Team Site.

If the property is of sufficient size to warrant the possibility of it being capable of independent development, request for determination of Class should be made to the Chief Appraiser or his designee in conjunction with the circulation process. If a property will require sewage disposal by means of a septic system, it shall be the responsibility of the Property Management agent to have a certified soil scientist inspect the property to determine the ability of the parcel to support a residential or commercial improvement, if the Appraisal Section determines that the property otherwise meets the criteria for a site capable of independent development.

The request is circulated electronically utilizing the folder on the Portal to the various District disciplines listed below, to include a 14 day deadline for review and response, and ending with all discipline responses being submitted to the Director or designee for final approval. Any request for extension of the review period must be for a specific period and made in writing to the Property Management agent. In the case of a property located in the Northern Virginia District, circulation to additional disciplines is generally included.

1. Location and Design (L&D) Engineer (required and shall address 100-year flood plain data to include the current designation of the property by FEMA or whether the property is close to a flood plain but determination cannot be made or whether a designation has not been issued for the property).
2. Traffic Engineer.
3. Environmental Manager (required and to include hazardous materials, contamination, open space, wetland/stream mitigation, cultural or historical significance, etc., and Categorical Exclusion for property acquired on interstate projects with federal participation even if the property is not part of the Interstate System).
4. Regional Right of Way Manager.
5. Planning and/or Land Development Engineer.
6. Regional Utilities Manager

**Failure to respond from non-required Sections within the specified time period will be considered as concurrence in the disposal and the process will move forward.** Waiver of full circulation should not take place as federal policy specifically requires review and identifies specific discipline areas for the review on property acquired with federal participation.

The Environmental Division will be included in the circulation of the property. Part of their review, in conjunction with the onsite inspection by the Property Management agent, has

to ensure that the property was/has been assessed from an environmental assessment standpoint and/or, when applicable, was included in the necessary initial environmental project assessment. If not, this assessment will have to be made at this time by the Environmental Division. A Programmatic Categorical Exclusion will be prepared and submitted to the Central Office for each conveyance of property acquired with federal fund participation on interstate projects even if the property is not part of the Interstate System. This requires knowledge of funding sources. In many cases, residue property has been acquired without the use of federal funding.

Each discipline has its own interest to review, and any concerns, recommendations, etc., will be outlined in the District circulation and responses**. Each discipline is reviewing and "signing off" as approved for their Central Office counterpart.** In particular, L&D should address present and future right of way needs and will identify flood plain involvement. No involvement or flood plain limits not established has to be noted in their response.

As part of the RAMM's recommendation, he/she will advise as to the existence of any active land use permits on the property and the abandonment status of any area of the property that was a part of an old roadbed and if necessary, begin the abandonment process at the appropriate time following either project completion and/or receipt of notification from the Property Management agent that the property has been approved for conveyance by the Director. Formal abandonment of the old roadbed as a public road/way is necessary for surplus property before CTB approval can be requested for disposal. This ensures a more clear title at conveyance by removing any existing public use rights.

The disposal of all Department-owned real property acquired as part of or incidental to a project for transportation purposes requires that written notification be provided to the Mayor or Chairman of the Board of Supervisors in whose jurisdiction the property is located (Va. Code 33.1-223.2:2). This action requires no response on behalf of the locality. The notification should be made after internal circulation review and approval is completed. The notification letter in RUMS (PM31) is to be used.

If a letter from the Mayor or Chairman of the Board of Supervisors or City/Town Council initiates the request, the notification letter is not required, provided the Mayor or Chairman are the recipients of or have been copied on the subsequent correspondence from VDOT regarding the request. If a request to acquire property is received from an agency or authority of a locality, the notification letter is not required provided the Mayor or Chairman is copied on the correspondence to and from VDOT.

At the same time as notification to the locality is sent, the request will be circulated to the following units for review and comment:

1. Department of Rail and Public Transportation (DRPT) in Richmond
2. Central Office Transportation Planning and Mobility Management (TPMM) Division

Every effort will be made to ensure a proactive and timely completion of the process. Electronic medium to expedite communication and processing, via email and links to Property Management Team Site, will be utilized over hard copy documentation where and whenever possible.

### 7.6.5 Submission of Request Package to the Director, and Central Other Circulation

Whether or not the property is determined to be suitable for conveyance by the parties included in the District circulation, the results and all supporting information and documentation are to be uploaded and maintained in the PMI Portal folder. In the event of a decline to convey response from a District discipline other than the RAMM or the PIM, the request and response of decline to convey will be forwarded to the Division Administrator of its Central Office counterpart for further review and determination. Upon receipt of those findings, a request for approval will be forwarded to the Director for final review and approval before proceeding. The transmittal memorandum to the Director will outline the request to include information on acreage of area recommended for disposal, acquisition, Class determination, grade information on the site, existing access to public roads, the results of the circulation, abandonment status of old roadbeds/ways, any issues/concerns/special circumstances regarding the property, etc. in summary, as well as other relevant information, and reporting the outcome of any conflicting District Section recommendations.

The Portal folder for the PMI will include the following as a minimum at this point:

1. Letter of request.
2. Source of title and copies of the following: deed or certificate with a copy of the recorded plat (if certificate, include copy of final order).
3. Documents showing acquisition funding codes
4. RW-24 Report.
5. Old project title, R/W data, revision data, and vicinity plan sheets sheet, parcel and adjoining plan sheet(s) showing the property, assembled as needed.
6. Adjacent ownership deeds and plats as applies to the request and shown by plat(s) or property lines on plans.
7. Improvements and/or easements existing on the property.
8. Existing access to public roads (as needed).
9. Grade information on the site (as needed).
10. Abandonment status of old roadbeds/ways with any completed resolution(s) and sketch(s). Where involved, all old roads require abandonment prior to Commonwealth Transportation Board (CTB) action.
11. Identification of rights (easements, etc.) to be retained or conditions imposed.
12. Current plan sheet(s) with all relevant existing property lines, limited access lines, fence locations, easements, entrances, etc. This should show all adjacent owner(s) property lines when VDOT's property is a Class II property.
13. District sign-off (approvals) sheet(s) with relevant required information (flood plain data, existing permits, environmental concerns, etc.)
14. Copy of letter of notification to locality.
15. Original letter to DRPT including the reply.
16. Original circulation memo to TPMM including the reply.

The PM for the Program Manager will review the property disposal information for accuracy and completeness prior to submission for CTB approval for surplus property or submission of the deed for signature for residue property.

Other parties who will be included in the circulation and/or approval process depending on location and circumstances are:

1. Federal Highway Administration Division Administrator (for property acquired with federal fund participation on Interstate Highway System Projects only. A Programmatic Categorical Exclusion is required for this approval request.).

2. Department of General Services Division (for Class I property) for their expression of interest on behalf of all other state agencies (order of refusal for public use consideration is federal, then state, then local government).

3. Central Office Divisions as may be appropriate, which includes reviewing plans for replacement drainage facilities, and District Section concerns resulting from the review process, etc.

The Property Management agent will keep the PM Program Manager fully informed of any issues that arise or need resolution and keep the Portal folder, RUMS PMI screens and assignment sheets up-to-date. Every effort will be made to ensure a proactive and timely completion of the process. Electronic medium to expedite communication and processing, to include email and links to Property Management Portal folder will be utilized over hard copy documentation where and whenever possible.

### 7.6.6 Appraisal and Value Estimate

Upon favorable response to the circulations to TPMM and DRPT and expiration of period for response from the locality, the Property Management agent will request a value be placed on the property being disposed of from the Chief Appraiser or designee. The request at this stage, after complete review, allows the appraiser to have the benefit of all encumbrances, restrictions, changes, etc., including any flood plain involvement.

A valuation will be prepared and approved for all properties being conveyed in accordance with procedures outlined in Chapter 4 of this manual, unless waived by the Director. The valuation should be completed, reviewed and approved within 60 days of the request for valuation. Accepted Department valuation procedure and methodology will be used as set forth in Chapter 4 of this Manual. Residue and surplus property valuations are to be classified by the appraiser in one of the two classifications as defined in the following table:

## TABLE 7-3

## Valuation Classifications
## Parcels

| CLASS | CRITERIA | VALUATION |
|---|---|---|
| I | Parcel has legal public access and is of sufficient size, etc. to permit independent development. | All residue/surplus property valuations will be in accordance with accepted valuation methodology and practices as set forth in Chapter 4. Parcels with an estimated value of less than or equal to $25,000.00 may utilize the Basic Acquisition Report. Parcels with a value greater than $10,000.00 require a full appraisal by a licensed appraiser. |
| II | Parcel requires assemblage with adjoining tract for utility and/or access. | |

The above classifications represent general guidelines, and final classification and disposal should be handled with judgment and regard for unique circumstances. Class II parcels can include small nuisance parcels, as well as parcels donated for transportation purposes and requested by the original owner. Each individual Class I residue or surplus property, regardless of whether it is part of an assemblage by the Department, requires that upon identification as a Class I property, it be appraised individually.

In order to make a Class determination for a property, it is necessary to determine the ability of the parcel to have access to the necessary utilities. If a property will require sewage disposal by means of a septic system, it shall be the responsibility of the Property Management agent to have a certified soil scientist inspect the property to determine the ability of the parcel to support a residential or commercial improvement. A certified letter from the soil scientist should indicate the date the parcel was inspected and the findings. This documentation shall be included with the appraisal when submitted. Should it be determined the property will not support the necessary septic system; the property will be classified as a Class II residue or surplus property.

Once a property is determined to be Class I, any deposits received from interested parties should be returned with information on the bidding process for a property offered through Public Sale.

All residue/surplus property valuations are to be sent to the Chief Appraiser who will review them for compliance, as a minimum, and statistically monitor the valuation process for disposal of real property, keep necessary statistical records, and approve as necessary.

### 7.6.7 Disposal of Property by Sale

VDOT employs several methods of selling property. The following table presents typical sale methods for the classifications of residue and surplus property. Refer to Table 7-3 for definitions of the classifications.

**TABLE 7-4**

**Conveyance Method**
**Property Classifications**

| CLASS | METHOD | COMMENTS |
|---|---|---|
| I | Administrative Settlement | Exchange of land for a proposed project. Requires reconciliation of value between the property acquired and the property conveyed |
| | Former owner consideration | Convey to former owner at FMV w/o negotiation or Code Section 33.1-90 as appropriate |
| | Public Entity | DGS offer for use of agencies of the Commonwealth. Federal Government or Localities may request conveyance for public use or purchase for development. Reversion clause may be required. |
| | Public sale | Requires Public Sale through Sealed bid, auction or licensed real estate broker and simultaneous listing via VDOT Website. |
| | Negotiated sale | If public sale fails, property may be sold to anyone through individual negotiation and simultaneously listed on VDOT Website in the Inventory of Property For Sale. |

| CLASS | METHOD | COMMENTS |
|---|---|---|
| II | Administrative Settlement | Exchange of land for a proposed project to adjoining owner(s). Requires reconciliation of value between the property acquired and the property conveyed. |
| | Public Entity | Commonwealth agencies, Federal agencies or Localities as adjoining owners may request conveyance for public use or purchase for development and are given preference. Reversion clause may be required. |
| | Negotiated sale | Preference to original adjacent owner, then other adjacent owners. |
| | Sealed bids (private) | If several adjacent owners are interested |

Donated property will be considered for conveyance upon request of the original owner (not to include heirs, assigns, etc.) without cost once the property is determined to no longer be needed for transportation purposes.

No matter what value is placed on a property, $500.00 will be the minimum value accepted for any property being conveyed for monetary consideration.

**Adjacent property** is defined as an abutting property with a sufficient common boundary/property line to meet legal use and access conditions. For example, a property corner on the VDOT boundary/property line does not qualify as an adjacent property for purposes of Chapter 7 of this Manual.

Once the approved appraisal or Basic Acquisition Report has been received, and all other issues are resolved, the Property Management agent may proceed with negotiations as appropriate for the surplus/residue property provided all approvals have been received and remain in order.

Each individual Class I residue or surplus property, regardless of whether it is part of an assemblage by the Department, requires that upon identification as a Class I property, it be appraised individually and offered “to the owner from whom it was acquired” before disposal/sale to anyone with the exception of the property being used as a part of settlement by the Department. Assembled Class II properties that constitute a Class I

property are not included in this requirement. Heirs, assigns, etc. are not delineated, and as such, VDOT is not required to seek out successors in title.

Other federal or state agencies, local governments and other public entities still have the right of first refusal after former owner considerations. The property is to be offered at fair market value without negotiation to the original owner(s) or in accordance with stipulations of the case notes reflected in 33.1-90 of the Va. Code as of 2007. Special attention needs to be made to whether any of the property was used for transportation purposes in order to determine at what amount the property should be offered to the former owner. VDOT is required to make a reasonable effort to contact the original owner(s) by certified mail to the last known address, with a 30-day deadline for their expression of interest and no more than 6 months from the date of offer to consummate the purchase. Their purchase opportunity shall be considered to have lapsed if either of these terms is not met.

Federal agencies, other state agencies, local governments, and other public entities—in this order—still have the right of first refusal after former owner considerations for the disposal of Class I surplus/residue property.

Following use as part of Administrative Settlement and satisfying any former owner considerations, sale of Class I surplus/residue property requires the Department of General Services (DGS) be notified of the availability of the property and afforded the opportunity for expression of interest for continued public use of the property by other state agencies. Virginia Code does not require this for properties acquired for highway purposes, however was adopted as a good business practice and continues at the discretion of the Director. The Property Management agent will initiate this action in writing via electronic medium with an established response deadline. Upon an expression of interest by DGS, VDOT will consider the request and proceed to transfer the property after all reviews and approvals are completed. Upon expiration of the period for expression of interest by DGS, the Property Management agent will proceed to offer the property at “public sale, and if unsuccessful, to negotiate sale at large”.

Class I surplus property requires CTB approval by formal resolution prior to any form of conveyance or sale. Upon receipt of CTB approval authorizing conveyance, the Property

Management agent may proceed with conveyance as part of an administrative settlement or satisfying previous owner considerations provided all approvals have been received and remain in order. If neither of these conveyance methods is utilized then the property will be offered to any state agencies expressing interest that have all approvals to acquire in place through the DGS process, followed by public sale and if unsuccessful, negotiated sale at large.

In the case of Class II residue or surplus property being adjacent to other Commonwealth of Virginia or other public entity property, the individual agency's or entity's needs will have first consideration. Following this, preference will be given in offering Class II property to the original adjacent owner from whom it was acquired, and then other adjacent owners.

### 7.6.8 Public Sale

Public sale can be accomplished through a sealed bid or public auction sale, or by offering the property through a licensed real estate brokerage firm (broker) with a simultaneous listing as determined by the PM Program Manager on the VDOT Website for all offerings. When offered through a broker or private auctioneer, prior approval from the Director must be secured. A broker or auctioneer will be selected in compliance with the Virginia Public Procurement Act as administered through the ASD Agency Procurement and Surplus Property Manual (APSPM) established by the Department of General Services/Division of Purchases and Supply (DGS/DPS) and the Guidelines for Procurement and Management of Professional Services Manual.

Exceptions to public sale will occur when the property is to be conveyed to others as a part of an administrative settlement in exchange for lands required by VDOT or to the original owner(s), or when it is to be conveyed to a governmental agency or locality. .

#### A. Sealed Bid Sale

The Property Management Team Member will conduct the sealed bid sale. The sealed bid sale package will be prepared, utilizing the forms in RUMS. This package includes the advertisement notice, bid proposal form, instructions to bidders, detailed property description and fact sheet. Once this information has been completed and assembled,

the advertisement will be placed in at least two newspapers, when possible, serving the area and listed simultaneously on VDOT's Website with all the same conditions, deadlines, etc. The VDOT Website should be used as a minimum. Other local medium should be used provided it is cost effective. Consideration should be given to state, regional or national exposure for high value, high visibility property.

The advertisement will be run in the real estate section of the paper, over a minimum of one weekend, in a column advertisement with VDOT's logo. Higher profile properties requiring higher exposure should be advertised using block advertisements in the real estate and/or other locations of the newspaper. Simultaneous with the public advertisement, a "For Sale" sign will be placed on the property until sold.

Bids will be received according to the bid instructions. They will be opened publicly and promptly at the prescribed bid closing time and place and in the presence of a minimum of two VDOT employees. Bids will be read, tabulated and approved within prescribed parameters and as advertised. Bids not meeting requirements will not be accepted and bidders present will be advised. Other unacceptable bids will be returned to the bidder with a letter of explanation. If the high bid meets or exceeds the appraised value, the high bidder will be advised that the bid is accepted. The PM Program Manager has approval authority for no less than 90% of appraised value or minimum established bid value for public sales. Amounts less than 90% of value require written justification from the Property Management agent, recommendation from the Property Management Program Manager and the Director's approval. The PM Program Manager will have discretion in negotiating sale of Class I property valued under $10,000 that was not acquired on the Interstate System with Federal funds.

All bidders will be formally advised in writing of the results of the sale and provided with a copy of the bid tabulation. The Property Management agent will prepare the Offer to Purchase Agreement to include any items of disclosure about the property for notarized signature by the successful bidder and any other persons to be included as a Grantee in the deed. All deposits of unsuccessful bidders will be promptly returned. The deposit for the successful bidder will be retained and forwarded to the Reimbursement Section in the manner described in Section 7.3.4 under the heading –

Credit and Transmittal of Monies - Form RW-80 Excel SALES ONLY- Check Transmittal Form located on the Property Management Team Site.

The successful bidder will also be advised of the closing process. The Property Management agent will request any complex plan revisions from L&D or Survey Division or complete minor plan revisions; prepare the deed and upload any information utilized for deed preparation; titling; plan revision information (if necessary); a copy of the completed Offer to Purchase Agreement and sealed bid sale package to the PMI Portal folder.

Should all bids be rejected, the PM Program Manager will be so advised, by the Property Management agent who will have the RUMS advertisement screen immediately updated so that the property remains on the website as a negotiated sale until the appraisal is 12 months old and prepare and upload the documentation for returned deposits to the PMI child site. The Property Management agent will proceed to negotiate a sale for the property beginning with the highest bidder, then the next highest and so forth, and then with anyone expressing an interest. Once sold, the property will be removed from the VDOT Website listing. Values must be kept current within accepted business practices, typically no more than 12 months old, depending on the property and market conditions.

“Private” sealed bid sales are used in instances where two or more adjacent property owners to the Class II residue or surplus property are interested in purchasing and agreement cannot be reached in a divided sale of the property. They should be as informal as possible. Typically, the interested purchasers are to provide a written bid for the property subject to a minimum amount and Department’s right of rejection. Preference will be given in offering Class II property to the original adjacent owner from whom it was acquired, and then other adjacent owners.

### B. Public Auction Sale

The same process will be used in public auctions as defined in Section 7.5.10 with regard to disposal of improvements. In addition, Class I surplus/residue property will also be listed on the VDOT Website.

## C. Negotiated Sale

The negotiated sale is used for Class II residue/surplus property, and after the public sale requirement has been satisfied for Class I residue/surplus property. Class I properties will continue to be advertised simultaneously on VDOT's Website of VDOT Property for Sale. Upon completion of all portions of the process, resolution of all issues, securing all necessary approvals and receiving the valuation approval from the Appraisal Section, negotiations may proceed with all adjacent landowners, as defined in Section 7.6.6, to Class II properties. Each will be contacted and offered the property for the approved appraisal value, however in the instance of Class II property being adjacent to other lands of the Commonwealth or other public entity or the original adjacent owner from whom it was acquired, the property will be offered to them first (in this order), and then other adjacent owners.

Final sale through negotiations for Class I or Class II residue/surplus property are concluded with the execution of the Adjacent Landowners Affidavit and/or Offer to Purchase Agreement as needed. A deposit in the amount of $500 for Class II property and in the amount of 10% of the purchase price for Class I property shall be submitted by the prospective purchaser with Offer to Purchase Agreement and deposited in the manner described in Section 7.3.4 under the heading –Credit and Transmittal of Monies - Form RW-80 Excel SALES ONLY- Check Transmittal Form located on the Property Management Team Site.

The Purchase Offer Agreement (Form PM16) is to be filled out in its entirety as applies. Particular attention needs to be paid to the citing of the Grantees and Trustees on Class II property to ensure they match the documents affecting the adjoining land and citing whether there are any liens on the adjoining land. Omission of this information can cause delays in processing the deed for execution. All surplus property sales are subject to CTB approval, which is typically to be completed prior to offering the property for sale and beginning negotiations. Only in the event of the conveyance being approved for negotiated settlement or special negotiations by the Director would the property be offered prior to CTB approval. Any negotiations of this nature would be contingent upon obtaining this approval. The Property Management agent will prepare the deed for conveyance of the property and request any complex plan

revisions from L&D or Survey Division or complete minor plan revisions; upload any information utilized for deed preparation; titling; plan revision information (if necessary); a copy of the completed Offer to Purchase Agreement and sealed bid sale package to the PMI Portal folder and process the deed for signature. The PM Program Manager has approval authority for no less than 75% of appraised value on Class II property. This will apply only when there is a single party eligible or interested in the property. Amounts less than 75% of value require written justification from the Property Management agent, recommendation by the PM Program Manager and approval by the Director.

A Certificate of Title prepared by an attorney will be required to be submitted by prospective buyers who are owners of adjacent land where the property being conveyed controls the access to the adjoining land or there is significant road frontage involved and the purchaser's property is encumbered with liens and/or a deed of trust(s). Refer to VDOT Department Policy Memoranda Manual; DPM Number 9-5. In this instance, any lien holders on the adjoining property shall be included in the deed of conveyance, as appropriate. A certification from the landowner's attorney verifying the present ownership of adjacent property and the exact names to whom title is to be vested is sufficient.

Under normal circumstances all conveyances will be based on VDOT's current valuation. The PM Program Manager is authorized to dispose of Class I properties with a value of $10,000 or more, within a 10% variance of value. The PM Program Manager will have discretion in negotiating sale of Class I property valued under $10,000 for property not acquired with Federal Funds on Interstate Projects. Support for any negotiated sale will be prepared by the Property Management Team Member and included in the file and uploaded to the PMI child site.

The Director of RWUD has discretion in authorizing negotiated sale prices that deviate from the above. The criteria for exercising this discretion will be fairness, consistency, and the overall best interest of the Commonwealth. Appropriate documentation will be placed in the file and uploaded to the PMI child site for actions taken.

### 7.6.9 Transfer of Title

When all approvals have been secured, including that of the Commonwealth Transportation Board (CTB), as applies, and agreement has been reached with a prospective purchaser, the Property Management agent will perform the following actions:

1. Initiate the necessary plan revisions, typically of the Central Office L&D Division. Reconciliation of plats with project plans, active, ongoing district projects, etc., may be requested of the Districts for completion, revision, etc.

2. Upon receipt of revised plans, review them to ensure all revisions are correct and prepare the deed, typically quitclaim or other transfer agreement, the deed will be reviewed with any corrections/changes made as appropriate. Any deed other than a quitclaim deed must be made known to the PM Program Manager and its issuance approved by the Director prior to any necessary CTB approval and title work provided by the buyer and approved by VDOT staff attorney.

3. Place the necessary conveyance note on the plans.

4. Have the deed reviewed by the Office of the Attorney General if modifying the deed template beyond completing the typical form fields.

5. Obtain any necessary utility deeds and plats to either be executed by the Commissioner and recorded prior to recordation of the deed, or executed by the purchaser and sent to the respective utility company for recordation after the deed conveying the property is recorded.

6. Have the deed processed and executed by the Commissioner of Highways.

The executed deed along with the plat for the State Highway Plat Book is then ready for closing. A copy of the deed and plat is provided to the Residency Area Maintenance Manager for their records. The Property Management agent will be responsible for informing the purchaser of the recording costs required and recording of the deed following receipt of these costs and the remaining consideration. The purchaser will incur and be responsible for all costs associated with the execution or review of the deed by third parties and any associated recording fees. Properties that span more than one jurisdiction of the Circuit Court will need to be recorded in both localities.

Closing with a definitive closing date will then be scheduled with the purchaser. The payment will be received and promptly forwarded to the Reimbursement Section in the manner described in Section 7.3.4 under the heading – Credit and Transmittal of Monies –

Form PM15 RW-80 Excel SALES ONLY- Check Transmittal Form located on the Property Management Team Site. The $500 deposit must be properly credited through the Reimbursement Section and transferred from the assigned deposit account and credited to the proper revenue account.

**Credit of Proceeds**

All proceeds from the sales of property, etc. shall be promptly and properly credited to the established revenue account(s). All revenue generated from the sale of property acquired with federal funding participation shall be credited to the proper account (Section 7.3.4) so as to ensure identification for use on future Title 23 of the Code of Federal Regulations eligible projects, including Transportation Enhancement projects (see Chapter 5, Section 5.13.3). Acceptance of cash payments is not permitted.

**Property Conveyed For Public Use**

In those instances where a property is conveyed to a federal, state or local government entity at no cost or consideration, it is done so with the stipulation and understanding that the property will remain in public use and/or a specified public use. The deed should contain a clause stating this condition of reversion and the deed should be executed by the authorized signature authority of the Grantee to confirm agreement to the requirement for reversion of the property. Should that use change to non-public or the specified use change, the property ownership will revert to the Commonwealth of Virginia, Department of Transportation, and be so conveyed or transferred by the locality, authority or agency by deed at their expense to include third party fees. All deeds, Inter-Agency Transfer Agreements (other state agencies), etc. conveying property under these conditions will have a clause to this effect included.

In addition, land (acreage) credits for uses such as parkland, open space, wetland mitigation, etc., from the requesting entity should be investigated as part of the consideration and secured through necessary associated agreement(s), referenced in the deed or transfer agreement as needed. The Environmental Division and any other necessary division, section, etc., shall be consulted as needed.

Prior to conveyance or transfer, the Special Negotiations Section shall also be consulted to determine any considerations for exchange for property needed or with the Regional Manager for exchange or consideration involving local governmental entities.

### 7.6.10 Property Management Inventory

The RUMS Property Management Inventory (PMI) is a database comprised of all residue properties owned by VDOT, surplus properties that are being processed for disposal, and properties that have been sold or are leased. Each individual parcel acquired as described and involved in a disposal or lease request is to be included in the PMI and the current status maintained. The Property Management agent is responsible for all initial setup, complete data entry of all screens and monitoring to keep the database up-to-date and accurate. All necessary research is to be done for complete setup for both sale and leasing of property as discussed in Section 7.6.1. The database must be reviewed prior to setting up a new PMI to ensure that no individual residue or surplus property is assigned more than one PMI number. Any existing duplication of individual residue or surplus properties in the database must be brought to the attention of the PM Program Manager for resolution.

### 7.6.11 Conveyance of Urban Project Operating Right of Way and Residue Parcels

VDOT is required to convey the operating right of way including project related easements (excluding limited access rights and replacement easements acquired for utility entities) where title is vested in the name of the Commonwealth on Urban System projects located in cities and towns where the road is maintained by the locality and included in the locality's street or road system. Special attention needs to be paid to whether the locality is or is not to maintain the bridge structures on the project.

These projects can be jointly funded by the locality, VDOT, and FHWA. They require that the right of way be acquired under agreement by VDOT at the request of the locality. Typically the locality passes a resolution under Code Section 33.1-89 to request the Department to acquire the right of way for the project. The project right of way is to be conveyed to the locality upon project construction completion, acceptance, and finalization, and when VDOT has indefeasible title to all property. Conveyance is typically

not finalized until then. The Regional Manager is responsible for monitoring/reviewing parcel acquisition status once the C-5 Form Notification of project completion is received and recommending conveyance of the right of way once VDOT has indefeasible title to all property. This is to be an automatic process as required by law and does not require a request from the locality. A deed will be prepared transferring title to the locality.

A locality may also request by passage of a formal resolution of its governing body (33.1-149B or 33.1-154B) the conveyance of a portion of a public street or road right of way located in the locality, where title to the right of way is vested in the name of the Commonwealth, on which there is a public way maintained by the locality, on which the locality is receiving payment of VDOT maintenance funds, and the public street or road will remain a part of the locality's street system. Typically these are streets in annexed areas or portions of streets relocated as a result of VDOT projects. Conveyance of this right of way requires CTB approval.

Residue property acquired on projects as cited in this section will be conveyed to the locality if the locality is classified as a member of the Urban Construction Initiative or retained by VDOT in the name of the Commonwealth and managed and disposed of accordingly. If the locality conveys or leases the property for non-public use, the locality must follow the requirements of the Code of Virginia and any applicable Federal regulations. The locality shall notify the Director of RWUD in writing of the impending transfer and indicate the dedication of any funds received to future transportation projects as required, and confirm their allocation. Localities or other public entities may request conveyance of residue property if they demonstrate a public need and subject to the deed containing a clause requiring reconveyance to the Commonwealth should that use change. The transfer to the locality will be without consideration.

Conveyance of all right of way in either of these situations requires an in-depth and comprehensive review of all property involved ensuring that, among other things, no property needed for the maintenance of VDOT projects or right of way needed for future improvements is conveyed. The request for conveyance to the Director shall include the checklist for locality conveyance found on the Property Management Team site and all supporting documentation. The conveyance shall be entered in RUMS under one PMI number unless there are residue properties included in the conveyance, in which case

each residue parcel shall be assigned an individual PMI number and grouped with the PMI number for the project right of way. In the case of Urban System agreement projects, a copy of the locality resolution requesting VDOT to acquire the right of way is required. This resolution by date is cited in the deed of conveyance.

### 7.6.12 Old Right of Way Plat Files

The Central Office Property Management Section maintains a set of old plat files that include many District Offices, Residency Offices, and Area Headquarters; complicated right of way acquisitions; old railroads; old projects; individual parcels; waysides; residues; some old toll road areas; borrow pits; weigh stations; weigh turnouts; correction camps; etc. Many of these are original survey plats. These plats can be identified by the inclusion of a R/W Plat File number, which is usually located near the title of the plat.

### 7.6.13 Quality Assurance Reviews of Property Management Program Activities

The PM Program Manager and assigned staff will be responsible for conducting the annual review of Property Management files.

**Process**

The reviewers will examine the recent cases shown in RUMS, and select projects or files for detailed review. The review sample will include a cross section of cases and types and will include vacant land as well as improved property, residential and non-residential uses. Quality Assurance reviews will be conducted using the checklist for each phase or area of the program as needed to ensure compliance and quality of program operations. The checklists of what are required for each conveyance, lease, or improvement are located on the Property Management Team Site.

The reviewers will record findings and conclusions on the checklists. The reviewers will retain the worksheets and any correspondence generated from the reviews for later discussions with Property Management and Regional personnel.

If there are particular problems, weaknesses, or procedural errors disclosed from the initial sample review, the reviewers might examine additional work or expand the scope of the

review to the extent needed to come to a fair and sound conclusion on the various aspects of work performance.

**Reporting conclusions**

After the review is completed, the reviewers will prepare a written report. A meeting will then be held with the Regional Manager, or Property Management staff to review and discuss the findings and conclusions. The work skills, strengths, and instances of superior performance will be discussed, as well as areas that need improvement or change. The need for training or changed assignments will be discussed, if appropriate, to help employees reach their potential and improve efficiency of the work unit. The reviewers will prepare a report after the conference to reflect new information, agreements reached, and any remaining issues. A copy of the report will be forwarded to the Director. The Regional Manager will also be provided a copy of the report.

The Regional Manager, after consultation with the Director, will determine the manner and time at which the report will be discussed with employees whose work has been reviewed.

**Follow-Up Activities**

A key to the success of the Quality Assurance Review is that action is taken to correct deficiencies that are noted and beneficial practices are recognized and widely implemented.

Responsible parties should agree to specific corrective measures at the post review meeting. A time period should be established for the corrective actions to be performed. A follow-up process should be established to evaluate corrective actions after they have taken place.

Favorable review findings should be reflected in appropriate recognition for responsible employees. The manner and form of recognition should be discussed at the post review meeting.

The review may identify opportunities for achieving a higher level of performance of certain employees. This might involve expanding work experiences, new assignments,

training, transfer to another unit or function, or employee counseling. These actions should be clearly identified and responsibility assigned for performance.

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# CHAPTER 8 - RIGHT OF WAY CONSULTANT SERVICES

## Section – 1 Determination of Need

### 8.1.1 General

The Virginia Department of Transportation (VDOT) contracts for the performance of right of way and utilities services when the Regional Office staff resources are not sufficient to meet project advertisement schedules. VDOT normally contracts for services on a project basis, including the functions of appraisal, appraisal review, negotiation and relocation. Appraisal services are contracted routinely on a project basis when Regional staff performs other right of way functions.

The increased use of consultants to supplement right of way staff requires the development of knowledge and skills in effective project management and contract administration. It also requires that involved personnel know and strictly adhere to VDOT and Right of Way and Utilities Division (RWUD) policy concerning selection and use of consultants.

Right of way acquisition firms/individuals are selected to perform under contract on a competitive negotiation basis. This means that contracts are not awarded to the lowest offerer. Cost is a single factor among other important considerations, including staffing and the firm/individual's ability to perform the services. Consultant firms/individuals are selected following a formal review of proposals that are received from all interested prequalified firms/individuals.

Services are contracted in Virginia under the authority and control of the Virginia Public Procurement Act. VDOT has developed guidelines complying with the Procurement Act for the procurement and management of non-professional services (see Attachment 1). While right of way is not included in the Public Procurement Act as a professional service, VDOT guidelines for non-professional services are used as an informational resource. The practices defined in this chapter, specifically for right of way, are consistent with the guidelines.

The policies contained in this chapter are intended to tailor consultant selection and contract management practices to Virginia law and applicable federal law. They are also intended to assure that consultants are employed under a fair and equitable process that is

consistent statewide. This chapter is intended to be a basic framework of important practices. It is understood that policy cannot anticipate the wide range of circumstances that can occur, and there is a need to provide for flexibility. If the application of procedures in this chapter would have an undesired result or be inconsistent with other policy or goals of VDOT, this matter should be brought to the attention of management, starting with the Administrative & Consultant Contract Coordinator.

### 8.1.2 Determination of Need for Services

VDOT has a qualified right of way staff that is capable of performing all phases of a right of way project. If it is not efficient or practical to maintain a staff that is adequate in size to accommodate peak workloads or advance priority projects, temporary assignment of personnel from other Regions may assist for short periods. This cannot meet the continuing needs because of potential disruption to the work schedules of the donating Regional offices, the costs of travel and temporary living expenses, and the personal disruptions of the life of reassigned employees.

It is recognized that right of way services must be contracted to meet VDOT's need to deliver a clear right of way to the roadway contractor on schedule, yet perform all responsibilities required by the federal and state real estate acquisition and relocation laws and regulations.

The Director of the Right of Way and Utilities Division is responsible for approving Requests for Proposals (RFP's) to use contract services, based on recommendations that are received from the Regional Offices. The request to use outside services will normally originate from the Regional Right of Way Manager and will be forwarded to the Director by memorandum. This memorandum will address current and projected staff resources in relation to workload generated by roadway project advertising schedules. The effect of factors such as recent or projected retirements and diversion of staff to meet other urgent needs should be considered.

If the need for consultant services is apparent, a scoping meeting will be convened. The purpose of this meeting is to define the right of way functions that are being contracted, identify available staff resources, and develop or define the scope of services for the RFP.

The convening authority for a preproposal meeting will be either the Regional Right of Way Manager or a designated representative. Participation will include representation from the Regional Right of Way Office and the Central Office Consultant Contracting Section.

After approval by the Director, the Central Office Contracting Section will prepare a RFP based upon information provided by the Regional Office. Informal approval will be given to the Regional Office before the RFP is finalized. The final RFP will be provided to all consulting firms that are currently on VDOT's list as prequalified to perform right of way services.

## Section 2 - Consultant Prequalification

### 8.2.1 General

It is important that consultants be selected from among firms that possess the qualifications and resources to perform the work adequately and on schedule. Also, the complexity of the program and tight schedules require that contracts be awarded in an efficient and orderly manner. In order to achieve these goals, the Right of Way and Utilities Division (RWUD) has established a consultant prequalification process. This provides for all interested firms to be evaluated in an objective and equitable basis according to criteria essential to effective project performance and conforms to the Virginia Public Procurement Act (see Attachment 2).

### 8.2.2 Summary of Prequalification Process

On a biennial basis, (if deemed appropriate and cost effective, the RWUD will advertise in commonly utilized publications, including those of interest to the Right of Way Industry, that it intends to let contracts for the acquisition of right of way within the next two years. The notice will indicate the availability of a prequalification questionnaire and state a date by which submissions will be accepted.

A Prequalification Review Committee approved by the Director of the Right of Way and Utilities Division (the Director) will review the submissions received from applicants. The Committee will recommend firms for approval to the Director. Consultant firms/individuals that are being considered for qualification will be requested to submit financial information

for a pre-award audit conducted and approved by the External and Construction Audit Division. In addition to the above, interested applicants will also be subject to providing Title VI information and may be interviewed, if deemed necessary.

### 8.2.3 Prequalification Review Committee

The Prequalification Review Committee will be appointed by the Director as deemed appropriate and will report to the Director. It will review qualifications of applicant firms to determine if the firm and its employees meet the guidelines established for right of way acquisition consultants (Section 8.2.4) and are qualified to perform these services for VDOT.

The Committee may interview principals of prime consulting firms, their proposed subconsultants, and key personnel identified in the submittal.

The Prequalification Review Committee will make its recommendations to the Director within 90 days from the receipt of information outlined in the Prequalification Questionnaire (see Attachment 2). The Committee will identify firms considered qualified and firms considered not qualified. The Director shall approve or not approve any of the Committee's recommendations. Should a committee not be formed, it will be the responsibility of the Administrative and Consultant Contract Coordinator to submit to the Director, a detailed analysis of the submittal from the consultant firm.

VDOT will accept, at its discretion, applications from interested firms that are submitted outside the period of official notice. A Prequalification Review Committee will evaluate these in the same manner as respondents to the biennial call. The response time for review of the submittal and prequalification may be expected to take up to 90 days from receipt of the application and supporting information.

A consultant firm will not be allowed to submit proposals on any contract request solicited by VDOT until the firm has been designated as prequalified.

### 8.2.4 Minimum Qualifications

The following qualifications are used by the Prequalification Review Committee to evaluate consultant firms and individuals.

## A. General Firm Qualifications

The firm will have a demonstrated ability to perform or subcontract appraisal, acquisition and relocation functions in compliance with current Virginia Department of Transportation policies and procedures and U.S. Department of Transportation and Federal Highway Administration regulations and policies.

The firm will be adequately staffed either with persons it employs or through contractual arrangements so that it can acquire right of way on a 50-parcel project, involving 5 relocations, within a 9-month time period.

The firm will have an overhead rate; average hourly rates, etc., that meet the pre-award audit criteria of VDOT's External and Construction Audit Division. Financial reports, including overhead rates, must be submitted under signature of a Certified Public Accountant (CPA) following the Federal Acquisition Regulations (FAR).

Personnel assigned at a project level will have a basic understanding of the laws and policies relevant to the functions they will perform as stated in the following items.

## B. Appraisers

Personnel assigned to appraise proposed right of way will have a minimum of 5 years experience in the appraisal of real estate for public acquisition. This will include the appraisal of partial acquisitions as well as entire properties. The appraiser will have an active Virginia Certified General License. Out-of-state appraisers will have a Reciprocal Certified General License. Appraisal experience should include serving as expert witness at property condemnation proceedings.

## C. Relocation Specialists

Personnel proposed to provide relocation services and benefits will have a minimum of 2 years experience in performing relocation in conformity with the Federal Uniform Relocation Act and its implementing Federal and Virginia regulations and policies.

### D. Negotiators

Personnel proposed to negotiate the purchase of right of way will have a minimum of 2 years experience in the ability to negotiate partial and whole acquisitions for public projects. Also, these persons will have the ability to read and interpret complex highway plans and to write centerline property descriptions.

### E. Project Managers

The Project Manager may perform one or more of the above functions as well as serve in a supervisory role for the project property acquisition team. The Project Manager will possess the qualifications (as above) to perform any of the functions undertaken as well as 5 years experience in the coordination of right of way acquisition activities.

## 8.2.5 Pre-Award Financial Audit

Consultants considered for qualification by the Review Committee or the Administrative and Consultant Contract Coordinator will be requested to provide financial information necessary for the External and Construction Audit Division to perform a pre-award audit evaluation. The External and Construction Audit Division will determine and verify the consultant's overhead rates, salaries and the acceptability of their accounting system.

Consultant applicants will submit the following financial information:

1. Current actual or average hourly rates (unloaded/bare) by classification. A responsible official of the firm must certify the rates. Applicants will be required to submit current payroll register.

2. Schedule of general and administrative expenses supporting the overhead rate developed by the consultant for fiscal years requested. All individual accounts and amounts will be included and any FAR nonallowables such as interest, entertainment, etc.

3. FAR overhead audit, or state or federal overhead audits, if available, for use as a provisional rate. An indirect cost rate (overhead) established according to FAR and audited by a cognizant government agency or CPA firm will be required.

4. Full explanation of any corporate allocation indicating accounts, amounts and method of allocation.

5. Complete description of accounting system, list of officers, principals, organizational chart, chart of accounts and company brochures.

6. Development of rates for in-house computer, reproduction and other rates used by the firm.

7. Relationship between the firm and lessor for rental charges. Financial information of the lessor will be required if common control exists, including balance sheet, income statement and tax return.

8. Federal employee number.

On successful completion of the pre-award audit, a firm will be added to list of consultant firms eligible to respond to specific right of way acquisition contract requests.

### 8.2.6 Application for Prequalification

The following information will be required of all applicants for prequalification:

1. A detailed statement indicating the organizational structure under which the firm proposes to conduct business in Virginia. If more than one firm is involved, state the type of arrangement between the firms and the percent of work each will perform.

2. Names and addresses of all affiliated and subsidiary companies. Indicate which companies are subsidiaries. If there is uncertainty as to affiliation by another firm, the doubt should be resolved in favor of affiliation and the firm listed as an affiliate.

3. Names of key personnel who will be assigned to projects and provide the experience record of each. A detailed resume' should be included which identified the amount of time that personnel have been performing right of way work. Key personnel are defined as those to whom the project will be assigned and who will be performing the actual right of way services.

4. Information that will indicate the firm's ability to meet the time schedule for work to be performed. Anticipate that multiple assignments will be occurring during the life of the contract.

5. Indicate previous experience and current work with VDOT including: Project identification; Region or Division managing each project; amount of outstanding fee remaining; and estimated date of completion. Current workloads with VDOT should only include right of way activities.

6. Copies of current GSA forms 254 and 255 for all firms involved. The form 255 must specify the number of personnel by discipline for each office where the work is to be performed. List only personnel assigned to the office(s) at the time of submission.

7. Any other information that would indicate qualifications to perform right of way work required under the procurement notification.

8. Disclosure as to any owner, partner, officer, or person in a position to administer activities paid with federal funds employed by the applicant firm or any subconsultants:

   - Is currently under suspension, debarment, voluntary exclusion of determination of ineligibility by any federal agency.
   - Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years.
   - Has a proposed debarment pending.
   - Has, within the past 3 years, been indicted or had a civil judgment rendered against it or them by a court in any matter involving fraud or official misconduct.
   - For any condition noted above, specify to whom it applies, initiating agency and date of action.
   - Any of the above conditions will not necessarily result in denial of prequalification or award of a contract. Information will be considered in total context. Limitations or special conditions may be imposed.

9. Completion of the State Procurement Memorandum Questionnaire for Participation of Small Businesses and Businesses Owned by Women and Minorities in State Procurement Activities, indicating past participation and any planned participation.

Refer to the flow chart, Attachment 3–A, which describes the contracting prequalification process.

### 8.2.7 Expiration of Prequalification

Prequalified firms are required to submit for renewal once every two years or on other intermediate occasions as determined necessary by the Director.

### 8.2.8 Appeals

A firm determined not to be qualified to perform right of way acquisition services may request a meeting with the Director. At that time additional information may be provided in support of a reconsideration of the determination. The Director will provide final determination in writing within 5 days.

The Determination of the Director may be appealed in writing to the Commissioner of Highways.

### 8.2.9 Civil Rights

VDOT will actively comply with Title VI of the Civil Rights Act of 1964 in all activities concerning prequalification and selection of consultants. No person will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color or national origin under any program or activity administered by the Virginia Department of Transportation.

VDOT will require a Title VI report to be prepared and submitted to the VDOT Civil Rights Division for review and approval for all firms.

## Section 3 – Contract Awards

### 8.3.1 General

The Director of the Right of Way and Utilities Division (the Director) is responsible for determining when the services of a consultant firm/individual are needed to acquire right of way for a project. This determination is made after an evaluation of workload, project schedules and current staffing. The request for approval of consultant services may be initiated by the Regional Offices in the manner described in Section 8.1.2.

### 8.3.2 Request for Proposals (RFP)

After a determination has been made that there is a need for consultant services, a Request for Proposals (RFP) will be prepared and distributed to all consulting firms that are at that time on the Right of Way and Utilities Division's list of firms prequalified for right of way acquisition. The RFP will detail the specific scope of work required on the project or group of projects to be included in the proposed project.

When there is a RFP to be distributed, it will be placed on the Internet and all prequalified consultants will be notified by email, which will also contain a direct link. The consultant will have three (3) days after receipt of the email indicating that a RFP has been posted to respond advising receipt of notification. At the end of the third (3) day, they will receive one (1) call by the Central Office Consultant Contracting Section advising that a RFP has been placed on the Internet.

The email will advise the consultant of important dates such as the preproposal meeting date, time and location, the deadline for ordering plans as well as a contact person. These plans will be provided to the consultants at the preproposal meeting. This will allow the consultants to evaluate the requested work and prepare a detailed and accurate cost proposal.

The steps to access the RFP are as follows:

Type in www.Virginiadot.org/business/row-rfps.asp or it can be accessed from the RWUD main page at www.Virginiadot.org/business/row-default.asp. A popup box displaying the RFP Number, Preproposal Meeting, Proposals Due and Service Type will appear. When there is an active RFP a "Download" option will appear. Simply click on this and the RFP can be downloaded.

### 8.3.3 Preproposal Conference

A preproposal conference will be held seven (7) working days from the date the RFP is posted in the Regional Office having jurisdiction for the project. Attendance at the conference will be mandatory for all consultant firms intending to submit proposals.

The purpose of the preproposal conference is to afford an opportunity to interested firms to obtain more specific and current information about the project than may be provided in the RFP. It assures that all interested firms/individuals are enabled to submit proposals on an informed basis. Key people are introduced, possible problems are discussed and deadlines are set forth. It might also allow for clarification of elements in the RFP that may not have been well understood. The preproposal conference also provides VDOT an advance indication of interest in the project by qualified firms.

Consultant firms interested in submitting proposals will be expected to submit the original and two copies of the contract and any other pertinent information to the Central Office within ten (10) days after the preproposal meeting. This date is identified in the RFP as well as the email. The RWUD is unable to accept electronic bids.

Consultant firms that are not interested in responding to a specific RFP are requested to indicate their intention to VDOT in writing.

### 8.3.4 Evaluation and Award of Contract

A Selection Committee will be appointed by the Director to review and evaluate all proposals received in response to the RFP. The Committee will be composed of at least three members. Two members are appointed by the Director and one member designated by the Regional Right of Way Manager.

The Selection Committee will evaluate firms according to the following award criteria:

1. Qualifications and experience of each consultant firm in appraisal, negotiations and relocation (15%).
2. Qualifications and experience of personal assigned this project in appraisal, negotiations and relocation (35%).
3. Cost (10%). Points are assigned based on a factor of the lowest price offered by all respondents divided by the price of the consultant being evaluated. The resultant number is then multiplied by the maximum points available to develop points assigned.
4. The consultant firm's organization, capability and ability to perform the job on time (15%).
5. The consultant firm's present workload with VDOT (10%).
6. Past, current and planned participation of small businesses and businesses owned by women and minorities (15%).

The weights assigned to individual evaluation factors may be revised at the discretion of the Director.

Each Selection Committee member individually scores each consultant proposal using a form developed for that purpose. The assigned Committee Chairperson totals all the completed sheets. The evaluated firms are than ranked from most qualified to least qualified based on the evaluation scores.

The Selection Committee Chairperson will make a recommendation to the Director indicating the firm having the highest overall score. The Director will recommend the selection to the Chief of Policy & Environment, who will execute the contract after final review and approval.

### 8.3.5 Appraiser Prequalification

The Virginia Department of Transportation (VDOT) intends to request proposals from appraisers that wish to be considered for providing appraisal services necessary for the acquisition of rights of way on transportation construction and maintenance projects. Only those appraisers who have submitted the necessary information outlined below and have been approved, as being prequalified will be considered for a contract.

Interested persons, corporations, or partnerships expressing interest relating specifically to appraisal services shall meet the following guidelines for prequalification.

1. Each candidate, regardless of level (Appraiser, Senior or Reviewer) must meet the following licensing and experience requirements:

   a) Be licensed as a "Certified General Real Estate Appraiser" in Virginia with at least three years of appraisal experience in the past ten years.

   Or

   b) Be licensed as a "Residential" or as a "Certified Residential" appraiser with a minimum of five years appraisal experience.

2. Each appraiser must meet the following continuing education requirements:

   a) People applying for "Appraiser" level must have seven hours of continuing education specific to eminent domain valuation within the past five years.

   b) People applying for "Senior Appraiser" and/or "Review Appraiser" level must have at least twenty-eight hours of continuing education specific to eminent domain valuation within the past five years.

Absent having the required hours of continuing education, the appraiser may fulfill this requirement within six months of being prequalified. A waiver request for this requirement can be submitted to the Chief Appraiser located at the Central Office. Questions regarding a course's suitability should be referred to the Chief Appraiser. An exhibit of possible education providers and courses that fulfill this requirement are listed on the VDOT Appraisal Web Page(s). However, the list may not be all-inclusive of available options.

a) References submitted on the "Appraiser Application" are checked.

b) The appraiser must be able and willing to testify as an "Expert Witness".

c) The appraiser or their firm must have an approved Title VI Evaluation Report on file with VDOT.

All fee and/or consultant appraisers should meet the basic requirements outlined and be prequalified prior to submitting a proposal to VDOT.

**Appraiser Qualification Level Requirements and Work Description**

The type of work that a prequalified appraiser may complete will be determined based upon his or her assigned qualification level once their application is approved. Once prequalified the appraiser may request an increase in assigned qualification level by following the procedures outlined in Chapter 4.2 of the Right of Way and Utilities Manual.

**A. Appraiser Level**

The licensed appraiser must meet all basic requirements. Appraisers licensed as "Residential" or "Certified Residential" Real Estate Appraisers are categorized as "Appraisers" on the prequalification list. Certified General Real Estate Appraisers with less than 2,000 hours of appraisal experience specific to eminent domain will qualify as an "Appraiser".

**B. Senior Appraiser**

The appraiser meets the basic requirements outlined and they must be licensed as a Certified General Real Estate Appraiser. Also, they must have more than 2,000 hours of appraisal experience specific to eminent domain. The applicant will also be evaluated based upon their work samples submitted and VDOT's prior experiences with the appraiser, if applicable. In addition, the appraiser must have a minimum of twenty-eight hours of continuing education specific to eminent domain appraisal.

**C. Review Appraiser**

Requirements for prequalification as an Approved Review Appraiser are the same as those outlined for a Senior Appraiser. In addition, the Review Appraiser must have demonstrated at least two years of commercial real estate appraisal review experience and have experience testifying as an expert witness to become

prequalified. Review Appraisers must submit an application, Title VI documentation, a resume, three eminent domain appraisal report samples, and three review appraisal report samples. Appraisers may be requested to provide additional information.

**Application for Prequalification**

A. The appraiser shall specifically address the following in their submission. Items required for prequalification consideration include:

1. A completed and signed application.

2. A copy of the appraiser's resume.

3. A copy of the appraiser's current appraisal license.

4. A copy of three appraisal report work samples, including two reports for past eminent domain appraisal purposes if the appraiser has eminent domain appraisal experience, preferably of commercial properties. Form appraisals are acceptable.

5. Title VI Evaluation Report

6. Evidence of completion of continuing education specific to eminent domain appraisal (7 hours for an Appraiser, 28 hours for a Senior Appraiser) or a statement that it is needed.

7. A list of three professional references with their contact information.

8. Appraisers prequalified as approved appraiser or review appraiser and have registered with eVA may complete work on a statewide basis. However, the prequalified appraiser and review appraiser will be segregated by Regional/or district based upon the location of the appraiser's place of business.

Upon requesting an application to be prequalified, a VDOT Appraiser Orientation, or Internet instructions for access to the orientation, is provided with the application. When the appraiser signs an application to be placed on VDOT's approved appraiser or review appraiser panel, they acknowledge that they have access to the VDOT Appraiser Orientation. Prior to completing their first assignment for VDOT, the appraiser should complete the VDOT Appraiser Orientation.

Three members of the Appraiser Relations Committee will review the application, and the region's recommendation if applicable, and make a recommendation to the Chief Appraiser.

The committee members may request that the applicant meet with them for an interview. The Chief Appraiser will make a final recommendation to the Director who determines if the appraiser will be added to the prequalified list, pending the acceptance of the applicant's Title VI documentation. Exceptions to the prequalified application process and requirements may be made at the discretion of the Director and the Chief Appraiser.

**Expiration**

Qualified appraisers or their firm are required to submit for renewal every year an updated Title VI evaluation report.

**Performance Evaluation**

VDOT's Regional Right of Way Managers and/or Project Coordinators are required to complete a Performance Evaluation on each appraiser completing a contract. This report will be used as a basis for evaluating the appraiser's performance and prequalification status.

### 8.3.6 Selection Process

After the appraisal cost estimate (formerly known as the time study estimate) [RUMS AF20] has been approved, (see 4.2.12 for preparation instructions), a request for the use of a fee appraiser should be sent to the Central Office Contracting Section. At that time, all prequalified appraisers within the geographical area (region) and any others deemed appropriate will be contacted by email. If there is a fee appraiser that does not have an email address, they will be provided a written notification. Appraisers will be advised of the time, date, and place to attend a project showing, if it is deemed necessary. Only one notice will be sent to appraisal firms that employ two or more prequalified appraisers. All proposals **must be** submitted by paper mail since VDOT requires a signed time study estimate by the fee appraiser. They will be sent directly to the Central Office Consultant Contracting Section for review, selection and the issuance of an appraisal contract.

Should the Region have a request that is for five or fewer parcels, the Central Office Consultant Contracting Section will obtain written proposals, either via mail or electronic

submission, from at least three fee appraisers. A signed and dated fee appraiser time study estimate is required from the successful fee appraiser and will be made a part of the contract and project file.

The criteria for selecting a fee appraiser should be the same as outlined below:

Appraisal contracts will be awarded based on the following factors:

7. Price
8. Demonstrated expertise in performing similar assignments
9. Ability to submit appraisals on schedule
10. Evaluation of the appraiser's past performance
11. Value of ongoing contracts with VDOT

### 8.3.7 Fee Appraiser Contract Procedure

Should it be determined that outside fee appraisal services are needed, the guidelines are discussed in Chapter 4 – Appraiser Prequalification and Appraisal Application Section. Also see Attachment 4 - Prequalification Questionnaire for Right of Way Appraisers and Attachment 3 - Procedures for the Procurement of Right of Way Appraisal Services.

All services of a fee appraiser or consultant will be by standard contract form with appendixes (RUMS Form AA1). The contract will list the parcel assignments with commitment as to dates of submission. If the contract is with a firm, the individual who will perform the appraisals must be specified. All contract signatures will be witnessed.

When the need arises for a fee appraisal contract, a letter is to be sent to the Central Office Consultant Contracting Section requesting that the project be advertised (RUMS Form AA5). Accompanying this request will be a priority listing of appraisals in order; identifying types of appraisals and the due dates (RUMS Form AA1D); and a copy of the approved, signed, and dated "State" Appraisal Cost Estimate. The Central Office Consultant Contracting Section will review the request, verify the information, ascertain that funding is available, and obtain a recommendation from the Director. The Region will be notified of approval or disapproval.

A letter, along with the priority listing, will be sent to all fee appraisers in the geographical area, regional area and any others deemed appropriate on the prequalified list. This notification will contain pertinent project information, total number of appraisals required, location and time of meeting, (if deemed necessary) proposal due date, Regional contact person, and cut off date for ordering plans. Should it be determined that a preproposal meeting is necessary, a representative from the Central Office Consultant Contracting Section will be in attendance. A marked set of plans will be available at the showing for review and explanation. Regional right of way personnel conducting the showing will be prepared to answer questions that may be asked by participating appraisers.

Proposals will be sent to Central Office for review for mathematical correctness, fee appraiser's outstanding work, staffing, and past performance. Fee appraisers will be required to submit a "Fee" Appraisal Cost Estimate. The estimate must identify the appraiser(s) who will complete each appraisal assignment. The appraiser(s) identified to complete an assignment must meet the minimum qualifications for that type of assignment and must be on VDOT's prequalified list. The Region will be consulted and kept abreast of the decisions when appropriate.

A written recommendation will be forwarded to the Director for approval and the contract prepared and submitted to the fee appraiser for execution (RUMS Form AA1). Upon execution by all parties, a notice to proceed will be issued to the fee appraiser and the unsuccessful proposers will be notified. The Region will receive a copy of the contract and letter. From this point forward, the Region will manage the project; however, the Central Office must approve any contract adjustments that include addition or deletion of parcels, change in appraisal types, and change in fee or time extension as explained in this section.

If the contract fee exceeds that shown in the time study estimate, the Regional Right of Way Manager and/or Appraisal Team Leader must furnish written justification for the higher fee.

A fee appraiser or right of way consultant will not begin an assignment until the approving authority notifies the appraiser to proceed.

### 8.3.8 Small Dollar Contracts

The RWUD may contract for non-professional services utilizing the following process if the anticipated fee is expected to be $30,000 or less.

1. The initiating office develops a scope of work and a proposed schedule for the project. This is forwarded to the Central Office Consultant Contracting Section.

2. Qualified potential providers are identified from a list of firms/individuals that have previously performed services. A sole provider may be identified if the firm/individual is uniquely qualified to perform a specialty service or is the only qualified provider available at the time. Consideration is given to selecting a small Virginia business, minority owned business or female owned business to meet VDOT's overall Disadvantaged Business Enterprise goals.

3. Telephone or personal interviews are conducted with a representative of each firm/individual to determine their current personnel qualifications, experience, workload, and ability to perform the scope of work and meet the proposed schedule. Written documentation of the interview is made a part of the project file.

4. A fee for the service is negotiated with a selected firm. If negotiations fail to obtain an agreement at a fair and reasonable fee, and on other conditions advantageous to VDOT, negotiations are terminated and a second firm selected for negotiation. This procedure is continued until a contract is negotiated at a fair and reasonable fee.

5. A project specific agreement is prepared using the latest contract agreement approved by the Attorney General's Office. The contract will be on a fixed billable basis, and the overhead rates, average salary rates and net fee will be within the range normally accepted by VDOT and shall be approved by the Director as reasonable. No pre-award audit is required.

6. The Director reviews and approves the proposal based on the Central Office Consultant Contracting Section recommendation.

## Section 4 – Administration of Contracts

### 8.4.1 General

The contractual terms and conditions under which the consultant will perform specified right of way services will be included as part of the RFP for each contract advertised.

When the selection has been made, the contract will be processed for execution on behalf of the Virginia Department of Transportation (VDOT) in accordance with VDOT policy.

Once all parties execute the agreement, it will be distributed and a notice to proceed will be issued.

### 8.4.2 Contract Administration and Payments

VDOT will advise the consultant of the person it has designated as Project Coordinator after the contract has been executed and a notice to proceed has been issued. The contract will be coordinated through the Right of Way and Utilities (RWUD) Office in the Region having jurisdiction for the project.

The Central Office Consultant Contracting Section will process all claims for payments made by the consultant. The vouchers will be reviewed by the Project Coordinator to ensure that the percentage of work being billed has been completed and verify all costs billed are accurate. The FD-AP-01 will be prepared and submitted to the Fiscal Division, along with the invoice and required documentation for entry into FMSII. Central Office Consultant Contracting Section will maintain a copy in the contract/project file.

Payments to be processed on fee appraisal contracts will be processed by the Regional Office. A FD-AP-01 will be prepared and submitted to the Fiscal Division, along with the invoice and required documents for entry into FMSII. A copy should be forwarded to the Central Office Consultant Contracting Section.

### 8.4.3 Changes in Scope of Work

A supplement to the contract will be required if there are changes in the scope of work assigned to the consultant. This may arise, for instance, if acquisition parcels are added to the project because of a plan change occurring after execution of the contract. All information concerning a change in the scope of work, along with a recommendation, will be submitted to the Director for review and approval before any additional work is initiated. The Consultant will be instructed at the time a notice to proceed is issued that all supplements will be submitted to the Central Office Contracting Section. It will be the responsibility of the Regional Office to maintain records and provide a response to any supplements submitted by the Consultant. .The Central Office will prepare and process all necessary modifications to the contract. A copy of any modifications will be sent to the Regional Office and to the Project Coordinator.

### 8.4.4 Project Production Meetings

The Project Coordinator will hold production meetings with key consultant project personnel monthly during the active stage of right of way acquisition and relocation. The meetings will focus on the status of work in relation to the contract schedule. The consultant will identify any problems being encountered. Strategies and methods to resolve problems will be explored in a spirit of cooperation and open communication.

The Project Coordinator will inform the Regional Manager and the Administrative & Consultant Contract Coordinator of the status of the project on a regular and continuing basis. Any written reports submitted by the consultants at these meetings should be forwarded to the Central Office Consultant Contracting Section.

Thirty days prior to completion date of a consultant contract, the Central Office Contracting Section will request the consultant to identify (in writing, parcel by parcel) all unfinished work. Unfinished work must be explained (item by item) stating why the work is incomplete or whether it will be completed on time. The original copy of this report will be submitted to the Director with copies to the Regional Manager and/or Project Coordinator. The Regional Office will have five days after receipt of this report to offer any comments to the Central Office Administrative & Consultant Contract Coordinator, who will make the final determination to release the consultant from further work.

### 8.4.5 Contract Completion and Evaluation

When the consultant has completed the work in the contract, all documentation and files will be provided to VDOT's Project Coordinator. The Regional Office will prepare a Notice of Completion and forward it to the Director of the RWUD. The consultant will be requested to prepare and submit the final billing on the contract.

Evaluations (RUMS Form AF23) are to be performed every six months from the notice to proceed and at contract completion for right of way acquisition contracts. Evaluations for appraisal contracts will be evaluated at the end of the contract.

The Project Coordinator in the Region will initiate a multi-disciplinary evaluation (RUMS Form AF23) of the consultant's performance. The evaluation will be performed by each of the functional areas included in the contract--normally the Appraisal, Negotiations and the

Relocation sections. The original of the evaluation should be sent to the Consultant, along with a copy to the Central Office Consultant Contracting Section. The consultant is to be advised that they are to sign and return the evaluation within 30 days of receipt. Failure to return may result in a temporary suspension from the prequalification status. The Central Office Consultant Contracting Section will maintain the original in the consultant's folder and will be input into a database on the team site.

The evaluations will be submitted to the Director. The Selection Committee will review the evaluations in considering the consultant's proposals for the award of future contracts.

**CHAPTER 8 – RIGHT OF WAY CONSULTANT SERVICES**

**LIST OF ATTACHMENTS**

**Attachment 1 – Procedures for Procurement of Right of Way Acquisition Consultants**

**Attachment 2 – Consultant Prequalification Questionnaire**

**Attachment 3 - Procedures for the Procurement of Right of Way Appraisal Services**

**Attachment 4 – Appraisers Prequalification Questionnaire**

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# RIGHT OF WAY AND UTILITIES DIVISION

# PROCEDURES FOR THE PROCUREMENT OF RIGHT OF WAY ACQUISITION CONSULTANTS

**RIGHT OF WAY AND UTILITIES DIVISION**

**PROCEDURES FOR THE PROCUREMENT OF RIGHT OF WAY ACQUISITION CONSULTANTS**

According to the Virginia Public Procurement Act, the acquisition of right of way is considered to be a nonprofessional service. In accordance with the Virginia Public Procurement Act, the Virginia Department of Transportation (VDOT) has developed the following procedures to be used in the competitive procurement of these services.

## PREQUALIFICATION OF CONSULTANTS

On a biennial basis, the Right of Way and Utilities Division will advertise in commonly utilized publications a notice that it intends to let contracts for the acquisition for right of way within the next two years. The notice will indicate that firms interested in performing these services should obtain a prequalification questionnaire from VDOT and submit their request for prequalification within the specified period of time.

The prequalification questionnaire will outline the minimum qualifications VDOT has determined a consultant firm must possess in order to perform the appraisal, negotiation, and relocation aspects of right of way acquisition. The questionnaire also will indicate the information that must be submitted in order for a consultant to be evaluated and, if appropriate, determined to be qualified to respond to actual contract requests.

## PREQUALIFICATION REVIEW COMMITTEE

The State Right of Way Director will establish a Prequalification Review Committee to evaluate submittals received as a result of the biennial notice as well as any other submittals received. This committee shall determine if a consulting firm and its employees meet the guidelines established for right of way acquisition consultants and would be qualified to perform these services for VDOT.

The Prequalification Review Committee's evaluation may include any interview with prime consulting firms, their proposed subconsultants, and key personnel indicated in the submittal.

The Prequalification Review Committee shall make its recommendations to the State Right of Way Director within 90 days from receipt of the information outlined in the prequalification questionnaire for firms determined to be qualified and those the committee determines are not qualified. The State Right of Way Director is responsible for approving or disapproving the committee's recommendations.

## PREQUALIFICATION SUBMITTAL OUTSIDE BIENNIAL ADVERTISEMENT

During any time frame outside the biennial notice, VDOT will accept requests and submittals from consultants interested in becoming prequalified for right of way acquisition contracts. These submittals will also be reviewed by the Prequalification Review Committee. The response time, which includes the review of the submittal and prequalification, may take up to 90 days from receipt of the information outlined in the prequalification questionnaire. Until prequalified, a consultant shall not be allowed to submit proposals on any contract request solicited by VDOT.

## PRE-AWARD FINANCIAL AUDIT

Once a consultant has been determined to be qualified and approved to perform right of way acquisition services for VDOT, the consultants will be requested to provide financial information in order for the External and Construction Audit Division to conduct a pre-award audit evaluation. Upon receipt of this data, the External and Construction Audit Division will determine and verify the consultant's overhead rates, salaries, and the acceptability of their accounting system.

Once the External and Construction Audit Division has approved a consulting firm from a pre-award audit standpoint, that firm shall be added to the list of consultant firms eligible to respond to specific right of way acquisition contract requests. The list will be separated into two Tiers. All firms will be eligible to respond to Request for Proposals advertised by and administered by VDOT's Right of Way and Utilities Division. Only firms that have successfully performed a contract administered by VDOT will be on the Tier recommended for local administered projects.

The consulting firm will also be required to submit a Title VI to be reviewed and approved by the Civil Rights Division.

REGISTRATION

The firm shall be registered with the following boards and be in good standing:

1). Eva: www.eva.state.va.us

2). State Corporation Commission: www.scc.virginia.gov

3). Department of Professional Organizations: www.dpor.virginia.gov

Documentation of current registrations should be provided with the prequalification package.

## ADVERTISEMENT OF RIGHT OF WAY ACQUISITION CONTRACTS

The State Right of Way Director shall be responsible for determining when an outside consultant firm is needed to acquire right of way on a project. This determination shall be made after an evaluation of the current staffing ability to handle the work within the project development time frame.

Upon determining the need for outside services, a Request For Proposal (RFP) shall be prepared and posted on VDOT'S external website and can be accessed at http://www.virginiadot.org/business/rfps.asp#right. An email advising of this posting and specific instructions will be sent to all consulting firms that are, at that time, on VDOT's list of consultant firms prequalified for right of way acquisition work. The RFP will outline the specific scope of work required on the project or group of projects to be included in the proposed contract. The consultant's proposal will include the cost to perform the various elements of the work as shown in the RFP.

A pre-proposal conference will be held when VDOT determines it to be appropriate. Should a pre-proposal conference not be held, inquiries regarding the RFP will be accepted within an established time frame. All prequalified offerors attending this conference will be provided with plans for the project or projects. Consultants not interested in responding to a specific RFP may indicate that information to VDOT in writing.

## EVALUATION AND AWARD OF CONTRACT

The State Right of Way Director shall appoint a Selection Committee consisting of at least two members appointed by him and an additional member to be determined by the requesting Regional Manager. The Selection Committee shall review and evaluate all proposals received within the specified time frame to determine the most qualified offeror. The committee's evaluation shall include criteria previously established, along with the consideration of those employees of the consultant firm that will be involved with the specific project and the consultant's cost proposal.

The Selection Committee shall rank the firms in order from most qualified to least qualified and provide their recommendation to the State Right of Way Director. The State Right of Way Director shall then make his recommendation to the Chief of Policy and Environment, who shall approve or disapprove the selection.

## CONTRACTUAL ARRANGEMENT

The contractual terms and conditions under which the consultant will perform the specified right of way acquisition services shall be included as a part of the RFP for each contract advertised. In addition, the RFP will contain a specific format, which the consultant will be expected to utilize in indicating its proposed direct and nondirect costs for the services specified.

In accordance with the above, the consultant firm will execute at the time the proposal is submitted a contractual sheet on behalf of the consultant firm. This contractual sheet will incorporate the RFP terms and conditions therein, and the consultants fee proposal all as a part of the contract.

Once a selection has been made, the contract will be processed for execution on behalf of VDOT in accordance with Departmental Policy. Once the agreement is fully executed, the contract shall be distributed and a notice to proceed shall be issued.

## ADMINISTRATION OF CONTRACT

After the consultant contract has been fully executed and the notice to proceed given, VDOT will designate and advise the consultant of his VDOT contract representative for that project. All aspects of the actual contract will be administered and coordinated through a regional right of way and utilities office. All requests for payments made by the consultant will be processed through the Central Office Consultant Contracting Section for their review and recommendations for payment.

In the event it is necessary that the contract be changed as a result of a change in the scope of work, all information regarding the change shall be submitted to the State Right of Way Director for review and approval. Any necessary modifications to the contract will be prepared and processed by the Central Office Consultant Contracting Office.

## CONTRACT COMPLETION AND FINAL EVALUATION

Once the consultant has completed the right of way acquisition and turned all necessary documentation over to VDOT's representative, a notice of contract completion is to be provided to the State Right of Way Director. At that same time, the consultant is to be requested to prepare and submit their final billing on that contract.

Within sixty days of the notice of contract completion, the contract representative shall perform an evaluation of the consultant's performance prepared by the various disciplines involved in the contract (i.e., Appraisal Section, Negotiation Section, and possibly Relocation Section) and forward to the consultant for signature. These evaluations are to be submitted to the State Right of Way Director and copies will be provided to the Selection Committee for their use in determining the consultant's qualifications to continue providing these types of services and to be considered in the award of future contracts.

12/10

# RIGHT OF WAY AND UTILITIES DIVISION

# RIGHT OF WAY ACQUISITION
# AND
# ASSOCIATED SERVICES

## CONSULTANT PREQUALIFICATION QUESTIONNAIRE

## ACQUISITION OF RIGHT OF WAY AND ASSOCIATED SERVICES

I. Purpose

The Virginia Department of Transportation (VDOT) intends to request proposals (RFP) from Right of Way consulting firms who wish to be considered for providing services necessary for the acquisition of rights of way on transportation construction and maintenance projects. Only those firms that have submitted the necessary information outlined below and have been approved as being prequalified will be considered for a contract in response to a request for proposal (RFP).

II. Minimum Qualifications

A. It will be required of interested persons, corporations, or partnerships expressing interest that the services requested, relating specifically to rights of way acquisition, be performed according to current United States Department of Transportation/Federal Highway Administration guidelines and policies, Virginia Department of Transportation policies and procedures, and applicable federal and state laws. The consultant firms shall have a demonstrated ability to perform these services according to federal and state laws, rules, regulations, and policies.

As a part of or in addition to the above, the firm shall have personnel with experience in the following:

Appraisals

Personnel proposed to be used in the appraisal of the proposed right of way acquisition shall have a minimum of five years experience in the appraisal of real estate for public acquisition. This shall include the appraisal of partial acquisitions as well as entire properties. The appraiser shall also have an active Virginia Certified General License or out of state appraisers must have a reciprocal Certified General License.

Evidence of this experience will be in sufficient detail on the résumé to satisfy the requirements.

Relocations

Personnel proposed to be used in the relocations of families and businesses involved in the acquisition of property (real, personal, and mixed) for the construction, reconstruction, and maintenance of the public highways of the Commonwealth shall have a minimum of two years of demonstrated experience in relocations in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (49 CFR Part 24 and Title 25, Chapter 6, 1950 Code of Virginia). Evidence of this experience will be in sufficient detail on the résumé to satisfy the requirements.

Negotiations

Personnel proposed to be used in the negotiation of right of way acquisition shall have a minimum of two years of demonstrated experience, the ability to read and interpret complex highway plans and to write property descriptions utilizing the centerline method. Evidence of this experience will be in sufficient detail on the résumé to satisfy the requirements.

Project Manager

This individual is responsible for the administration and coordination of all activities involving the acquisition of rights of way, relocation of families and/or businesses, and the clearing of parcels for construction along with the relocation of utilities in conflict with the project. The Project Manager must demonstrate extensive knowledge in appraisal, negotiations, and relocations including utilities and may be a key person performing one or more of these functions. The Project Manger shall have at least five (5) years of experience in managing complex right of way projects. Evidence of this experience will be of sufficient detail on

the résumé to satisfy the requirements. The Project Manager will ensure that all work is performed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Code of Virginia, (1950 as amended) specifically Titles 15, 25, 33 and 56, and the Right of Way and Utilities Manual of Instructions, Volumes I and II.

*Note: For any individual or firm proposed to perform work in any of the above disciplines who is not a direct salaried employee or a subsidiary, there must be a signed letter of intent included in the submission.*

B. The firm shall be adequately staffed either through its employees or through contractual arrangements so that it can acquire right of way on a 50-parcel project, involving four relocations, within a nine-month time frame.

C. The firm shall have an overhead rate, average hourly rates, etc., that meet the pre-award audit criteria of VDOT's External and Construction Audit Division. Financial reports, including overhead rates, must have been prepared by a CPA following the Federal Acquisition Regulations (FAR). (See Attachment A for a checklist of complete requirements.)

D. The Department assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants will be required to submit a Title VI Evaluation Report (EEO-D2). Title VI Form

E. The firm shall be registered with the following boards and be in good standing:

1). Eva: www.eva.state.va.us
2). State Corporation Commission: www.scc.virginia.gov
3). Department of Professional Organizations: www.dpor.virginia.gov

III. Application for Prequalification

The firm shall specifically address the following in its submission:

1. Submit a detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in this proposal, state the type of arrangement between the firms and the percentile of work to be performed by each.

2. Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If a situation arises in responding to this questionnaire where you are unsure whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed as an affiliate.

3. Indicate KEY PERSONNEL ONLY who will be assigned to the projects and give detailed work experience for each. Key personnel are defined as those to whom the project will be assigned and who will be performing the actual right of way services. The resume for key personnel should be included and should demonstrate their specific knowledge in the area they will be assigned.

4. Provide information that will indicate your firm's ability to meet the time schedule for this work. It is anticipated that multiple assignments will be occurring during the life of the contract.

5. Indicate your previous experience with VDOT and current work with VDOT including the projects, the Division managing the projects, the amount of outstanding fee remaining, and the estimated date of completion. Also, include your estimated fees for any projects that the firm have been selected but not executed an agreement. Work of affiliated and/or subsidiary companies is to be included. (Current work

with VDOT should only include right of way acquisition activities.) - See Present Workload with Department Form

6. Furnish copies of current GSA Forms 254 and 255 for all firms involved. The Form 255 must specify the number of personnel by discipline for each office where the work is to be performed. List only the personnel assigned to the office(s) at the time of this submission.

7. Furnish any other information you wish that would indicate your qualifications to perform the right of way work required under the proposed procurement.

8. Please indicate, by executing and returning the attached Certification Regarding Debarment forms, if your firm, subconsultant, or any person associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of federal funds:

   Is currently under suspension, debarment, voluntary exclusion of determination of ineligibility by any federal agency;

   Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

   Does have a proposed debarment pending; or has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any of the above conditions will not necessarily result in denial of an award but will be considered in determining offeror responsibility. For any condition noted, indicate to whom it applies, initiating agency, and

dates of action. Providing false information may result in federal criminal prosecution or administrative sanctions.

9. 49 CFR Part 26 required VDOT to collect certain data about firms attempting to participate in VDOT contracts; therefore it is essential that you complete the Firm Data Sheet.

Firms interested in being considered must reply with three copies giving qualifications, experience, and availability for performing the required services.

10.. Send to: Mr. Richard R. Bennett
State Right of Way Director
Right of Way and Utilities Division
Attn: Mrs. Vicki B. Campbell
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

IV. Expiration

Prequalified firms are required to submit for renewal once every two years or on other intermediate occasions as may be considered necessary. Financial information and Title VI requirements must be updated annually.

V. Performance Evaluation

VDOT's Right of Way contract representatives are required to complete a Performance Evaluation on each prime consultant completing a contract. This report will be used as a basis for determining the consultant's performance and ultimately determining the consultant's prequalification status.

VI. Appeals

If it is determined that the consultant firm is not qualified to perform right of way acquisition services, they may request a meeting with the Director of the

Right of Way and Utilities Division. At that time they may provide additional information regarding the reasons VDOT did not find the consultant to be qualified. The State Right of Way Director shall provide his final determination in writing within five days.

This final decision may be appealed in writing to the Commissioner of Highways.

The Department assures compliance with Title VI requirements of nondiscrimination in all activities pursuant to its procurements.

Approved:

_____ December 29, 2010

Mr. Richard R. Bennett — Effective Date
State Right of Way Director

# ATTACHMENT A

## CHECKLIST FOR FINANCIAL INFORMATION FROM CONSULTANT

1. Current actual or average hourly rates (unloaded/bare rates) by classification (certified by responsible official). (Supported by ***actual*** payroll registers) Attach a separate sheet with names indicating current classifications as shown on Attachment A. This will facilitate the auditing process. (See example – Supplement to Attachment A)

2. Schedule of General and Administrative expenses supporting an overhead rate developed by the consultant for FYE(s) requested, indicating all individual accounts and amounts, including any FAR (Federal Acquisition Regulation) non-allowables such as interest, entertainment, etc.

3. Complete CPA report(s) for requested FYE(s). The consultant should submit a FAR overhead audit, or state or federal overhead audit if available, for use as a provisional rate on this project. An indirect cost rate (overhead) established according to FAR and audited by a cognizant government agency or independent CPA firm will be required.

4. Full explanation of any corporate allocation, indicating accounts, amounts and method of allocation.

5. Complete description of accounting system, list of officers/principals, organizational chart, chart of accounts, and company brochures.

6. Development of rates for in-house computer, reproduction or other rates used by the firm.

7. Relationship between firm and lessor for rental charges. If common control exists, financial information (Balance Sheet, Income Statement, and Tax Return) of the lessor will be required.

8. Federal Employer Identification Number.

9. Copy of current payroll register.

Questions regarding audit procedures should be directed to
Mr. Judson Brown, External and Construction Audit Division Administrator
(804) 225-3597.

**Firm Name** _____
**Year** _____

# ATTACHMENT A

| CLASSIFICATION | AVERAGE WAGE RATE/ PER CLASSIFICATION + | PAYROLL BURDEN & OVERHEAD + FACILITIES COST OF CAPITAL + | FIXED BILLABLE RATE | FBR TO ESTABLISH NET FEE |
|---|---|---|---|---|
| PARTNER/PRINCIPAL | | | | |
| RIGHT OF WAY MANAGER | | | | |
| APPRAISER | | | | |
| APPRAISER TECHNICIAN | | | | |
| RIGHT OF WAY TECHNICIAN | | | | |
| RIGHT OF WAY SPECIALIST | | | | |
| RELOCATION SPECIALIST | | | | |
| RELOCATION SPECIALIST TECH. | | | | |
| DRAFTSMAN | | | | |
| SECRETARY | | | | |
| OTHER (SPECIFY) | | | | |
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*NOTE: FBR TO ESTABLISH NET FEE CANNOT INCLUDE FACILITY COST OF CAPITAL.
*NOTE: FIXED BILLABLE RATES TO BE DETERMINED IN ACCORDANCE WITH VDOT POLICY.
**NOTE: INDICATE PERSON(S) ASSIGNED TO THIS CLASSIFICATION FOR AUDIT PURPOSES

Firm Name _____
Year _____

Supplement to Attachment A

| | |
|---|---|
| Mac Doe | Principal |
| John Doe | Right of Way Manager |
| Jane Doe | Senior Right of Way Specialist |
| Tom Doe | Right of Way Specialist |
| Tammy Doe | Right of Way Technician |
| Jimmy Doe | Relocation Specialist |
| Janet Doe | Relocation Technician |
| Susie Doe | Secretary |

PRESENT WORKLOAD WITH DEPARTMENT

(List Amount of Each With VDOT by Division)

| PROJECT NUMBER AND FMS II CONTRACT ID NUMBER | MANAGING DIVISION | DATE OF ORIGINAL AGREEMENT | AMOUNT OF CONTRACT ** ($) | LESS SUB'S AMOUNT ($) | SUBTOTAL ($) | LESS FIRM'S APPROVED PAYMENT ($) | PLUS PENDING SUPPLEMENT *** ($) | TOTAL REMAINING WORKLOAD ($) | SCHEDULED COMPLETION DATE |
|---|---|---|---|---|---|---|---|---|---|
| PRIME CONSULTANT | | | | | | | | | |
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| TOTAL AMOUNT OF PRIME'S CONTRACTS | | | | | | | | | |
| SUBCONSULTANTS† | | | | | | | | | |
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| TOTAL AMOUNT OF SUB'S CONTRACTS | | | | | | | | | |
| TOTAL REMAINING WORKLOAD | | | | | | | | | |

For any work that has been exempted by VDOT, you must include a copy of the exemption letter with this submittal.
Work being performed under the Public Private Transportation Act (PPTA) or as a subcontractor on a Design-Build project shall not be included. Work being performed as a prime or joint venture on a Design-Build project shall be included.
† The outstanding workload of any certified DBE or SWaM prime and subconsultant is not to be included. When a DBE or SWaM firm graduates from the program, their workload incurred while a DBE or SWaM will be exempted for the next three years. Any work obtained after graduating from the program will be counted.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

(1) The prospective primary participant certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; and have not been convicted of any violations of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the firm for contracts to be let by the Commonwealth Transportation Board.

Signed at _____, this _____ day of _____, 20___.

| _____ | _____ | _____ |
|---|---|---|
| Signature | Title | Date |

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the firm for contracts to be let by the Commonwealth Transportation Board.

Signed at _____, this _____ day of

_____, 20____.

| _____ | _____ | _____ |
|---|---|---|
| Signature | Title | Date |

**FIRM DATA SHEET**

Project No.: _____

Right of Way and Utilities Division

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Proposals not including all of the required data will not be considered.

| Firm's Name and Address | Firm's DBE/SWAM Status * | Firm's Age | Firm's Annual Gross Receipts |
|---|---|---|---|
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* YD = DBE Firm Certified by DMBE N = DBE/SWAM Firm Not Certified by DMBE
NA = Firm Not Claiming DBE/SWAM Status
YS = SWAM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.

# RIGHT OF WAY AND UTILITIES DIVISION

# PROCEDURES FOR THE PROCUREMENT OF RIGHT OF WAY APPRAISAL SERVICES

# RIGHT OF WAY AND UTILITIES DIVISION
# PROCEDURES FOR THE PROCUREMENT OF RIGHT OF WAY APPRAISAL SERVICES

According to the Virginia Public Procurement Act, the acquisition of right of way is considered to be a nonprofessional service. In accordance with the Virginia Public Procurement Act, the Virginia Department of Transportation (VDOT) has developed the following procedures to be used in the competitive procurement of these services.

## PREQUALIFICATION OF APPRAISERS

On a biennial basis, the Right of Way and Utilities Division will advertise in commonly utilized publications or notify licensees by direct mailing a notice that it intends to let contracts for the appraisal of property required in connection with highway construction projects (if deemed economically appropriate). The notice will indicate that appraisers interested in performing this service should obtain a prequalification questionnaire from VDOT and submit their request for prequalification within the specified period of time.

The prequalification questionnaire will outline the minimum qualifications VDOT has determined an appraiser must possess in order to perform an appraisal or appraisal review work. The questionnaire also will indicate the information that must be submitted in order for an appraiser to be evaluated and, if appropriate, determined qualified to respond to actual contract requests.

## APPRAISER RELATIONS COMMITTEE

The Right of Way and Utilities Division has established an Appraisers Relations Committee to evaluate submittals received as a result of the biennial notice as well as any other submittals received. A panel of three (3) members from this committee shall determine if an appraiser meets the guidelines established for appraisal services for VDOT. The Appraiser Relations Committee's evaluation may include an interview with the appraiser.

The Appraiser Relations Committee shall make its recommendations to the Chief Appraiser within 90 days from receipt of the information outlined in the prequalification questionnaire. The Chief Appraiser is responsible for approving or rejecting the committee's recommendation.

## PREQUALIFICATION SUBMITTAL OUTSIDE BIENNIAL ADVERTISEMENT

During any time frame outside the biennial notice, VDOT will accept requests and submittals from appraisers interested in becoming prequalified for appraisal services. The response time, which includes the review of the submittal and prequalification, may take up to 90 days from receipt of the information outlined in the prequalification

questionnaire. Until prequalified, an appraiser shall not be allowed to submit proposals on any contract request solicited by VDOT.

## ADVERTISEMENT OF APPRAISAL CONTRACTS

The Regional Right of Way Manager shall be responsible for determining when services of an appraiser are needed. This determination shall be made after an evaluation of the current staffing ability to handle the work within the project development time frame. Upon determining the need for outside services, a State Appraisal Cost Estimate shall be prepared and submitted for approval to the Regional Right of Way Manager. A request to the Central Office Consultant Contracting Section.

A letter, along with the priority listing, including completion dates will be sent to all fee appraisers in the regional area and any others deemed appropriate on the prequalified list. This notification will contain pertinent project information, total number of appraisals required, location and time of meeting, (if deemed necessary) proposal due date, Regional contact person, and cut off date for ordering plans. Should it be determined that a preproposal meeting is necessary, a representative from the Central Office Consultant Contracting Section will be in attendance. A marked set of plans will be available at the showing for review and explanation. Regional right of way personnel conducting the showing will be prepared to answer questions that may be asked by participating appraisers.

Proposals will be sent to Central Office for review for mathematical correctness, fee appraiser's outstanding work, staffing, and past performance. Fee appraisers will be required to submit a "Fee" Appraisal Cost Estimate. The estimate must identify the appraiser(s) who will complete each appraisal assignment. The appraiser(s) identified to complete an assignment must meet the minimum qualifications for that type of assignment and must be on VDOT's prequalified fee appraisal list.

## EVALUATION AND AWARD OF CONTRACT

Appraisal contracts will be awarded based on the following factors:

1. Price
2. Demonstrated expertise in performing similar assignments
3. Ability to submit appraisals on schedule
4. Evaluation of the appraiser's past performance
5. Value of ongoing contracts with VDOT

## CONTRACTUAL ARRANGEMENT

All services of an appraiser will be by standard contract form. The contract will list the parcel assignments with commitment as to dates of submission. If the contract is with a firm, the individual who will perform the appraisals must be specified. All contract signatures will be witnessed.

Once a selection has been made, the contract will be processed for execution on behalf of VDOT in accordance with Departmental Policy. Once the agreement is fully executed, the contract shall be distributed and a notice to proceed shall be issued.

## ADMINISTRATION OF CONTRACT

After the appraisal contract has been fully executed and the notice to proceed given, VDOT will designate and advise the consultant of his VDOT contract representative for that project. All aspects of the actual contract will be administered and coordinated through a Regional right of way and utilities office. All requests for payments made by the appraiser will be processed through the Regional office with their review and recommendations for payment.

## CONTRACT COMPLETION AND FINAL EVALUATION

Once the appraiser has completed all assignments and turned all necessary documentation over to VDOT's representative, the contract representative in the Regional office shall prepare an evaluation of the appraiser's performance. This evaluation is to be submitted to the appraiser for signature and then forwarded to the State Right of Way Director. The evaluations will be used in determining the appraiser's qualifications to continue providing services and to be considered in the award of future contracts.

# RIGHT OF WAY AND UTILITIES DIVISION

# RIGHT OF WAY APPRAISERS

# PREQUALIFICATION QUESTIONNAIRE

# RIGHT OF WAY APPRAISER SERVICES

## I. Purpose

The Virginia Department of Transportation (VDOT) intends to request proposals from appraisers that wish to be considered for providing appraisal services necessary for the acquisition of rights of way on transportation construction and maintenance projects. Only those appraisers who have submitted the necessary information outlined below and have been approved, as being prequalified will be considered for a contract.

## II. Minimum Qualifications

A. It will be required of interested persons, corporations, or partnerships expressing interest that the services requested, relating specifically to appraisal services be performed according to current United States Department of Transportation/Federal Highway Administration guidelines and policies, Virginia Department of Transportation policies and procedures, applicable federal and state laws and USPAP. Appraisers shall have a demonstrated ability to perform these services.

B. Basic "Appraiser" requirements include:

1. Each candidate, regardless of level, must meet the following licensing and experience requirements:

a) Be licensed as a "Certified General Real Estate Appraiser" in Virginia with at least three years of appraisal experience in the past ten years.

Or

b) Be licensed as a "Residential" or as a "Certified Residential" appraiser with a minimum of five years appraisal experience.

2. Each appraiser must meet the following continuing education requirements:

a) People applying for "Appraiser" level must have seven hours of continuing education specific to eminent domain valuation within the past five years.

b) People applying for "Senior Appraiser" and/or "Review Appraiser" level must have at least twenty-eight hours of continuing education specific to eminent domain valuation within the past five years.

3. Each candidate must provide the following:

a) References submitted on the "Appraiser Application" are checked.

b) The appraiser must be able and willing to testify as an "Expert Witness".

c) The appraiser or their firm must have an approved Title VI Evaluation Report on file with VDOT.

Absent having the required hours of continuing education, the appraiser may fulfill this requirement within six months of prequalification to the approved appraiser list or prior to the completion of their first appraisal assignment, whichever occurs first. Questions regarding a course's suitability should be referred to the Chief Appraiser. An exhibit of possible education providers and courses that fulfill this requirement are listed on the VDOT Appraisal Web Page(s). However, the list may not be all-inclusive of available options. A waiver request for this requirement can be submitted to the Chief Appraiser located at the Central Office.

All fee and/or consultant appraisers should meet the basic requirements outlined and be prequalified prior to submitting a proposal to VDOT.

## III. Appraiser Qualification Level Requirements and Work Description

The type of work that a prequalified appraiser may complete will be determined based upon his or her assigned qualification level once their application is approved. Once prequalified, the appraiser may request an increase in assigned qualification level by following the procedures outlined in Chapter 4.2 of the Right of Way and Utilities Manual.

### A. Appraiser

The licensed appraiser must meet all basic requirements. Appraisers licensed as "Residential" or "Certified Residential" Real Estate Appraisers are categorized as "Appraisers" on the approved appraiser panel. Certified General Real Estate Appraisers with less than 2,000 hours of appraisal experience specific to eminent domain will qualify as an "Appraiser" versus a "Senior Appraiser" on VDOT's approved list.

**Work Description**

An appraiser may complete appraisal assignments, and sign appraisal reports, as allowed by their licensing status and within the competency provision of USPAP that involve total property acquisitions. Also, they may complete assignments that involve partial acquisitions of vacant land or land with "minor improvements" where no significant damages result to the remainder. When a change in highest and best use results in significant damages and possible enhancements to a property, a Senior Appraiser is required to complete or supervise the appraisal.

If an appraiser determines one or more of the following conditions exists:

a) The appraisal is complex in nature because the property has damages, other than minor incurable damages or cost to cure items to a remainder property.

b) The appraisal assignment exceeds that allowed under their licensing status.

c) The appraiser does not meet the competency provision as defined under USPAP.

They may have a "Supervisory Appraiser" who meets VDOT's minimum requirements, and who is on VDOT's approved appraiser list, sign the appraisal report as the "Supervisory Appraiser". If a "Supervisory Appraiser" is not available to sign the report, VDOT may reassign the appraisal to an appraiser who does meet VDOT's minimum approved appraiser requirements at its discretion.

**B. Senior Appraiser**

The appraiser meets the basic requirements outlined and they must be licensed as a Certified General Real Estate Appraiser. Also, they must have more than 2,000 hours of appraisal experience specific to eminent domain. The applicant will also be evaluated based upon their work samples submitted and VDOT's prior experiences with the appraiser, if applicable. In addition, the appraiser must have a minimum of twenty-eight hours of continuing education specific to eminent domain appraisal.

**Work Description**

No limits on acquisition and/or damage costs exist for the approved property types other than those imposed due to licensure status and/or competency to complete an assignment as outlined by USPAP.

**C. Review Appraiser**

Requirements for admission to the Approved Review Appraiser list are the same as those outlined for a Senior Appraiser. In addition, the Review Appraiser must have demonstrated at least two years of commercial real estate appraisal review experience and have experience testifying as an expert witness. Review Appraisers who are not prequalifed with VDOT must submit an application, Title VI documentation, a resume, three eminent domain appraisal report samples, and three review appraisal report samples. Appraisers currently on the Approved Appraiser list only need to submit an application and appraisal review work samples unless otherwise requested to provide additional information.

## IV <u>Application for Prequalification</u>

A. The appraiser shall specifically address the following in their submission. Items required for consideration of acceptance to the panel include:

1. A completed and signed application.

2. A copy of the appraiser's resume.

3. A copy of the appraiser's current appraisal license.

4. A copy of three appraisal report work samples, including two reports for past eminent domain appraisal purposes if the appraiser has eminent domain appraisal experience, preferably of commercial properties. Form appraisals are acceptable.

5. Title VI Evaluation Report

6. Evidence of completion of continuing education specific to eminent domain appraisal (7 hours for an Appraiser, 28 hours for a Senior Appraiser) or a statement that it is needed.

7. A list of three professional references with their contact information.

8. Appraisers approved for placement on the approved appraiser or review appraiser lists that have registered with eVA may complete work on a statewide basis. However, the approved appraiser and review appraiser lists will be segregated by Regional/or district based upon the location of the appraiser's place of business.

Upon requesting an application to be placed upon VDOT's approved list, a VDOT Appraiser Orientation, or Internet instructions for access to the orientation, is provided with the application. When the appraiser signs an application to be prequalified by VDOT's, as an approved appraiser or review appraiser, they acknowledge that they have access to the VDOT Appraiser Orientation. Prior to completing their first assignment for VDOT, the appraiser should complete the VDOT Appraiser Orientation.

An appraiser interested in being considered must reply with three copies of the above items giving qualifications, experience, and availability for performing the required services.

Send to: Mr. Richard R. Bennett, State Director
Right of Way and Utilities Division
Attn: Mrs. Vicki B. Campbell
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Three members of the Appraiser Relations Committee will review the application, and the district's recommendation if applicable, and make a recommendation to the Chief Appraiser. The committee members may request that the applicant meet with them for an interview. The Chief Appraiser will make a final recommendation to the Director who determines if the appraiser will be prequalified to perform appraisals for VDOT, pending the acceptance of the applicant's Title VI documentation. Exceptions to the approved appraiser application process and requirements may be made at the discretion of the Director and the Chief Appraiser.

## V. Expiration

Qualified appraisers or their firm are required to submit for renewal every year an updated Title VI evaluation report.

## VI. Performance Evaluation

VDOT's Regional Right of Way Managers and/or Project Coordinators are required to complete a Performance Evaluation on each appraiser completing a contract. This report will be used as a basis for evaluating the appraiser's performance and prequalification status.

## VII Appeals

If it is determined that an appraiser is not qualified to perform appraisal services, they may request a meeting with the Chief Appraiser or State Right of Way Director. At that time they may provide additional information regarding the reasons VDOT did not find the consultant to be qualified. The State Right of Way Director shall provide his final determination in writing within five days.

The Department assures compliance with Title VI requirements of nondiscrimination in all activities pursuant to its procurements.

APPROVED:

| | |
|---|---|
| _____ | December 29, 2010____ |
| Richard R. Bennett | Effective Date |
| State Right of Way Director | |

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# CHAPTER 9 – SPECIAL TOPICS

## Section 1 - Securing Rights of Way on Local Projects

### 9.1.1 Securing Rights of Way – Towns under 3,500 Population

Most towns with a population less than 3,500 operate under provisions of Sections 33.1-79 and 33.1-82 of the Code of Virginia, as amended. However, there are seven towns in this category that on June 30, 1985, maintained certain streets under Section 33.1-80 as then in effect and which now maintain streets under Section 33.1-41.1. These towns are Saltville, Narrows, Pearisburg, Chase City, Elkton, Grottoes, and Woodstock.

The procedures for acquiring rights of way for these towns is the same as followed on projects generally when the Virginia Department of Transportation (VDOT) takes title. The only exception is when Urban System funding is used to finance an improvement in one of the above-named towns. In such a circumstance, title will be taken in VDOT's name only in the event that the town passes a resolution requesting VDOT to acquire the rights of way.

### 9.1.2 Acquisition of Rights of Way by VDOT in Cities and Towns Operating Under Sections 33.1-23.1, 33.1-23.2, 33.1-23.3, and 33.1-44

The Commissioner of Highways may, when requested by governing bodies, acquire the necessary rights of way on Urban Projects within the corporate limits of municipalities having a population over 3,500. The Commissioner may also, when requested by the governing bodies, acquire the necessary rights of way on Urban Projects within those incorporated towns that on June 30, 1985, maintained certain streets under Section 33.1-80, as then in effect. These seven towns are listed under Section 9.1.1.

Upon receipt of a request, the acquisition will be handled in the same manner utilized by VDOT for projects generally. The municipality will pay its proportionate share of the cost if applicable. It will have no control over the actions of the Commissioner, whose decisions will be final. The rights of way acquired will later be conveyed to the municipality in accordance with Section 33.1-89 of the Code of Virginia, as amended.

### 9.1.3 Acquisition by Municipality – Population over 3,500

A municipality with a population over 3,500 may elect to acquire needed rights of way within its corporate limits and take title in its name. Also, incorporated towns listed in Section 9.1.1 may acquire in its name.

A copy of the Right of Way Manual of Instructions and other pertinent guidance are available to the municipality from VDOT. Policies and procedural guidance published by the Federal Highway Administration (FHWA) are available if there is federal participation in any phase of the project (preliminary engineering, right of way or construction). The Regional Right of Way and Utilities Manager will provide guidance regarding the work performed by municipalities and will assign right of way Special Projects Team members to coordinate with the municipality's staff on a continuing and as-needed basis.

The municipality's staff is expected to become familiar with the essential requirements of rights of way acquisition and relocation (if applicable). Failure to comply with State policies and procedures will result in loss of State participation in related costs. If there is federal participation in the project (any phase), all activities are subject to federal review. The municipality will bear any costs determined as not reimbursable because of non-compliance with federal requirements.

The general requirements to be followed by a municipality in the development of a project using state or federal funding can be found in the Locally Administered Project (LAP) Manual. Specific requirements regarding acquiring rights of way on state and/or federal funded projects can be found in Chapter 16 of the LAP Manual.

VDOT's right of way Special Projects Coordinator (Coordinator) shall continually monitor the locality's progress in acquiring right of way and relocating displacees. The Coordinator will utilize RUMS progress reports or an approved status report format provided by the locality to ensure progress is being made and that the proper steps are being completed. Any issues should be discussed with the Regional Manager, and if necessary, a Quality Assurance review should be requested from the Central Office.

## A. Advertisement of the Project

VDOT is responsible for issuing the formal advertisement certificate on federally funded construction projects. The following requirements shall apply.

1. Certification of the Right of Way

   At the time indicated in the project schedule, the municipality will certify to the Regional Manager with copies to the Local Assistance Division Director and the District Administrator that the status of right of way is such that the project advertisement for construction contract bids may proceed in accordance with current FHWA directives covering the acquisition of real property.

   All property rights called for in the plans must have been obtained by signed instruments or certificates filed. Also, all occupied properties (residential, businesses and/or personal property) being displaced by the project must have moved from the project with all relocation entitlements provided. In addition, arrangements must be completed for the utility adjustments prior to this certification.

   The Regional Manager will forward the Certification to the Director with his recommendation to proceed with advertisement for construction.

2. Conditional Certification

   Municipalities exercising "quick taking" authority will have to provide a conditional certification (Certificate III) as outlined in Chapter 9, Section 2, prior to advertisement. The conditional certification will list those right of way acquisitions that are incomplete, as well as any incomplete relocations, indicating the time frame in which the right of way will be cleared. It should include an analysis indicating the effect these outstanding items may have in the construction contract, if any. If the certification is satisfactory to VDOT, the project may be released to the Scheduling and Contract Division or municipality for advertisement.

## B. Submission of Final Bill by the Municipality

1. Fulfillment of Negotiated Agreement Items

The Regional Manager will stress to the municipality the importance of completing all items of work in the agreements with the landowners and the paying of all charges in connection with the right of way acquisition promptly. This is required before the final bill can be submitted.

2. Billing by the Municipality

The municipality will submit a final bill to the Local Assistance Coordinator for all work performed and those reimbursable costs that were not submitted on previous bills. This will be done after completion of all right of way work on the project. The bill will be itemized by project number, landowner and parcel, and payee's name and will describe each expenditure (land, damages, attorney's fees, moving costs, replacement housing payments, etc.). The municipality will be responsible for reporting the real estate transactions to the Internal Revenue Service (Form 1099-S).

3. Certification of Billing

The final bill is to include the following certification signed by the appropriate official of the municipality:

*"This is to certify that the Virginia Department of Transportation has not previously been billed for the itemized amounts shown above and that this is the final bill for all costs incurred and paid by the City (Town) of _____ in connection with the acquisition of the right of way required for the captioned project."*

*Date*_____ _____

*Signature of Appropriate Official*

## Section 2 – Reports and Certificates for Project Advertisement

### 9.2.1 General

A key responsibility of the Right of Way and Utilities Division is to deliver a clear right of way in a timely manner so the Virginia Department of Transportation's (VDOT's) construction and maintenance projects can proceed to bidding on schedule. It is, therefore, necessary that progress of right of way acquisition is reported accurately and the status of right of way be certified before advertisement of bids for construction.

The Acquisition Status Report provides both Regional and Central Office right of way and utility personnel with complete and accurate information as to the progress and status of right of way and utility work.

The Building Data Report contains complete and accurate information on the disposition of buildings and improvements within the required right of way.

The purpose of the Right of Way Certification is to attest to the status of right of way and utilities at the time the project is to be advertised for receipt of construction bids. The Certification assures that all required property rights have been acquired or will be acquired within a certain time. Further, it assures that requirements of state and federal law have been met with regard to relocation assistance, property acquisition and hazardous contamination, utility adjustments, and railroads.

### 9.2.2 Negotiation Status Report; Building Data Report

It is essential that acquisition status information be entered into the Right of Way and Utilities Management System (RUMS) completely and accurately. This report will often be relied on without supporting information to determine which projects are ready for certification and advertisement. Also, the report will help identify which properties will require filing a Certificate of Deposit or a Certificate of Take, or be listed as exceptions in the right of way certification at advertisement.

The acquisition status information must account for all right of way required for the project and must be updated to reflect any plan changes that have added or deleted parcels. This

information will be entered into RUMS by the Regional personnel or project manager for no plan, design-build, or locally administered projects.

The Building Data Report will contain complete and accurate information regarding the disposition of buildings and improvements located within required right of way. Estimates for the cost of removal, the method of removal and clearing of parcel should be entered into RUMS at least 120 days before the scheduled advertisement date. Instructions for completing the Building Data Report are found in the RUMS Tutorials.

Extraordinary events may occasionally prevent reporting of completed right of way activities a minimum of 2 months in advance of proposed project advertisement (4 months for Building Data). It will be the responsibility of the Regional Right of Way and Utilities staff to provide notification of negotiations and building status to the Central Office.

### 9.2.3 Right of Way Certification for Project Advertisement

Advertisement for state and federal projects is the point at which VDOT commits the right of way to the terms of a construction contract. Bids submitted by contractors are based on VDOT's delivery of a clear right of way by the start of construction. If a contractor does not have access to a property because sufficient property rights are not acquired or certain properties remain occupied, damages for delay of work may result, and the project will not be completed on schedule.

Federal and State law assures property owners and displaced occupants (residents and owners) of specific rights and protections and the delivery of certain entitlements before possession is taken of the property. The most important of these are:

- Owners must be paid estimated just compensation, or the amount deposited in court for their benefit, before the agency takes possession of their property.
- Residential displacees must be offered comparable replacement housing that is within their financial means and available for occupancy before being required to move.

The Right of Way Certification declares that the acquiring agency (Department or municipality) has complied with these and other requirements of statute and regulations.

There are three levels of certification corresponding to the status of right of way for federally funded projects:

**A. Certification No. I**

This certification applies if all needed property rights are acquired, the right of way is completely clear of occupancies, and there is compliance with all laws and regulatory requirements. The Certification will contain statements attesting to the following:

- All property needed for the project right of way has been completely acquired in accordance with the Uniform Relocation Act and title is vested in the Commonwealth or the acquiring municipality.
- All buildings are vacant and available for removal.
- All personal property has been removed.
- All rights of way has been acquired and persons relocated in compliance with applicable federal and Commonwealth regulations.
- Arrangements have been made with railroad and/or utility companies and all agreements are complete and satisfactory for construction.
- Hazardous waste contamination determinations have been made.

**B. Certification No. II**

This level of certification applies when all the Certification No. I provisions have been met except that the closing of options and/or eminent domain proceedings to determine just compensation are not completed for one or more properties.

**C. Certification No. III**

This level of certification applies when there is compliance with most of the Certification No. I provisions except there are some incomplete activities. This could be one or several displacees remaining on property; a railroad agreement that is not executed; a utility arrangement which is incomplete; and/or there are properties for which acquisition is not completed nor rights of entry secured. This

certification is issued when it is projected that any outstanding issues will be completed by the date that the project is considered for award of contract.

The exceptions must be specified by parcel, displacee, and railroad company. The circumstances of each must be discussed briefly, and a projected completion date for remaining work specified.

If outstanding right of way cannot be acquired and residentially and/or commercially occupied buildings vacated prior to the date bids are received, deferral of the project should be recommended.

Every effort should be made to acquire all rights of way; relocate every family, business and/or non-profit organization; secure the railroad agreement; and complete utility arrangements a minimum of 60 days prior to advertisement date in order to avoid the utilization of Certification No. III. This type of certification must be approved by the Chief Engineer and FHWA before a project can be advertised for bids.

Certification No. III must be updated to show the status of outstanding work before the construction contract is awarded. Every effort should be made to acquire necessary property rights and relocate remaining residents in full compliance with VDOT's procedures.

### 9.2.4 Certification for Industrial, Recreational, and Airport Access Roads

The Commonwealth Transportation Board adopts resolutions approving funds for these classes of roads contingent on the acquisition of right of way and relocation of utilities at no cost to the Commonwealth or the Access Fund. The Regional Manager will provide a written certification to the Director confirming that title to all required right of way has been secured. In cases where the contingency specifies utility involvement, the certification will specify the date that all adjustments are completed.

When the District Administrator's staff is responsible for coordination, copies of all deeds, dedication documents and/or other instruments conveying right of way will be sent to the Regional Manager for review prior to Certification. The Director will provide a Certification

to the Local Assistance Division reflecting that the Transportation Board's contingency has been met.

### 9.2.5 Project Advancement

On federally funded projects, the certification is subject to approval by the Federal Highway Administration. Federal authorization for construction may not be provided on Certificate No. III projects until property rights are secured and residential property vacated.

The Federal Highway Administration may, in limited circumstances and when determined in the public interest, authorize advertisement and award of contract with a Certificate No. III. However, a Project Agreement will not be executed, and thus VDOT cannot claim reimbursement for costs until certification issues are resolved.

It is state policy that physical construction cannot begin on any portion of a project until occupants on all residentially improved property have vacated and hazardous waste determinations have been completed. Accordingly, it is imperative to secure any outstanding land rights and resolve relocations as soon as possible after issuance of a certification with provisions.

## Section 3 – General Policies

### 9.3.1 Cattle Passes

Following is a resolution adapted by the State Highway Commission (now the Commonwealth Transportation Board) regarding cattle passes:

> "That with regard to cattle passes, it will be the policy of this Commission that on two lane highways with right of way of 110 feet or less, cattle passes will not be built, except in widening highways existing structures will be widened. If the property owner desires a cattle pass and pays the difference between such a structure and the structure that is required for drainage, then a cattle pass may be constructed."
>
> "Where the right of way width is over 110 feet and the plans for the present or future construction provide for a four lane divided highway, cattle passes may be constructed under certain conditions. If the land on each side of the highway is under the same ownership and at least 40 head of horses or cattle are to be passed from one side of the right of way to the other at least daily and the construction of

> a cattle pass is recommended by the right of way Engineer, approved as to location by the Location and Design Engineer, a cattle pass may be constructed upon the approval of the Chief Engineer."

If a cattle pass is provided under the conditions as set forth in the above resolution of the Commission, it will be shown on the plans as part of the highway construction.

The appraiser, in determining value of the right of way required and damages to the remainder, will take into consideration the fact that a cattle pass is to be provided.

### 9.3.2 Crop Damage

The following points will be considered in determining whether a payment will be made for crop damage:

- Itemize a specific amount to cover crop damage whenever it is certain the standing crop will be destroyed.
- Make a conditional agreement for probable destruction of a standing crop before harvest.
- Make no allowance where there is no crop standing or no preparation for a crop is in evidence at the time the option is secured, regardless of the landowner's intention to cultivate.

### 9.3.3 Agricultural or Commercial Use Permits

It is not desirable to lease or otherwise grant permission for the use of any right of way owned by the state after construction has been completed. However, in extreme or emergency cases and then for a limited time only, agricultural or commercial use permits may be issued by VDOT's Permit Section in accordance with the provisions outlined in the Land Use Permit Manual.

No agreement will be made with a property owner whereby the issuance of an agricultural or commercial use permit is expressed or implied.

Where right of way is acquired for future construction, it may be leased as provided in Section 33.1-140 of the 1950 Code of Virginia as amended and under the policies of the Virginia Department of Transportation (VDOT) in effect on the date of the lease.

### 9.3.4 Cable Communication (TV) Relocations

The Code of Virginia as amended does not require cable telecommunication (TV) companies to incorporate as public service corporations/companies, and no TV companies have been known to do so.

The Attorney General's Office has indicated that the relocation and adjustment of cable communications facilities resulting from highway projects should be treated as business relocations until such time as a cable communications company is incorporated as a public service corporation/company and is considered a public utility.

In view of the above and since cable telecommunications facilities are similar to telephone or other communication utility plants, the procedure for handling their adjustment and relocation will be as outlined in VDOT's Utility Manual.

The cost of reimbursable cable telecommunications relocations will be charged as outlined under business relocation procedures, Chapter 6, Section 6 of this manual.

### 9.3.5 Secondary System Additions – Utility Quitclaim Deeds

In accordance with state statute and the Commonwealth Transportation Board's policy, new roads and subdivision streets are added to the Secondary System of Highways. Before acceptance of a section of roadway into the state highway system, a free and unencumbered right of way will be dedicated or conveyed to the Commonwealth or the local jurisdiction.

Portions of proposed new street or road rights of way are often encumbered by existing easements owned by a utility company, a public service corporation, or a gas or petroleum pipeline company. When this occurs, all existing encumbrances and property interests must be relinquished to the Commonwealth by quitclaim deed or subordination agreement provided by the developer or party initiating the highway system addition.

## A. Preparation of Quitclaim Deed

The following guidelines will be followed in the preparation of the quitclaim deeds relinquishing all interest in the portion of the easement encumbering the proposed right of way.

1. The quitclaim deed should require only the signature of the grantor. It should not require execution on behalf of the Commonwealth.

2. If the grantor requires a temporary right to remain in place until its facilities are relocated or until the facilities are covered by a permit, it is permissible to include a reservation clause to this effect in the deed.

3. If the grantor requires a provision for the easement to revert to the grantor in the event the street or road ceases to be used for the stated purpose, this may be accomplished by a reversion clause. However, in no case should it be provided that the easement will be conveyed back to the grantor by the Commonwealth.

4. Whenever the right of way is encumbered by an easement for a utility transmission line, the Commonwealth Transportation Board's policy governing transmission facilities through subdivision streets will govern the preparation of the quitclaim deed. A transmission facility is defined as "that part of utility system connecting its main energy or material sources with its distribution system to which individual customers usually are not connected."

5. If the transmission line conforms to the policy, the following reversion clauses may be included in the quitclaim deed:

   - That the transmission facility may continue to occupy the street or road in its existing condition and location.
   - That the public service corporation or utility company will be responsible for such facility and for any damages to persons or property resulting therefrom.

- That in the event VDOT should later require for its purposes such public service corporation or utility company to alter, change, adjust, or relocate such transmission facility, the nonbetterment cost of any such alteration, change, adjustment, or relocation will be the responsibility of the State.

**B. Processing of Quitclaim Deeds**

When the District Office receives a request for a street or a road addition to the Secondary System, which includes quitclaim deeds, they will check the deed for conformity to policy. Should the deed meet the policy requirements or be in an approved format sample provided by the Director, the deeds can be approved for recordation by the requesting party. The addition assembly may then be processed for final action.

If the District Office has any questions regarding the quitclaim deed, it should be forwarded to the Regional Manager for review and approval. The Regional Manager will provide the District Office with comments regarding needed changes or will approve the deed. If necessary, the Director and the Attorney General's Office may be consulted to review a quitclaim deed.

Once the quitclaim deed has been corrected as requested or approved by the Regional Manager, the deed will be recorded by the requesting party or developer. The addition assembly can then be processed for final action. The District Office will issue the necessary permits to cover occupancy of the State right of way by the public service corporation or the utility company.

### 9.3.6 Supplemental Right of Way

Supplemental right of way and/or permanent easements are frequently added along the existing right of way of a roadway or transportation facility that is a part of one of the State maintained Systems. When additional right of way or easements are acquired as a part of a VDOT funded construction or maintenance project, the procedures outlined throughout this Manual shall be applicable.

When additional right of way or easements are being provided along an existing roadway in connection with development improvements, any existing third party easements which are

displaced by the improvements are to be quitclaimed in accordance with the procedures outlined in Section 9.3.5. VDOT does not require pre-existing easements that can remain in place within supplement right of way to be quitclaimed, and the owner of such easements should be granted a stay-in-place Land Use Permit.

When an area adjacent to an existing VDOT maintained roadway is made available for future highway purposes, whether gifted by deed to VDOT or dedicated to public use and accepted by recordation by the local government (i.e. titled in the name of the local government, §15.2-2265, Code of Virginia), VDOT does not require pre-existing easements to be vacated or quitclaimed, and the owner of any facility occupying such easements will be granted a stay-in-place Land Use Permit. In the event local government ordinances require the vacation or quitclaim of such easements, the enforcement of such local government regulations properly remains a function of local government and is to be managed by local government officials. VDOT's participation in such enforcement is discouraged.

## Section 4 – Disposition of Old Roads

### 9.4.1 General

The disposition of old roads is a multi-discipline process involving the Residency Maintenance Manager, District Office administration, Central Office divisions, local governments, etc.

On occasion, the Regional Manager is requested to make recommendations in connection with the disposition of old roads. The Regional Manager should review any such requests primarily from the standpoint of the disposition of the right of way. The following information is a brief explanation of the type of dispositions that can be made and will serve as a guide in making recommendations.

In general, roads can be abandoned, discontinued or transferred from one highway system to another. Refer to the Local Assistance Division's Guide for Additions, Abandonments and Discontinuances for more specific detail.

### 9.4.2 Abandonment

If the right of way of the existing road is owned in fee simple, the road can be abandoned for maintenance purposes if it is deemed no longer necessary. However, the fee right of way remains in the name of the Commonwealth unless specifically conveyed to some other party.

If the right of way of the existing road is a prescriptive easement, upon abandonment, the right of way automatically and without formal conveyance reverts to the adjacent underlying fee owner(s). The centerline is presumed to be the property line unless proven otherwise. Consequently, if there is a need for the right of way to be retained for public use, abandonment should not be recommended. Examples of such needs are serving as access to properties along the old road, utility and/or other easements, etc.

1. For abandonment procedures relative to the Primary System refer to Sections 33.1-145 and –148 of the Code of Virginia (1950). Refer to the Local Assistance Division's Guide for Additions, Abandonments and Discontinuances, and to Sections 33.1-151 and –155 of the Code for abandonment procedures relative to the Secondary System. Refer to Section 33.1-157 and –164 for abandonment procedures for roads in neither system.

2. Upon abandonment of sections of roads in the Primary System, the right of way may be conveyed to others in accordance with Section 33.1-149. (Refer to Chapter 7, Section 6 – Conveyance of VDOT Real Property.)

3. Upon abandonment of sections of roads in the Secondary System, the right of way may be conveyed to others in accord with Section 33.1-154. (Refer to Chapter 7, Section 6 – Conveyance of VDOT Real Property.)

### 9.4.3 Discontinuance

When a road is discontinued, the public right to continue to use the right of way is not relinquished, regardless of whether or not the existing right of way is in fee or by prescription.

Refer to Section 33.1-144 of the Code of Virginia (1950), as amended, for discontinuance procedures on the State Highway System. Refer to Section 33.1-150 of the Code of Virginia, as amended, for discontinuance procedures on the Secondary System.

## Section 5 – Right of Way & Utilities Management System (RUMS)

### 9.5.1 General

The Right of Way and Utilities Division (RWUD) implemented a computerized on-line Right of Way and Utilities Management Information System named RUMS. The system is now accessed through VDOT's intranet and is available to approved external users through a secure Internet portal site.

RUMS tracks the right of way acquisition process by project and parcel from the inception of the project until condemnation proceedings are concluded, breaking that process and the associated information down by discipline. In addition, the system maintains information about the Division's Property Inventory including lease, disposal of improvements, and data related to the relocation of utility facilities from the path of proposed construction. By making these entries into the system, RWUD personnel are able to review the status of the acquisition and utility relocation to gauge progress toward meeting the advertisement date for each applicable project.

### 9.5.2 Data Entry Responsibility

Primary responsibility for data entry into RUMS falls to the regional right of way staff by virtue of the fact that the Regional Offices do much of the work about which the system captures data. The Central Office Project Scheduling and Certification, Special Negotiations, Eminent Domain, Consultant Contracting, Property Management, and Reimbursement Sections have data entry duties. Other Central Office sections may have limited data entry duties within the system as well.

In addition, all right of way acquisition consultants are responsible for data entry on projects they have under contract with VDOT, including Public Private Transportation Act (PPTA), design build, and Public Private Education Act (PPEA) projects. Fee appraisal and title consultants, performing services on a minimal number of parcels, do not have to use RUMS; however, they are encouraged to utilize the system. If they opt not to get access, the Regional Office is responsible for assuring that all data for activities performed by these consultants are entered into RUMS.

RUMS should be used to track all right of way acquisitions (including donations), utility relocations, and property management activities. Because the system is used to generate special reports requested by the Commissioner and others, accurate and complete data entry is vital.

### 9.5.3 Forms and Reports

RUMS is used to generate most standardized forms and reports employed by the Division. The user must create these forms and reports through RUMS. RUMS enters data on the forms and reports from information stored in its data base. Again, accurate and complete data entry is crucial for these forms and reports. Once a form is considered complete, the form complete process must be done in RUMS so that the form will be viewable to all users with appropriate access rights.

## Section 6 – Federal Right of Way Credits

### 9.6.1 General

VDOT may be entitled to State matching share credits for certain right of way acquisition costs on federally eligible projects. The credits are not available for any lands acquired with any form of Federal financial assistance or for lands already used for transportation purposes.

The credit is for the value of land payments made to the property owner only and does not include relocation expenses, property management costs, and costs incidental to the purchase, e.g., appraisal fees, negotiation, recording costs, etc.

Federal laws and regulations concerning right of way donations and credits are contained in 23 USC 323(b) and 23 CFR 710, Subpart E.

### 9.6.2 Requests for FHWA Credit for the cost of early acquisitions

VDOT's primary method of computing allowable credit shall be based on the historic cost of the lands. The actual payments made to the landowner will be used. This will include the value of land, buildings, improvements and both curable and incurable damages. Any

administrative settlements in an amount exceeding the original offers may be included if the amount is attributable to the items listed above. Likewise, any settlement of eminent domain litigation through an agreement or award of court can be included if the amount is attributable to these items.

Under special circumstances, and with the approval of the Director, the current fair market value may be used as an alternative method to request credit under 23 CFR 710.507. They may be in cases where:

(1) There has been a significant lapse in time since the property was acquired, or

(2) There has been a significant change in market conditions (not caused by the project) since the property was acquired.

In most cases, the Regional Managers will be advised, when the Notice to Proceed with right of way acquisition is issued, that the acquisition of right of way will utilize state funding in anticipation that credits will be accumulated for use as the future match of federal construction project funds. Other projects currently underway, on which the right of way acquisition is using state funds, may also qualify for right of way acquisition credits for future federal match. On these projects, the Regional Managers shall submit a request to the Director for possible credit match providing project development dates and possible future construction projects requiring funds.

### 9.6.3 Approved FHWA Credits to be applied to cost of construction

Prior to VDOT requesting construction authorization for the project for which credits will be applied towards the State's matching share of the construction costs, it will be necessary for VDOT to obtain approval of allowable credits for early state-funded right of way acquisitions and donations. The Regional Manager will submit a spreadsheet showing each individual property acquired for the federal eligible project with parcel number, landowner's name and amounts paid for the eligible items indicated above.

The following documentation must be provided to support the amount of the desired credit:

(1) a certification that the requirements for acquired lands specified in 23 USC 323 (b)(l) were satisfied, which are:

A. is lawfully obtained by VDOT or a unit of local government in the State;

B. is incorporated into the project;

C. is not land described in 23 USC 138; and

D. that VDOT determines and the FHWA concurs that the action taken will not influence the environmental assessment of the project, including-

i. the decision as to the need to construct the project;

ii. the consideration of alternatives; and

iii. the selection of a specific location.

E. a statement that the property was acquired in accordance with the provisions of 49 CFR Part 24

F. a certification that all acquisition activities were in compliance with Title VI of the Civil Rights Act

(2) evidence supporting the historic acquisition costs of the acquired lands.

For Voluntary Conveyance –

A. Signed RW 206 Closing Statement

B. Administrative Settlement Justification

For Condemnations –

C. Copy of Certificate

D. Copy of AAC and Justification, or

E. Copy of Award Documented

(3) if the current fair market value is used to request credits in cases where there has been a significant lapse in time since the property was acquired, or there has been a significant change in market conditions (not caused by the project) since the property was acquired, the supporting documentation shall include copies of the Certificates of Value or Review Appraiser Statements.

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# Chapter 10 - SPECIAL PROJECTS SECTION

## Section 1 - Introduction

### 10.1.1 Background

The Special Projects Section was expanded in 2009 as a part of the reorganization of the Right of Way and Utilities Division. Prior to reorganization there was no Special Projects team in the field and the only Special Project resources were assigned to the Central Office.

Right of Way reorganization centralized the reporting structure of the Division and compacted the previous nine (9) Districts into three (3) Regions, all reporting to the Director. One of the many purposes of reorganization was to standardize the processes and procedures for all of the right of way disciplines. A Special Projects team was created in each of the three Regions.

Contemporaneous with the reorganization of the Right of Way and Utilities Division, VDOT began to place more emphasis on having transportation projects developed and delivered through Design-Build contracts, Public-Private Transportation Act Agreements ("PPTA") and Urban Construction Initiatives ("UCI".) Utilization of these methods of project delivery allows VDOT to leverage its diminishing resources and address the voids left by staffing reductions.

The expanded Special Projects Section has been tasked to standardize statewide the manner in which the Right of Way and Utilities Division and the Regional Right of Way offices interface with Design-Build contractors, PPTA concessionaires and with localities managing their own right of way acquisition. The creation of Special Project field teams allows contractors, concessionaires and localities to obtain technical advice and assistance from Right of Way resources that are in closer proximity to their projects and who are more familiar with locally available VDOT resources and the geographical area in which the projects are being developed.

### 10.1.2 Organization

The Special Projects Section is under the supervision of the Program Manager – Eminent Domain and Special Projects (the "Program Manager.") The Program Manager reports to the State Acquisitions Manager ("Acquisitions Manager") who has overall responsibility for the activities of the Section. The Acquisitions Manager reports to the Director.

Each Region has a Special Projects Team consisting of a Special Projects Team Leader (the "Team Leader"), a Special Projects Coordinator (for Design-Build, PPTA and UCI projects), a Right of Way Specialist for Studies and Estimates and a Right of Way Technician. While these staff members report to the Regional Manager, they also take direction and work assignments from the Program Manager. In effect, they are matrixed to the Program Manager for any assignment associated with design-build, PPTA or UCI projects.

### 10.1.3 Jurisdiction of the Special Projects Section

The Special Projects Section provides advice and assistance (technical and non-technical) to other VDOT Divisions as part of the development and evaluation of Design-Build and PPTA solicitations and contracts. Once awarded, the Special Projects Section serves as a point of contact for the contractors and concessionaires, provides defined services to them during the acquisition phase and ensures compliance with federal and state laws and policies applicable to right of way activities. Attachment 1 to this Chapter is a matrix showing the roles and responsibilities of the Special Projects Section for each of the types of special projects for which the Section is responsible.

## Section 2 – Design-Build Projects

### 10.2.1 Design-Build Projects Generally

Under a Design-Build contract, a contractor from the private sector is awarded a contract to manage, design, acquire right of way, perform permitting and utility relocation and build the highway project under the supervision of VDOT. Essentially, the Design-Build contractor is an agent of VDOT and does all of the work using its own forces (or sub-contractors to the Design-Builder) for an agreed upon price.

The right of way activities associated with a Design-Build project are identical to a normal VDOT construction project except that the Design-Build contractor is normally responsible for acquiring the right of way by voluntary conveyances. Where a voluntary conveyance cannot be obtained, the matter is referred to the Right of Way and Utilities Division to pursue the eminent domain process. An example of the right of way provisions in a typical Design-Build contract is included as Attachment 2 to this Chapter 10.

### 10.2.2 Pre-Award Functions

VDOT's Innovative Project Delivery Division ("IPD") is responsible for soliciting and evaluating bids from contractors on Design-Build contracts. [NOTE: In some cases the procurement process will be managed by the District offices.] Once all bids have been evaluated, IPD is responsible for recommending the bidder to whom the contract should be awarded.

Identification of a successful bidder is accomplished in either a one or two step process. In the one step process, VDOT creates the technical requirements and then solicits proposals from any firms who would like to offer a proposal. All the proposals are evaluated and scored and along with the price proposal are used to determine the successful bidder.

In the two step process, VDOT solicits a Statement of Qualifications (SOQ's) from any firms who would like to submit one. The SOQ's are evaluated and scored and firms are shortlisted to three. The three shortlisted firms are then requested to submit proposals. Their technical proposals are evaluated and scored and along with the price proposals are used to determine the successful bidder.

In the pre-award stage, the Special Projects Section in the Central Office reviews the right of way provisions of the Request for Proposal to be issued by IPD and provides appropriate comments and suggestions on those provisions.

Once all proposals have been received, the Central Office Special Projects Section serves as a Technical Point of Contact ("TPC") for IPD and evaluates the right of way provisions in each proposal and provides its comments and evaluation on those provisions to the Evaluation Team designated by IPD.

In some instances, a representative from the Central Office Special Projects Section may be asked by IPD to serve on the Evaluation Team for a specific solicitation. In these instances, the representative provides input not only on the right of way provisions but the rest of the proposal as well.

Whether serving as a member of the Evaluation Team or as the TPC only, the representative from the Central Office Special Projects Section serves as the single point of contact for the Right of Way and Utilities Division to IPD and the Evaluation Team on all right of way issues and policy with regard to Design-Build solicitations and contracts.

### 10.2.3 Post-Award Functions

Once a contract has been awarded to the Design-Builder, the Special Projects Team in the appropriate Region assumes the role of advisor and reviewer.

The Regional Team provides advice and technical assistance to the Design-Builder with regard to matters of law and policy. Their goal is to ensure that the Design-Builder or their sub-contractors comply with all federal and state laws, regulations and policy with regard to right of way acquisition.

In addition to providing advice and assistance to the Design-Builder or their sub-contractors, the Regional Team provides oversight, reviews, and approvals at various stages of the project. This includes the following:

- Review and comment on proposed project design at any review stage.
- Review and comment on preliminary cost estimates or Stage I relocation reports prepared for funding or a public hearing.
- Review, comment on and approve plans submitted for right of way approval (RW-300/301.) [NOTE: Submissions on Design-Build projects may be made in separate packages as determined by the Design-Builder. This may be total takes or later partial takes or a defined section of the project. Regardless of submission packaging such submissions must have adequate plan information on plats so that acquisitions can be authorized.]

- VDOT will process plans for right of way signatures, funding and must issue a Notice to Commence Right of Way Acquisition to the Design Builder prior to any offers being made to acquire property. These processes are currently being performed by the Innovative Projects Division.

- Review and approve appraisal types, scope of appraisals and the appraiser for each parcel.

- Review and approve appraisals, BAR's, review appraisals and determinations of just compensation offers.

- Review and approve all relocation assistance documentation, including determination of eligibility, RHP and moving cost calculations and offers.

- Review and approve negotiated settlements [NOTE: Should the settlement amount exceed the approved offer, appropriate VDOT administrative approvals must be obtained.]

- Review and concur with a reported impasse in negotiations resulting in the need to use the eminent domain process for acquisition. In such cases, the Regional Special Projects Team will review the RW-24 report to ensure it is complete and negotiations with the landowner are being properly conducted. [NOTE: If the Regional Special Projects Team agrees that negotiations are at an impasse, the Regional Team must process the Certificate package in the normal manner through the Negotiations/Legal Section.]

- Review and approve the closing packages for voluntary conveyances.

- Review and accept the parcel file as being complete including appropriate entry of RUMS data.

Depending on the funding source, the Regional Team is responsible for ordering checks and state warrants for acquisition activities including checks for relocation expenses. Where voluntary conveyances cannot be obtained, the Regional Team initiates the process to file a certificate and pursue acquisition by eminent domain. Once a certificate

is sought, the Design-Builder is relieved of all further responsibility for acquisition on that particular parcel.

Even though a Design-Builder may be responsible for right of way acquisition activities on a specific highway project, it is the responsibility of the Central Office Innovative Project Delivery Division to issue the notice to Commence Right of Way Acquisitions and to certify to the Federal Highway Administration that all right of way is clear for construction. [NOTE: Notice to commence Right of Way acquisition and Certification For Construction may be issued for multiple sections of the project.]

## Section 3 – Public-Private Transportation Act Projects ("PPTA")

### 10.3.1 PPTA Projects Generally

The authority for PPTA projects is found in Virginia's Public-Private Transportation Act of 1995. All such projects are strictly controlled by the provisions of that Act. See Virginia Code Sections 56-556 through 56-575.

Although there are similarities between a Design-Build project and a PPTA project, the distinctions are substantial. A PPTA project is based upon an agreement between a private entity (the "Concessionaire") and a public entity (in our case VDOT.) Funding for the PPTA project is provided by the private entity, sometimes with a contribution from the public entity or another government agency. The Concessionaire is solely responsible for designing and constructing the entire project and does not act as an agent for VDOT in that regard. However, when acquiring right of way for the project in the name of the Commonwealth, the Concessionaire does act as an agent for VDOT but in no other instance.

Normally, a written, comprehensive agreement is signed by the private and public entities and spells out all of the details of financing, planning and constructing the project. In some cases an interim agreement is executed prior to the comprehensive agreement. The interim agreement addresses the preliminary phases of the project such as planning, design and right of way acquisition and is executed to allow the project to proceed while the details of the comprehensive agreement are being worked out.

Unlike the Design-Build contract, the proposal for a PPTA project may originate with the Concessionaire. VDOT is obligated to receive and evaluate all such proposals.

### 10.3.2 Pre-Agreement Functions

The Special Projects Section in the Central Office reviews and evaluates the right of way provisions of any PPTA proposal and provides advice to the Evaluation Team with regard to those provisions and assists in developing the right of way provisions to be included in the interim or comprehensive agreement. An example of the right of way provisions in a PPTA agreement is included as Attachment 3 to this Chapter 10.

If requested, a representative of the Central Office Special Projects Section serves on the Evaluation Team for PPTA proposals.

Whether serving as a member of the Evaluation Team or only as the TPC, the representative from the Central Office Special Projects Section serves as the single point of contact for the Right of Way and Utilities Division to Procurement and the Evaluation Team on all right of way issues and policy with regard to PPTA proposals and agreements.

### 10.3.3 Post-Agreement Functions

Once the PPTA proposal has been accepted and the Concessionaire chosen a comprehensive contract is also usually executed. At this point the Special Projects team in the appropriate Region assumes responsibility for the project and provides the oversight, reviews and approvals specified in Section 10.2.3.

## Section 4 – Urban Construction Initiative and Local Assistance Projects

### 10.4.1 Urban Construction Initiative and Local Assistance Projects Generally

Urban Construction Initiative ("UCI") and Local Assistance ("LA") projects are both under the jurisdiction of VDOT's Local Assistance Division.

The foundation for UCI projects was the First Cities program. A locality could apply for approval as a member of a First Cities program to the Local Assistance Division. If approved, the locality was allowed to oversee all of its own highway projects.

At the beginning of each year a "First Cities" locality would submit a list of projects and funding needs for that year to the Local Assistance Division. Once approved, funding would be provided in a single allocation for all of the approved projects. The locality would proceed to conduct its projects approved for that year.

The same mechanisms are still in place for "First Cities" projects but now they are called UCI projects. The policies and procedures formerly applicable to First Cities have been improved and are more formalized. Once approved, the locality is responsible for prosecuting all of its road projects using the funding allocated by VDOT and often supplementing this funding with funds from other sources.

Local Assistance projects are submitted by a locality to the Local Assistance Division on a project by project basis. Its submission indicates that the locality wants to manage its own, discrete, project.

After approval by the Local Assistance Division, funding is provided for that project only and the locality prosecutes this single project. This is unlike the "bulk funding" supplied to UCI projects and does not encompass all of the road projects for that locality in that particular year.

The locality is not designated as a "First City" nor does it come under the UCI umbrella. A locality may choose to submit some of its projects as local assistance projects and some as projects managed and conducted by VDOT.

### 10.4.2 Special Project Section Responsibilities for UCI and LA Projects

For all UCI and LA projects, the Special Projects Section in the Central Office serves as a resource to the Local Assistance Division in connection with all right of way issues. As requested, the Section will review the right of way provisions in agreements between VDOT and the locality and provide other advice and assistance to the Local Assistance Division.

In addition, as called upon, the Special Projects Section in the Central Office and the Regional Team serve as a resource to localities who are conducting UCI projects and those who are pursuing LA projects. Particularly with regard to LA projects, often the locality will ask the Regional Team for assistance in reviewing the right of way provisions in their solicitations for contractors.

Both the Central Office and Regional Special Projects Section representatives are immediately available to provide advice, assistance and guidance on right of way matters arising out of UCI or LA projects.

If services of a more regular nature are desired in connection with these projects, provisions are included in the agreement between VDOT and the locality to specifically define the nature and extent of such requested services.

The Regional Special Projects Team is responsible for reviewing the locality's progress in acquiring right of way and relocating all displacees once the Notice To Proceed is issued. The locality should provide the Regional Team with a parcel by parcel tracking report or utilize RUMS for this purpose. These reports should be submitted to the Regional Team every two months once the Notice To Proceed is issued and every month once the project is within four (4) months of the scheduled advertisement date.

In reviewing these reports, the Regional Team should note any parcels that may appear to be not in full compliance with the Uniform Act or VDOT's policies and procedures. Such situations should be reported to the Quality Assurance Review Team Leader for a possible interim review. The Regional Team will likely be requested to assist in such a review.

## Section 5 – Estimates and Studies

### 10.5.1 Special Project Section Responsibilities for Estimates and Studies

In addition to its other responsibilities, the Regional Special Projects Team is responsible for preparing all right of way preliminary cost estimates and entering them into the Integrated Project Management System. Once prepared and entered, the Regional Team is responsible for ensuring that the estimates are current and are updated as required.

The Regional Team is responsible for ensuring that a right of way representative attends all project scopings, field inspections, project days and program days and other project meetings. Where a representative is needed from Right of Way to attend a Value Engineering study, the Regional Team is responsible for ensuring that a representative from the Regional Right of Way office is assigned to participate.

Whenever a right of way study is needed such as a service road study, the Regional Special Projects Team is responsible for ensuring the study is conducted, completed and submitted as required.

## Roles and Responsibilities of the Special Projects Teams

| Project Phase | Work Function | Type Of Special Project | | | | |
|---|---|---|---|---|---|---|
| **PE Phase** | | **DB - Design Build** | **PPTA** | **LAP (Local Assistance Projects)** | **LAP - Enhancement Projects** | **UCI (Urban Construction Initiative Projects)** |
| | **Procurement Process** | C.O. R/W | C.O. R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Attends PE Meetings and Provides Plan Design Comments** | Regional R/W | Regional R/W | **Not R/W** | **Not R/W** | Regional R/W |
| | **Reviews & Comments on Preliminary Cost Estimates & Stage I Relocation Reports Prepared for Funding or Public Hearing** | Regional R/W Prepares Cost Estimate - PM 104 | Regional R/W Reviews Estimate | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Prepares: PM - 130 (Also Called RW-300 & 301)** | Regional R/W | **Not R/W** | Regional R/W | **Not R/W** | Regional R/W |
| | **RW Funding Authorization and NTP** | **Not R/W** | **Not R/W** | **Fed Projects ONLY** – CO R/W Issues NTP | Fed Authorization by District Enhancement Coordinator | **Fed Projects ONLY** – CO R/W Issues NTP |
| | **RW Certification** | **Not R/W** | **Not R/W** | LPA Submits; CO R/W Reviews and Approves With Copy to Regional R/W Manager | 1) LPA Submits to Project Sponsor 2) Regional R/W Manager Reviews for Compliance and Submits to State R/W & Utilities Director | C.O. R/W |
| | **Process Plans For R/W Signatures and NTP** | **Not R/W** | **Not R/W** | **Not R/W** | **Not R/W** | **Not R/W** |
| **RW Phase** | | | | | | |
| | **Provides Technical and Non-Technical Guidance** | Regional R/W | Regional R/W | Regional & C.O. R/W | Regional & C.O. R/W | Regional & C.O. R/W |
| | **Review and Approve Appraisal Types, Scope and Appraiser** | Regional R/W | Regional R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Approves Appraisals/BAR's for Negotiation** | Regional R/W | Regional R/W | **Not R/W** | **If Necessary - Regional R/W** | **Not R/W** |
| | **Approve Relocation Documentation: Determination of Eligibility; RHP; Moving Cost Calculations; and Offers** | Regional R/W | Regional R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Approves Admininstrative Settlements** | DB; Regional or C.O R/W - See Contract | PPTA; Regional or C.O R/W - See Contract | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Process Voluntary Conveyance Packages** | Regional R/W | Regional R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Approves AAC** | Regional or C.O. R/W - See Policy | Regional or C.O. R/W - See Policy | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Reviews RW 24 Reports** | Regional R/W | Regional R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Orders Checks & Warrants** | Regional R/W | **Not R/W** | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Concur With Filing Certificates** | Regional R/W Initiates Filing If They Concur | Regional R/W Initiates Filing If They Concur | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Accept Parcel File As Complete and Confirm RUMS Data Entered Properly** | Regional R/W | Regional R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **Eminent Domain Proceedings** | C.O. R/W | C.O. R/W | **Not R/W** | **Not R/W** | **Not R/W** |
| | **RW Project Quality Assurance Review** | C.O. R/W | C.O. R/W | C.O. R/W | **If Necessary - C.O. R/W** | C.O. R/W |

**Attachment 2 To Chapter 10**

**Right of Way Provisions In Design-Build Contracts (August, 2010 Revision)**

## 2.12 Right-of-Way

The Design-Builder, acting as an agent on behalf of the Commonwealth of Virginia ("Commonwealth"), shall provide right-of-way acquisition services for the Project. Right-of-way acquisition services shall include certified title reports, appraisal, appraisal review, negotiations, relocation assistance service and, parcel closings, to include an attorney's final certification of title. The Design-Builder's lead right-of-way acquisition consultant shall be a member of VDOT's prequalified right-of-way contracting consultants and the Design-Builder's right-of-way team shall include a VDOT prequalified fee/review appraiser. VDOT will retain authority for approving just compensation, relocation benefits, and settlements. VDOT must issue a Notice to Commence Right-of-Way Acquisition to the Design-Builder prior to any offers being made to acquire the property. This represents a hold point in the Design-Builder's Baseline Schedule. VDOT must also issue a Notice to Commence Construction to the Design-Builder once the property has been acquired prior to commencing construction on the property. This also represents a hold point in the Design-Builder's Baseline Schedule. The Design-Builder will **NOT** be responsible for the right of way acquisition costs. As used in this RFP, the term "right of way acquisition costs" means the actual purchase price paid to a landowner for right-of-way, including fee, any and all easements, and miscellaneous fees associated with closings as part of the Project. All right of way acquisition costs will be paid by VDOT, and shall not be included in the Offeror's Lump Sum Bid. Notwithstanding the foregoing provision, should additional right-of-way (whether fee or easements) be required to accommodate Design-Builder's unique solution and/or Contractor's means, methods and resources used during construction) above and beyond the right of way limits depicted on the preliminary drawings included in the RFP Information Package, then all right of way acquisition costs for such additional fee or easements shall be paid by the Design-Builder. These costs would include (but not be limited to) the costs of any public hearings that may be required, actual payments to property owners and all expenses related to the additional acquisitions and associated legal costs as well as any additional monies paid the landowners to reach a settlement or pay for court awards.

The following responsibilities shall be carried out by either the Design-Builder or VDOT as specified in each bulleted item below:

- The Design-Builder shall acquire property in accordance with all Federal and State laws and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act") and Titles 25.1 and 33.1 of the 1950 Code of Virginia, as amended. The acquisition of property shall follow the guidelines as established by VDOT and other State and Federal guidelines that are required and the *VDOT Right of Way Manual of Instructions, 3rd Edition, dated 1/1/11 and the VDOT Utility Relocation Policy and Procedures Manual, 10th Edition, dated 1/1/11*, as well as IIM-LD-243.4 and Chapter 12 of the VDOT Survey Manual, which require individual plats to be prepared and

recorded with each deed, easement agreement, certificate or other instrument relating to the acquisition of any interest in real property required for this project. All conveyance documents for the acquisition of any property interest shall also be accompanied by properly marked plan sheets and profile sheets.

- VDOT will designate a hearing officer to hear any Relocation Assistance appeals. VDOT agrees to assist with any out of state relocation by persons displaced within the rights of way by arranging with such other state(s) for verification of the relocation assistance claim.

- The Design-Builder shall submit procedures for handling right-of-way acquisitions and relocations to VDOT for approval prior to commencing right-of-way activities. This represents a hold point in the Design-Builder's Baseline Schedule. These procedures are to show the Design-Builder's methods, including the appropriate steps and workflow required for certified title reports, appraisals, appraisal review, negotiations, acquisition, relocations and parcel closings. These procedures shall include VDOT's review and approval of just compensation, relocation benefits and administrative settlements.

- The Design-Builder shall submit a Project specific Acquisition and Relocation Plan for VDOT approval. The plan shall identify a schedule of right-of-way activities including the specific parcels to be acquired and all relocations. The plan shall allow for the orderly relocation of displaced persons based on time frames not less than those provided by the "Uniform Act" and Chapter 6 of the *VDOT Right of Way Manual of Instructions, 3rd Edition, dated 1/1/1*1 This plan shall be updated as necessary during the life of the Project.

- A VDOT Representative will be available to make timely decisions concerning establishing review and approval of just compensation, approval of relocation benefits, and approval of administrative settlements on behalf of VDOT. The VDOT Representative is committed to issuing decisions on approval requests within twenty-one (21) days. The commitment is based on the Plan providing a reasonable and orderly workflow and the work being provided to the VDOT Representative as completed.

- The Design-Builder shall obtain access to and use VDOT's Right-of-way and Utilities Management System ("RUMS") to manage and track the acquisition process. RUMS will be used for Project status reporting; therefore, entries in RUMS shall be made at least weekly to accurately reflect current Project status. VDOT standard forms and documents, as found in RUMS, will be used to the extent possible. Training in the use of RUMS and technical assistance will be provided by VDOT.

- The Design-Builder shall provide a current title examination (no older than sixty (60) days) for each parcel at the time of the initial offer to the landowner. Each title examination report shall be prepared by a VDOT approved attorney or Title Company. If any title examination report has an effective date that is older than sixty

(60) days, an update is required prior to making an initial offer to the landowner. A Title Insurance Policy in favor of the Commonwealth of Virginia in form and substance satisfactory to the Commonwealth shall be provided by the Design Builder, for every parcel acquired.

- The Design-Builder shall prepare appraisals in accordance with VDOT's Appraisal Guidelines.

- The Design-Builder shall provide appraisal reviews complying with technical review guidelines found in the *VDOT Right of Way Manual of Instructions, 3rd Edition, dated 1/1/11* and make a recommendation of just compensation. The Design-Builder's Right-of-Way consultant shall be a member of the VDOT pre-qualified contracting consultant list, and include a VDOT pre-qualified Fee Appraiser. The reviewer shall be approved by VDOT and shall also be on VDOT's approved fee appraiser list. VDOT shall have final approval of all appraisals.

- The Design-Builder shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court. Payment documentation is to be prepared and submitted with the Acquisition Report (RW-24). VDOT will process vouchers and issue State Warrants for all payments and send to the Design-Builder, who will be responsible for disbursement and providing indefeasible title to VDOT.

- The Design-Builder shall prepare, obtain execution of, and record documents conveying title to such properties to the Commonwealth and deliver all executed and recorded general warranty deeds to VDOT. For all property purchased in conjunction with the Project, title will be acquired in fee simple (except that VDOT may, in its sole discretion, direct the acquisition of a right-of-way easement with respect to any portion of the right of way) and shall be conveyed to the "Commonwealth of Virginia, Grantee" by a VDOT-approved general warranty deed, free and clear of all liens and encumbrances, except encumbrances expressly permitted by VDOT in writing in advance. All easements, except for private utility company easements shall be acquired in the name of "Commonwealth of Virginia, Grantee". Private utility company easements will be acquired in the name of each utility company.

- Because these acquisitions are being made on behalf of the Commonwealth, VDOT shall make the ultimate determination in each case as to whether settlement is appropriate or whether the filing of a condemnation action is necessary, taking into consideration the recommendations of the Design-Builder. When VDOT authorizes the filing of a certificate, the Design-Builder shall prepare a Notice of Filing of Certificate. All required documents necessary to file a certificate shall be forwarded to the VDOT Project Manager. VDOT will file the certificate.

- The following will be paid, if and when necessary, under a Work Order in accordance with Article 9 of Part 4 (General Conditions of Contract): The Design-Builder will be responsible for continuing further negotiation to reach settlement after the filing of

certificate. The Design-Builder will provide the necessary staff and resources to work with VDOT throughout the entire condemnation process until the property is acquired by entry of a final non-appealable order, by deed, or by an Agreement After Certificate executed and approved by VDOT and the appropriate court. The Design-Builder will provide updated appraisals (*i.e.*, appraisal reports effective as of the date of taking) and expert testimony supporting condemnation proceedings upon request by VDOT.

- The Design-Builder will be responsible for all contacts with landowners for rights of way or construction items.

- The Design-Builder shall maintain access at all times to properties during construction.

- The Design-Builder shall use reasonable care in determining whether there is reason to believe that property to be acquired for rights of way may contain concealed or hidden wastes or other materials or hazards requiring remedial action or treatment. When there is reason to believe that such materials may be present, the Design-Builder shall notify VDOT within three (3) calendar days. The Design-Builder shall not proceed with acquiring such property until they receive written notification from VDOT.

- During the acquisition process and for a period of three years after final payment is made to the Design-Builder for any phase of the work, and until the Commonwealth has indefeasible title to the property, all Project documents and records not previously delivered to VDOT, including but not limited to design and engineering costs, construction costs, costs of acquisition of rights of way, and all documents and records necessary to determine compliance with the laws relating to the acquisition of rights of way and the costs of relocation of utilities, shall be maintained and made available to VDOT for inspection or audit. This also would apply to the Federal Highway Administration on projects with federal funding. Throughout the design, acquisition and construction phases of the Project, copies of all documents/correspondence shall be submitted to both the Central Office and respective District Office.

# Attachment 3 to Chapter 10

# Right of Way Provisions in PPTA Agreements

## 3.1 Right of Way

A. The Concessionaire shall provide certain right of way (ROW) acquisition services for the Project. ROW acquisition services shall include the preparation of ROW plans, title examinations, appraisal, appraisal review, negotiation, relocation assistance and advisory services, closings, and legal services. The Concessionaire shall coordinate and determine required right of way for utility relocations and coordinate preparation of all required easement agreements, right of way plans and documentation for acquisition and vacation of existing property rights. All appraisers and acquisition firms shall be selected from VDOT's pre-approved lists. VDOT will retain authority for approving just compensation, relocation benefits, and settlements. VDOT must issue a Notice to Commence Right of Way acquisition to the Concessionaire prior to any offers being made to acquire property. VDOT must also issue a Notice to Commence Construction to the Concessionaire once the property has been acquired prior to commencing construction on the property. The required right of way plans and documentation will be reviewed by VDOT and, as required, FHWA.

B. The Concessionaire shall carry out its responsibilities in accordance with the following requirements:

1. The Concessionaire shall acquire property in accordance with all applicable Federal and State laws and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act), and Titles 25.1 and 33.1 of the 1950 Code of Virginia, as amended. The acquisition of property shall follow the guidelines as established by VDOT and other State and Federal guidelines that are required and the *VDOT Right of Way Manual of Instructions, 3rd Edition, dated 1/1/11 and the VDOT Utility Relocation Policy and Procedures Manual, 10th Edition, dated 1/1/11*.

2. VDOT will designate a hearing officer to hear any Relocation Assistance appeals. VDOT agrees to assist with any out of State relocation by persons displaced within the rights of way by arranging with such other State(s) for verification of relocation assistance claim.

3. The Concessionaire shall submit a project-specific ROW Acquisition Plan for VDOT's review and comment.

4. The Concessionaire shall submit, as part of the ROW Acquisition Plan, procedures for handling ROW Acquisitions and relocations to VDOT for review and comment before beginning ROW activities. These procedures must show the Concessionaire's methods, including the appropriate steps and workflow required for title reports, appraisals, and review of appraisals, negotiations, acquisition, relocations and parcel closings. The Concessionaire shall have the same authority for administrative settlements as established for VDOT's Regional Right of Way Manager. These procedures must include 21 days for VDOT to review and comment just compensation, relocation benefits, and administrative settlement.

5. The Concessionaire shall have access to, and use VDOT's ROW and Utilities Management System (RUMS) to manage and track the acquisition process. When required, all entries made into RUMS shall be made weekly to accurately reflect current project status. VDOT's standard forms and documents, as found in RUMS, shall be used to the extent possible. Any changes to the forms and documents must be approved by VDOT. Within 15 days after Financial Close, VDOT will commence provision of training and technical assistance to the Concessionaire in the use of RUMS.

6. The Concessionaire shall provide a current title examination (no older than 60 days) for each parcel at the time of the initial offer to the landowner. Each title examination report shall be prepared by a VDOT-approved title company, in accordance with the *VDOT Right of Way Manual of Instructions, 3rd Edition, dated 1/1/11* and shall include title insurance commitment. Should the Concessionaire select a law firm to certify title examinations, the certifying attorney shall provide evidence of professional liability insurance. VDOT reserves the right to determine if the professional liability insurance coverage is sufficient. If any title examination report has an effective date that is older than 60 days, an update is required before making an initial offer to the landowner.

7. The Concessionaire shall prepare appraisals and appraisal reviews in accordance with VDOT's appraisal guidelines. The appraiser shall be on VDOT's approved fee appraiser list.

8. The Concessionaire shall provide appraisal reviews complying with technical review guidelines of VDOT's appraisal guidelines. The reviewer shall be on VDOT's approved fee appraiser list. VDOT will review the Concessionaire's appraisal waiver, appraisal, and appraisal review for each parcel, and shall have the decision of final approval of each appraisal and just compensation offer.

9. The Concessionaire shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be

deposited with the court. Payment documentation is to be prepared and submitted with the Acquisition Report (Form RW-24). VDOT will process vouchers and issue State warrants for all payments and send to the Concessionaire, who will be responsible for disbursement.

10. Concessionaire shall prepare, obtain execution of, and record documents conveying title to such properties to the Commonwealth and deliver all executed and recorded general warranty deeds to VDOT. For all property purchased in conjunction with the Project, title will be acquired in fee simple, except that, with VDOT's prior written concurrence, permanent easements may be acquired in lieu of fee simple interest for the construction, maintenance, and use of items such as noise walls, retaining walls, storm drainage structures, and earthen slopes. All property shall be conveyed to "Commonwealth of Virginia, Grantee" by a VDOT-approved general warranty deed, free and clear of all liens and encumbrances except encumbrances expressly permitted in writing by VDOT in advance. All easements, except for private utility company easements, shall be acquired in the name of "Commonwealth of Virginia, Grantee." Private utility company easements will be acquired in the name of each utility company, except when the use of eminent domain is necessary.

11. The Concessionaire shall use its best efforts to settle claims with landowners. Such efforts do not require the Concessionaire to make an offer to the property owner in excess of "just compensation". VDOT shall make the ultimate determination in each case as to whether settlement is appropriate or whether the filing of a condemnation action is necessary. The Concessionaire shall not request the filing of a certificate until the landowner has been given a minimum of 45 days to consider the offer or terminate the negotiations. If, despite the Concessionaire's best efforts, it is unable to reach a settlement with any landowners, VDOT will handle any necessary condemnation proceedings.

12. The Concessionaire shall be responsible for all contacts with landowners for ROW -related issues, prior to initiation of condemnation proceedings by VDOT. The Concessionaire shall provide documentation of all contact with property owners (including participants and organizations), a summary of discussions, agreed items, follow-on activities, and copies of items distributed, including but not limited to appropriate and timely documentation in the Acquisition Report (Form RW-24).

13. Once access is gained by the Concessionaire to acquired ROW, Concessionaire shall use reasonable care in determining whether there is reason to believe that the property may contain concealed or hidden waste or other materials or hazards that may require remedial action or treatment. VDOT shall be notified of the presence of such materials within Three (3) Business Days of such discovery. In no event shall an

offer to acquire any interest in such property be made in advance of and without written concurrence from VDOT.

14. During the acquisition process and for a period of three years after the later of Final Acceptance or the Commonwealth has indefeasible title to the property, all Project documents and records not previously delivered to VDOT, including all costs of acquisition of ROW, and all documents and records necessary to determine compliance with the laws relating to ROW Acquisition and the costs of relocation of Utilities shall be maintained and made available by Concessionaire to VDOT for inspection or audit.

C. The Concessionaire shall be responsible, at its sole expense, for demolishing and disposing of all existing buildings from the ROW and permanent and temporary easements, as necessary. All such work shall comply with the Standard of Care and these Technical Requirements.

D. The Concessionaire shall exercise care to minimize impacts and damages to property, businesses, and residences, including noise, vibrations, temporary traffic patterns, and clearing of tree buffers. The Concessionaire shall address public, business, and government comments in coordination with VDOT within 21 days of receipt; however, the responsibility to coordinate, address and/or respond to the comments shall be the Concessionaire's. Where requested, the Concessionaire shall provide stakeout and marking of existing property lines and impacts.

E. Right of way for temporary highways, diversion channels, sediment and erosion control features or bridges required by the Technical Requirements will be planned, designed and provided by the Concessionaire.

F. Prior to right of way authorization, requirements listed in Section 1.3.1 C – Environmental Documentation shall be performed and completed.

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# CHAPTER 11 - EMINENT DOMAIN

## 11.1 Introduction

The Eminent Domain Section was created in 2009 as a part of the reorganization of the Right of Way and Utilities Division. Right of Way reorganization centralized the reporting structure of the Division and compacted the previous nine (9) Districts into three (3) Regions, all reporting to the Director. One of the many purposes of reorganization was to standardize the processes and procedures for all of the right of way disciplines.

The Eminent Domain Section was created to standardize the manner in which eminent domain cases were prosecuted statewide and to provide a higher level of assistance and support to Fee Counsel.

The Eminent Domain Section provides advice and assistance (technical and non-technical) to Fee Counsel in condemnation matters and serves as the liaison between Fee Counsel, Staff Counsel and the Division. Also, the responsibility for auditing, processing and paying all invoices from Fee Counsel was centralized in the Section.

In performing their duties it is the responsibility of each member of this Section to ensure (to the extent of their ability and authority) that all expenditures in connection with eminent domain are “necessary, reasonable, and justified” and, in situations where they are not, to bring such situations to the attention of their supervisor or the Acquisitions Manager.

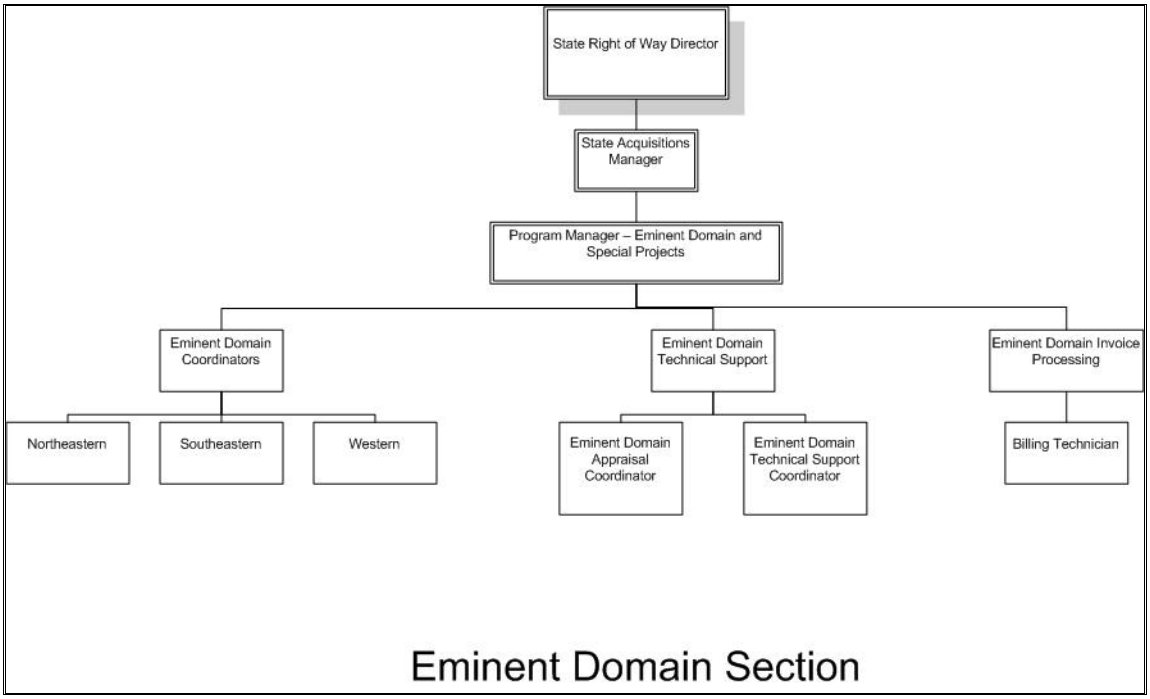
## 11.2 Organization of the Eminent Domain Section

The Eminent Domain Section is under the supervision of the Program Manager – Eminent Domain and Special Projects.

It is divided into three (3) discrete sub-sections: Eminent Domain Coordinators; Eminent Domain Technical Support; and, Eminent Domain Invoice Processing. (See Exhibit 11-1, below.) There is one (1) Eminent Domain Coordinator (“EDC”) assigned to each of the three (3) Regions. The Technical Support Section consists of a Technical Support Coordinator and an Appraisal Coordinator. The Invoice Processing Section is composed of one (1) Technician.

The Program Manager – Eminent Domain and Special Projects reports to the Acquisitions Manager who has overall responsibility for the activities of the Section. The Acquisitions Manager reports to the Director.

**Exhibit 11-1**
**Eminent Domain Section Organization Chart**




## 11.3 Responsibilities of Eminent Domain Section Personnel

A. Eminent Domain Coordinators

The EDC (or their delegate) is responsible for testifying as VDOT's fact witness in all condemnation cases in their Region and for conducting the "view" at trial. They are responsible for entering their own assignments of these duties in RUMS for each project and parcel.

In a role similar to a paralegal, they (or their delegate) provide or arrange for assistance to Fee Counsel when requested in connection with all pre-trial and trial activities. Such activities can include, for example only: arranging for pre-trial staking of the parcel; providing plans, plats, aerial photographs, etc. to counsel or VDOT witnesses; coordinating the scheduling of VDOT witnesses for depositions, pre-trial conferences and trial; participating in mediations; approving or responding to

discovery requests; and approving (or recommending approval of) the hiring of expert witnesses by Fee Counsel. The EDC's respond promptly to requests for advice from Fee Counsel about VDOT policies and procedures and other matters. Where necessary they serve as the contact between Fee Counsel and other VDOT Divisions or Sections. This is not an exhaustive list but is merely an example of the types of assistance an EDC might be called upon to provide to Fee Counsel in order to ensure that VDOT's Fee Counsel has all resources required to adequately and properly represent VDOT's interests at all stages of the eminent domain process.

If Fee Counsel requires technical assistance (such as the preparation of exhibits, courtroom demonstrations, or technical assistance with appraisals), the EDC serves as the initial contact and coordinator for such assistance, involving the Eminent Domain Technical Support Section as necessary.

They provide advice on cases and proposed settlements to Staff Counsel and/or the Acquisitions Manager. They make recommendations on the advisability of mediation, settlement of cases by Agreements After Certificate, the need to hire experts, the advisability of second appraisals, and any other request from Fee Counsel, if appropriate.

If necessary because of workload or other factors, an EDC may (with the consent of the Regional Manager) delegate their responsibilities in connection with a specific condemnation case to another qualified right of way employee within the Region. The EDC will still be responsible for ensuring that the delegate performs the duties delegated.

On an ongoing basis, the EDC is responsible for entering remarks in RUMS in the contacts screen under the Legal tab recording significant activities/events in connection with each case. They may rely heavily on the standard verbiage available in RUMS to make these entries.

B. Eminent Domain Technical Support Coordinator

As requested by Fee Counsel or the EDC, the Technical Support Coordinator prepares, assists in preparing or obtains any exhibits needed for mediation or trial.

Utilizing specialized software, the Technical Support Coordinator, upon request, will work with Fee Counsel to create a presentation of electronic exhibits and display the presentation at trial or mediation.

If Fee Counsel requests authority to hire a third party expert to prepare such electronic presentations, the Technical Support Coordinator, working with the EDC, will evaluate the request and make a recommendation as to whether or not to approve the request and will participate in developing an agreement between Fee Counsel and the third party.

If the third party is hired, the Technical Support Coordinator will be responsible for overseeing the work and participating in the preparation and display of the presentation.

The Technical Support Coordinator will assist the EDC's by verifying acreages and other plan details. He/she will assist the EDC's in answering technical questions related to road design and assist in responding to technical discovery requests. The Technical Support Coordinator may offer opinions and suggestions on project design for parcels on which a certificate has been filed. As requested, the Technical Support Coordinator will provide other assistance to the EDC's and Fee Counsel that may be related to other technical issues.

C. Eminent Domain Appraisal Coordinator

The Appraisal Coordinator provides technical support in connection with appraisals. Upon request of the EDC and/or Fee Counsel, the Appraisal Coordinator reviews appraisals prepared by VDOT or landowner appraisers and provides comments and advice to Fee Counsel concerning the appraisals reviewed.

The Appraisal Coordinator may be asked to provide advice as to case risks relative to the appraisals, the need for an additional appraisal by VDOT, and recommendations as to trial/mediation strategy and settlement issues.

If requested, the Appraisal Coordinator will attend and participate in settlement discussions and mediations.

If Fee Counsel requests authority to hire an additional appraiser, the Appraisal Coordinator may be asked by the EDC to evaluate the request, provide advice to Fee Counsel and make internal recommendations concerning the request. If the request is approved, the Appraisal Coordinator will, to the extent necessary, participate with Fee Counsel in developing a contract and fee schedule with the appraiser.

D. Eminent Domain Technician

The Technician is responsible for receiving, auditing, processing and arranging for payment for all eminent domain related invoices.

Invoices are received via email in a special resource mailbox established for the sole purpose of receiving invoices.

The Technician checks the mailbox at least once each day and moves all received invoices to a page on the VDOT portal reserved for that purpose.

The Technician audits each invoice utilizing the special software developed for this purpose. Until the audit is complete and all discrepancies resolved the invoice is saved to a discrete location on the VDOT portal and marked "Audit in progress." The Technician will resolve all discrepancies, most often by communication with the firm that submitted the invoice.

When the audit is complete and all discrepancies are resolved, the invoice is sent via email to the appropriate Staff Counsel for review and approval. Once Staff Counsel has approved the invoice for payment, the Technician prepares the FD-AP-01 and backup documentation and submits them to the Program Manager – Eminent Domain and Special Projects for signature. Once signed, the documents are submitted to the Fiscal Division for payment.

In performing these duties, the Technician is responsible for meeting the requirements of Virginia's Prompt Payment Act.

The Technician should bring to the attention of the Acquisitions Manager any repeated discrepancies in invoicing by the same firm.

## 11.4 Role of Staff and Fee Counsel In Eminent Domain

A. Staff Counsel

Staff Counsel are hired by the Attorney General with the concurrence of the Director. The Attorney General typically appoints them as Senior Assistant Attorneys General. Staff Counsel are carried on the employee rolls of the Department and report to the Acquisitions Manager. There is one Staff Counsel assigned to each Region and they have offices in each construction district.

In eminent domain cases, Staff Counsel serve as the primary liaison between Fee Counsel and the Transportation Section of the Virginia Attorney General's Office. They provide first level advice on legal matters to Fee Counsel and ensure the Attorney General's Office is kept appropriately apprised of legal issues, Fee Counsel's performance, case status as requested, and, as they deem appropriate, solicit assistance from the Attorney General's Office for research, substantive legal advice or other assistance in connection with eminent domain cases or issues.

Staff Counsel review and approve all invoices from Fee Counsel or other parties that arise out of eminent domain matters. If they have issues or concerns about specific invoices or charges, they resolve them personally or with the assistance of Division personnel before approving the charges and requesting further processing for payment.

As appropriate and as requested, Staff Counsel make recommendations with regard to: case assignments to Fee Counsel; whether or not to hire experts; whether or not to participate in mediation; tactical litigation issues and strategies; motions to be filed or objections made in advance of trial; proposed settlements; and, whether or not to file exceptions to rulings or appeal final decisions. As they deem appropriate they apprise the Transportation Section of these matters.

Staff Counsel provide legal advice to VDOT staff (particularly the EDC for their Region) in connection with eminent domain cases upon request and serve as a legal resource in eminent domain matters to the Division and Regional staff. In some

instances, and with their approval, Staff Counsel assumes the role of counsel of record in litigation matters.

Staff Counsel ensure that mandates and instructions issued by the Attorney General are followed by Fee Counsel, and if not, note the deficiencies and take corrective action as they deem appropriate. In all such instances, they discuss the deficiencies with the Acquisitions Manager.

Staff Counsel evaluate the progress of cases assigned within their Region and discuss with the Acquisitions Manager and EDC (if they deem appropriate) any case concerns.

B. Fee Counsel

Fee Counsel are appointed by the Virginia Attorney General on a geographical basis following a solicitation for bids. Appointment letters are sent to successful bidders and contain the conditions of the appointment and include a list of authorized timekeepers and the approved billing rates for each. Copies of the appointment letters are provided to the Eminent Domain Section and remain on file on the VDOT portal as a reference.

Fee Counsel normally represent the Department as counsel of record in condemnation matters within their geographical area. A Fee Counsel is specifically appointed for each case by the Director through the use of the Right of Way form RW-36.

In some cases, Fee Counsel may represent the Department in cases other than condemnation. While these appointments are made by a letter from the Director, the concurrence of the Attorney General's office is required before the appointment is made. Likewise, the Attorney General's office must approve Fee Counsel representation in connection with all appeals from cases under the purview of the Division. Those appointments, if approved, are also made in writing.

## 11.5 Role of the Regional Manager In Eminent Domain Cases

The Regional Manager is responsible for ensuring that a complete and correct set of documents necessary to request a Certificate of Take or Deposit ("Certificate Application

Package") is submitted to the Acquisitions/Legal Section in a timely manner so that the Right of Way End Date for the project can be met.

When the application is approved, the documents are signed by the Director and returned to the Regional Office. The Regional Manager is then responsible for ensuring that the proper documents are filed with the appropriate Clerk's Office after a current owner run-down title update is conducted and shows no obstacles to filing the certificate. If not approved, the Regional Manager will be advised by the Director as to what other actions to take to clear the parcel.

The Regional Manager is also responsible for ensuring that a complete package of information is sent to the appointed Fee Counsel (the "Appointment Package.") The Appointment Package should contain at a minimum: all appraisals or BAR's; the RW-24 Report; plans, profiles, cross sections (if appropriate) and plats, as applicable; all substantive written correspondence between the landowner and VDOT (including e-mails, if applicable); the Title Report and all updates; and the original, signed appointment document (RW-36.)

Once the Certificate is filed, there are no more actions in the case required to be taken by the Regional Manager except for the administrative activities described in the previous paragraphs or as may be requested by the Acquisitions Manager or EDC. When the certificate is filed, all further responsibility for the case transfers to the Eminent Domain Section.

However, if the Regional Manager reasonably believes that there is likelihood that a voluntary conveyance could be negotiated by the Regional Office within sixty (60) days of the date the certificate is filed, the Regional Manager may elect to have the certificate filed but delay in referring the case to the appointed Fee Counsel for sixty (60) days. A request to delay referring the case for sixty (60) days should be included as a separate document that is made part of the Certificate Application Package sent to the Acquisitions/Legal Section.

If the request is approved, the Regional Manager will be notified at or before the time the signed documents are returned. The Regional Manager will follow the normal procedures

for filing the certificate but will have the case assigned to the Region's Staff Counsel for a period of sixty (60) days for monitoring and will notify the Region's EDC that referral to Fee Counsel is being delayed for sixty (60) days. The Appointment Package will not be sent to appointed Fee Counsel during this period. The Regional Manager will ensure that a staff member is assigned to diligently pursue negotiations with the landowner for a voluntary conveyance.

Not later than the sixtieth (60th) day from the date the certificate was filed, if negotiations have not been successful, the Appointment Package will be sent to the appointed Fee Counsel and the assignment will be changed in RUMS from Staff Counsel to appointed Fee Counsel by the appropriate staff member in the Region. At this point responsibility for the case will shift to the Eminent Domain Section. The Region is responsible for notifying Staff Counsel and the EDC in writing (email is acceptable) of the assignment change.

If it is clear at any time during the sixty (60) day period that further negotiations are not likely to be successful, the Regional Manager should immediately send the Appointment Package to the appointed Fee Counsel and not wait for the expiration of the sixty (60) days. Again, the Region is responsible for making the assignment change in RUMS and for notifying Staff Counsel and the EDC of the change.

If, during the sixty (60) day period negotiations result in an agreement for a voluntary conveyance, as soon as the Option Agreement is signed, the EDC, Staff Counsel and the Acquisition/Legal Section should be notified and the RW-36 should be returned to the Acquisitions/Legal Section. After an agreement has been reached with the landowner, Staff Counsel will seek to close the matter in one of two ways using what appears to be, in his or her professional judgment, the most expeditious method:

A. Draft and have executed an Agreement After Certificate. Then, based upon the executed AAC, prepare and present to the judge for entry a petition and order approving the AAC, vesting indefeasible title in VDOT and ordering payment or disbursement of the funds depending upon the type of Certificate that was filed.

B. Upon recordation of the voluntary conveyance, seek to invalidate the Certificate or file a Petition and Final Order closing the case. The method of closing the case is left to the discretion of Staff Counsel.

If the case is closed by invalidating the certificate, it is the responsibility of the Regional Manager to ensure that a request to close the case is made in writing to Staff Counsel as soon as the voluntary conveyance is recorded.

## 11.6 Fee Counsel Assignments In Condemnation Cases (RW-36)

Attorneys who are currently authorized and appointed by the Office of the Attorney General may be selected for specific case assignments. Attorney assignment recommendations are a part of the Certificate Application Package sent to the Acquisition/Legal Section.

The selection of specific Fee Counsel for a specific case is made jointly after consultation between Staff Counsel, the EDC and Regional Staff. Several factors should be considered in making the decision:

- All appointments should be made with the objective of reasonably balancing the case load among all Fee Counsel serving the construction district;
- Geographical proximity of Fee Counsel to the jurisdiction where the case will be tried;
- Whether special skills or experience is needed for the specific case and whether or not Fee Counsel has those skills or experiences;
- Performance of Fee Counsel in other recent cases;
- Whether there might be an advantage to assigning all cases on a specific project to a limited number of Fee Counsel;
- Whether there is an advantage or disadvantage to assigning a Fee Counsel to a case because of prior experiences/relationships with landowner's counsel or the court;

Once consensus is reached between the regional staff, Staff Counsel and the EDC, the name of the Fee Counsel identified will be entered in the appropriate place in the RW-36

which will be made part of the Certificate Application Package. If a consensus cannot be reached, the Acquisitions Manager will be consulted and will specify the Fee Counsel to be appointed.

Once the application to file a certificate has been approved and returned to the local regional office, that office will send the Appointment Package to Fee Counsel unless the case is to be held for sixty (60) days and not referred. See the previous Section 11.5 for more details.

Once appointed, Fee Counsel is required to immediately contact the landowner by mail to advise them of their rights to drawdown the funds and offer assistance in doing so if they are not represented by counsel. If Fee Counsel knows the landowner is represented by a lawyer, the letter should be sent to the landowner in care of their lawyer. Typically if this letter is to the landowner, Fee Counsel introduce themselves and advise the landowner that eventhough a certificate has been filed, VDOT would prefer to reach a mutually acceptable settlement.

Fee Counsel is also responsible for ensuring that the appropriate petition and any other necessary documents are filed with the court within the one hundred eighty (180) day statutory period. If Fee Counsel is unable to meet this deadline the Acquisitions Manager is to be notified immediately. This requirement applies even in situations where the Region has elected to withhold referral for sixty (60) days.

## 11.7 Quarterly Reports and Case Information

A. Fee Counsel Quarterly Reports

On a quarterly basis, beginning in January of each year, Fee Counsel are required to send a report to the EDC and the appropriate Regional Staff Counsel reflecting the current status of each case for which they have been appointed.

If not received within ten (10) days from the first day of the month when due (January, April, July, and October), the EDC will contact the Fee Counsel who have not provided the quarterly report and facilitate prompt compliance with this

requirement. If not successful in ensuring compliance, the matter should be referred to Staff Counsel for further action.

Though no particular format is required, the sample shown in Attachment 1 to this chapter reflects the required information that should be submitted.

If a review of the status report by the EDC reflects issues or problems that should be addressed, they should be brought to the attention of the appropriate Staff Counsel and/or the Acquisitions Manager.

B. Use of RUMS By EDC's

Each EDC is responsible for entering appropriate remarks on the Contacts Screen under the Legal Tab in RUMS. Remarks concerning every significant event, contact, meeting, correspondence, or court activity should be entered. The purpose of such entries is so that anyone can read the remarks and understand all significant activities and the most current status. EDC's should make extensive use of the standard verbiage provided in making their remarks. The EDC should enter their initials at the end of each entry.

EDC's are responsible for ensuring counsel appointments; authorizations to hire experts and increase expert compensation; entries relative to AAC's; entries relative to court awards, Final Order dates; and eminent domain assignments and re-assignments are all appropriately noted in RUMS.

C. Condemnation Cost Estimates

In addition to the other information and remarks the EDC is required to enter in RUMS, they must also enter and review (and update if necessary) on a quarterly basis, a cost estimate for each parcel upon which a certificate has been filed and where the final order has not been entered. Upon request of the appropriate persons, they may be required to review and update as necessary some estimates more frequently than every quarter.

## 11.8 Hiring Experts

VDOT must approve Fee Counsel's hiring of any expert witness or other third party service provider (except couriers and similar providers) before the party is hired. It is entirely appropriate for Fee Counsel to discuss the need for the expert or other third party with the EDC, Staff Counsel and/or the Eminent Domain Appraisal Coordinator. Fee Counsel and the VDOT staff consulted should agree upon a scope of work and, if possible, the identity of the person or firm to be hired.

Once a decision is made on the need to hire and a scope of work is developed, a request for approval to hire is submitted through the appropriate EDC. The appropriate authority will decide whether or not to grant the request and the EDC will notify Fee Counsel of the decision.

If the decision is approved, Fee Counsel will contact the person or firm, explain the scope of work and request a detailed estimate of the pricing and maximum costs. This information will be provided to the EDC. If an appraisal expert is involved the EDC may, at their discretion, provide the information to the Appraisal Coordinator and ask for comments, suggestions or assistance.

VDOT will decide whether to accept the estimate and hire the expert or other third party. A decision may be made to attempt to negotiate better pricing or maximum costs.

If the expert or other third party is hired, they are hired by Fee Counsel and not by VDOT. VDOT will guarantee payment of the expert or other third party's bill so long as the bill is consistent with the terms of the engagement. When hired, the terms of the engagement must be reduced to writing and signed by the expert or other third party before work begins. If this requirement is not followed, VDOT may elect not to reimburse Fee Counsel for these costs. A form of engagement letter for experts and other third parties is available on the VDOT portal. Fee Counsel may use the form engagement letter or a letter that they have drafted. If Fee Counsel does not use the form document, the engagement letter drafted by Fee Counsel must be reviewed and approved before its first use. A copy of the signed engagement letter must be provided to the EDC.

## 11.9 Requests for Assistance of VDOT Staff Appraisers

On occasion, Fee Counsel may want assistance from a VDOT Staff Appraiser. In those instances, counsel's request must be made to the EDC and counsel should not contact a Staff Appraiser directly with any such requests.

Upon receipt of a request from Fee Counsel for the assistance of a Staff Appraiser, the EDC will send an email request for such assistance to the Appraisal Section and the appropriate Regional Manager.

The Appraisal Section will confer with the Regional Manager and decide whether or not to make a work assignment to a Staff Appraiser. The EDC will be notified of the decision by the Appraisal Section. If approved, the EDC will contact the assigned Staff Appraiser and arrange for any contact with Fee Counsel, if necessary. The EDC will also notify Fee Counsel of the assignment and coordinate any contact between the assigned Staff Appraiser and Fee Counsel.

If the decision is not to assign a Staff Appraiser to do the work, the Appraisal Section and the Regional Manager will develop a recommendation as to how the work should be done. The Appraisal Section will advise the EDC of the alternate recommendation. The EDC will be responsible for ensuring the implementation of the recommended alternative and advising Fee Counsel.

## 11.10 Approving Mediation

Mediation of a case will not normally be approved until both counsel have made a bona fide, good faith effort to settle the case by negotiation between themselves. This, by nature, requires that each side disclose a certain amount of information about their case. Discretion is left to Fee Counsel as to how much disclosure of VDOT's case is appropriate, understanding that most of our information has already been shared with the landowner in the acquisition process. Where landowner's counsel refuses to disclose information to support their position or otherwise refuses to negotiate in good faith, mediation will not be approved.

If it is apparent to Fee Counsel that the reason for failure to successfully negotiate a settlement is for a reason other than the good faith effort by landowner's counsel (such

as an intractable landowner), mediation may be considered. Where counsel have attempted to negotiate in good faith and have been unsuccessful, mediation will be considered.

Normally, Fee Counsel will direct their request for authority to mediate to the EDC verbally or in writing. The request for authority to mediate should only be made if Fee Counsel believes that settlement is reasonably possible through mediation. Unless Fee Counsel supports mediation it will not normally be approved so there is no necessity for submitting the request. The request should identify, if possible, the proposed mediator and the approximate costs to VDOT for the mediation including counsel and witness fees. It need not include the cost for participation by any VDOT employee. Normally, VDOT will not pay more than fifty percent (50%) of the cost of a mediator.

The EDC will seek approval for mediation from the appropriate authority. If the identity of the mediator or the cost information has not been provided, any approval will be contingent upon receipt and evaluation of such information. The EDC will advise Fee and Staff Counsel as to the decision to approve mediation.

## 11.11 Draw Down Orders

Once a certificate has been filed, the landowner is entitled to have the funds represented by the certificate paid to them. This is called a “draw down.” If a settlement is reached or an award entered that is less than the amount drawn down, the landowner must repay the difference. If the settlement or award is greater than the amount drawn down, VDOT is required to pay the excess.

A draw down is authorized when a drawdown order requested by the landowner is signed by an appropriate judge and the order is entered by the Clerk of the Circuit Court where the certificate is filed.

If the landowner is represented by counsel, their counsel prepares and submits the order. VDOT will always consent to the entry of such order. If the landowner is not represented by counsel, Fee Counsel will prepare the order, obtain the landowner’s signature and submit the order to the court for entry.

Fee Counsel must send a copy of the drawdown order, once entered by the Clerk, to the EDC. The EDC will enter the appropriate remarks and other information into RUMS on the appropriate tab on the Legal screen. If a check is required to be ordered (in the case of a Certificate of Deposit) the EDC will arrange for the check to be ordered and delivered to Fee Counsel. The check will be a "net check." Any sums due to lienholders of record will be deducted from the amount of the check and held for payment to such lienholders.

## 11.12 Landowner Requests for a Trial Continuance

Fee Counsel should seek approval to agree to a trial continuance made by the landowner through the EDC. Other than in exceptional circumstances, the Department will normally agree to such a request.

However, when such a request is made and Fee Counsel is fully prepared to proceed according to the original schedule, a request should be made to the landowner to waive any interest due (including interest on an excess award) for the period between the date of the continuance and the date of the actual trial in return for VDOT's consent to the continuance. If the landowner does not agree, the effect will be that VDOT will pay a monetary penalty (daily interest) for each day of the landowner's delay of the trial eventhough VDOT was prepared to try the case according to the original schedule.

If the landowner agrees to waive interest, the agreement should be incorporated into the order continuing the case. If the landowner does not agree to waive interest, Fee Counsel should not consent to the continuance absent some compelling circumstance.

## 11.13 Service of Process on VDOT Witnesses

Among their other duties, the EDC ensures that, when subpoenas are issued for VDOT employees and consultants, they accept service of process pursuant to Va. Code §8.01-327 without the necessity for the use of a process server paid for by Fee Counsel.

## 11.14 Amending, Invalidating, Combining and Filing New Certificates

Once a certificate is filed, there may be situations which require that the certificate be amended to reduce the take area or the property rights being acquired. No certificate

may be amended to increase the take area or the degree of property rights being acquired.

Most typical is a situation where the plans are changed after filing. Changes to the plans can result from VDOT's own design changes or where an agreement with the landowner mandates changes to the plans. There are a variety of other reasons why a certificate may need to be amended. Another example is a situation where errors in the calculation of the take area are discovered.

When a certificate needs to be amended to reduce the take area or property rights being acquired, approval of the Director is required. The EDC is responsible for ensuring that a request to amend the certificate is presented to the Acquisitions/Legal Section whether it originates from Fee Counsel, Staff Counsel or other VDOT sections. The Acquisitions/Legal Section will present the request to the Director for approval and notify the EDC of the decision. If approved, the EDC will coordinate with Fee Counsel to ensure the amended certificate is recorded.

In some cases, after a certificate is filed, it may be necessary to increase the take area or degree of property rights being acquired. This is normally done by filing a new, additional certificate applicable to the same property. Approval from the Director is required to file an additional certificate or substitute a new certificate, invalidating the old one. The process for obtaining approval is the same as for amending a certificate except that the Acquisitions/Legal Section is responsible for ensuring the preparation of the new certificate and signature by the Director.

When a new certificate is filed on the same parcel as described above, it is necessary that it be treated as a separate acquisition. All of the normal procedures for an acquisition must be followed before the new certificate is filed. This includes a new appraisal or BAR, a new Title Report, a new offer and a good faith attempt to obtain a voluntary conveyance. Only after a refusal can the new certificate be filed. Failure to follow this process can only be approved by Staff Counsel in writing.

It may also be appropriate in some cases to invalidate a certificate that has been filed. The reasons for invalidation can vary. For example, it may be possible, as a result of

negotiations, to settle a case by a voluntary conveyance from the landowner directly to VDOT. There are also situations where the construction schedule on a particular project is extended and VDOT determines it appropriate to release any claim it may have to the use of the property. The Director must approve the invalidation of all certificates and the process for obtaining approval is the same as for amending a certificate or filing another certificate.

## 11.15 Recommendation for Settlement (RW-33)

As VDOT would always prefer to resolve acquisition issues by mutual agreement rather than trial, settlement discussions between Fee Counsel and the landowner's counsel are always encouraged. If Fee Counsel deems it appropriate, they may, in their sole discretion, involve Staff Counsel, the EDC and other VDOT staff directly in the negotiations.

Since every case is different, there are no hard and fast rules on settlements. In addition to monetary considerations, VDOT may be amenable to considerations in construction, design, property "swaps" or the conveyance of surplus right of way or residue property. Within reason, VDOT is agreeable to considering any non-monetary consideration that will effectuate a settlement. In all events, approval of a settlement after a certificate has been filed rests within the discretion of the Director or his designee.

The exception to the requirement that the Director or his designee must approve all settlements is a situation where the amount of the settlement is the same as the amount of the certificate and there is no other consideration offered. Fee Counsel may, without approval of the Director, accept such settlements on behalf of VDOT.

Normally, a recommendation for settlement originates with Fee Counsel after discussions with counsel for the landowner. The recommendation is submitted normally in writing although it may be presented verbally when time is of the essence. (If presented and approved verbally, a confirming email will be sent to Fee Counsel.)

In submitting a recommendation for settlement, counsel should specify the discrete amount and/or other consideration being recommended. It is not normally appropriate for counsel to recommend a "range" of amounts and fail to specify a specific amount

being recommended. In addition to the specific amount and/or other consideration being recommended, counsel must submit a written justification for the recommendation.

Settlement amounts recommended must be inclusive of interest, costs, fees, expenses, etc. If interest is included as a component of the settlement amount, the interest is not considered to be damages but, rather, income to the landowner. If interest is included in the settlement amount, its inclusion must be specifically justified.

While there is no "formula" for writing a settlement justification, nevertheless there are certain things that are a hallmark of a good justification. The justification should be an appropriate analysis of the relevant strengths and weaknesses of each sides' case and the evidence to be presented at trial. It should discuss any relevant factors that might have a bearing on a potential verdict (e.g. publicity, jury pool, prior experience, etc.) and the likelihood of that verdict being rendered. It should present the pros and cons of the specific amount and/or other consideration being recommended with specific reasons as to why the amount being recommended is the proper settlement.

In arriving at a settlement recommendation, counsel should also take into consideration: whether the recommended settlement is equitable vis à vis all of the other landowners on the project; is the settlement fair to the landowner, VDOT and the taxpayer's; and whether or not it sets a precedent for subsequent cases, and if so, what.

Once a settlement recommendation has been developed, counsel may submit it for approval to the Division following one of two methods: 1.) counsel may seek pre-approval of the settlement; or, 2.) counsel may seek approval of a contingent settlement. When seeking approval of a contingent settlement, counsel is obligated to advise landowner's counsel that the settlement being recommended is not final but, instead, is contingent on its being approved by the Director or his designee.

Pre-approval of a settlement means the settlement is approved in advance, sometimes even before it is discussed with landowner's counsel. Pre-approval allows counsel to make a firm commitment that the settlement is accepted. If pre-approval is sought, normally Staff Counsel and the EDC will be consulted for their recommendations.

No matter whether the settlement is pre-approved or submitted on a contingent basis, Fee Counsel prepares the Fee Counsel portion of the Right of Way form RW-33. If the settlement has been pre-approved, Fee Counsel should check the appropriate box on the form and attach the written approval (or confirmation) and the statement of justification. If not pre-approved, Fee Counsel should check the appropriate box and attach the statement of justification. If not pre-approved, counsel should ensure that landowner's counsel is made aware that Central Office approval is required before the settlement is final.

Once Fee Counsel has completed the RW-33 and attached all necessary documents, the original, signed RW-33 is sent to the appropriate Staff Counsel. A copy of the transmittal letter only (without attachments) is sent to the Acquisitions Manager.

After reviewing Fee Counsel's portion of the RW-33, Staff Counsel prepares the Staff Counsel portion of the RW-33. Staff Counsel may recommend approval or disapproval of the settlement and, if disapproval is recommended, should state the grounds for the negative recommendation. Staff Counsel then forwards both parts of the RW-33 with all attachments to the appropriate EDC. The EDC makes appropriate entries in RUMS and forwards all of the documents to the Acquisitions/Legal Section.

The Fee and Staff Counsel portions of the RW-33 for settlements in the exact amount of the certificate are required to be filed in accordance with the provisions of the following paragraph.

## 11.16 Processing Agreements After Certificate ("AAC")

An "Agreement After Certificate" (AAC) is an instrument executed by the landowner and the Director at any time after a certificate has been filed. It sets forth all of the terms and conditions of the settlement reached between the Department and the landowner with regard to the acquisition represented by the certificate.

Once signed by the landowner, the AAC is executed by the Director and no more than two (2) copies are returned to Fee Counsel – one (1) for landowner's counsel and one (1) to be filed with the court. If the court does not require that an original be filed with the Final Order, only one (1) copy will be returned to Fee Counsel. It is the responsibility of

the EDC to determine whether one (1) or two (2) copies of the AAC should be returned to Fee Counsel and to advise the Acquisitions/Legal Section accordingly.

Fee Counsel will draft the AAC and present it to the landowner's counsel for execution. When preparing an AAC, Fee Counsel may use an AAC Form made available by VDOT including one drafted for individual landowners (Right of Way form RW-14) or one drafted for execution by a membership organization (Right of Way form RW-22.) In certain circumstances, Fee Counsel may wish to draft an AAC without using an existing VDOT Form. In these circumstances, Fee Counsel should seek preapproval of its use through the EDC. The EDC will obtain a review of the document by Staff Counsel.

When the proposed terms of an AAC result in compensation that is equal to or less than the funds that are represented by the certificate, the Director's approval of the AAC is not required. In such cases, the authority has been delegated to Fee Counsel to settle the case without approval and to execute the AAC on behalf of the Commissioner.

In such cases, after the AAC is executed by the landowner, Fee Counsel should transmit two (2) original, executed copies of the AAC, Fee Counsel's portion of the RW-33 (with attachments, if any) and any other relevant documents (including, where appropriate the Final Order) to Staff Counsel. Staff Counsel will complete his/her portion of the RW-33 and send all of the documents to the EDC. The EDC will make the appropriate entries in RUMS and forward all of the documents to the Acquisitions/Legal Section for further processing.

If a Certificate of Deposit was filed and not drawn down, Fee Counsel will make arrangements with the EDC for the issuance of a check to the landowner. If a Certificate of Take was filed and drawn down, Fee Counsel will make arrangements with the landowner and the EDC for a refund to VDOT of the excess, if any.

When the settlement exceeds the amount of the certificate, Fee Counsel will proceed as described in the previous paragraphs except that the entire set of documents including the AAC executed by the landowner, Fee Counsel's portion of the RW-33 and all associated documents will be transmitted to Staff Counsel. Staff Counsel will transmit all of these documents along with Staff Counsel's portion of the RW-33 to the EDC. The EDC

will make the appropriate entries in RUMS and forward all of the documents to the Acquisitions/Legal Section for further processing. The Acquisitions/Legal Section will have the AAC signed by the Director (or designee), arrange for any necessary checks and, when the process is complete, forward the AAC signed by the Director (or designee) and any necessary checks to Fee Counsel.

## 11.17 Eminent Domain Coordinators Award Report (RW-27)

The EDC or his designee who attends the condemnation trial is responsible for completing and submitting to Staff Counsel and the Acquisitions Manager the Eminent Domain Coordinators Award Report (form RW-27.) This report is the first notice to the Central Office about the outcome of a trial.

The RW-27 must be submitted via email to Staff Counsel and the Acquisitions Manager not later than one (1) business day after the conclusion of the trial and announcement of the award. Paper copies of the report should be promptly sent subsequent to the email. The original, signed by the EDC or designee, should be sent to the Acquisitions Manager. If a designee has been appointed, it is the EDC's responsibility to ensure that the designee complies with these requirements.

## 11.18 Fee Counsel's Award Documentation (RW-32)

The individual Fee Counsel who serves as lead counsel for VDOT at the trial of a condemnation case is responsible for preparing and submitting the Award Documentation (form RW-32.) The Award Documentation is a more detailed description of the major events of trial and contains Fee Counsel' recommendations concerning filing exceptions, paying the award and filing an appeal.

It is critical that the form is prepared and the copy (signed by Fee Counsel) sent in *.pdf format to the appropriate Staff Counsel within one (1) business day after the award is announced. The original paper copy should be sent to Staff Counsel as soon after the email as possible.

The reason for this short deadline is the fact that pursuant to Virginia Code §25.1-233B, any exceptions must be filed with the court within ten (10) days. Approval for filing

exceptions rests with VDOT and the Attorney General's office and receipt of the information in the RW-32 is critical to making this decision.

Upon receipt of the emailed copy of the RW-32, Staff Counsel should immediately add his/her comments, sign the form and transmit it in*pdf format to the Acquisitions Manager with copies to the EDC, the Director and the Chief of the Transportation Section in the Attorney General's office. A decision will be made as to whether or not to follow Fee Counsel's (and/or Staff Counsel's) recommendations as to filing exceptions and noting an appeal. Staff and Fee Counsel will be notified of the decision and may be consulted during the decision making process.

Immediately upon receipt of the RW-32, the EDC will compare the information in the RW-27 with the information contained in the RW-32 and advise the Acquisitions Manager if there are discrepancies. If discrepancies exist, it is the responsibility of the EDC to get them resolved as soon as possible and report the resolution to the Acquisitions Manager.

## 11.19 Final Orders

After an AAC is executed by both parties or when an award is made, a Final Order must be entered by the court. The order typically recites (among other things) that a settlement has been reached or a verdict rendered, that the landowner is to be paid a specific amount of money (perhaps with interest), that indefeasible title is vested in the Commonwealth and the Commissioner and the Treasurer of Virginia are relieved from any further responsibility.

When Fee Counsel obtains a copy of the Final Order, a copy should be provided to the EDC. The EDC will make the appropriate entries concerning the Final Order in RUMS in the Legal tab. The EDC will provide a copy of the Final Order to the Reimbursements Section so that appropriate interest calculations can be made and checks ordered, if necessary, in cases where no appeal will be taken.

Checks made payable to satisfy an award or an AAC are sent to Fee Counsel for delivery to the court, the landowner or their counsel. For specific details about processing an AAC, see Section 11-16 of this Chapter.

## 11.20 Interest Calculation and AAC's

Under Virginia law, VDOT must pay a property owner statutory interest on any award in excess of the amount of the certificate and on any amount represented by the certificate that was not deposited with the Clerk when the certificate was filed. If a Certificate of Take was filed, any interest to which the landowner may be entitled (except on an award in excess of the certificate amount) must be paid by the Clerk of Court and VDOT is not responsible for any such interest.

If a landowner is entitled to statutory interest, the interest amount is calculated by the Reimbursements Section. Theirs is the only "official" interest calculation. In making their calculation of interest, typically they will allow some time between the issuance of the check and depositing the money with the court or paying it to the landowner.

Until all the necessary documentation is received by them, they cannot provide a precise interest calculation. They can only provide this information when they are prepared to order the check.

## 11.21 Checks Payable to Landowner's Counsel Only

The Department normally will not voluntarily agree to name a lawyer or law firm as the sole payee of a check arising out of an AAC or a court award. Normally, the check will be made payable to the landowner. Fee Counsel should resist having a court order payment to counsel only.

The Department will agree to make such a check payable jointly to the landowner and their counsel on the condition that the landowner executes a "Joint Payment Authorization." The form "Joint Payment Authorization" is available on the VDOT portal.

The Department does not object to delivering checks that satisfy an AAC or court award to landowner's counsel no matter who is shown as the named payee.

## 11.22 Appeals

Staff and Fee Counsel submit their recommendations as to whether or not to pay an award and file an appeal in the form of the RW-32. This is reviewed by the Director,

other members of the Division Staff and the Transportation Section in the Attorney General's Office. It is important that these recommendations be as clear and concise as possible. The recommendations should address the pros and cons of filing an appeal and all of the substantive legal issues. Counsel should identify the most important appeal points and all significant risks should be identified.

The Attorney General's Office in consultation with the Director make the decision as to whether or not to file an appeal. In addition, they decide whether VDOT will be represented by a member of the Attorney General's staff or Fee Counsel. If the decision is made to appeal, Fee Counsel will be notified and will be expected to file the notice within the prescribed statutory period.

When Fee Counsel learns that the property owner has filed an appeal, Fee Counsel will notify the Acquisitions Manager and Staff Counsel immediately via email. If possible, a copy of the Notice of Appeal should be attached to the email as a *.pdf document but the notification to VDOT should not be delayed while awaiting a copy of the Notice. The Acquisitions Manager will notify the Transportation Section and the Director promptly of the appeal.

## 11.23 Fee Counsel Invoices

Billing instructions are issued to all appointed Fee Counsel as an attachment to their appointment letters. Follow up instructions have and will be issued from time to time via email. Counsel are required to comply with these instructions in order to be paid.

Until an invoice is in full compliance with the instructions, they will not be processed for payment. The Eminent Domain Technician will note on the invoice that it is out of compliance, will contact the appropriate Billing Assistant and ask that the discrepancies be corrected and a corrected invoice submitted. Once a correct invoice has been received, it will be processed for payment in the normal manner and will not be given priority. If a firm repeatedly submits non-compliant invoices, the Technician will advise the Acquisitions Manager.

Significant billing instructions issued include the following:

- All invoices must be submitted as a *.pdf document via email to: RW.CounselBills@VDOT.Virginia.gov.
- The bills must include, as separate line items, all amounts billed by third parties (e.g. experts, guardian's ad litem, court reporters, etc.)
- The third party invoices must be attached in *.pdf format as backup documentation.
- The bills must be certified for payment by Fee Counsel.
- The bills must show: a unique identifying number; landowner name; and UPC, project and parcel number.
- A single bill must be submitted for each case.
- The minimum invoice amount we will process is $1,000 except for December bills.
- In December all counsel must "clear their books" and "zero their balances" by submitting invoices for any outstanding balance no matter how small. These will be paid in January, assuming there are no discrepancies.
- When the invoice covers the last services provided before Fee Counsel closes the case, the invoice should be specifically marked "Final Bill." Once paid, no additional payments will be made to Fee Counsel unless a specific exemption is granted by the Acquisitions Manager with the concurrence of the EDC and Staff Counsel and only for good cause shown.
- VDOT will issue one check in payment of each invoice to Fee Counsel's firm. It is Fee Counsel's responsibility to pay third parties.
- VDOT will only issue IRS Form 1099 to the law firms. They will be responsible for issuing 1099's to third parties, if necessary.

## 11.24 Eminent Domain Communications

All email communications involving condemnation matters or that are seeking or giving legal advice, where Fee Counsel or Staff Counsel are a recipient (To; CC; or BCC) or where Staff or Fee Counsel is the originator of the email (or the email is a reply to their email) should include the caption, "Subject To Attorney Client Privilege" in the subject line.

For reference purposes, all email or written communications (emails, letters or memoranda) dealing with a specific case or cases must include the following in the subject or reference line:

- State Project ID Number
- Universal Project Code (UPC)
- Parcel Number
- Landowner's Name

To the extent possible, the size of email communications should not exceed 500 kilobytes ("KB") including attachments. Space can be reserved on the VDOT portal for storage of large attachments. Also, large attachments can be compacted into a *.zip file and then attached to the email.

EDC's should develop their own system of storing relevant written communications on the VDOT Portal so that they are available to other members of the Eminent Domain Section and other Division staff in the EDC's absence and to reduce the storage space required on the network servers.

Once a case is assigned to Fee Counsel, their primary contact person within VDOT will be the Region's EDC. In most instances, the Region's EDC is Fee Counsel's initial contact for addressing any issues or concerns, authorizing settlements, hiring experts, approving mediation, etc. In some instances, it may be necessary to assign a case to a staff member other than the EDC. If so, the EDC will notify both Fee and Staff Counsel and the assigned staff member will assume the responsibilities of the EDC.

Fee Counsel and Staff Counsel should send copies of all substantive written correspondence including emails concerning the case to the assigned EDC or substitute staff member. In addition, if Fee Counsel or Staff Counsel is involved in a substantive telephone call regarding the case, they should either include the EDC in the call or provide the EDC with a brief synopsis of the call.

It is normally not necessary to include the Director, Acquisitions Manager or Staff Counsel as a recipient of a copy of routine communications relative to a specific case to or from

Fee Counsel. Sending such communications to the EDC is sufficient. The EDC has the responsibility for bringing such communications to the attention of Staff Counsel when appropriate in the EDC's judgment. However, where involvement of the Director, the Acquisitions Manager or Staff Counsel is required, there should be no hesitation to write them directly or include them on the list of persons to whom copies should be sent.

The purpose of these policies is to make sure that VDOT (normally through the EDC) is kept up to date on the status of important activities that transpire without the necessity for sending multiple copies of communications to others unless necessary. The intent is to reduce the number of copies being sent. Sending unnecessary copies increases the time allotted to handling, routing and filing such copies. The EDC has the primary responsibility of keeping Staff Counsel, the Director and the Acquisitions Manager appropriately advised of activities in connection with specific cases. With this as a guiding principle, all parties should use good judgment and common sense in deciding to whom to copies should be sent other than the EDC.

## 11.25 Meetings and Communications With Owners or Their Counsel After Fee Counsel Has Been Appointed

Once a Fee Counsel has been appointed, there should be no further communications (in person, written or oral) about the case with a landowner or their counsel by a VDOT representative (including the EDC) without the knowledge and permission of assigned Fee Counsel.

In the event a landowner or their counsel contacts a VDOT representative, the representative should politely advise them that once a lawyer has been appointed to represent VDOT, all further communications should be with our lawyer. They should then end the conversation and report the contact to Fee Counsel and the Acquisitions Manager.

If the contact is by the landowner and the VDOT representative knows that the landowner has a lawyer, the landowner should not only be advised that future communications should be through our Fee Counsel but they should also be advised to contact their own lawyer and have their lawyer make contact with counsel for VDOT. Except when permitted by the landowner's lawyer, VDOT representatives should not

speak with a landowner who is represented by counsel except to advise them to talk to their counsel.

If the landowner is represented by counsel and their lawyer is willing to allow communications with VDOT without landowner's counsel's involvement, before communicating directly with the landowner, the VDOT representative should get permission for such communications in writing from the landowner's counsel.

These same policies apply to meetings between VDOT representatives and landowners and/or their counsel. If Fee Counsel is willing to permit such communications or meetings without Fee Counsel's involvement, the VDOT representative should make certain whether the permission applies to a single conversation or meeting or is "blanket" permission.

# APPENDIX A

## RIGHT OF WAY DEFINITIONS

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

## A

**AAC** – Agreement After Certificate. This is a document executed by the landowner(s) and VDOT which contains the terms of the negotiated settlement of a condemnation case following the filing of a certificate, but prior to a verdict in the case.

**ABANDONMENT** - Cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes. (Sometimes called vacation.)

**ABSTRACT OF TITLE** - A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property, and all liens, charges, encumbrances, and releases.

**ACKNOWLEDGMENT** - The signatures to deeds and certain other writings must be acknowledged or "proved" by the makers of such instruments before a notary or other officer designated by law, or before witnesses. See "Recordation."

**ACQUISITION OR TAKING -** The process of obtaining right of way.

**ACQUISITIONS MANAGER** – The individual in the Central Office holding the title of State Acquisitions Manager and who has overall responsibility for the following sections and activities statewide: Acquisitions/Legal (including Special Negotiations and Relocation), Eminent Domain and Special Projects, Appraisals and employee training and certification.

**ACQUISITIONS/LEGAL SECTION –** As used in this Manual this refers to the Section in the Central Office that is responsible for negotiations, legal activities, special negotiations and relocation assistance. It is supervised by a Program Director.

**ADMINISTRATOR** - The one appointed by the Court to settle the affairs of a deceased person who left no will. Administrators cannot convey real estate (except an "administrator with the will annexed", who is appointed by the Court to carry out the provisions of a will after executors have died or been removed.)

**ADVERSE POSSESSION** - The occupancy or use of another's land, exclusive, continuous, hostile, open, and notorious, for the statutory period of fifteen years, east of the Allegheny Mountains, and ten years west thereof, so as to give complete title to the land to the adverse claimant. There can be, however, no adverse possession against public property.

**APPOINTMENT PACKAGE –** All of the documents that must be sent to Fee Counsel when they are appointed to represent VDOT in connection with an eminent domain case. As to each appointment, this includes at a minimum all appraisals or BAR's; the RW-24 Report; plans, profiles, cross sections (if appropriate) and plats, as applicable; all substantive written correspondence between the landowner and VDOT (including e-mails, if applicable); the Title Report and all updates; and the original, signed appointment document (RW-36.)

**APPRAISAL** - An estimate of the fair market value of the property supported by all available market data and all other pertinent facts as to the before and after values of the property. In essence, the appraisal may be defined as a written estimate of the market value of an adequately described property as of a specified date and is supported by the presentation and analysis of factual and relevant data.

**APPRAISAL SECTION** – The section in the Central Office that consists of the Chief Appraiser, the State Review Appraiser and an Appraisal Section assistant. This section is responsible for implementing and administering the appraisal and appraisal review program statewide.

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## B

**BAR** (**B**asic **A**dministration **R**eport) – The form used to record the relevant information used by an employee other than an appraiser to perform an uncomplicated valuation where the property is valued at less than $10,000 based on assessment records or other objective evidence with no incurable damages. Two formats have been developed for this purpose. One is used to develop a valuation for acquisition and the other is to develop a valuation for the sale of residue/surplus property.

**BUILDING** - Structures and other related items on the right of way, such as fences, gates, landscaping, etc., but does not include lawns, topsoil or signs.

**BUSINESS** - See Section 6.1.3 of this Manual.

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## C

**CERTIFICATE OF TITLE** - A document based on a title search stating that title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

**CERTIFICATE APPLICATION PACKAGE –** All of the documents needed by the Acquisitions/Legal Section in order to have a certificate issued and counsel appointed to represent VDOT when a negotiation has not been successful.

**COMMISSIONER, The –** When used in this Manual it refers to the Commissioner of the Virginia Department of Transportation (VDOT) also known as the Commissioner of Highways.

**COMPARABLE DWELLING UNIT** - See Section 6.1.3 of this Manual.

**CONDEMNATION** - The process by which property is acquired for public use through legal proceedings under power of eminent domain.

**CONSEQUENTIAL DAMAGES** - Loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

**CONSULTANT CONTRACTING SECTION –** This section in the Central Office is responsible for soliciting bids and proposals for services for the Right of Way and Utilities Division or its regional or district offices. In addition to drafting the Requests for Proposal ("RFP"), the Consultant Contracting Section evaluates the responses and selects the successful submission. Where appropriate the consultants may perform or coordinate the performance on behalf of the Division.

**CONTRIBUTE MATERIALLY** - See Section 6.1.3 of this Manual.

**CONVEYANCE** - A written instrument by which a title, estate, or interest in property is transferred.

**COTENANCY** - The undivided right to possession by one or more persons but without the right of survivorship.

**CURTESY** - That portion of, or interest in, the real estate of a deceased wife which the law gives for life to her widower. Curtesy rights in a parcel of land may be released by having the husband join with his wife in the execution of a deed.

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## D

**DECENT, SAFE & SANITARY** - See Section 6.1.3 of this Manual.

**DEED** - A sealed instrument in writing, duly executed and delivered, providing for the transfer and conveyance of real estate.

**DEED OF TRUST** - A deed conveying real estate in trust to secure a debt.

**DEDICATION** - The setting apart by the owner and acceptance by the public of property for highway use, in accordance with statutory or common law provisions.

**DEPARTMENT, The –** As used in this Manual, it refers to the Virginia Department of Transportation or VDOT.

**DIRECT COMPENSATION** - Payment for land or interest in land and improvements actually acquired for highway purposes. (Sometimes called direct damages.)

**DIRECTOR, The** – As used in this Manual it refers to the Director of the Right of Way and Utilities Division. He is the Division Administrator and has overall responsibility for the right of way and the utility functions throughout VDOT.

**DISCLAIMER** – A written declaration that the landowner(s) has no interest or rights with regard to a specified item affixed to their property.

**DISPLACED PERSON** - See Section 6.1.3

**DIVISION, The –** As used in this Manual, it refers to the Right of Way and Utilities Division within VDOT.

**DONATION** - The voluntary conveyance of private property to public ownership and use, without compensation to the owner.

**DOWER** - That portion of, or interest in, the real estate of a deceased husband, which the law gives for life to his widow. Dower rights in a parcel of land may be released by having the wife join with her husband in the execution of a deed.

**DRAINAGE EASEMENT** - An easement for directing the flow of water.

**DRAW DOWN ORDER –** This is an order entered by a court that allows a landowner to obtain the funds specified in a certificate before there has been a trial to determine "just compensation."

**DWELLING** - See Section 6.1.3 of this Manual.

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## E

**EASEMENT -** A right acquired by public authority to use or control property for a designated highway purpose.

**EDC --** Eminent Domain Coordinator. There is one coordinator for each region. They are responsible for providing advice to Fee Counsel on VDOT policies and procedures, maintaining liaison with Staff and Fee Counsel, testifying as a fact witness at condemnation trials and other duties associated with eminent domain matters.

**EMINENT DOMAIN SECTION** – The section in the Central Office responsible for all support functions for eminent domain cases. There is an Eminent Domain Coordinator for each Region. In addition, there is an eminent domain technical support group and an eminent domain invoice processing group. The Section reports to the Program Manager – Eminent Domain and Special Projects who, in turn, reports to the State Acquisitions Manager.

**EMINENT DOMAIN** - The power to take private property for public use after paying just compensation therefore.

**EXECUTOR** - The one appointed by a testator to carry out the provisions of his/her will. An executor may not convey real estate belonging to the testator unless the will so provides.

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## F

**FAIR MARKET VALUE**- The price which one, under no compulsion, is willing to take for property which he/she has for sale, and for which another, under no compulsion being desirous and able to buy, is willing to pay for the property.

**FAMILY –** See Section 6.1.3 of this Manual.

**FARM OPERATION** - See Section 6.1.3. of this Manual.

**FEE COUNSEL –** These are Virginia attorneys in private law practice who are selected and appointed by the Attorney General to represent VDOT in eminent domain cases and other types of litigation as assigned. In some instances, these attorneys have agreed and have been authorized to perform title examinations upon specific request from VDOT.

**FEE SIMPLE** - An estate or ownership of land, without any limitation as to class of heirs or restriction as to right to dispose of same. There exists, in other countries, an estate of "Fee Tail", and land so owned is said to be "entailed", i.e., can only be disposed of to a certain class of heirs; such as, one's oldest son, etc. Entailed land cannot exist in the United States, so fee simple is often spoken of as merely "Fee".

**FINANCIAL MEANS** - See Section 6.1.3.

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## G

**GENERAL BENEFIT** - Advantage accruing from a given highway improvement to a community as a whole, applying to all property similarly situated.

**GRANTEE** - One to whom a grant or conveyance is made.

**GRANTOR** - One by whom a grant or conveyance is made.

**GUARANTEED TITLE** - A title, the validity of which is insured by an abstract, title, or indemnity company. (Sometimes called insured title.)

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## H

**HIGHEST AND BEST USE** - The most productive use, reasonable but not speculative or conjectural, to which property may be put in the near future.

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## I

**INCIDENTAL EXPENSES** - Closing and other costs incidental to the purchase of a replacement dwelling.

**INCREASED INTEREST PAYMENT –** See Section 6.1.3

**INFANT** - A person under 18 years of age.

**INITIATION OF NEGOTIATIONS FOR A PARCEL** - The date the Department makes the first personal contact with the owner of a parcel or property to be acquired or his designated representative where price is discussed.

**INVERSE CONDEMNATION -** The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his property as a result of a highway improvement.

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## J

**JOINT TENANCY** - An estate held by two or more persons jointly with an equal right in both or all to enjoy the same during their lifetimes. Joint tenancy is created by the taking of identical interests acquired simultaneously in the same property from the same source and by the same conveyance. At common law where joint tenancy existed, the surviving tenant acquired the whole of the realty owned. The common law survivorship arrangement between joint tenants has been superseded by statute in Virginia and a conveyance to two or more persons as joint tenants creates a tenancy without survivorship unless the intention to create survivorship is expressed on the face of the granting instrument. Where the intention to create survivorship is not expressed upon the death of an owner, their interest passes to their heirs or devisees.

**JUST COMPENSATION** - A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes. It includes not only the fair market value of the "highest and best use" of the land taken but also any damages (or enhancements) to the remainder caused by the taking and reimbursements for "costs to cure" items.

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## L

**LIMITED ACCESS LINE** – A line bordering highway right of way along which the right of ingress and egress from abutting property is denied. (see Code of Virginia Sections 33.1-57and 33.1-58)

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## M

**MARK** - A person who cannot write his name may execute a deed or other writing by making, before a witness, a character which is usually a cross mark, which should be identified by a

witness. Such a person may also execute a deed or other writing by touching the wrist or hand of another while the latter signs the name of the former.

**MORTGAGE** - Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property together with the credit instruments, if any, secured thereby.

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## N

**NEGOTIATION** - The process by which property is sought to be acquired for highway purposes through discussion conference, and final agreement upon the terms of a voluntary transfer of such property.

**NON-PROFIT ORGANIZATION** - an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

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## O

**OPTION** - A written agreement granting a privilege to acquire property or interest therein at a fixed price within a specified period.

**OWNER** - See Section 6.1.3 of this Manual.

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# P

**PARCEL** - A unit of land not separated by any other ownership, either private or public and to which a single tax map number is assigned. If the land on both sides of a highway is in the same ownership and both sides have the same tax map number, they will both be assigned the same parcel number. If they have separate tax map numbers then each must be assigned a different parcel number.

**PARCEL PLAT** - A map of a single parcel of property or portion thereof needed for highway purposes, showing the boundaries, areas, the remainder improvements, access, ownership, and other pertinent information.

**PARTIAL TAKING** - The acquisition of a portion of a parcel of property.

**PERSON** - See Section 6.1.3 of this Manual.

**PLANTING EASEMENT** - An easement for reshaping roadside areas and establishing, maintaining and controlling plant growth thereon.

**POWER OF ATTORNEY** - The authority one person may give another to sign a deed or other writing and/or to conduct certain business matters. This authority must be given in writing.

**PRESCRIPTION** - Establishment of a claim of title to an easement over the lands of another by use and enjoyment for a period of twenty years. Adverse, notorious, exclusive, and uninterrupted use of such a right or easement for such period results in a presumption that there has been a grant of such easement.

**PROPERTY MANAGEMENT SECTION –** The section in the Central Office responsible for managing surplus and residue properties including the sale, lease or exchange of such properties. This section also performs all of the activities required by the Division in connection with additions, abandonments and changes in limited access.

**PROJECT MANAGER, the VDOT** – When used in this Manual it refers to the person assigned to manage a project from the preliminary engineering stage to the construction stage. Normally the VDOT Project Manager is assigned to the Location and Design Division or to the local Project Management Office, if one exists.

**PROJECT SCHEDULING AND CERTIFICATION SECTION –** The Section in the Central Office Right of Way and Utilities Division that is responsible for issuing the Notice To Proceed and certifying a project as being ready for advertisement from the right of way standpoint.

**PURCHASE SUPPLEMENT** – See Section 6.1.3 of this Manual.

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## Q

**QUITCLAIM DEED** - An instrument by which any right, title, interest or claim which one person may have in or to an estate held by himself or another, is released, relinquished or conveyed to another. No warranty of any kind is made as to the title of the land or interest so released or conveyed.

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## R

**RECORDATION** - Every contract or conveyance in respect to real estate is void as to subsequent purchases unless it has been acknowledged by or proved as to the signer and duly recorded in the county or city wherein the land affected lies.

**REGIONAL MANAGER –** The Manager of the Right of Way Section for one of the three (3) right of way regions: Northeast; Southeast; or Western. Has day-to-day responsibility for all acquisition functions within their region.

**REIMBURSEMENT SECTION –** The Section in the Central Office Right of Way and Utilities Division that is responsible for processing select vouchers and check requests in support of the Regional Offices and the activities of the Central Office. This Section reports to the Program Manager for Administration and Consultant Coordination. They do not process invoices from Fee Counsel. That function is performed by the Eminent Domain Section.

**RELEASE** - Land conveyed or bound under a Deed of Trust (q.v.) remains, generally, so bound until evidence of the satisfaction of the debt has been noted on the margin of the page of the Deed Book wherein the Deed of Trust is recorded, or until same has been released by deed. The beneficiary as well as the trustees must join in the execution of a deed releasing land previously conveyed in trust.

**REMAINDER** - The portion of a parcel retained by the owner after a part of such parcel has been acquired.

**REMNANT** - A remainder so small or irregular that it usually has little or no economic value to the owner.

**RENT SUPPLEMENT** – See Section 6.1.3

**RESIDUE** – A remainder (see above) which VDOT has discretionary authorization by statute to purchase by either agreement or eminent domain.

**RETENTION VALUE** - Value established on the basis of supportable comparable values through an analysis of previous public sales in similar areas and should be the highest price expected to be received on a building if it were retained by the owner.

**RIGHT OF ACCESS** - The right of ingress to a highway from abutting land and egress from a highway to abutting land.

**RIGHT OF ENTRY** – Right granted by the landowner to permit VDOT or its agents to enter upon a property to perform certain work prior to the acquisition of the proposed right of way or easement.

**RIGHT OF IMMEDIATE POSSESSION** - The right to occupy property for highway purposes, after preliminary steps for acquisition have been taken and before final settlement.

**RIGHT OF SURVEY ENTRY AND INVESTIGATION** - The right to enter property temporarily to make surveys and investigations for proposed highway improvements.

**RIGHT OF WAY** - A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

**RIGHT OF WAY ESTIMATE** - An approximation of the market value of property including damages, if any, in advance of an appraisal.

**RIGHT OF WAY STRIP MAP** - A plan of a highway improvement showing its relation to adjacent property, the parcels or portions thereof needed for highway purposes, and other pertinent information.

**RIPARIAN RIGHTS** - The rights of a person owning land bordering on a stream or other body of water in or to its banks, bed, or waters. Title to the beds of tidal, navigable waters lies in the Commonwealth, private property lines ending at the ordinary low-water mark, but the riparian owner may erect and maintain wharves, piers, and bulkheads beyond the low-water mark, subject to regulations imposed by law. The bed of a non-navigable stream belongs to the owners of the land through which it flows.

**ROADSIDE CONTROL** - The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve the attractiveness of the landscape.

**ROADSIDE ZONING** - The application of zoning for roadside control.

**RUMS –** The **(R)** ight of Way and **(U)** tilities **(M)** anagement **(S)** ystem which is a computerized system and accompanying data base in which information relevant to all acquisition and property management activities is stored and from which it is retrievable by any user with access to the system.

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## S

**SCENIC EASEMENT** - An easement for conservation and development of roadside views and natural features.

**SETBACK LINE** - A line outside the right of way, established by public authority, on the highway side of which the erection of buildings or other permanent improvements is controlled.

**SEVERANCE DAMAGES** - Loss in value of the remainder of a parcel resulting from an acquisition. (Sometimes called Indirect Damages.)

**SIGHT LINE EASEMENT** - An easement for maintaining or improving the sight distance.

**SLOPE EASEMENT** – A permanent easement for cuts or fills.

**SMALL BUSINESS** - See Section 6.1.3 of this Manual.

**SPECIAL BENEFIT** - Advantage accruing from a given highway improvement to a specific property and not to others generally.

**SPECIAL NEGOTIATIONS SECTION –** This section is part of the Acquisitions/Legal Section and reports to its Program Manager. Special Negotiations is responsible for negotiating acquisitions from "special" clients such as federal and state agencies, the National Park Service, the various branches of the armed forces, railroads, quasi governmental authorities (e.g. the Washington Metropolitan Transit Authority) and in many cases public utilities.

**STAFF COUNSEL –** An attorney, licensed to practice law in Virginia, who is a member of the Right of Way and Utilities Division Staff, reporting to the State Acquisitions Manager. In addition, they are formally appointed by the Virginia Attorney General as an Assistant or Senior Assistant Attorney General.

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# T

**TENANTS BY THE ENTIRETIES** - In Virginia today, a husband and wife can own real property either as tenants in common, joint tenants, or as tenants by the entireties. A tenancy by the entireties is characterized by the ownership of one piece of property by husband and wife who hold as one person. A tenancy by the entireties can exist only between a husband and wife. The law fictionally treats the husband and wife as one person. However, a tenancy by entireties between a husband wife exists only when it manifestly appears on the face of the granting instrument that a tenancy by the entireties is intended. Where a tenancy by the entireties does exist, neither the husband nor wife can sell their interest without the consent of the other. The property cannot be reached by a creditor unless the creditor is the creditor of both the husband and wife.

**TENANCY IN COMMON** - The holding of an estate in land by several persons, by several and distinct titles, but by unity of possession. It is immaterial, for the purpose of creating a tenancy in common, whether the owners obtain their titles simultaneously or from the same person, but since they hold separate interests they need not have equal interests in the property. Each tenant in common is thereby the owner of an undivided share of the whole, and remains a tenant in common until he conveys or alienates his undivided share or until his share is given him by partition. When a tenancy in common estate has been created there is not any right of survivorship. Upon the death of a tenant in common his interest passes to his heirs or devisees rather than to the surviving co-tenants.

**TITLE** - The evidence of a person's right to property or the right itself.

**TITLE OPINION** - An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

**TITLE SEARCH** - An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.

**TORRENS TITLE** - A certificate of title issued by a public authority, under a system wherein all deeds and documents affecting real property must be recorded in the appropriate court clerk's office in order to have legal validity and enforceability.

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## U

**UNIFORM ACT, The -** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly referred to as the Uniform Act, is a Federal law that was passed by Congress in 1970. The objective of the Uniform Act is to provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced by a public project that is Federally-funded. The implementing regulations of the Uniform Act are found in 49 CFR, Part 24.

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## V

**VACATION** - Cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes. (Sometimes called abandonment.)

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## W

**WARRANTY DEED** - A deed containing covenants by the grantor, for himself and his heirs, to the grantee and his heirs, to warrant and defend the title and possession of the estate conveyed.

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## Z

**ZONING** - The division of an area into districts and the public regulation of the character and intensity of use of the land and improvements thereon.

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# APPENDIX B

# EXPENDITURE CODES

## Introduction

Listed below are the activity codes for right of way expenditures including the purchase of areas required for borrow or disposal. These activity codes are used only when work is performed on a job having an assigned project number that has been properly authorized. All charges made to such projects are to be properly coded before being submitted to the Central Office.

Please note: Capital Outlay, Slide and Bridge Replacement projects require a different activity code scheme.

## Code Number Format

**6XX** **Federal Aid Projects**

**7XX** **State funded projects**

## Code Numbers

**606 – 706** **Advance Right of Way Work Prior to Right of Way Acquisition.**

Include the following activities: preliminary engineering for utilities; plan or plat preparation for individual parcels; title examinations; right of way studies such as comparable sales etc. for use in preparing an appraisal brochure. Other studies needed to complete the acquisition process; replacement housing market and relocation assistance studies as may be needed. Actual appraisals of properties where the necessity for the take has been established. This activity is also used to charge salaries and associated expenses of the Fiscal Division's External Audit Section employees while performing Pre-Award Audit Evaluations, Interim Audits, and Final Audits.

**621 – 721** **Staff Appraising:**

Preparation ad updating of staff appraisals only.

**622 –722** **Fee Appraising:**

Preparation and updating of fee appraisals only.

**623 – 723** **Court Testimony by Staff Appraisers:**

Court and pre-trial conference work by staff appraisers only.

**624 – 724** **Court Testimony by Fee Appraisers:**

Court and pre-trial conference work by fee appraisers only.

**625 – 725** **Appraisal Review:**

Review of all appraisals, whether staff or fee prepared.

**N/A – 729** **Right of Way Educational Courses:**

Departmental educational and training courses relating to right of way activities such as appraising, negotiating etc.

**652 – 752** **Staff Attorneys:**

Salaries and expenses of staff attorneys for title examinations, closing deeds, condemnation cases, etc.

**653 – 753** **Fee Attorney:**

Payments to fee attorneys for work on projects in connection with right of way acquisition, i.e., title examinations, closing deeds, conducting condemnation cases, etc. (exclude specific performance).

**654 - 754** **Incidental Legal Payments:**

Court costs, costs of securing demonstrative evidence (expert witness—use account code 1261), recording fees, court reporter fees, notary fees, and attorney's out of pocket expenditures.

**655 – 755** **Relocation Advisory Assistance:**

Work of Department employees and the services of other public agencies or private contractors in providing relocation advisory assistance.

**656 – 756** **Relocation of Utilities:**

Moving utilities and providing required easements.

**657 – 757 Preliminary Utility Relocation Engineering:**

Work performed prior to issuance of relocation authorization by:

a) Department employees in securing and reviewing relocation plans, estimates and agreements.

b) Utility companies in providing relocation plans, estimates, and agreements.

c) This activity is also used to charge salaries and associated expenses of the Fiscal Division's External Audit Section employees, while performing Pre-Award Audit Evaluations, Interim Audits and Final Audits.

**658 – 758 Construction Utility Relocation Engineering:**

Work performed after issuance of relocation authorization or award of contract by:

a) Department employees inspecting facility relocation or performing other work incidental to the relocation, including processing utility billings.

b) Utility companies in providing engineering services incidental to the relocation.

c) This activity is also used to charge salaries and associated expenses of the Fiscal Division's External Audit Section employees while performing Pre-Award Audit Evaluations, Interim Audits and Final Audits.

**659 – 759 Right of Way Engineering:**

Salaries and expenses incurred in connection with work incidental to the appraising (securing estimates and/or permits) or negotiating processes, posting of individual parcel acquisition status to a computerized data sheet, and the disposal of surplus property. (Includes consultant contracting charges.)

**661 – 761 Purchase of Land:**

Land and other elements of value, including shrubs; flowers; trees; sidewalks; paved or gravel drives; acquisition of fencing; purchase or loss of water supply, including wells, springs, cisterns, ponds, and water lines; permanent drainage easements; and temporary construction easements.

**664 – 764 Advertising Rights:**

Payment to landowner for loss of advertising rights.

**665 – 765 Damage:**

The loss in value of the remainder of a parcel resulting from an acquisition; cost to cure/replace septic system or water supply; cost of to replace (survey) pins; crop damages...the loss of value of a crop at the time of acquisition-not maturity value; consequential damages...the loss in value of a parcel, no portion of which is acquired; cost to cure to relocate or replace fencing; adjustment of existing fence by State or landowner.

**668 – 768 Purchase of Buildings:**

Buildings acquired in whole or part, regardless of final disposition, including all incidental cost to demolition or resale, and any proceeds therefrom.

**672 – 772 Advertising Signs (Relocation or Purchase):**

Allowance for relocation or purchase of advertising signs located within the rights of way or signs that are non-conforming.

**674 – 774 Incidental Work Under Agreement:**

Incidental work called for in right of way option agreement and chargeable to right of way acquisition but not includable in other activities. Payments to persons other than landowner for sewer or water connection fees, well drilling, stump grinding, and other special services.

**676 – 776 Underground Utilities:**

To be utilized with construction projects involving additional cost to adjust utilities underground on projects requested by cities and municipalities.

**677 – 777 Interest:**

Interest on drawdowns or condemnation awards.

**678 – 778 Highway Right of Way Negotiating (Staff):**

Work of Department employees in negotiating for the purchase of property (includes court testimony).

**691 – 791 Moving Personal Property:**

Allowance made to families, individuals, businesses, farm operations, and non-profit organizations (owners and tenants) for moving personal property from land purchased.

**694 – 794** **Replacement Housing Payments:**

Allowance made to owners ($22,500) and tenants ($5,250) to obtain decent, safe, and sanitary replacement housing.

**696 – 796** **Incidental Transfer Expenses:**

Reimbursement to the owner for reasonable and necessary expenses incurred in transferring property to the State, such as penalty costs for prepayment of mortgages, pro-rated portion of prepaid property taxes etc.

**697 – 797** **Housing of Last Resort:**

Cost necessary to provide comparable replacement housing to owner and tenant displacees.

**699 –799** **Functional Replacement of Real Property:**

The present cost of replacing the improvement and/or site with one having the same utility and usefulness in accordance with present day requirements.