

Real Property Appraisal* Section Of the Right of Way Manual

(Revised as of January 2019)

* Definition of Appraisal

In 49 CFR Part 24.2(a)(3): A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

In Alabama Code 34-27A-2: The act or process of developing an opinion of value of real property; of or pertaining to appraising real property and related functions such as appraisal practice or appraisal services.

I. 2019 CHANGES TO MANUAL:

The more significant changes are; a rewriting of the Forward noting the re-labeling of this document to be one of five sections of the Right of Way Manual.

Note: All referenced forms are available for downloading and review on the Intranet and/or internet for ALDOT employees and all referenced forms, not restricted to employee use only, are available on the Internet for non-employees.

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III. Foreword

The purpose of the appraisal section is to provide information and guidance to Right of Way personnel, so, they may better serve the public by performing their responsibilities at a consistently high level. The information included has been assembled for the convenience and guidance of staff employees.

The purpose of this publication is to standardize procedures and thereby assure uniform right of way appraisal practices and procedures in the five (5) Regions and Central Office which comprise ALDOT, as well as, local public agencies. The section should be carefully studied and followed by all personnel dealing with these functions. Real property appraisers who contract with the Alabama Department of Transportation to appraise rights of way may also benefit from this manual section. The Right of Way Manual includes five sections. The other sections are; Administrative, Negotiation, Relocation, and Property Management.

“The Uniform Act, provides important protections and assistance for people affected by Federally funded projects. This law was enacted by Congress to ensure, on projects receiving federal funds, that people whose real property is acquired, or who move, will be treated fairly and equitably and will receive assistance in moving from the property they occupy.”¹ Compliance with the federal regulations, as well as the laws of the State of Alabama, is required.

There is no single operation within a right of way acquisition program that is more important to its success than the appraisal/appraisal review of needed tracts of real property. For any tract requiring an appraisal, it is necessary that the approved offer is based on a well documented, factual, and complete report prepared by a qualified and competent real property appraiser. It is equally important that the appraisal report, once submitted, be subjected to a review by a qualified and competent review appraiser who is objective, fair, and complete.

IV. Purpose of Appraisal Reports and Just Compensation

State law requires payment for the taking of private property for public use and the case law handed down by our Supreme Court indicates that this payment should be based on fair market value.

Appraisals are for developing an opinion of value without regard to race, color, religion, sex, or national origin, of what is being acquired as part of a project, based on a Before valuation and an After valuation. it is ALDOT's mission to pay the owner the full they are entitled to under the law and to avoid over-payment or under-payment.

There are many definitions of market value but the one which is generally acceptable under Alabama law and which will be required for use in real property appraisals of rights of way for acquisition or disposal purposes on behalf of ALDOT, is described as follows: “the price the property would bring when offered for sale by a willing seller who is not forced to sell and which is sought by a willing buyer who is not required to buy, after due consideration of all the elements affecting value”. Code of Alabama §18-1A-172

¹ Quote from www.fhwa.dot.gov/real_estate/uniform_act

The appraisal report submitted from a fee appraiser or staff appraiser is not the only determining factor in the amount of money to be offered to a property owner. These reports serve only as a guide to Department personnel in determining the amount of the offer based on all information at their disposal. The amount of the offer in most cases will be in the amount of an appraisal report, but, since it is possible for appraisal to include calculation error(s), items not compensable under the law, or conflicting methodology and principles, it is necessary that the approved offer be based on a reviewed appraisal.

Establishment and offer of just compensation

According to 49 CFR 24.102 (d); Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

V. Conflict of Interest

According to 49 CFR 24 (n):

- 1) the appraiser, and review appraiser, shall not have any interest, direct or indirect, in the real property being valued for the Department that would in any way conflict, or in any way give the appearance of a conflict or bias, with the preparation or review of the appraisal; Compensation for making an appraisal shall not be based on the amount of the valuation estimate;
- 2) No person shall attempt to unduly influence or coerce an appraiser or review appraiser regarding any valuation or other aspect of an appraisal, appraisal review (i.e., they shall not be supervised or formally evaluated by the person functioning as a negotiator for the subject appraised/valued property, except that the FHWA may waive this requirement if it determines that it would create a hardship for the Department);
- 3) an appraiser, or review appraiser making an appraisal, or appraisal review may be authorized to act as a negotiator for real property for which that person has made an appraisal, or appraisal review only if the offer to acquire the property is \$10,000, or less.

VI. Types of Valuation Reports

The Alabama Department of Transportation requires the use of Form Appraisals provided by the Department. However, in certain cases we may allow the use of different type form appraisal reports (minerals, timber, etc.).

The formerly approved 'waiver valuation' format, for state employees has been discontinued due to conflicts with state law. The value finding report format will be used (by state employees only) for non-complex, low dollar amount valuations. *Please note; **Minimum Payments** are discussed under the review section of this document because it is an adaptation of the valuation results of one of the following.*

The different type form appraisals utilized by the Department are as follows:

A. Value Finding Appraisal (Download current form(s) from the ALDOT Intranet website, available for employee use only):

A Value Finding Appraisal is to cover tracts on which there is no damage to the remainder or minimum damage which can be measured by cost to cure. Additionally, the value of the taking must not exceed \$35,000. As support for land values, reference may be made to applicable comparable sales in the files or appraised values on other specific tracts on the same project.

We do not foresee value-finding appraisals being used to any great extent on improved properties. However, should they be prepared on improved properties, the value of the improvements will be supported by an attachment showing the source of the unit values and the method of arriving at depreciation.

Cost to cure items will be supported in the same manner. An Appraisal Certification such as is used in the Standard Form Appraisal should be completed and attached to the Value Finding Appraisal.

It is the Department policy that this type report be prepared by staff employees only. It is the intent of the Department that Value Finding Appraisals be prepared by staff review appraisers only after the completion of the review and approval of the more complicated tracts on the project.

It is also the intent of the Department that all tracts with takings estimated to be less than \$35,000 be appraised by Staff personnel.

B. Partial Appraisal (Download current form(s) from the ALDOT Internet website): A Partial Appraisal covers tracts in which improvements exist on the property, but in the appraiser's opinion, are so far removed from the area of acquisition that their value remains constant in both the "Before" and "After" situation. The appraiser utilizes the Standard Form Appraisal format completing only those areas required to support the valuation of the land and any affected improvements. This type report may be prepared by staff or fee appraisers. Note; the permitted use of the "partial" appraisal format is a cost savings procedure which is intended to result in lowering appraisal fees by the appraiser not having to include unaffected improvements which are considered to contribute a constant value before and after a proposed acquisition for highway construction purposes. *Whenever a partial appraisal is a possibility, a fee for a complete appraisal must be provided by the appraiser when quoting the assignment as well; so, ALDOT can decide which one to engage.* The proper use of this permitted procedure should in no way impact on the amount of money due the property owner as "just compensation" for the proposed acquisition from his/her property

C. Complete Appraisal (Download current form(s) from the ALDOT Internet website): This is the Department's standard form appraisal required for eminent domain proceedings. The appraiser must address the total valuation of the property and all improvements if a total acquisition, and in both the "Before" and "After" situation if a partial acquisition. In a partial acquisition, the value of the acquisition is the difference between the "Before" appraised value and the "After" appraised value. This type of report may be prepared by staff and fee appraisers.

(**Note**; the term ‘complete’ is used above in the context of what is required for eminent domain proceedings; USPAP has removed the self-contained, summary and restricted report labels and now have Appraisal Report and Restricted Appraisal Report. The restricted appraisal format is not applicable in assignments for ALDOT by fee appraisers.

VII. This Section Reserved for Future Use

VIII. Master Section

In those cases, in which an appraiser signs a contract for the furnishing of a number of reports, (2 or more), a Master File Report (see ALDOT Internet downloads Rpt-8) may be prepared and submitted with an original and two copies along with the completed reports. The use of a master file allows the appraiser to save time and money by omitting the need to replicate data common to all or multiple reports in his/her assignment. The Department benefits with reduced appraisal costs and reductions in required file space. The provided Master Section Form Appraisal Package contains the following forms and sections: 1) letter of transmittal; 2) market area analysis; 3) time adjustment discussion & support; 4) optional summary tabulation sheets for sales/rental comparables; 5) area/location maps; 6) individual write-up forms for market sales/rental comparables; 7) appraiser qualification/contingent & limiting condition guides; and 8) index for attachments. This provided form package provides the appraiser with a method to submit general market and project data in an organized and systematic presentation.

The appraiser shall provide support for the change in value due to market conditions (time). When market indices are used, local people who have knowledge of the real estate market should be contacted and identified by name to verify local conditions. It should be remembered that for any given period of time, the values of different type properties (i.e., agricultural, residential, etc.) may fluctuate at different rates due to specific market conditions. When this is the case, sufficient documentation, as outlined above, should be included for the different positive or negative market conditions applied to each type of property.

All comparable sales and rentals shall be furnished with an original and one copy utilizing the forms provided by the Department, each with an adequately described & dated color photograph of the comparable (***no black & white copies will be accepted***). The viewer should be able to comprehend the camera angle and identify each improvement or important feature of the property being depicted. It is suggested that all sales of similar properties (i.e., agricultural, residential, commercial, rental, etc.) be grouped together for easy reference. All sales should fall within a five (5) year time frame from the date of valuation in the appraisal report. All comparable sales must be appropriately verified by the grantor, grantee, closing attorney, or broker of record. Also, each sale should be individually numbered for identification & location purposes (maps).

IX. Qualifications of Appraisers

A. FEE APPRAISERS

To be eligible to contract as a fee real property appraiser for the Alabama Department of Transportation, the applicant must be a State of Alabama Certified General or Residential Real Property Appraiser.

The fee appraiser's certification must allow the appraiser to perform a complete appraisal of the total before value of the subject property.

Note: All fee appraisers are required to be able to write a narrative-type appraisal report which is well supported and based on sound appraisal techniques and practices with the ability to competently represent the State in condemnation proceedings. Fee appraisers are employed based on qualifications submitted at the time they make application for employment. When an appraiser's qualifications are found to be acceptable a Master Agreement with the Department is executed for real property appraisal services on a statewide basis.

B. STAFF APPRAISERS

A staff appraiser may be considered qualified based on being a State of Alabama Certified General or Residential Real Property Appraiser. A certified staff appraiser must comply with the certification they hold along with all ALDOT policies for the certification type.

Staff appraisers are not required to be certified, but are required to meet the following minimum qualifications:

- A. Be twenty-one years of age or over.
- B. Be a graduate of an accredited four-year college or university with a major in real estate, finance, accounting, business, building science, construction management, engineering, or a related field.
- C. Have successfully completed Appraisal Institute Courses Appraisal Principles & Appraisal Procedures, 15-Hour USPAP, or equivalent courses, supplemented by two years of actual appraisal experience.

X. Agreement for Real Property Appraisal Services

A. Master Agreement (Form A-1)

This is an agreement form (contract for services) used by the Alabama Department of Transportation in obtaining the services (statewide) of real property fee appraisers. The Master agreement form must be executed by the appraiser and the State Chief Appraiser who, after reviewing and executing the agreement, forwards it for the approval of the State Right of Way Engineer, the Transportation Director, and the Governor. The original is retained in the Central office for use in making payments and for future work assignments.

This form sets out in detail what real property appraisal services will be provided, the methodology/techniques to be used, the appraiser's commitment to keep the appraisal information confidential, the total amount that may be paid the appraiser under the agreement, the amount of the per diem fee for court testimony and preparatory conferences and several other items.

The appraiser will be compensated for the appraisal assignment as follows. The appraiser will receive a 65% payment upon the completion and delivery of the appraisal(s). The payment for the remaining 35% is made upon the delivery of supplemental information, if any, or at the end of a 60-day period. If supplemental information has been requested by ALDOT during the 60-day period, the appraiser shall not be paid the remaining 35% until the delivery of this supplemental information.

It is strongly recommended that every fee appraiser thoroughly familiarize themselves with the detailed requirements of this agreement prior to executing same. ***Of note, appraisals are required to be submitted within 20 days of the date of value.***

Note: Master Agreements (Over \$1,500.00) must be approved by a Legislative Contract Review Oversight Committee prior to being executed by the Governor. Current Department policy limits the length of these contracts to two (2) years duration. Also, master agreements over \$50,000 must have adequate supporting data for justification.

B. Work Authorization Order (WAO) – (Form A-2)

Actual project/tract work assignments are attained by the execution of Work Authorization Orders from the various Regions and/or Central Office of the Department and require the approval of the State Transportation Director. A work authorization order is on the intranet site under Appraisal/Review In-House Forms and Manual (WAO Form). The WAO sets out the project number, the specific tracts, the type report to be prepared for each tract (i.e. partial or complete), particular Scope of Work notes per tract, any additional fees for providing complete reports, the total fees per the specific agreement, the number of days which the appraiser has to complete the reports, the number of days the appraiser has to respond to any supplemental questioning, and the specific tracts. Before contacting any appraisers, the Region appraisal personnel will make recommendations and receive approval from the State Chief Appraiser on the appraiser(s) to be contacted and the tracts to be quoted. The Central Office shall consider all the appraisers current and potential commitments to ALDOT statewide in making assignments.

Page-2 of the WAO details the scope of work for each tract such as; what approaches to value will be used, what tracts with structures to be acquired do not require an on-site meeting, etc. ***Note; all tracts which have acquired structures require the on-site meeting, unless it has been pre-determined which specific tracts will not require such and it is noted on this 2nd page under scope (per tract).***

The Scope of Work is developed between ALDOT and the appraiser for each tract/assignment. Regional personnel and the State Chief Appraiser will determine a preliminary Scope of Work before contacting an appraiser. Additional input from the appraiser is appropriate and will be considered. The final scope is to be determined by the department and approved by the State Chief Appraiser.

The Region will obtain appraisal fee quotes, for each tract the appraiser is asked to quote, based on the preliminary scope of work; the Region will submit all fees, along with any suggested changes to the scope of work, for approval from the State Chief Appraiser prior to submitting the WAO.

When a fee appraiser is requested to submit a written proposal to appraise certain right of way tracts, that appraiser should quote a firm fee based on the scope for the appraisal on each tract. Whenever a fee for a partial report is provided on a tract, a fee for a complete report should also be provided (so the Central Office can decide if a complete would better serve the Department's needs). The appraiser shall be told during this process which tracts will require a meeting with our Relocation personnel. Prior to submitting his/her proposal, the appraiser should consider the same items as listed above which were considered by Region Personnel in estimating the probable fees. The Region appraisal personnel will contact the State Chief Appraiser to discuss the fees and obtain approval prior to submitting

them on the work authorization order (WAO) form. The subsequently approved fee(s) will be submitted on the WAO form with all appropriate signatures.

The per diem fee for conference and court work will be based on the appraiser's current certification type. This fee will be determined in advance and included in the Master Agreement for Appraisal Services between the Alabama Department of Transportation and the individual appraiser from whom the proposal is obtained. At present, the per diem is \$600/day for residential certification and \$800/day for general certification. These fees will be reviewed periodically and adjusted as needed. Note: If an appraiser's certification changes during the life of his/her master agreement; and an authorized per diem service covered by said agreement is subsequently provided; the per diem fee of the revised (current) certification will be applicable.

The Department stresses the necessity for the appraiser to be fully aware of the time limits contained in the agreement and the submittal of the appraisals and any supplemental responses within that time limit. Failure to comply with these limits could subject the work authorization order and/or master agreement to cancellation. Further, in addition to quality of work product, compliance with stated time limits will weigh heavily in the consideration for future assignments.

When an appraiser determines that an assignment cannot be completed on time, he/she must provide the appropriate Region with a written request (an email is acceptable) for an extension setting forth the reasons for failing to comply with his/her work authorization order. This request must be received in the Region at least ten (10) working days prior to the due date in the agreement. The Region will immediately forward this letter along with their written recommendation to the State Chief Appraiser. A request for extension shall in no way be construed to guarantee an extension will be granted. If no extension is approved, the appraiser remains bound to the terms of his/her work authorization order/master agreement.

Important Note: When an appraiser is granted a contract extension, he/she will not be approved for new assignments until the project assignment under the extension and any other currently running assignments are submitted in acceptable form and within the stated time lines of the applicable work authorization orders.

Acceptance of the assignment(s) is acceptance of the scope, forms, terms and conditions as stated in the Master Agreement.

XI. Letter-Type Agreement – (Form - A-3)

In special cases, the Alabama Department of Transportation uses a short-form agreement commonly known as the letter-type contract, an example of which is shown in the Downloads (Form A-3). This type agreement can be utilized for specialty reports such as timber cruises, sign estimates, and other miscellaneous cost estimates which would not typically warrant the use of a master agreement. Current Department policy limits the time to one (1) year and total amount allowable under this type agreement to \$1,500.00. The letter-type agreement can be approved by the Director and does not have to go before the Legislative Contract Review Oversight Committee. Note: Any agreement over \$1,500.00 must go before the above-mentioned oversight committee.

XII. Estimating Appraisal Fees for Project Cost Estimates

The Region's experience and any other available information should be considered in arriving at appraisal fees for cost estimates. A qualified Region employee (Real Property Valuation Analyst or Right of Way Specialist w/Appraisal Training) should visit the project site to identify the valuation problem and estimate a reasonable fee per parcel. The estimate is to be made prior to the request for authorization or submission of the Budget Allotment Request and submitted to the Central Office. Prior to submitting these estimated fees, they are to be discussed with the Chief Appraiser or one of his/her assistants. This estimate shall be retained in the Region and Central Office files for comparison with the actual fees submitted with each appraiser's proposal. In arriving at these estimated appraisal fees, consideration should be given to:

- A. The complexity of the appraisal or other work to be undertaken and the skills necessary to provide such services.
- B. The number of parcels normally included in an assignment.
- C. The amount of information and data provided fee personnel by the Alabama Department of Transportation, and the extent of information that must be developed by the appraiser.
- D. The time which the appraiser could reasonably be expected to spend in the preparation of the appraisal and the distance which the appraiser will likely be required to travel.
- E. The time which can be expected to be allowed for the completion of an assignment.
- F. Any necessary fees, which the appraiser may need to pay for specialized services/reports such as engineering estimates, cost to cure estimates, timber cruise reports, architectural fees, etc.

XIII. Appraisal Information Privileged Matter

The appraisal report is not to be; shown to, quoted to, read to, permit to be read by, loaned to, or in any way divulged to any person other than an authorized employee of the Alabama Department of Transportation. The appraisal report is to be regarded as a confidential communication within the Department for use of the Alabama Department of Transportation and its attorneys. From a legal viewpoint, the purpose of the appraisal report is for the State's use in connection with the justification of the State's estimate of just compensation arising out of the property acquisition by the Alabama Department of Transportation for highway purposes. Appraisal reports, therefore, must be confidential within the Department but this should not be construed to mean that review of such reports should be denied authorized personnel of the Federal Highway Administration where federal participation in costs is to be requested. Highway plans and right of way maps furnished by the Department to fee appraisers should also be treated as confidential matter. Plans shown to the public should be stamped "Preliminary-Subject to Change." It has always been ALDOT policy to avoid giving this type information to any party other than Department employees until all land necessary for a project has been acquired. Occasionally, real estate speculators, or other parties with commercial interests, come into possession of this information at an early date and all fee appraisers should be advised that we will anticipate that they will not furnish such information, show it to, or discuss it with any unauthorized persons. The release of such information is a violation of the appraiser's master agreement. At times, our appraisers are requested by the property owner or by the owner's attorney to divulge information of a confidential nature. We have had occasions in the past where some owners' attorneys have attempted to get such data through discovery proceedings in courts. Such efforts should be resisted, and the appraiser should promptly advise the Region Right of Way Manager when

such an attempt is made. § 18-1A-130 (Alabama Eminent Domain Code) dealing with discovery & pretrial conferences, precludes either party in a condemnation action from obtaining a written valuation report of the other party via reference to the Alabama Rules of Civil Procedure. The Region Right of Way Manager or the right of way representative should obtain legal advice for the appraiser either from the Special Assistant Attorney General assigned to the project or from the Department's Legal Counsel should any question arise concerning requests for confidential information/data. ***Under no circumstance will the fee appraiser, a Department employee or representative, or the State's legal counsel willingly surrender this type information to the owner or his attorney unless legally required to do so and approval is received from the State Right of Way Bureau Chief.***

XIV. Independent Opinions of Value

In assignments where more than one appraiser is assigned to one tract, the Alabama Department of Transportation anticipates and will require that separate and independent opinion of value be rendered by each of the employed appraisers. It is not acceptable practice for two or more of the State's appraisers to collaborate in arriving at the opinion of value. Otherwise, they have destroyed the very purpose for which several appraisals were required.

XV. Conduct of Real Property Appraiser

The appraiser whether staff appraiser or fee appraiser, is a representative of the Alabama Department of Transportation. Good public relations, therefore, dictate that the appraiser must be courteous and considerate in contacts with all property owners and/or their representatives. It will be a requirement that in every case the appraiser will make it a point to discuss each subject property with the owner or the owner's representative so that the owner will have the opportunity to point out any elements of value which he/she considers pertinent or any special features of the property which he/she thinks are exceptional. The appraiser shall include documentation in the transmittal letter to indicate the date of and extent of the contact with the owner. *The owner or a representative shall be given the opportunity to inspect the property with the appraiser. All efforts to contact the owner shall be documented; if unable to make contact, a certified letter is required to be sent and a copy of the document showing receipt of the certified letter shall be included in the Addenda of the report.* The appraiser should keep in mind that the atmosphere created in dealing with the property owner(s) sets the stage for subsequent contacts by negotiators and other personnel of the Department who will be transacting additional right of way related business with the same person(s).

Under no circumstances is the appraiser to reveal or express an opinion to the owner or occupant or their respective representatives relative to values established for this or any other property being appraised for the Alabama Department of Transportation. The contracted appraiser must personally perform, be responsible for and certify to the following requirements:

- The appraiser of record made owner contact and performed a personal inspection of the subject property. If structures are acquired or affected, both interior and exterior inspections are required.
- The appraiser shall field inspect all comparable sales relied on in the report.
- Right-of-way acquisition limits are to be visually inspected on the ground and the effects personally noted by the appraiser of record.

- An appraiser may seek assistance from fellow appraisers, associates, engineers, or other professionals. Significant professional assistance must be acknowledged in preparing both the Master File and the individual appraisal report. The appraiser contracting with the Alabama Department of Transportation accepts the full responsibility for the Master File and each submitted appraisal report.
- Staff and fee appraisers shall disqualify themselves from appraising properties where there is a personal or business relationship with any interest in the property to be appraised.

XVI. Number of Appraisals

It is the normal procedure of the Department to obtain at least one appraisal on each tract of needed right of way. Where the value of the acquisition can reasonably be expected to be greater than \$350,000.00, whether a total or partial acquisition; two (2) appraisals will be obtained (except as follows). In some cases, where the complexity of the appraisal problem justifies, it will be necessary to obtain a second appraisal regardless of the amount of compensation indicated; additionally, in situations where the appraisal problem is less complex, only one report may be needed (this will require approval of the Right of Way Bureau Chief). In some unusual cases, it may become necessary to obtain a third or fourth appraisal. It is recommended that on projects having complex properties and/or having a large number of tracts, that more than one appraiser be assigned to do work on the project. The time consumed in the appraisal phase is thereby reduced. Also, this permits comparative studies of the several reports by the reviewing appraiser.

It is important to note that a required second appraisal on the same property shall be separate and fully independent in calculation, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer. The appraisers and their employees and all Region staff are responsible for maintaining this policy.

Requirements governing the appraisal of real property for Federal and Federally-assisted projects are set by 49 CFR Part 24.103.

XVII. Staff Appraisals

Staff appraisals will conform to the same requirements as those for fee appraisers. In the selection of a person to prepare a staff appraisal, which exceeds the Value Finding Appraisal limitations, consideration should be given to the designated person's ability and qualifications. No staff appraiser shall be assigned, to perform a secondary report, who cannot reasonably be expected to provide the State with expert testimony during any possible future litigation.

XVIII. Assignment of the Real Property Appraiser

When work has been authorized on a project, the Central Office will contact the Region Engineer, or Region personnel assigned this duty, and ask for a recommendation on the use of staff or certified fee appraisers, along with a list of suggested tracts to be assigned to each. The State's Central Office Right of Way Bureau will maintain in CPMS a list of approved real property appraisers with valid Master Agreements available to provide real property appraisal services to the Department. Minority appraisers will be given equal consideration. Appraisers will be selected without regard to race, color, religion, sex, or national origin.

In the selection of a fee appraiser for an assignment, consideration should be given to the appraiser's experience and qualifications to provide an adequate appraisal based on the complexity of the appraisal problem, the value of the property to be appraised prior to the acquisition, and his/her ability to testify as an expert witness in the event that the required right of way has to be acquired by condemnation.

In other words, the appraisal assignment will be based on the fee appraiser having the proper experience, qualifications, and certification to perform an appraisal of the total property, including all improvements, in the "Before" situation. No fee appraiser shall be assigned, whether performing the sole or a secondary report, who cannot reasonably be expected to provide the State with expert testimony during any possible litigation. The selection of fee appraisers will be discussed with and approved by the State Chief Appraiser or his/her assistant in the Central Office (Right of Way Bureau) prior to determining a prospective appraiser's availability; specific elements of the Scope of Work for each tract will also be discussed and approved concurrently. The Department shall make all reasonable effort to contract with qualified local fee appraisers throughout the state. Upon determining an appraiser's availability for assignment, a proposed fee will be obtained in writing by the Region Right of Way Manager or Region personnel assigned this duty, covering each tract, which is to be assigned to the appraiser. *Whenever a partial appraisal is a possibility, a fee for a complete appraisal must be provided as well; so, ALDOT can decide which one to accept.* If these fees compare favorably with the estimated appraisal fees on the project, they are to be submitted to the State Chief Appraiser for approval. If not, the Region Right of Way Manager is to request the appraiser to consider revising the fee. If agreement on the fee amount cannot be reached, the Region Right of Way Manager the State Chief Appraiser to obtain a proposal from another appraiser.

Once the fees are found acceptable, the State Chief Appraiser will request the Region to prepare a work authorization order (WAO) as an addendum to the appraiser's existing Master agreement.

The WAO discussed in more detail under X., Agreement for Real Property Appraisal Services, identifies the real property appraisal services to be provided and spells out the fees for tract on a specific project and assignment. It must be executed by the appraiser, Region Engineer, State Chief Appraiser, Right of Way Bureau Chief, and the Transportation Director. **The fee appraiser should await notification of the approval of a Work Authorization Order before proceeding with the work which it covers.**

In making appraisal assignments, the State Chief Appraiser shall exercise caution in selecting the number of tracts to be handled by any one appraiser. Consideration must be given to the ability of the individual assigned to complete the work within the time limit specified., Region personnel shall remind the fee appraiser to consider their workload with other clients in committing to firm delivery date(s) with ALDOT.

It is important that the person making the assignment to the fee appraiser make clear the basis of the assignment, which in practically every case will be to develop an opinion of value based on the fair market value of the total property before the acquisition minus the fair market value of the remainder. Any need for a relocation estimate from the appraiser for structures located within the required right of way limits should be made known to the appraiser at the time of the assignment and should also be made a part of the work authorization order. All pertinent data, when available, shall be furnished the appraiser at

the time the assignment is made. The appraiser can download templates of the Department's Appraisal forms from the ALDOT website ([Forms](#)). Other data typically provided each appraiser includes; designated legal descriptions and name of record owners, rights being appraised, a copy of the right of way map, project plans, description of taking, and a property plat or sketch. **However, it is incumbent upon the appraiser to verify (through public records) current owner(s), property size, etc. as part of regular due diligence expected by other clients of appraisal services.** There will be occasions when the appraiser, in evaluating partial takings, will need detailed information as to where the right of way line bisects a given lot and the improvements on the lot. It may be necessary, for the Region office to arrange to have the lot staked to clearly show the location of the right of way line. Every effort to furnish this assistance to the appraiser should be made as promptly as possible.

Region/Area personnel shall not instruct any appraiser to stop or hold-up on completing an assignment without written approval from the State (Central Office) Chief Appraiser. Any extension of the agreed upon delivery date must be requested in writing and approved ten (10) business days prior to the due date.

Each assigned appraiser should be familiar with and understand that under Alabama law special benefits to a remainder parcel may be used in offsetting the value of the part taken as well as damages to the remainder. The appraiser should also be familiar with all other aspects of the laws of eminent domain. Special benefits in some cases may exceed the value of the part taken plus damages to the remainder. Accordingly, compensation due the owner in some cases may be zero dollars. Before each assignment, appraisers should be reminded to refer to PDF document A-18, Instructions for Forms & Report, which in its Addenda includes instructions relative to the Department's policies and/or procedures affecting the handling of various items that may be encountered in the preparation of requested appraisal reports. Such instruction should cover only the proper handling of items and should not be concerned with monetary values. Items of personalty not to be appraised should also be discussed with the appraiser.

XIX. Reserved for Future Use

XX. The Appraisal Process

When a specific property is within the proposed right of way of a planned highway project the extent of the proposed acquisition must be determined. If the property is wholly within the right of way limits, the taking will be identified as a "total taking / acquisition". In this situation, all the real property (land & buildings) in the ownership will be acquired or "taken". Personal property such as furniture, tools, equipment, machinery, and inventory, is not normally acquired. If only a portion of the property lies within the proposed right of way limits, the taking will be identified as a "partial taking / acquisition". In this situation, the part of the property to be acquired will be a portion or part of a larger parcel generally referred to as the "parent parcel". That part of the larger parcel (parent parcel) which is outside of the proposed acquisition area and not acquired is known as a "remainder" in the after taking situation.

A. Market Value Defined

The Alabama Eminent Domain Code (Sec. 18-1A-172) states as follows:

The fair market value as used in this chapter shall be defined as the price the property would bring when offered for sale by a willing seller who is not forced to sell, and which is sought by a willing buyer who is not required to buy, after due consideration of all the elements affecting value. (Acts 1985, No. 85-548, p. 802, § 1003.)

B. Data on Whole Property

The initial step in the appraisal process should be to clearly determine the legal description of the property and in turn the size and location of the subject project. This information will be furnished the appraiser by the State (the appraiser is to verify its accuracy). The neighborhood or area analysis should be sufficient to establish the environment and characteristics of the parcel being appraised. The highest and best use of the subject property, both “as vacant” and “as improved” must be analyzed and determined so that the extent of this designated usage is clear beyond a reasonable doubt, considering those uses which are physically possible, legally permissible, economically feasible and maximally productive. An explanation must be given if the highest and best use premise used is different from the present use of the property. The standards for the highest and best use analysis of remainders are the same as for the total property before the acquisition.

C. Highest and Best Use

The Dictionary of Real Estate Appraisal by the Appraisal Institute defines highest and best use as “the reasonable and probable use that supports the highest present value of vacant land or improved property as defined, as of the date of the appraisal.” The determination of highest and best use is one of the most important considerations in the appraisal process. The appraiser is required to consider all potential uses for the property and justify his conclusions in both the Before and After analyses. The highest and best use as though vacant and improved is required to meet the following criteria: The highest and best use must be legally permissible, physically possible, and financially feasible. The highest and best use of the subject property, both “as vacant” and “as improved” must be analyzed and determined so that the extent of this designated usage is clear beyond a reasonable doubt, considering those uses which are physically possible, legally permissible, economically feasible and maximally productive.

D. Determination of the Larger Parcel (Parent Parcel) – Excerpts from The Uniform Appraisal Standards For Federal Land Acquisitions (UASFLA)

The Dictionary of Real Estate Appraisal defines the larger parcel as follows:

“In condemnation, unity of ownership, contiguity, and unity of use, are the three conditions that establish the larger parcel for the consideration of severance damages in most states. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use.”

E. Criteria for Appraisals

The report or reports shall, in form and substance, conform to recognized appraisal principles and practice in accordance with existing State law and the real property acquisition appraisal requirements for Federal and federally-assisted programs as described in §24.103(a) of title 49, Code of Federal Regulations.

These requirements are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). Compliance with both USPAP and the requirements for Federal and federally-assisted programs may be achieved by using the *Supplemental Standards Rule* and the *Jurisdictional Exception Rule* of USPAP where applicable. Each submitted appraisal report shall contain, as a minimum, the below listed five (5) requirements.

- 1) An adequate description of the physical characteristics of the property being appraised (and in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
- 2) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
- 3) Photographs and a description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- 4) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- 5) The effective date of valuation, date of appraisal, signature, and the ALDOT certification of the appraiser form.

F. Scope of Work

"Scope of Work" defines the general parameters of the appraisal and should reflect the needs of the Department and the requirements of Federal and federally assisted program appraisal practice. Each report shall have an Appraiser's Scope of Work which mirrors the Scope of Work statement form the WAO, and what is the mutually expected outcome of the assignment/agreement.

Accordingly, the Scope of Work statement is to be developed with input from both the agency (ALDOT) and the appraiser. Scope of Work can be described as "the type and extent of research and analysis in an assignment" and includes, but, is not limited to: the extent to which the property is identified; the extent to which tangible property is inspected; type and extent of data researched, and the type and extent of analysis applied to arrive at opinions or conclusions.

The purpose and/or function of the report, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal should also be included and discussed. It should also consider the specific requirements in 49 CFR 24.103 (a) (i) through (v) and address them as appropriate (see above Appraisal Criteria).

The Scope of Work development will begin when appraisal fees are requested, and assignments are made. As the assignment progresses, issues may arise warranting a change in the scope. Any change in scope requires appraiser discussion with ALDOT

appraisal and all assignment/scope changes must be approved by the State Chief Appraiser. All assignment changes must be in writing, prior to completion of the appraisal. *Note; a significant change in scope may warrant a change in the appraisal fee as well.*

G. Market Data (Sales Comparison) Approach

In the market data approach to value, the appraiser considers sales and other market data of comparable or nearly comparable properties, adjusting for significant differences between the property being appraised and the comparable properties. Since most users of appraisal services expect the sales comparison approach to be a primary approach to value, ALDOT has the same expectation. The courts generally recognize the best evidence of just compensation is like and comparable sales within a reasonable time preceding the condemnation.

The appraiser is required to include the information set forth in the State's appraisal forms for each pertinent comparable sale used. The appraiser is also required to include an original photograph and the date each sale was inspected. By analyzing these sales, the appraiser can more nearly estimate the price that the subject property could be sold for by a willing seller to a willing buyer at the date of the appraisal. The use of this approach to value requires the assembly of data concerning sales of properties in the area and weighing and examining points of differences or similarity. The appraiser shall include a statement setting forth the analysis and reasoning for each item of adjustment to comparable sales. This method of determining value is widely accepted by the courts as an indication of the value of real estate and experience has proven that good comparable sales information has been extremely helpful in court since jurors readily understand and accept appraised values when shown known sales of similar property in the immediate area.

H. Income Capitalization Approach to Value

This approach to the value opinion, sometimes called the capitalization approach, assumes that the value of the property tends to be set by the amount of the future net income that a typical, well-informed purchaser would expect the property to produce during its remaining economic life (and/or holding period). The amount of the net income produced in the past is unimportant except insofar as it may serve as a guide in the estimation of the probable amount of future income. It may be well to remember that a real estate appraisal is made on the real property involved, and not on the business itself. This approach is a capitalization or discounting process, i.e., finding the value by capitalizing one year's income or discounted present value of future cash-flows. Where it is determined that the economic rental income is different from the existing or contract income, the increase or decrease shall be explained and supported by market information. Documentation to support the income, expenses, interest rate, remaining economic life and capitalization rate and/or discount rate must be included.

I. Cost Approach to Value

The cost approach to value will generally substantiate the theory or assumption that the replacement cost of land and improvements sets the upper limit of value. Because the cost approach is generally considered by the courts as the least reliable method of valuation, it should not be relied on over another approach to value for the sole reason of assigning value to different improvements in partial acquisitions. In calculations concerning the determination of replacement costs, it should be emphasized to the appraiser that

dimensions of the various improvements should be accurately determined and that the unit of replacement cost established by the appraiser should be a figure that is current and in line with construction costs in the area in which the appraisal is being made, and should be substantiated by reference to cost manuals or local builders. The appraiser should provide sufficient information to enable the reviewing appraiser to replicate the cost figures. The difference in replacement cost new and the value of the existing improvement is called accrued depreciation. This is a deduction from the cost of replacement new at the date of the appraisal. It is the difference between replacement cost of the improvements at the date of the appraisal and the value of the improvements as of that date. The total of accrued depreciation may be due to physical depreciation, functional obsolescence, or economic depreciation, or any combination of the three. The depreciated values of all improvements should then be added to the land value as developed from the market data approach, land residual techniques, or other acceptable appraisal approaches to the value of land, as appropriate.

The terms “replacement” and “reproduction” costs are often confused and used interchangeably. The replacement cost, as used on ALDOT’s forms, is the current cost of replacing the improvement using modern material and standard, but, has the same utility as the improvements being appraised. The reproduction cost is the current cost of producing an exact replica of the improvement.

Entrepreneurial incentive represents the incentive that is necessary for a developer to undertake the risk associated with real estate development. Many appraisers are currently adding entrepreneurial incentive in addition to the *Marshall and Swift* cost figures. Entrepreneurial incentive should be considered by the appraiser in a cost estimate, but it should be extracted from the market. Entrepreneurial incentive is market sensitive and varies with changes in the economic conditions.

The validity of the cost approach to value is related to the simple theory of substitution in that normally an intelligent, informed buyer, acting without necessity, will not pay more for any parcel of real estate than it would normally cost to replace it. For existing improvements, accurate estimation of accrued depreciation is crucial and market extraction is recommended. If Marshall & Swift or other age-life tables are relied on, the effective age should be derived from similar market comparables.

J. Correlation of Approaches

The final step in the appraisal process is the correlation of the three approaches to value arrived at by the market data, income and cost approaches. In correlating the approaches, the appraiser considers the purpose of the appraisals, the type of property, and the adequacy of the available data used in processing the answer for each approach. The reliability of the data on hand and the purpose of the appraisal will influence the weight to be given to each approach in the correlation procedure. In any event, the appraiser should not make three opinions of value an average by dividing their sum by three. The conclusion of value derived should be both understandable and convincing and tabulated to show the allocation between land and major improvements. Should the three approaches indicate highly divergent estimates of value, it is very probable that the appraiser has erred in the analysis and this result should prompt the appraiser to review each approach to eliminate any error or oversight. In case all three approaches to value were not used, the appraiser shall state why any approaches not used were not applicable.

K. Evaluation of a Partial Taking

Alabama is a strict "Before and After" law (Federal Rule) state which permits benefits to the remainder of the property to be used in offsetting the value of the part taken as well as any damage to the remainder parcel.

Because of this, it is necessary in the appraisal of a partial taking to make two appraisals, that is, one in which the appraiser arrives at the total before value, and a second where the value of the remainder parcel(s) with the highway project in place. It is important for the process to be two appraisals within one report; Alabama is not a 'part taken' state. The compensation due is then the difference between these two opinions of value and shall be broken down between land, improvements, damages and/or benefits to the remainder.

In estimating the value of the remainder parcel(s), the appraiser, unless otherwise given specific instructions, should base the value opinion on the "value in exchange" concept rather than a "value in use" concept. In other words, the appraiser should estimate the value of remainders on the value under highest and best use if sold on the open market, rather than on the value to the present owner or under the present use. It is important to note; the property owner is not to be penalized by the appraiser increasing the unit value of the remainder due solely to a reduced size if the highest and best use does not change to a higher-density use.

A common distortion of the After analysis is undue consideration to 'what is taken' rather than 'what remains'. The premise of the After analysis is the Hypothetical Condition - the project is completed, and the typical buyer only sees what remains. (See the last paragraph in the next section.)

L. Damages and Benefits

Damages

According to *Alabama's Eminent Domain Code Section 18-1A-22(c)*,

In the preparation of the appraisal, the appraiser should fully cover the basis for estimating any compensable damages which is felt, will accrue to a remainder parcel due to a highway project. This decrease in the value of the remainder is usually referred to as severance damage. Damage to the remaining property can be classified as either as curable or incurable. Damages should not be 100%.

When the damage is considered curable, a cost to cure the damage should be proposed in the appraisal. Some cost to cures may alleviate all damages to the remainder while others may only partially alleviate damages and additional severance damages may be in order. The cost-to-cure analysis should include the following steps: identify and analyze the damages, estimate the value of these damages, compare cured situation with elements paid for in acquisition, and allocation of value between value of property acquired and necessary cost to cure damages.

General Benefits

There are two classifications of benefits: general and special benefits. In eminent domain acquisitions, general benefits are those which result from the enjoyment of the public facility and general prosperity to the area at large, or the area at or near the project. General benefits cannot offset against compensation to the property owner.

Special Benefits

According to *Alabama's Eminent Domain Code Section 18-1A-22(c)*, "The amount of compensation to which the owners and other parties interested therein are entitled must not be reduced or diminished because of any incidental benefits which may accrue to them or to their remaining lands in consequence of the uses to which the lands to be taken or in which the easement is to be acquired will be appropriated; provided, that in the condemnation of lands for ways and rights-of-way for public highways, water or sewer lines, the commissioners may, in fixing the amount of compensation to be awarded the owner for lands taken for this use, take into consideration the value of the enhancement to the remaining lands of such owner that such highway, water or sewer lines may cause; and provided further, that in proceedings instituted by water conservancy districts and water management districts, benefits accruing to the landowner from an improvement may be considered and allowed as a offset against the damages to be awarded, but benefits derived from improvements other than the improvement for which the land is condemned cannot be considered."

Special benefits, like damages, relate only to partial acquisitions. Special benefits, as used herein, are defined as the beneficial factors that occur from a public improvement for which private property has been acquired in eminent domain. As stated in *Section 18-1A-170*, Alabama has a "before and after" law where special benefits can offset the item acquired or damaged by the acquisition. Special benefits, like damages, cannot be speculative or conjectural. For a special benefit, to be considered at all, it must not be as remote or speculative as to be incapable of a reasonably accurate monetary measurement. The special benefit must affect the parcel of land from which the acquisition was made. The appraiser must provide market evidence and appraisal report documentation that is extensive and convincing.

It is ALDOT's policy that special benefits are not to accrue solely to a reduction in size of the remaining property. This policy is based on our interpretation of the Code of Alabama Section 18-1A-171 that states, "The amount of compensation to which the owner and other parties interested therein are entitled must not be reduced or diminished because of incidental benefits which may accrue to them or to their remaining land in consequence of the uses to which the lands to be taken or in which the easement is to be acquired will be appropriated." Any value increases due merely to a size reduction of the remainder is considered an incidental benefit.

XXI. Appraisal Review

All types of real property appraisal reports relied on in determining offers of just compensation for needed rights of way, or fair market value for disposal of excess rights of way, must be reviewed before the initiation of negotiations. A qualified review appraiser shall examine the presentation and analysis of market information in all submitted appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a) (3) and criteria for appraisals found in 49 CFR 24.103 and other applicable requirements, including, to the extent applicable, the UASFLA (the Uniform Appraisal Standards for Federal Land

Acquisitions; aka Yellow Book), and support the appraiser's opinion of value. *In 49 CFR 24.104(a) the review appraiser at each level of the review process is given three (3) options (required actions) in reporting his review: 1) report not accepted; 2) report accepted; or 3) report recommended with necessary corrections and revisions.*

After the submission of the appraisal report(s) to a Region Office, it will be the responsibility of Region Personnel to make the initial review(s). Even when a project and/or some of the tracts can be approved at the Region level; copies of all related documents/reports will be sent to the Central Office. This includes Master Files as well and the report copies are required to be original copies (with color images, not black & white). With rare exception, contracted and staff prepared real property appraisal reports will be submitted to a Region Right of Way Office.

Personnel assigned to the review function should have (or gain as part of the review) knowledge of the local real estate market and neighborhoods as well as market land values, elements of improvement costs, and whether affected items are compensable under Alabama law and Federal Regulations.

Qualifications -Review appraisers are staff appraisers that have qualifications commensurate with the appraisal scope of work for each tract assignment. Review Appraisers are preferably classified as 1) ROW Appraiser or 2) ROW Appraiser Senior or 3) Right of Way Manager. Other qualified (by training and experience) staff personnel in the various right of way sections with classification as 1) ROW Coordinator or 2) ROW Coordinator Senior may also be assigned review appraiser status for work commensurate with their appraisal qualifications. This includes RPVA and Sr. RPVA temporarily until there are no state employees in these terminated classifications. Staff personnel assigned to review complete before and after appraisals of commercial/industrial and the more complicated properties must have successfully completed Appraisal Institute courses; Appraisal Principles, Appraisal Procedures, Basic Income Capitalization (Parts 1 & 2), Advanced Income Capitalization, the 15-Hour USPAP, or their college level equivalents. Staff personnel assigned to review residential, vacant lots, or other less complicated property types must have successfully completed Appraisal Institute Courses Appraisal Principles and Appraisal Procedures, the 15-Hour USPAP, or their college level equivalents.

Staff appraisal review personnel who hold state certifications, must comply with the parameters of their certification. Certified residential appraisers can appraise (review) 1 to 4 residential units without regard to transaction value or complexity and appraisals of other types of real estate having a transaction value of less than \$250,000. Certified general appraisers can appraise (review) all types of real estate regardless of complexity or transaction value. The transaction value is the Before value, not the difference between the Before and After values.

Conflict of Interest - In accordance with 49 CFR Part 24, §24.102(n) & §24.102(n)(2) (3): review appraisers

- 1) Shall not have any interest in the appraised property;
- 2) Shall not be subject to influence or coercion regarding valuation;
- 3) May be authorized to act as a negotiator where valuation role is for acquisitions less than \$10,000.00; & shall not be supervised or formally evaluated by the person functioning as a negotiator for the appraised property.

A. Technical Reviews- All reviews for ALDOT are, technical because they are always considering value and therefore are not administrative looking only at format, so the inclusion of the term technical is not necessary. The review is performed by an appraiser in accordance with ALDOT's policies, the *Eminent Domain Code of Alabama*, federal regulations, and *Standard 3 of USPAP*.

If the employee is a licensed or certified appraiser, they are to indicate these designations in the review. Employee's holding state certifications are bound by the rules and limitations of the certification along with compliance with ALDOT's policy in performing reviews.

Examples of technical reviews are as follows:

1. The reviewer forms an opinion of value regarding the analyses of the market information, opinions, and conclusion in the report.
2. The reviewer reaches a conclusion regarding whether to recommend approval, disapprove, or modify the conclusions presented in the appraisal under review the amount believed to be just compensation.

All technical reviews shall at a minimum, include a check by the review appraiser of the following items:

- ❖ the land area cited in the report against the area indicated on the map,
- ❖ the size and nature of the improvements as cited in the appraisal,
- ❖ the appraisal content against that information shown on the map or plans,
- ❖ the construction features (i.e. depth of cut, fill height, proximity of the right of way to the improvements,
- ❖ the land value assigned, how it is arrived at and the sales/data that support it; and will also apply his/her knowledge of the land values in the vicinity as well as relating it to land values cited by other staff or fee appraisers who are working in the general area; using the comparable sales cited in this report as well as any other recent reports in the neighborhood with which he/she may be familiar,
- ❖ the improved market approach, when included, how it is arrived at and the sales/data that support it; and will also apply his/her knowledge of the improved values in the vicinity as well as relating it to improved values cited by other staff or fee appraisers who are working in the general area; using the comparable sales cited in this report as well as any other recent reports in the neighborhood with which he/she may be familiar,
- ❖ the income approach, when included, how it is arrived at and the rents/data that support it; and will also apply his/her knowledge of the income properties in the vicinity as well as relating it to income related data/values cited by other staff or fee appraisers who are working in the general area; using the comparable sales cited in this report as well as any other recent reports in the neighborhood with which he/she may be familiar,
- ❖ the value of improvements, if the cost approach is included, using the Marshall-Swift Cost Service Manuals, which are in service in the Region and Central Offices, and consider the unit values assigned to the improvements in light of his/her personal knowledge of such values as well as examine the report to be certain that all types of depreciation have been properly applied to the wasting assets included in the particular parcel,
- ❖ the reconciliation and correlation of values; also, any reason(s) for omitting approaches,

- ❖ effect of the acquisition and all after value analysis and all other items which may affect the amount of compensation due.

Since the reviewing appraiser at the Central Office may not have benefit of a field inspection of the property, it is important that Region personnel make whatever checks are necessary to be sure that the improvements mentioned in the appraisal report exist and are in the condition stated by the staff or contract appraiser. A thorough check should be made by use of (Form A-6) - *Appraisal Review Checklist/Visual Inspection Certificate* shown in the Downloads to guarantee mathematical accuracy and to eliminate oversights and omissions. A further check should be made to assure correctness as to the type construction and as to the assumptions of fact and law. This form should then be executed by the review appraiser and submitted with the appraisal.

When the appraisal report has been reviewed at the Region level, a letter should be written noting any supplemental information needed to correct any noted deficiencies and errors found in the report. On residential or "selected property types," where only one report is obtained, and the value of the acquisition is equal to or less than the Region's approval authority, this letter is forwarded to the appraiser for supplemental response. The one exception to this rule is for properties in which the valuation of minerals is involved (regardless of the value level of the acquisition). All reports that involve the valuation of minerals, regardless of value, are submitted to the Central Office for review prior to supplemental questioning of the appraiser.

Where the value of the acquisition is greater than the Region's approval authority, the Region letter noting any supplemental information needed to correct deficiencies and errors found in the report should be sent to the Central Office Appraisal Section, along with a copy of the appraisal, for their input before contacting the appraiser to make corrections and/or revisions to the appraisal. The report will be assigned to a staff Review Appraiser in the Central Office Appraisal Review Section. The Central Office Review Appraiser shall perform a review to determine if the report is complete, accurate, in keeping with the agreement/work authorization order between the Department; the appraiser and the report meets the requirements of the Federal Highway Administration, and just compensation has been appropriately concluded and recommended. The Central Office appraisal review staff will respond in writing with additional comments as needed at which time the Region appraisal review staff will send a supplemental letter to the appraiser.

Appraisals requiring Central Office Review shall be submitted to the Central Office no later than forty-five (45) days from the Region/Area's receipt along with their review comments and/or recommendations. This will allow the Central Office to review them and respond to the Region with any additional comments for the appraiser to address within the sixty (60) day period to pay the appraiser the remaining fee, if no review comments are addressed to the appraiser by that time.

While the previous paragraph delineates the desired maximum time limits for review; the Region/Area reviewers should make every effort to begin the review process upon receipt with the goal to approve or recommend the report within **two weeks** of receipt. It is very important to question the appraiser while the report/project is within quick recall of the appraiser; the reviewer will get better results and the appraiser will be more cooperative in the review process. Time is of the essence, in the appraisal/review process regardless of

changes in project priorities and in certain situations, a teleconference will be arranged by the Region personnel to include the appraiser and the Central Office reviewer to expedite and clarify review issues.

When two appraisals are required on a tract, or when minerals are involved, the Region's letter along with the original and one copy of the appraisal report(s) should be forwarded to the Central Office.

Upon receipt of requested supplemental information, or if Region personnel considers that the report as submitted properly supports the compensation stated by the appraiser, a Region Review Appraiser should properly fill out a (Form A-16) – Appraisal Review Report/Summary of Appraisals Form showing a breakdown of values for land, buildings, and damages/and or special benefits and forward the report along with their determination as to the amount of the offer to the Region Chief Appraiser. There may be some cases in which sufficient information has been submitted to the extent that the Review Appraiser can arrive at the amount of the offer but in which this amount may be inconsistent with the compensation as shown by the appraiser. The Review Appraiser will then set forth in a memorandum the elements of value which constitute the recommendation for an approved offer and explain the reasoning to the same extent as required in an appraisal.

If the amount of the offer is within the Region's approval authority, the Region Chief Appraiser will submit the appraisal report and all required documentation to the Region Right of Way Manager recommending it for approval in a memorandum (Region Memorandums for Approval - Forms A-9/A-9A). The Region ROW Manager can proceed with approving the offer up to their approval authority amount. The procedures for approval will be the same as those at the lower limit.

It is important to note, the region's review function regarding LPA projects does not include any approval authority. The same as with appraisal amounts exceeding Region authority, upon completion of the review and supplemental questioning process, the Region will submit their recommendation for approval to the LPA. All responsibility for complying with state and federal laws, including all approval authority and settlement authority, is held by the LPA. The region function is to provide procedural approvals, contracting approvals, guidance, and recommendations to the LPA.

Minimum Payment: Should the indicated value of the property to be acquired be less than \$500, the approval shall reflect the minimum offer of \$500.

Region Approvals without RHP(s): The Region will submit the original and one (1) copy of the appraisal report and all supporting documentation and correspondence including (Form A-9) to the Central Office Files. **Region Approvals with RHP(s):** Same as above except the Memo for Approval (Form A-9A) will be an unsigned copy. The Central Office will then request necessary RHP computations from the Region. Subsequent to approving RHP(s), the Central Office will scan and email a copy of the completed Form A-9A (with RHP(s) penciled in) to the Region. The Region will then send an executed copy of the completed Form A-9A to the Central Office Files. The Central Office Appraisal Review staff will not review these (unless as part of an audit review process), but, will make a record of the approval amounts and forward all paperwork to the appropriate Central Office personnel for required file documentation retention.

If the report exceeds the value limitations for Region approval, the Region Chief Appraiser will submit the appraisal report and all required documentation to the Region Engineer for recommendation to the State Right of Way Engineer under a cover letter recommending the offer of just compensation for approval. Note; In situations where an appraisal is above region approval authority as originally submitted and submitted to the Central Office for review, but revised to be within region authority, the revised report is still subject to the Central Office process.

Upon receipt of the appraisal report in the Central Office, it will be assigned to a staff Review Appraiser in the Appraisal Review Section. The Review Appraiser shall perform a technical review to determine if the report is complete, accurate, in keeping with the agreement/work authorization order between the Department; the appraiser and the report meets the requirements of the Federal Highway Administration, and just compensation has been appropriately concluded and recommended.

Upon receipt, the Central Office Staff Reviewer will complete their review. In situations where the appraisal report and/or supplemental response(s) appears to be adequate and the Region has submitted its recommendations, a Central Office Review Appraiser will fill out, sign, and date a (Form A-16) – Appraisal Review Report/Summary of Appraisals Form. The Review Appraiser will then prepare a letter to the Region Engineer setting forth the approved offer to be made to the property owner together with all circumstances on which it is based. This letter becomes the official approved offer when signed by the State's Right of Way Engineer.

There may be some cases in which sufficient information has been submitted to the extent that the Review Appraiser can arrive at the amount of the offer but in which this amount may be inconsistent with the compensation as shown by the appraiser or appraisers. In those cases, the approved offer may be an amount between the figures of two appraisal reports or it could be above or below the amount estimated in a report and/or reports. In any case, however, the Review Appraiser will set forth the elements of value, which constitute the approved offer and explain his/her reasoning for relying on one report over the other or neither report.

In situations where the information submitted by the fee appraiser and the Region office does not appear to give a proper basis for arriving at an approved offer, a Central Office Review Appraiser will formulate a letter to the Region office setting out the steps which should be taken at that time. In such cases, it may be necessary to obtain an additional appraisal report, or it may be necessary to go back to the original staff or fee appraiser for supplemental information. In the event the Region representative must contact the appraiser for supplemental information, such contacts will be kept to a minimum since minor adjustments, using the same unit price can be made by the Review Appraiser. There are many cases in which some slight change is made in acreage or other factors involved after the appraiser has made his study. It will be assumed, when minor changes are made, the appraiser will be willing to testify to the adjusted figure if nothing other than a mathematical adjustment has been made.

Appraisers should be urged to submit supplemental information promptly upon request. Any delay in obtaining this supplemental information brings on a subsequent delay in the determination of the offer to be made to the property owner.

B. Supplemental Request

(Must first go to the Central Office for input if Acquisition is more than the Region's approval authority)

The reviewer is required to request supplemental information from the appraiser for the following deficiencies:

- When an improper report format is utilized. (Example: An appraisal report is not on the latest revised ALDOT appraisal forms.)
- When an offer for accompaniment on the inspection is not made.
- Any time the appraiser violates the *Eminent Domain Code of Alabama*.
- Any report that is not signed.
- Any report that lacks an Appraiser's Certification Statement.
- If the report type requires a before and after appraisal and the appraisal does not properly analyze the remaining property.

The reviewer may consider requesting supplemental information for the following errors:

- The appraisal has numerous violations of USPAP.
- The report has numerous errors that result in a misleading conclusion. ***The reviewer should avoid asking the appraiser for supplemental information on minor errors and omissions that do not affect value. Note, minor errors and omissions that do not affect value should be addressed and corrected in any appraisals prepared for court condemnation cases.***
- A report that relies on sales data that is not verified, or it lacks sufficient support and analysis where the reader of the report cannot make the same conclusions as the appraiser.

It is the reviewing appraiser's responsibility to monitor progress on the corrections requested from the appraiser. Every effort should be made to ensure that corrections are received in an appropriate manner and the project letting schedules are not jeopardized. The reviewing appraiser should make every effort to have open communication with the appraiser.

XXII. Revised or Updated Offers

It may be necessary in special cases after final approval to revise the amount of an approved offer due to minor changes in acreage or other such causes. In these situations, it will be necessary that the Region Reviewer complete a new (Form A-16) – Appraisal Review Report/Summary of Appraisals Form and write a brief memorandum to the file as documentation and support of the revised figure. These revised forms should then be forwarded to the appropriate personnel for approval of a new offer. Should the change make a substantial difference, it will be necessary that the original appraiser be asked to revise his/her appraisal since another contact with the owner must be made. Also, in the case of an ownership change, the new owner must be contacted by the appraiser.

There will be cases in which negotiations for the acquisition of a property or the condemnation of the property is delayed beyond a reasonable period following the date of valuation indicated in the report. In such cases, it may be necessary to update the appraisal report to indicate any increase or decrease in the value of the property due to the appreciation or depreciation which may occur in this time interval. Updates are typically for addressing value changes due to the passage of time and where it is reasonable to assume the appraiser will be willing to testify based on the adjusted figure. The time frame for the need to update an appraisal may vary based on the market activity in the project area.

However, for any report over one year old, the need or lack thereof for an update for time should be addressed by the Review Appraiser and included in the file.

Since an appraisal is a time sensitive product, updates for time should be limited to reports in which the date of valuation does not exceed two years from the time of the proposed update. New reports should be requested from the appraiser when an offer has not been approved prior to two years after the date of valuation listed in the appraisal.

If design or other significant changes occur, the original appraiser will be asked to revise the report. In all such cases, the Region Office should communicate with the Central Office as to the method of accomplishing this.

There will be instances in which the owner will employ a recognized appraiser to write a report and is willing to submit this report for the Alabama Department of Transportation's consideration. In situations where the owner chooses to submit an appraisal report which he/she has caused to be prepared, this report should be reviewed by the Region Office and by the Central Office and should be given that weight which it appears to be due. If it offers justification and support for a change in the amount of the approved offer, consideration should then be given to the change indicated.

XXIII. Approvals for Court

Immediately upon the Region receiving notification that a case is proceeding to circuit court; the Region will notify the State Chief Appraiser. The Chief Appraiser will consult with the appropriate Central Office Review Appraiser as to the specifics of the appraisal problem and then will notify the Region as to how to proceed. This may entail requesting the original appraiser to update the report or it may require that a new appraisal(s) be obtained. **In all cases, acquiring the necessary appraisals, supplemental responses, and receiving final approval for witness testimony shall be considered top priority.** Agreements for these reports should not exceed 60 days for the report and 20 days for supplemental response. Failure to meet these deadlines should be immediately brought to the attention of the Chief Appraiser.

Upon receipt of the appraisal report, it will be the responsibility of the Region Office to make the initial review. If the amount of the updated appraisal is within the Region's approval authority, the Region reviewer will request any required supplemental information from the appraiser. Upon receipt of same, the Region reviewer will recommend any revised amount for negotiation per standard procedure to the Region Right of Way Manager. Upon acceptance by the Region Right of Way Manager, he/she will formulate a letter to the Central Office transmitting all appropriate appraisal information and copies and setting forth the amount of the revised offer and the name of the appraiser approved for court testimony.

Any appraisal for court for which the appraised amount exceeds the Region's approval authority will require a technical review by a Central Office Review Appraiser. Upon receipt of the appraisal report, it will be the responsibility of the Region Office to make the initial review. The Region will then forward the report along with its recommendation or supplemental questions to the Central Office.

Upon receipt of any required supplemental information or if the report is adequate; the Review Appraiser will formulate a letter to the Region office setting out the amount of the

State's approved offer and the name(s) of the appraisal witness (es) available to the State's attorney.

When the information submitted by the appraiser does not appear to give a proper basis for arriving at an approved offer, the Review Appraiser will formulate a letter to the Region office setting out the steps which should be taken at that time. It may be necessary to obtain an additional appraisal report, or it may be necessary to go back to the appraiser for additional supplemental information.

XXIV. Right of Way Estimates

❖ Preliminary: - Route Selection

The Right of Way Bureau will be called upon by the Design Bureau to prepare preliminary estimates of project right of way costs on several alternate locations. Such work is normally classified as preliminary engineering and the *broad-based* estimates furnished by the Right of Way Bureau to design personnel become a factor in the determination of highway location. Once the location of the highway has been determined, it may be necessary to further assist Design by making alternate appraisal cost studies. Such cases may involve the economic justification for the construction of cattle underpasses, machine underpasses, and frontage roads, etc. Another example would be a request for a right of way comparison study based on an embankment section versus a bridge structure section in an urban project area.

❖ Tract-by-Tract: - Project Authorization

These estimates are required for project authorization and budgeting purposes and are distinguished from preliminary estimates by more detail and level of accuracy. They are formulated by projecting the estimated right of way costs for each required tract into a total right of way cost figure for the proposed project. These estimates are made after a required field inspection of the project area by tract. The submitting Regions are expected to assign qualified staff persons to prepare these estimates which are to be reviewed and recommended by the respective Right of Way Managers. The Department has provided several downloadable (see website) forms (spreadsheets) which facilitate making these estimates by automatically computing required column totals and cost additive percentages, etc. These forms have spaces for comments relative to; 1) those tracts which appear suitable for cost saving appraisal methodologies (partial /value finding reports), or which may require two reports due to value thresholds being exceeded; 2) possible needed specialty reports such as timber cruises, mineral reports & equipment appraisals, etc.; and 3) miscellaneous pertinent comments and explanations. The preparer of these estimates is expected to maintain sufficient information on hand and in file notes to enable them to explain, justify, and defend the estimate from possible inquiries and questions from Region and/or Central Office management personnel. **Note:** In estimating per tract appraisal fees each cost estimate shall be based on a complete before/after report, even when it appears a partial report, or value finding report may be feasible.

XXV. Legal Restrictions: - Basis for opinion as to value; Supporting an opinion of remainder value(s); and Situations where damages may not be compensable

According to the *Code of Alabama Section 18-1A-196*, a valuation witness qualified under subsection (a) of Section 18-1A-192 may consider the following factors:

- “The price and other circumstances of any good faith sale of all or part of the property sought to be taken, whether the sale was entered into before or after the valuation date.
- The price and other terms and circumstances of any good faith sale of comparable property. A sale is comparable within the meaning of this section only if it was made within a reasonable time before or after the valuation date and the property is sufficiently similar in the relevant market, with respect to situation, location, size, usability, improvements, and other characteristics, to warrant a reasonable belief that it is comparable to the property being valued. Any proposed comparable sale that fails to meet the foregoing standards shall not be admissible.
- The terms and circumstances of any lease made in good faith that included all or part of the property being valued or of comparable property whether the lease was made before or after the valuation date.
- The actual or reasonable net rental income attributable to the property when used for its highest and best use, capitalized at a fair and reasonable rate.
- The cost of reproducing or replacing existing improvements on the property sought to be taken which enhance its value for its highest and best use, less any depreciation resulting from physical deterioration or from functional or economic obsolescence.
- The nature, condition, and use of properties in the general vicinity of the property being valued.”

Evidence supporting an opinion as to the remainder value in a partial taking (AL Code Section 18-1A-194) may be received relating but not limited to the following factors.

- Extent of increase or decrease in the productivity and convenience of use of the remainder reasonably attributable to the taking;
- Extent of improvement in or impairment of access to the public highways from the remainder upon completion of the project;
- Extent of benefit or detriment caused by the project due to a change in grade within a right-of-way abutting the remainder;
- Extent of enhancement or damage as a consequence of the project;
- Extent of benefit or damage resulting from severance of land or improvements;
- Extent of benefit or damage resulting from the distance or proximity of the remainder, or improvements on the remainder, to the project in view of its character and probable use; and
- Cost of fencing not provided by the plaintiff and reasonably necessary to separate the land taken from the remainder.

The acquisition of private property for public use can sometimes cause a damage or loss to a property, which may not be compensable. Some of these are:

- Business loss, to be distinguished from damage to the highest and best use of the property.
- Moving costs of personal property. This item is handled under a separate program of payment of relocation costs and should not be considered by the fee appraiser in arriving at his estimate of the market value.
- Depreciation, because of non-adaptability in a new location, of detachable personal property.
 - Damages because of increase or decrease in volume of automotive traffic as a separate item of damage.
 - Damages because of change of direction of the flow of automotive traffic in front of a property, including among other things, circuitry of travel traffic as a separate item of damage.
 - Loss of good will.

- Damage because of the owner's inability to acquire an acceptable substitute location.
- Noise, dust, and fumes caused by automotive traffic.
- Loss or diminution of parking on Public Street or Highway.
- Any damage which is speculative and remote or uncertain or difficult to ascertain, such as "intangible benefits" or future loss of income.
- Any injury the property sustains or receives in common with the community generally and which is not peculiar to the property.

From time to time questions, which are legal in nature, may arise in the appraiser's mind. Since the appraiser usually is not a lawyer, he/she usually cannot resolve such questions. In the event the questions cannot be resolved at the Region level with the help of the Special Assistant Attorney General for the project, then the question with a complete statement of the facts should be submitted to the Central Office for further submission to the Legal Bureau.

XXVI. Real and Personal Property

In accordance with 49 CFR Part 24103 the appraiser must now identify items in the appraisal report considered to be "real property" as well as those considered to be "personal property." Accordingly, for each tract assignment involving structures to be acquired, the appraiser will be required to coordinate an "on-site" meeting with appropriate Department (Region) relocation staff personnel in order to accommodate this requirement; unless informed in writing on a per tract basis by Department (Region) personnel that it has been determined such a required meeting is not necessary. It is the intent of the Department that the appraiser will be informed of each required realty vs. personalty meeting prior to executing a Work Authorization Order. The results of these meetings are to be included in the appraisal report(s) and will serve as guides in this area for the balance of the acquisition process. If needed, legal counsel is to be consulted when there are questions as to the status of a given item.

Title 18, Eminent Domain, of the Code of Alabama defines *real property* as "land and any improvements upon or connected with the land; and includes an easement, servitude or other interest therein". *Personal property* is defined as; "any property other than real property which is affixed or directly related to the real property proposed to be acquired."

The term "fixture" is generally used to denote an article of personal property, which has become so annexed to land or building so as to become a part of the realty. Making this determination may not be an easy matter. The Alabama Courts have no fixed rule, which classifies forever any certain article as to whether (or not) it is a fixture. However, certain definite rules have been established which are followed to determine if an article is a fixture or not. The conclusion must be based solely on the factual situation surrounding each such article. If the item is classed as a fixture it should be included in the appraisal report by being considered as a part of the realty. Emphasis is placed on the investigation and study to be made and the analysis should be as objective as possible. The conclusion reached should not be swayed or influenced by sympathy for or statements by the property owner, nor should it be swayed or influenced by the desire to save money for the State.

The determination of whether personal property has become a fixture or not is a difficult question. Possible approaches to this problem are as follows:

- 1- Has there been a real or constructive annexation of the article to the realty?
- 2- Was there a fitness or adoption of such article to the uses or purposes of the realty with which it is connected?

3- Was it the intention of the party making the annexation that the article should become a permanent part of the realty?

Of these three tests, controlling effect is usually given to the one concerning the intention. Caution should be exercised for the "intention" which is determinative is not a secret intention, but, is that which is expressly declared or has become apparent from the action, declarations and purposes to be served. In determining this intention, considerable weight is often given to the mode of annexation of the article to the realty and its removability.

However, other manifestations can over-rule this contributing factor. If the item of personal property is so securely attached to a building that it cannot be removed without extensive damage to the latter, considerable weight would be justified in favor of a determination that the intention was to make the article a part of the realty. However, regardless of the mode of annexation or attachment, if a manifestation is found that an article was annexed for only a temporary purpose, it is not a fixture.

Since no one test is the sole criterion, attention should also be given to the second test, for consideration must be given to the purpose or use for which the article was annexed to the building. It is stressed that weight should be given to each of these tests or approaches. To do so, it readily becomes apparent that a detailed study of the factual situation surrounding the annexation of the article to the realty is necessary if a conclusion is to be reached which can be justified and sustained if questioned. Therefore, too much care cannot be exercised in ascertaining the facts relating to an article. When an expensive, but questionable, article is involved, it is advisable to preserve the basis of the conclusion reached whether as a fixture or not, through means of written memoranda, photographs and other means. In determining whether an article or an item is a fixture or not, considerable difficulty often arises when the article is machinery or equipment. While the same three approaches are used in resolving the question as to a specific piece of machinery or equipment, other considerations sometimes affect the result. Whenever the question is presented as to a piece of machinery or equipment, an investigation should be made into the background of this machinery or equipment regarding ownership before the above approaches is applied.

A further complication often arises with machinery or equipment after the determination has been made that it is a fixture. This complication pertains to articles or parts, which are not in themselves physically annexed to the realty. The following approaches should be used in resolving this question:

1- Will the removal of such non-annexed part leave the principal part of the machinery (a fixture) unfit for use?

2- Are such non-annexed parts capable of being put to general use elsewhere?

These two tests should be applied together and not one singularly to the exclusion of the other. If it is determined that a certain type of non-annexed article is an integral part of the annexed machinery; and such is constructively annexed to the realty, then it must also be classified as a fixture. Careful attention should be exercised in determining the appropriateness of the number of such articles. A distinction may be justified in classifying such parts as not being a fixture based on the condition of serviceability of such parts. Another basis may be whether the stockpile of such parts is realistic in relation to the output of the machine or equipment; also, whether such parts have been stockpiled in obvious expectation of business expansion. When it is not readily apparent that an item is real or personal in nature, an opinion should be obtained from the Special Assistant Attorney General assigned to the project. This opinion should then be placed in the hands of the appraiser for guidance as to whether (or not) the value of the item in question should be

included in the estimate of the value of the real property. The attorney's opinion will be binding on the appraiser unless instructed to the contrary by the Department or by the Court. A copy of this opinion should be forwarded to the Central Office along with the appraisal report. It will not be necessary to issue special instruction on commonly recognized features about which no possible question exists.

XXVII. Uneconomic Remnants

Designation of a remainder as uneconomic is an administrative function unrelated to market value and is the responsibility of the review appraiser, but, requires approval of the State Chief Appraiser. However, if the total compensation is within the Regional approval authority, the Regional Chief Appraiser or ROW Manager over Appraisal has the approval authority. The appraiser is not to use the term 'uneconomic remainder/remnant' in the appraisal but to simply describe it as a damaged remainder/parcel. Uneconomic Remnant is considered an agency term identifying a remainder parcel which has very little utility to the owner of the parent parcel, even though it may have significant value in the market. 49CFR 24.2, defines an uneconomic remnant as "a (remaining) parcel after the partial acquisition of the owner's property, and which has little or no value or utility to the owner."

All tracts should continue to be appraised in the same manner as they have in the past with the appraiser considering benefits as well as damages to the remainder. If a reviewing appraiser has determined during the review process an uneconomic remnant exists, an alternate offer will be made which includes an amount for the part to be acquired, damages to the remainder, and the damaged value of the remainder.

Guidelines for Identifying Uneconomic Remnants:

- Remainder land which is small or of such odd shape that its only use would be for additional area to the adjoining property should be considered an uneconomic remnant and an offer to buy it made to the property owner.
- Factors such as highest and best use and the possibility and feasibility of obtaining access, without undue expense or effort by the owner, through an adjoining property may be considered in deciding whether (or not) a landlocked property, either physically or legally, is an uneconomic remnant.
- Timberland may have value to the owner even though landlocked if access sufficient to harvest the timber can be gained without undue expense or effort by the owner. If the landlocked parcel has a higher and better use which depends on ready access and it would be expensive, difficult, or time consuming to gain such access, the remnant should be considered uneconomic.
- If the property owner conveys to Region personnel the remainder is of no use or value to him/her, it should weigh heavily in the determination.

Important Note Concerning Uneconomic Remnants:

Current regulations require ALDOT as an acquiring agency, to offer to acquire any remainders identified as uneconomic remnants. Since the State may condemn only what it requires for the construction of a planned project, the owners of those parcels considered as uneconomic remnants will be presented with alternate offers which include the estimated values of any uneconomic remnants. It is important to remember that contract and staff appraisers are, with few exceptions, providing ALDOT with fair market value estimates of the before and after values of needed tracts of rights of way: ALDOT will make the determination whether (or not) a remainder parcel is to be considered as an uneconomic remnant.

XXVII. USPAP COMPLIANCE (Basic Requirements)

The following are basic requirements that must be met in every appraisal for ALDOT to comply with USPAP (*).

1. **The report must clearly set forth the appraisal in a manner that will not be misleading.** The appraiser must be aware of, understand, and correctly employ those recognized methods and techniques necessary to produce a credible appraisal.
2. **The report must contain sufficient information to enable the intended user to understand the report.** The appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal.
3. **Not render appraisal services in a careless or negligent manner, such as making a series of errors that, individually may not significantly affect the results, but in aggregate affect the credibility of the results.**

4. **Identify the client and intended users.**

Client-Alabama Department of Transportation. There are no other intended users, unless ALDOT so notes when the appraisal is assigned.

5. **State the definition of value**

Provided in the ALDOT form

6. **State the effective date of the appraiser's opinions and conclusions.**

7. **State the intended use of the appraisal appraiser's opinions and conclusions.**

An appraiser must not let the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

8. **Sufficiently identify characteristics relevant to the type and definition of value and intended use of the appraisal.**

Included: Location, a legal description, address, survey, map, photographs, etc., physical attributes, economic attributes, real property interest to be appraised, any personal property, trade fixtures, or intangible interests that are not real property but included in the value, any known; easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of similar nature, and any fractional interests, physical segments or partial holdings.

9. **Identify any extraordinary assumptions and hypothetical conditions necessary in the assignment.**

10. **Summarize the scope of work used to develop the appraisal**

A general scope of work is provided in the appraisal form, the appraiser shall include scope statements from the WAO (pg.-2) under the Specific Scope Statements.

11. **State the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal.**

12. **Develop an opinion of highest and best use, summarize the support and rationale for that opinion.**

13. **Summarize the information analyzed, the appraisal methods and techniques employed and the reasoning that support the analysis, opinions and conclusions; exclusion of the sales comparison approach, income approach or cost approach must be explained.**

14. Include a signed certification in accordance with Standards Rule 2- 3.

(* **Uniform Standards For Professional Appraisal Practice** as promulgated by the *Appraisal Standards Board of the Appraisal Foundation*.

XXIX. On-line (Intranet) Forms

-  A-10 Reg Apprl Ltr 2016
-  A-2 WAO-2017 Form
-  A-6 Review Cklst 2018
-  A-8 Appr Eval 2015
-  A-8A Appr Court Eval 2015
-  A-9 Reg Apprl Cover 2016
-  A-9A Reg Apprl Cover 2016
-  FA-1A VF Cover Page
-  FA-3A VF Summary 2017 Rev
-  FA-4A(1of2) VF Scope
-  FA-4A(2of2) VF
-  Form A-6A MF Cklst 2015
-  Rpt-7 Value Finding Report-2017

Note; all other forms are found on the ALDOT internet site.

XXX. Evaluation of Appraiser (Appraiser Rating Sheets)

Appraisers are to be evaluated on a continuing basis. This is to be accomplished by the completion of the Rating Sheet – Real Property Appraisers, as shown in the Downloads (Form A-8). This form is to be completed by the Region Right of Way Manager assisted by appraisal review personnel after all appraisal assignments for a project have been completed (excluding pending appraisals for court cases). The original of this form, which is to be completed for each fee and staff appraiser who has worked in the Region on a project, is to be forwarded to the Central Office for review and filing in the appraiser's permanent file.

XXXI. County-Aid Projects

At times, right of way personnel will be called on to assist various County Engineer's in the acquisition of lands for State and/or Federal Aid Construction projects. The FHWA approved, LPA Manual shall be complied with for these projects. Appraisal personnel may provide necessary support as follows:

1. Assist in any estimate costs and the determination of required appraisal report types.
2. Provide guidance in the selection and assignment of fee appraisers.
3. Provide appraisal services when time permits, and funding sources are available.

4. Provide review and approval services for all report types.

- a) Value Finding Appraisal – This type of report may only be prepared by Staff appraisers when time permits, and funding sources are available. The Region Right of Way Manager will review and will make the approval on this type report.
- b) Complete/Partial Appraisals – These type reports may be prepared by staff or fee appraisers. All appraisers, whether fee or staff, must conform to ALDOT's existing standard qualifications for appraiser selection. The review and approval of these type reports will follow standard ALDOT procedures based on report type and value limitations.

All other appraisal concerns not specifically addressed above will be subject to the existing ALDOT policies set forth in this section of the Right of Way Manual.

SPACE RESERVED (continued next page)

XXXII. Special Problems

A. Lessee Interests

In appraising properties under lease, the appraiser should make inquiry as to whether any part of the improvements is owned by a lessee. The appraiser should review the lease to be familiar with the terms and conditions contained therein and the findings should be indicated in the appraisal report. The appraised value of the whole property should be established, and the lessee interest is to be included within the value of the whole property value, and not to be considered as a separate item.

Under Alabama law the appraiser is to estimate the value of the real estate and there is no obligation to estimate separately the value of the lessee's and lessor's interests. This is a problem which must be resolved by the parties to the lease or by the Court.

B. Mineral Rights

According to the United States vs. 91.90 Acres of Land, "In appraising land which is underlain with mineral deposits, the existence of those minerals, ...is a factor of value to be considered in determining the market value of the property, but the landowner is not entitled to have the surface value of the land and the value of the underlying minerals aggregated to determine the market value." No attempt should be made to separate the value of the minerals from the value of the land. The appraiser cannot base his/her opinion of value upon the quantity of materials in place multiplied by the unit value. In such a calculation, there is a possibility that the value thus established will not be properly discounted for demand, market conditions, cost of production, and other items which would serve to reduce the value of minerals in the land.

The highest and best use analysis in the real property appraisal is one of most important considerations in the development of a reliable appraisal of a property with underground minerals. A detailed market analysis must be formed to determine whether there is enough demand for the minerals on the property. If there is no market for the minerals, or there are legal and environmental restrictions on mining these minerals, it is unnecessary to obtain a very expensive mineral valuation report.

If there is a market for these minerals, the preparer of the mineral report must determine the quantity, quality, location, cost of extraction, and accessibility of the minerals. This information is then used by the mineral appraiser for developing an opinion or value using the income and sales comparison approaches to value. It is the responsibility of the real estate appraiser, however, to review this report and include this information in their appraisal only if the conclusions were prepared by appropriate standards and are adequately supported.

Regulations of the Alabama Surface Mining Commission in the Alabama Administrative Code forbid mining "within 100 feet measured horizontally, of the outside right-of-way line of any public road." Reg. 880-X-7B-.06(4). When there is an economically recoverable resource, the appraiser should also value the minerals in the 100-foot setback area. Because of unfavorable court awards in this state and nationally, the Alabama Department of Transportation must exercise caution when purchasing property in areas with underground minerals resources. In cases where minerals are involved, the parties holding the mineral interest must be identified on the property, even though the mineral interest will not be acquired. A taking of a mineral interest constitutes the taking of real property. A taking of property occurs when one is denied the right to commercial use of its land. See

Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, 122 S. Ct. 1465 (2002); Pennsylvania Coal Company v. Mahon, 260 U.S. 393 (1922). **It is a requirement on all affected properties, even when there are no economically recoverable resources, to notify the mineral rights owner of its lack of value. This policy is a requirement to avoid the possibility that the owner of the mineral rights may file inverse condemnation.**

In certain areas, it is customary to except mineral rights in real estate transactions and the property owners whose land is being taken for right of way may own only surface rights. In these cases, and in other areas where subsurface minerals are highly valuable, the Department may wish to have mineral rights excepted from the rights appraised and the appraiser should be instructed accordingly. There may be situations where the Alabama Department of Transportation will allow the mineral rights owner to mine the minerals in the right of way through an operation conducted on the remainder of land and with no danger to the highway facility or the traveling public. In these cases, special instructions will be given the appraiser at the time of the assignment.

C. Fencing

When fencing is acquired that is necessary to maintain an enclosure for animals (livestock, etc.) or for legitimate privacy/security purposes, it is the normal policy of the Department to utilize a cost to cure method in making the affected ownership whole.

The Department shall pay the full cost of the fence to enclose the required area unless the cost to cure is to be affected by the contractor. In all other cases, the contributory value of the fencing acquired as reflected by market conditions is the proper method of establishing value.

In an agricultural scenario involving livestock it is strongly suggested the approved offer consider the fencing to be installed by the contractor to assure no delays or claims on construction. Acquisitions in easement areas that require double reset of fencing should always be considered an obligation of the contractor.

Additional Considerations in estimating fence costs

The appraiser will give appropriate consideration when the highest and best use justifies such to the value of the fences taken and any damage, which might accrue to the remainder of the due to the taking of the fence. On limited access projects where a parallel fence is constructed to protect the traveling public, the appraisers should be given special instructions. Normally, the fence furnished by the Department on such a project will be placed early in the construction sequence and the plans will indicate the location of the fencing at which it will be built. The appraiser is required to consider the existence of this fence in the after value of the remainder parcel giving credit, if any, to the State for any considered benefits from this improvement.

On property that is currently fenced, and a temporary easement is needed outside the existing right-of-way, a double re-set of the fencing, is necessary to maintain an enclosure for livestock or security or other concerns.

D. Merchantable Timber

In the case of timber producing lands, especially where timber is grown for commercial purposes, it may be necessary that the value of the land and timber be established separately. With such a breakdown, it will be possible to establish two values for appraisal; one value based on the procurement of the land and the timber combined. Due to the specialized nature of appraising timber, it may be desirable to use an appraiser with special qualifications for making a separate timber appraisal, or it may be necessary that the fee appraiser employ a timber cruiser. If this is necessary, the fee appraiser will be responsible for payment of the timber cruiser and should consider this when quoting the appraisal fee (unless otherwise handled by prior agreement in the appraiser's Work Authorization Order).

E. Crops

Prior to appraisal assignments, it should be determined by Region Right of Way personnel if the time schedule of right of way acquisition will allow harvesting of crops which have been planted. The appraiser should be instructed to consider crops in appraising property only if the right of way is to be acquired and the construction begun at such a time that the crops cannot be harvested by the owner. The appraiser should deduct costs and risks from gross price expected and possibly allow discount for present worth.

F. Bisected Improvements

A "bisected improvement" is a building or structure located partly within the right of way taking. These improvements should normally be treated as acquired, although consideration should be given to a cut-off proposal where there is only a minor area of a non-residential improvement within the right of way. We no longer consider cut-offs or house moving alternates in appraisals of residential acquisitions.

Although it would be a rare circumstance, we may have a "bisected improvement" of a non-residential structure where a cut-off may be considered. In such cases the appraiser should follow the following procedures:

The cost should include the cost of the owner's removal of the portion of the improvement located within the propose right-of-way.

The cost to reface, temporary weather seal, and repairs necessary to restore the remainder of the improvement to a state of usefulness should be included in the report.

The appraisal should include other compensable damages that may affect the improvements (loss of utility for any reason, change in highest and best use, loss of area, etc.).

To avoid any claims of liability, all cut-offs will be treated as a cost to cure and never as a construction item for our contractor.

G. Access Control

In assigning the appraiser, care should be taken to have him/her clearly understand the nature of the highway project for which the right of way is being appraised and acquired. If it is an Interstate project or another project with a denial of access to the remaining property, this characteristic of the project should be pointed out to the appraiser to eliminate any misunderstanding concerning the use to which the remainder parcel may be put.

While the plans and maps should clearly show the limits of access denial by the proper symbol, the above precaution would still be in order. The appraiser should be acquainted fully with the State's rights concerning access control and the legal determination as to the compensability and non-compensability where the State exercises this control.

H. Owners Refusal to Permit Entry for Appraisal Purposes

Whenever a property owner refuses to permit appraisers employed by the Alabama Department of Transportation to enter the property to view it, take measurements, photographs or make the necessary inspection, legal means are available by which such entry can be gained. The procedure to be followed in such instances will be as follows: The appraiser will stay off the property but make every effort to examine it from as many viewpoints as possible. The appraiser should make a very careful check of all available records such as soil conservation service aerial photographs and soil maps, U.S. Geodetic Contour maps, Tax Department Records, records in the Building Inspector's Office if inside a city, take distant photographs and resort to any other sources of information that can be used as a basis for a report.

The appraisal will clearly set forth that the appraiser was not permitted to enter upon the property and that the report is predicated on this certain assumption, which should be enumerated. The appraiser should also clearly set forth what sources of information were used as a basis for the assumptions.

Depending on the approval authority limits, either the Region or Central Office will determine at that time if further inspection is necessary before resorting to Court action. The Region reviewer should make every reasonable effort to get a close inspection of the property at the time of the required field inspection, prior to forwarding recommendations to the Central office. If the report is approved, negotiations will be entered into on that basis. The Department employee conducting negotiations should also make every reasonable effort to observe the premises to verify the appraiser's assumptions about the property. If radical variation appears to exist, the Central office should be advised before continuing with negotiations. If the offer is not accepted, eminent domain proceedings will be resorted to and entry by Court order can be obtained at that time.

I. Specialty Reports and Estimates

In those instances, where machinery, equipment, or other specialty items outside the area of the real estate appraiser's expertise, a report from a specialist is required. If the value of or compensation for the items to be acquired and/or damaged can reasonably be expected to exceed \$100,000.00, two reports are required. In some cases, where the complexity of the appraisal problem justifies, it will be necessary to obtain a second specialty report regardless of the amount of compensation indicated. In some unusual situations, it may become necessary to obtain a third or fourth specialty report.

All estimates must be firm, and the specialist must be willing to perform the service for the estimated amounts. If the appraiser includes an estimate in the report, the appraiser shall make a provision where the individual will be available in case of condemnation as a court witness. Unless specifically provided for in the contract with the appraiser, Alabama Department of Transportation will not pay additional amounts, above the fee per tract established, for the obtaining by the appraiser of services of a contractor or other specialist for estimates or other assistance to the appraiser.

J. Temporary Easements

Temporary easements are an encumbrance to the remaining property* for a specified period of time. Damages from the temporary easements are typically valued at the present value of the economic rent for the affected area over the term of the easement. The appraiser should consult with the Region Right of Way Manager for input regarding the term of the easement. Temporary easements on properties for any purpose are to be valued and included in the appraisal. If a temporary easement is the only acquisition from the property, the owner will be paid the value of the easement or the State's minimum payment (\$500), whichever is larger.

The contractor is required to replace in like kind any improvements he destroys, if any cannot reasonably be replaced, some type of payment is due the owner by the contractor. A controlling factor is contributory value relative to the highest and best use of the property.

*Appraisers must remember that the loss in value caused by a TCE acquisition is not an independent acquisition, and the compensation for it cannot be added to the indicated diminution in value associated with the permanent acquisition. The rent loss associated with a TCE should be used as the basis for an adjustment to the remainder property's after value, not as something to be added to the difference between the before and after value of the property (source Yellow Book).

K. Permanent Easements

Permanent easements are an encumbrance to the remaining property. Permanent easements are acquired solely for the construction and future maintenance of the structure and/or system specified in the roadway plans from which the original acquisition is based. While it is the Department's policy to allow permanent easements to be valued at the full unit value assigned to the property, they are not to be considered as a permanent right of way acquisition or to sever a remainder into separate parcels. Any damages considered to accrue due to the easement would be applicable to the entire remainder. If easement(s) improvements are compensated for in the acquisition, they are to be razed during clearing and grubbing to comply with acquisition standards.

L. Signs

The appraiser's assignment should clearly specify that a valuation of any signs within or near the area of the acquisition, that could reasonably be considered real property, is to be included in the appraisal report. The sign valuation procedure is basically identical to valuation procedures utilized for all types of real estate. All three approaches to value: market, income, and cost should be used where adequate data is available. The cost approach will normally be the only source in most cases due to the lack of other data. The cost sources, whether from a national cost service or local source, must be documented in the report.

M. Contamination

The purchase of contaminated properties presents unique conditions and challenges throughout the acquisition process. Although most of these sites should have been identified prior to the appraisal process, appraisers should be reminded to be alert for any potential contamination and alert the Region Right of Way Manager. Any appearance of contamination should be stated in the appraisal. Early identification of these sites can alleviate unnecessary problems and their associated costs in project cost and time.

At present, it is the normal policy of the ALDOT that all appraisals for right-of-way acquisition should be made under the assumption that project properties are free and clear of contamination from hazardous substances, unless instructed otherwise.

N. Mobile Homes - (Plus Manufactured Homes & Recreational Vehicles used as residences)

The identification of tracts with mobile/manufactured homes and determination of how to handle any type of mobile/manufactured home should be done when appraisal assignments are made. If there is a mobile home being acquired or impacted by what is acquired (not previously identified for the assignment), on a tract being appraised the appraiser should bring this to the attention of the Region's Chief Appraiser and/or Chief Relocation Officer for their determination if this structure should be treated as real property and appraised accordingly.

O. Across-the-Fence Valuation

The 5th Ed of the Appraisal Institute Dictionary of Real Estate defines 'Across the Fence Value' as; "In corridor valuation, a value opinion based on comparison with adjacent lands including the consideration of adjustment factors such as market conditions, real property rights conveyed and location." This methodology assumes that a corridor has a value consistent with the value of a typical adjacent land, as if vacant and based upon sales of nearby or adjacent land, without adjustments for size, shape, topography or access.

The above definition is correct for valuing corridors such as power-line easements, fiber optic corridors, railroad rights of way, but it does not specifically address valuation for the sale of surplus land.

P. Sale of Surplus ROW

The value of surplus property is to be by the method that produces the highest return to the Department/Agency. Typically, this means by the "across the fence" method. The process is the reverse of how the appraiser analyzes the property in a taking situation. In other words, value the adjacent property as it is to determine the Before Value of the adjacent property. Then value the adjacent property as if the surplus (ROW) area is already a part of the adjacent property (After analysis) and the difference is the value of the surplus land. The excess ROW parcel subject to appraisal is not adjusted for size, shape, etc. based on itself, but considered as part of the adjacent lands. *Report package #9 (Rpt. 9) under appraisal forms on the Internet is specifically for this type of assignment; it is the base package of forms and additional form pages may need to be added. Please make sure the appraiser uses this report package and make sure he/she understands the assignment.*

However, should the surplus property be of sufficient size and utility to be developed individually and this highest and best use produces the greatest value for the property; the property shall be valued as a separate parcel.

Note; the sale of surplus ROW shall be done using a SWA (special work authorization), however, a WAO approving an appraiser is still required. Even though the appraiser will be paid under the SWA, the WAO is also required to offset the appraisal fee against the master agreement approved by the legislative oversight committee (LOC) who approves all appraiser master agreements.