

**Negotiation and Acquisition
Section of the Right of Way
Manual**

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I. Foreword

This Negotiation and Acquisition section of the Right of Way Manual provides Statewide policies and standards for the purpose of acquainting Department of Transportation employees and any person who has the authority to acquire property by eminent domain under State law.

The purpose of this publication is to standardize procedures and thereby assure uniform practices in the several Regions. This section of the manual should be carefully studied and followed by all personnel dealing with these functions. The negotiator, in addition to familiarizing himself or herself with the information in this section of the manual, should have an understanding of the contents of the Department's Appraisal, Relocation Assistance, Outdoor Advertising Sign, and Property Management sections of the Right of Way Manual.

In 1970, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended or more commonly called "the Uniform Act". Section 301 of the Uniform Act includes guidance on expediting the process of acquiring property, attempting to avoid litigation, and assuring consistent treatment of owners to promote public trust in Federal land acquisition programs. The intent of the Uniform Act is codified in the Alabama Eminent Domain Code, Section 18-1A-20 as follows. "In order to encourage and expedite the acquisition of property by **agreement**, to **avoid litigation** and relieve congestion in the courts, to assure consistent treatment of owners and to promote public confidence in practices and procedures relating to the acquisition of property for public use, a condemnor, when acquiring property, shall comply with applicable provisions of Sections 18-1A-21 through 18-1A-30.", The intent is acquiring agencies using Federal-aid on a project **shall make every reasonable effort to acquire real property by negotiation.**

II. General

A. Definition

1. Negotiation is the process by which property is sought to be acquired for highway purposes through discussion, conference, and final agreement upon terms of a voluntary transfer of such property.

2. The Negotiations Process

Negotiations for parcels to be acquired are initiated by delivery of the initial written offer of just compensation by the Department.

The initiation of negotiations signals the beginning of the 30 days required for the property owner's consideration of the written offer.

When the property is being acquired without the threat of eminent domain, it is a voluntary transaction based on a review appraiser's

report and approved by the Right of Way Bureau Chief or the Region/Area Right of Way Manager, if the amount of the offer is within their approval limit.

- a. When presenting the written offer it is important to note - the appraisal on which the offer amount is based is an expert's opinion of market value.

Opinions of value can vary considerably, based on the complexity of the property and project.

The negotiator needs to present and carefully explain the State's offer to the owner in the most convincing and persuasive way he or she can, but also be a good listener and consider and discuss the owner's opinion of value and any other concerns the owner might have which could be included in the agreement, such as fencing, driveway connections, crop harvesting, etc.

Through this negotiating process, it is likely that the owner and the State will be able to agree to a settlement and avoid condemnation.

- b. The Offer Package must include but not necessarily be limited to:
 - 1) A print of the right of way map or a plat of the owner's property on which the right of way is shown.
 - 2) A print of the plan or layout sheet showing the owner's ingress and egress, as well as any other details which would affect the owner's remaining property.
 - 3) Acquisition Brochure.
 - 4) Acquisition agreement [ROW-12-A](#) or [ROW-12-A \(TCE\)](#).
 - 5) Acquisition invoice, properly filled out [ROW-25](#).
 - 6) Letter of Offer and Summary Statement [ROW-13](#).
 - 7) Construction Right of Entry [ROW-14](#)
 - 8) Relocation Assistance Brochure (if applicable).

B. The Right to Acquire

Section 23-1-45, Code of Alabama, 1975, provides that the Director of the Department of Transportation shall have the authority to acquire the rights of way deemed necessary by the Transportation Department for the construction of the State's roadways, either by purchase or by the exercise of the right of eminent domain in condemnation proceedings as provided under laws of this State.

A Notice of Intent to Acquire establishes eligibility for relocation assistance prior to the Initiation of Negotiations.

C. Eminent Domain

The power to take private property for public use. Article 1, Section 23, Constitution of Alabama of 1901, provides in part that "private property

shall not be taken for, or applied to public use unless just compensation be first made therefore".

D. Condemnation Procedure

1. Condemnation is necessary when an agreement cannot be reached with the owner; in those cases in which interested parties may be unknown heirs, mental incompetents, or minors; and, when title to the property is not clear.

When it becomes clear that the property cannot be obtained by negotiation for any of the reasons above, the attorney assigned to the project is notified to begin condemnation proceedings.

Negotiations will proceed for a minimum of 30 days, after the initiation of negotiations, before a condemnation petition is filed. The attorney is furnished a legal description of the property and plat of same.

2. Procedural steps necessary in a condemnation proceeding are set forth below. (It should be understood that the Probate Court has flexibility in the proceedings and can set additional hearings deemed necessary before granting the application [complaint] for condemnation.)
 - a. Condemnation action initiated by filing complaint for condemnation in Probate Court in county where property or part thereof, is located.
 - b. The Probate Court shall conduct a hearing within 45 days after complaint is filed and will hear allegations of complaint and objections.
 - c. Within ten days after first hearing in Probate Court, the court shall make an order granting or refusing the complaint.
 - d. Within ten days after order granting the complaint, the Probate Judge must appoint three (3) citizens of the county as commissioners.
 - e. Commissioners must hold a hearing, assess damages, and file a report in writing within 20 days of their appointment.
 - f. Within seven (7) days of the Report of Commissioners, the Probate Court must enter an order that the Report be recorded and the property condemned upon payment or deposit of compensation and damages assessed. All parties shall be mailed a copy of the order by first class mail, together with a notice of the right to appeal to Circuit Court. Once monies have been paid into court, the Department has right of entry to the property.
 - g. An appeal to the Circuit Court shall be made within 30 days of the Order of Condemnation. The Department always requests a jury trial. If the property owner appeals, the Department shall request that its attorney file a cross-appeal and a demand for jury trial.
 - h. Damages and compensation must be paid and deposited within 90 days after assessment of damages. (For good cause, court may extend time for payment an additional 30 days.)

- 1) Final Order and Judgment of Condemnation indicating the deposit of compensation is to be entered by the Probate Court upon payment of the award by the Department.
 - 2) Any additional amount determined by Circuit Court trial must be paid into court within 60 days after final appeal is determined.
 - i. After entry of the final judgment in Circuit Court, any party may appeal within 42 days thereafter to Civil Court of Appeals (where amount does not exceed \$10,000) or to the Alabama Supreme Court (where amount exceeds \$10,000).
 - j. Distribution of awards, claims and ascertainment are to be determined by the court, without jury, in subsequent proceedings.
 3. Once an award has been appealed to a higher court and if a settlement is subsequently reached, the case should be finalized by Consent Decree.
 4. All final decrees (Probate and Circuit Court) shall be filed in the deed records of the Probate Office.
 5. Trial in the Circuit Court in all but very few cases brings the litigation to a close.
- E. Property Interests to be Acquired
1. Fee simple interest is to be acquired in all property necessary for the construction of a road whether acquired by deed or through condemnation procedures except temporary easements. This is accomplished in negotiations by the use of Right of Way Form [ROW-4](#) in the Right of Way Plans Downloads. This eliminates any question of the Department's right to dispose of improvements located on the property. In acquiring through condemnation, fee simple interest is achieved through the wording of the petition.
 2. Should the owner object to conveying the property in fee simple, the Department of Transportation will consider accepting an easement using Right of Way Deed Forms [ROW-6](#) or [ROW-6A](#), in the Right of Way Plans Downloads.
 3. A copy of the individual property plat is to be attached to and made a part of the conveying instrument.
 4. In special cases such as those where valuable mineral deposits are involved, the Department of Transportation will consider accepting something less than the conveyance of all the property interests.
 5. All special cases should be referred to the Region/Area Right of Way Manager and the Central Office notified so that there will be an understanding by all parties as to the rights to be acquired.

F. Personalty and Realty

1. The negotiator should be familiar with the part of the Department's Appraisal section of the Right of Way Manual entitled "Real and Personal Property".
2. In negotiating for right of way, the Department of Transportation is attempting to obtain real property only. There will be instances where the court may rule that certain items are realty or instances where certain items have become so affixed to land or buildings so as to become a part of the realty. Normally the determination has been made as to whether an item is realty or personalty during the appraisal process.
3. The relocation agent and appraiser will resolve personalty vs. realty issues during an on-site meeting at the subject property during the appraisal process.
4. The Relocation Assistance section of the Right of Way Manual sets out the proper handling of personal property. Under this handling, it is normal for the Department of Transportation to pay a specified amount for the moving of personal property. Normally personal property is not to be purchased unless its value is less than the estimated cost of moving, and in such a case, this will be accomplished through the Relocation Assistance Program.

G. Outdoor Advertising Signs

1. On Right of Way Projects

Outdoor advertising signs on Right of Way projects are considered personal property and will be handled under the Relocation Assistance Program; however, in some cases signs may be so affixed to the real estate (including, but not limited to brick church signs, brick or rock subdivision signs, etc.) that they may be considered part of the real estate. In such cases the signs will be included in the appraisal and made a part of the offer for right of way. Otherwise, we will make an offer to purchase only those signs on Interstate and National Highway System routes which have been classified as non-conforming and cannot be modified to be made conforming. For those conforming signs whose value is less than the estimated relocation cost, the State may offer the owner the depreciated value of same and allow the owner to retain the sign for salvage; however, the sign must be relocated as personal property if the owner so desires. (See "Guidelines for Relocating Outdoor Advertising Signs")

H. Loss of Business and Goodwill

1. Loss of business profits is not a compensable item under Alabama law. This item would vary greatly with the quality of management of the particular property involved. While it is true that there is normally a loss

of business profits during the restoration of a business at a new location, most sales on which determination of the value of the business is based normally include some consideration to this item. No prudent owner would sell his or her business with the intention of restoring it elsewhere without - having given some thought to this matter. Also, it is normal for the Department of Transportation to give a period of rent-free occupancy after making available the money for the acquisition of the property. This period of time is set out in the Relocation Assistance section of the Right of Way Manual.

2. It would be difficult if not impossible to measure the value of goodwill since this is an intangible element. Many businesses which are dislocated by a highway are, within a short time, relocated in the same neighborhood and suffer little loss of goodwill since they draw on the same area for trade as that which originally supported the business.

I. Leasehold Interest

1. Under Alabama Law, the Department of Transportation is not required to appraise or acquire separately the several interests in a property. Instead, the property is appraised in a manner, which will estimate the value of the real estate, and, in so doing, the lessee's interest is included within the value of the whole property rather than through condemnation as a separate item.
2. It is normal for the negotiator to deal with the fee owner of the property. If agreement can be reached and the fee owner will obtain the necessary releases of the lessee's interest, thereby obtaining a merchantable title, the Department of Transportation can purchase the necessary right of way from the fee owner.
3. If the fee owner is willing to release and/or waive all of his or her rights to the improvements, then payment should be made to the owner of the improvements in accordance with Section 18-1A-29, Code of Alabama. However, no duplication in payment shall be made under this section.
4. If the negotiations cannot be handled in this manner and the lessee and lessor cannot agree on the division of the payment, it will be necessary to condemn the property naming both as interested parties.
5. A lump sum award is then paid into the court and the matter of the division of the funds must be resolved by the parties to the lease or by the courts.

J. Unrestricted Use of Right of Way

1. The Department is responsible for acquiring the unrestricted use of right of way, free of all encumbrances.

2. Wells, septic systems, underground tanks, or buildings shall not be left within our right of way limits for use by the property owner and the Department of Transportation shall not enter into such an arrangement.
3. In the event the negotiator finds that there are certain conditions which would warrant variance to this policy, the Central Office is to be consulted prior to entering into any agreements or commitments that would be binding on the Department.

K. Incidental Transfer Expenses

1. Ad Valorem Taxes

- a. In Alabama these taxes attach on the first day of October of each year for the full year, and constitute a lien against the property until satisfied. The policy covering the payment of these taxes in connection with our right of way program was developed after several conferences with our Legal Bureau and the legal representatives of the State Revenue Department. The procedure was discussed with and approved by the Department of Examiners, and it is our understanding that all tax collectors and assessors have been notified of the adoption of this procedure.
- b. The person holding title on October 1 must pay the full amount of such taxes for the new tax year. In order to eliminate any confusion regarding the payment of taxes, it has been determined that where an entire property is acquired by deed, the owner is to pay the full year's taxes at the time the transaction is closed, and he or she is later reimbursed the pro rata amount of taxes for the portion of the year the Department of Transportation is in possession of the property. This can be accomplished by the Deputy Attorney General withholding an amount equal to all taxes that have accrued against the property and paying it to the appropriate tax collecting official when it is due.
- c. There are provisions in fee simple warranty deeds [ROW-4](#) covering the obligation for the payment of the taxes. There will be occasions where agreements are secured near the end of a tax year when the attorney will be unable to close the transaction until some date after the beginning of the new tax year. In these cases only the Department of Transportation will assume the obligation for payment of all taxes accruing in the tax year following the date of execution of the agreement. Payment of these taxes by the Department of Transportation should be accomplished as soon after the closing of the right of way transaction as possible by having the Tax Collector execute our standard invoice form. The description on the invoice should read "To payment for ad valorem tax on Tract _____ for the tax year ending _____." The check issued should then be turned over to the Tax Collector and a paid receipt received and mailed to the Central Office for final record.
- d. The foregoing applies only to fee simple total takings.

- e. In other cases where the property is acquired during the taxable year, the Department of Transportation will reimburse the owner the pro rata amount of taxes paid which cover the period the Department of Transportation is in possession of the property. The procedures for the reimbursement of the pro rata share of ad valorem taxes are outlined in the Relocation Assistance section of the Right of Way Manual. Negotiators should familiarize themselves with these procedures. In the event it becomes necessary to condemn any tract, either a total or partial taking, the Tax Collector should be made a party to the proceedings so that he or she will be in a position to take such action as may be deemed necessary to recover the taxes that are due or will become due.
2. Other Transfer Expenses:

Owners of real property acquired for a highway project are entitled to receive reimbursement for reasonable and necessary expenses incurred in transferring such property to the State. Such expenses may include:

 - a. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property and any similar expenses incidental to conveying such property (The State is not required to pay costs solely required to perfect the owner's title to the real property.);
 - b. Penalty costs for prepayment of any pre-existing mortgage entered into in good faith encumbering such real property if such mortgage is on record or has been filed for record under applicable State law; and
 - c. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the State or the effective date of possession by the State, whichever is earlier.
- L. Payment to Owners:
1. Right of entry is obtained upon execution of the deed:
 - a. If the right of way is acquired by negotiations.
 - b. If acquired by condemnation, right of entry is obtained when the money for the Probate Court Award is paid into court.
 - c. When property is acquired by negotiations, the amount paid the property owner upon execution of the deed is the entire amount of the Department's approved offer or agreed upon settlement offer.
 - 1) Payment may be made jointly to the property owner and lien holder or mortgage insurer upon request of the property owner,
 - 2) or where it is determined to be necessary to insure that good title is vested in the State.
 - d. If acquired by condemnation, 100% of the Department's approved offer may, with rare exceptions, be withdrawn immediately after the money is deposited into court.

This is explained in the initial offer letter to the owner.

When final disposition of the case has been made in court, no interest should be paid on the amount of the drawdown made available to the owner whether he or she takes it or not.

2. Payment or availability of payment is made prior to the taking of physical possession of the property, except in cases where a letter of right of entry is obtained from the owner.
3. The Deputy Attorney General should petition the Court to invest the funds in all cases pending, in a reliable interest-bearing account. The amount of funds to be invested is the difference between the State's approved offer and the amount of the Probate Court Award. Should the property owner choose not to withdraw any funds available to him or her, the entire amount should be invested.

M. Qualifications of the Negotiator

1. Be twenty-one years of age or over and 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.
2. Ability to communicate effectively with successful completion of IRWA Course, Principles of Real Estate Negotiation.
3. Working knowledge of highway construction plans and right of way maps and ability to interpret and explain the relationship between the completed roadway and the property which will remain after a portion has been purchased for right of way; along with successful completion of IRWA Course, Principles of Land Acquisition.
4. Basic knowledge of Uniform Act acquisition regulations along with the ability to discuss the highlights of the relocation assistance program with the property owner; along with successful completion of IRWA Course, The Uniform Act Summary.
5. Basic knowledge of Alabama Eminent Domain Laws and procedures; along with successful completion of IRWA Course, Principles of Real Estate Law.
6. Basic understanding of appraisal methods and techniques and be able to discuss the elements of value with the property owner; along with successful completion Appraisal Institute courses Appraisal Principles and Appraisal Procedures. Or college level equivalent(s).
7. The process of negotiation is complex and cannot be confined to a set pattern. Individual and challenging problems, which the negotiator must be ready and able to cope with, will arise from each tract and owner. The negotiator has perhaps the best opportunity of any Department of Transportation employee to create and maintain good public relations for the Department of Transportation. His or her personal conduct during contacts will be considered by the public in many instances as

indicative of the policy and desires of those in authority within the Department.

8. The negotiator should carry out negotiations with the individual property owners for the acquisition of the property required for right of way in accordance with the policies and procedures of the Department.
9. He or she, being an employee of the State of Alabama, has an obligation to be fair and courteous to the property owner with whom he or she is negotiating and at the same time to represent the tax payers who are paying for the highway right of way and construction. The end results should be such as to assure that just and fair compensation has been made and the rights of each party have been fully respected.
10. It is only through the negotiator's ability to lend helpful suggestions and guidance that the property owner is enabled to understand the effect of the highway on his or her property.
11. The negotiator should refrain from passing judgment on rumors or gossip. The negotiator must be honest, willing to admit mistakes, and stand firm in his or her convictions of the ability and integrity of those who have devoted their efforts to the design of the project and valuation of the property. He or she must be cooperative with fellow employees so that the entire organization can function as a team.
12. The negotiator must be well prepared prior to contacting the owner in order that he or she can intelligently and accurately answer the questions, which the owner will have. The negotiator must be patient in dealing with the property owner and understand that, while he or she may be familiar with highway details, the property owner may have no knowledge whatsoever of the complexity of highway design and construction. He or she must be willing to work odd hours since many of the property owners cannot meet during the hours of a normal workday. It should be understood that the negotiator must conduct his or her meetings with the owner at the convenience of the owner.

N. Conflict of Interest

1. The negotiator shall not have any interest, direct or indirect, in the real property for which he/she is negotiating.
2. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Department.
3. An appraiser or review appraiser making an appraisal review may be authorized by the Agency 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.

III. Conduct of Negotiations

A. Notification to Real Property Owners

1. The Agency will notify in writing each property owner of property needed for a project to explain their rights. The acquisition information notices to property owners shall be made prior to delivery of the offer. It is recommended that notices be delivered at the time the Region/Area assigns appraiser(s) to the project. In no circumstances may the offer be delivered prior to the delivery of the notice.
2. The Region/Area office will prepare a letter from the form letter [ROW-15](#) (Acquisition Information Letter) located in the downloads of the Right of Way Website and mail to each property owner along with the Acquisition brochure.

B. Preparation Prior to First Contact

1. One of the keys to successful negotiations is preparation. The appraisal report should be studied by the negotiator, along with the map, plans, and construction features to the extent that he or she will be able to accurately interpret any and all items that may affect the property.
 - a. Review of the Plans:

Some of the things that are of utmost importance to the property owner are the features of the highway construction that affect the valuation and/or usage of his or her property, the means of ingress and egress, and the elevation of the facility in respect to the existing terrain. The negotiator should bear in mind that many persons do not understand engineering drawings and, therefore, must be sufficiently informed by study and consultation with the plans experts to adequately explain the necessity for and the valuation obtained by consideration given to those features.
 - b. The negotiator should be thoroughly familiar with any construction features which would tend to mitigate damages such as a drainage structure which may also be used for a cattle pass or machine underpass.
2. Review of the Appraisal
 - a. The negotiator must have knowledge of the appraisal process since he or she will be called on frequently to explain the various factors considered in the estimate of value.
 - b. Prior to the initial contact with the owner, the negotiator should make a review of the appraisal in order to be thoroughly familiar with all elements of value and damages included in the offer. Also, he or she must be able to explain the breakdown of the offer and the basis for each value.

3. Review of Map and Forms

Prior to contacting the owner, the negotiator should assemble all information and documents needed to properly inform the property owner and conclude negotiations. This should include but not necessarily be limited to:

- a. A print of the right of way map or a plat of the owner's property on which the right of way is shown.
- b. A print of the plan or layout sheet showing the owner's ingress and egress, as well as any other details which would affect the owner's remaining property.
- c. Acquisition Brochure.
- d. Acquisition agreement [ROW-12-A](#) or [ROW-12-A \(TCE\)](#).
- e. Acquisition invoice, properly filled out [ROW-25](#).
- f. Letter of Offer and Summary Statement [ROW-13](#).
- g. Construction Right of Entry, [ROW-14](#)
- h. Relocation Assistance Brochure (if applicable).

4. Controlled Access

- a. There are many benefits that accrue to the motorist on highways constructed under the control of access principle. The design of this type facility permits traffic to move with safety at a much higher speed, which results in a substantial time savings. Also, the elimination of stop and go traffic results in a substantial reduction in vehicle operation costs.
- b. Some features of a controlled access feature that the negotiator should be familiar with are:
 - 1) The limits of the access denial along the abutting property.
 - 2) The location of ramps that will permit the owner access to the facility.
 - 3) The alteration of the travel pattern because of the new construction.
 - 4) The direction of travel on frontage roads.
 - 5) The location of control of access fence.

5. Fencing

- a. One item of great concern to many rural property owners is the procedure involving fencing. The negotiator should be thoroughly familiar with the Department's standard specifications for different types of fencing so as to assure the property owner that fencing will be replaced in accordance with these specifications.
- b. On denied access highways, fencing will be erected along the right of way line at the expense of the Department of Transportation. Fencing protects the integrity of the controlled access facility by serving as a physical barrier to pedestrians, animals and lateral interference by vehicular traffic. The fencing shall be maintained by the Department of Transportation and shall be of a type consistent with standard specifications and drawings.

- c. If an alternate offer is made for the State to replace the fencing the signed agreement will specify which option the owner chooses in this regard. In providing this fencing, the Department of Transportation does not relieve the owner of his/her responsibility regarding livestock laws or in regards to the maintenance of said fencing.
 - d. The negotiator should also be familiar with the amount of compensation due the owner in the event he/she does not want the State to replace fencing.
6. Frontage Roads
- a. The primary functions of a frontage road are to control access to the travel way for through traffic, to provide access to the property in the vicinity of the highway, and to restore traffic circulation on the street or county road system on each side of the highway. The negotiator should be familiar with the plans for frontage and service roads. Questions regarding width, type surface, and design may be asked by property owners.
 - b. To properly inform the property owner and to satisfactorily answer the questions regarding the accessibility of the remaining property to a frontage road, through traffic lanes, and public ways, the negotiator must ascertain the relative elevation of the through traffic lanes and the frontage roads to the existing ground surface. This information can be obtained from the highway plans.
7. Easements
- a. Easements are generally of two types - Temporary and Permanent. Usually drainage easements are permanent while material sites, detour routes, and construction easements are generally temporary and revert when they are no longer needed.
 - b. In order for the negotiator to be able to properly inform the property owner, he or she must be familiar with the type easement to be acquired, the period of time it will be used, the construction details, and the condition it will be left in after its use has expired.
8. Timber
- a. Where there is no merchantable timber located on the acquired right of way, there is no problem in the disposition of that which is less than merchantable size or quality since it can be handled in the roadway contract as clearing and grubbing.
 - b. In those cases where there is a quantity of merchantable timber located on the right of way, there are two basic methods of disposing of this timber. They are:
 - 1) The property owner cuts the timber and removes it in advance of the construction letting and the value of the timber is deleted from the offer for the property, or
 - 2) The Department of Transportation purchases the timber, and it is selectively cut by the contractor. The cut timber becomes the

contractor's property with the value of same reflected in the bid price.

C. Contact with the Owner

1. Negotiations should be initiated as soon as possible after the offer has been approved.
2. Arranging the Meeting
 - a. Personal contact shall be made with all owners at which time an in-person meeting shall be offered.

If the owner lives outside of the region or out of state the following packet should be mailed to the property owner; if the scheduled appointment is greater than two weeks from the contact date or if requested by the owner:

- The Offer Letter, Summary Statement, [ROW-13](#)
- Invoice and Agreement Form, [ROW-25](#), [ROW-12A](#), [ROW-12A\(TCE\)](#)
- Right of Entry, [ROW-14](#)
- Property Plat or Sketch showing the effect of the taking, and the Acquisition Brochure

If the owner elects not to meet, in approximately two weeks, there shall be a follow-up telephone call.

If the negotiator is unable to make contact with the owner, the packet shall be sent certified mail. A letter setting forth the offer must be presented to all owners. (See letters on website for required content and format)

If the title work has been completed prior to the initial contact with the owner for negotiation purposes, the negotiator should refer to the title certificate to obtain the names of the parties with whom he or she should contact or discuss the conveyance.

If the title work has not been completed, the negotiator should contact the owner of record whose name may be indicated on the map or tax records. It is preferable to have the title information in hand prior to beginning negotiations.

- b. If the owner is represented by some other person and indicates that he/she would prefer to have that person handle the negotiations, the negotiator should obtain a document stating such and then make all contacts with the owner's representative.
 - c. In those instances where the owner has a disability (e. g. hearing or vision impairment, etc.) and he/she does not have a representative, steps must be taken to afford the owner an equal opportunity to

participate in and enjoy the benefits of our programs and services as required by Section 35.149 and Section 35.160, Title II of the Americans with Disabilities Act of 1990.

- d. In those Instances where the owner does not speak English and he/she does not have a representative who does, the Department must take steps to engage the services of someone proficient in the owner's language in order to facilitate negotiations. The offer letter and Acquisition Brochure will need to be translated to the owner's language as well.
- e. The negotiator should make an appointment to meet the property owner at a time convenient to the owner. Meeting with the owner, in person, is extremely important. In order to gain the confidence of the owner, the negotiator must present a neat, business-like, and friendly appearance. Impressions are of great importance.
- f. In the first meeting with the owner at the property, the negotiator must do the following:
 - 1) Verify with property owners that title to property being acquired is correct according to our R/W Map and title opinion.
 - 2) Verify that land, improvements, etc. inside acquired right-of-way match what is listed in appraisal review. When you are inspecting the area to be acquired, you need to make sure that we are not disturbing something without it being addressed in the appraisal review.
 - 3) Pay close attention to advertising signs and/or structures when you are inspecting the property. These have to be addressed by the Relocation section.
 - 4) Verify with the property owner if they are on sewer or a septic system. If he/she has a septic system, get them to help you determine where the tank and field lines are to ensure neither are on, or partially on, the area to be acquired.

3. Making the Offer

- a. The offer to the landowner may be the most important moment of the negotiation process. No offer should be made to the owner until the Right of Way Bureau Chief or the Region/Area Right of Way Manager, for approvals within the Region's approval limit, has established an approved amount.

The offer made by the negotiator should be a firm one with the written offer in hand. However, it should be presented in such a manner as not to give the impression that negotiations are closed if the offer is rejected by the property owner.

- b. The owner is to be given reasonable opportunity to consider the offer and to present material which he or she believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The negotiator must be attentive to the owner's presentation.

- c. Should the offer be rejected, consideration should be given to an administrative settlement. In no case is the appraisal report to be made available for the owner's review.
- d. The negotiator should never make known the amount of the approved offer to anyone other than the property owner or an authorized representative, except in an unusual circumstance. In most cases the neighboring property owners will discuss the various offers made to each of them. If questioned about offers made to the neighbors, the negotiator shall say offers made to other owners are confidential; however, offers normally differ because no two pieces of real estate are identical.
- e. The negotiator should be careful in the selection of his or her audience, being very particular to include only those parties whose signatures must be obtained on the conveyance and excluding others from the meeting unless they are authorized to advise or represent the property owners. Also, the negotiator shall not negotiate with several owners at one time, limiting negotiations to one property at a time.
- f. Negotiations for real estate are not to be undertaken with a lessee except upon approval of the Central Office.
- g. The only discussions which would normally be carried on with a lessee are those which are necessary for the relocation of personal property.
- h. In explaining the effect of the highway on the owner's property, the negotiator should use the maps and plans.
- i. The negotiator should be able to explain the elements of value which constitute the Department's offer. He or she should be familiar with the right of way map and be prepared, in case questions are raised about the areas involved, to scale or measure the distances and make computations in the presence of the owner. A rough check should be made of the area computations prior to contacting the owner to be sure there is no error.
- j. The right of way map or sketch should be compared with the property sketch in the appraisal report to assure that all improvements are shown and properly located.
- k. Usually, all structures within the required right of way will be purchased by the Department of Transportation and either sold by competitive or negotiated bid or razed and disposed of by the roadway contractor. An owner may be allowed to retain or repurchase the structures at a salvage value determined by the Department but only in cases where doing so will not interfere with construction schedules. In order to aid an owner, who expresses an interest in retaining structures, the negotiator should be familiar with moving requirements in the area, urban planning, zoning, construction schedules, etc.
- l. The vacation of improved properties is a matter of importance. It is necessary for the right of way to be cleared within the scheduled time. The period allowed for vacating the improvement should be

spelled out in the agreement and should be in accordance with the criteria set out in the Relocation Assistance section of the Right of Way Manual.

- m. There are certain incidental transfer expenses that will be incurred by the property owner. One in particular will be the payment of ad valorem taxes. The negotiator must be very explicit in detailing the expenses to be incurred by the owner. Details on the handling of this item are shown in Section II., K., Incidental Transfer Expenses.
- n. A record of all contacts must be reported on [ROW-RA-10](#) or [ROW-RA-11](#) (see Downloads). These forms must be properly prepared, signed by the negotiator or relocation officer respectively, and made a part of the permanent record of the affected parcel.
- o. The negotiator shall offer the property owner the full amount stated in the Department's approved offer at the initiation of negotiations. The Uniform Act requires all offers to be presented in writing. The written offer shall contain a summary breakdown of the elements of value considered in the offer.
- p. Any alternate offers must be made to the owner at this time.

4. Relocation Assistance Program

- a. The negotiator should be familiar with the services available through the Relocation Assistance Program of the Department of Transportation, including replacement housing payments, moving expenses, and incidental transfer and purchase expenses as well as the services available through other public and private agencies to the persons and businesses displaced by the highway program. Such agencies should include, but not be limited to, the Small Business Administration, local housing authorities, urban renewal, multiple listing services, and other Federal and local agencies and programs. The negotiator or relocation assistance officer, if there is one assigned to the project, will be responsible for giving each displacee, whether owner or tenant, a copy of the Relocation Assistance Brochure and explaining the Relocation Assistance Program at the first visit where price is discussed.
- b. In the Regions that have a separate section for relocation assistance, the negotiator should cooperate with that section in the matter of furnishing detailed information to the property owner on replacement housing payments, moving cost payments, incidental expenses, and relocation assistance advisory services.
- c. In the Regions that have no separate section for relocation assistance, it will be necessary that the negotiator be thoroughly familiar with relocation assistance and be able to answer the owner's inquiries in detail. In either case the negotiator or the representative of the Relocation Assistance Section should advise the property owner and/or occupant of benefits available through our relocation assistance program and other agencies. These benefits are spelled out in the Relocation Assistance section of the Right of Way Manual or in separate memoranda to the Region Engineers. Except in rare

instances, the negotiator or relocation assistance officer will make the replacement housing offer simultaneously with the offer for the real estate.

- d. This is a very important phase of the right of way program and the negotiator, by delivering information and by coordinating services available to the displacee, is in a position to minimize hardships and avoid unnecessary delays in highway construction.

5. Follow-Up After First Visit

- a. In some cases, a negotiator may be able to obtain an executed agreement and invoice on the initial visit with an owner. In others, it may be necessary to make several visits prior to obtaining the required signatures.
- b. Realizing that the property owner's decision as to the execution of the agreement is very important to him or her, the negotiator should be prepared to make several return visits, allowing the owner sufficient time to think over the offer or to obtain his or her own appraisal. Follow-up contacts should be made at two-to-three week intervals or as circumstances dictate.
- c. Regardless of the willingness of the property owner or the skill of the negotiator, there will be cases in which there is a personality clash between the two. If such develops, the negotiator should report it to the Region/Area Right of Way Manager who should then assign another negotiator to handle the remaining contacts with the property owner. If time permits, it is always good practice, prior to placing the case in condemnation, for a second skilled negotiator to contact the owners who have not signed agreements. This eliminates failure due to possible personality clashes.
- d. The negotiator shall explain to the property owner, that ALDOT may begin the condemnation process 30 days after the initiation of negotiations. However, the negotiator shall make it clear that negotiations may continue until a probate award is rendered.

6. The Agreement and Invoice

- a. When the property owner and negotiator have agreed upon the terms under which the property is to be conveyed to the State, Agreement [ROW-RA-12A](#) or [ROW-RA-12A \(TCE\)](#) should be filled out and executed by the negotiator and the property owner. The details upon which the property is to be conveyed should be clearly spelled out leaving no question in the minds of the property owner or State personnel who must process the necessary paperwork.
- b. The executed agreement and invoice should be forwarded from the Region/Area Office to the ROW Bureau for processing. Care should be taken to insure that the invoice is properly coded, especially if the purchase involves the acquisition of an excess parcel or uneconomic remnant. The invoice shall be in the name(s) of the owner(s) of record and not the owner's attorney.

- c. The State's attorney or the Region/Area Right of Way Manager shall deliver the warrant at closing.

7. New Value Evidence

If during negotiations it becomes apparent that some element of value or damages was overlooked by the appraiser, the negotiator shall cease negotiations and advise his or her supervisor, who in turn will contact the ROW Bureau. The reviewing appraiser will then be asked to make another check of the information available. If the reviewing appraiser finds that the offer should be revised, he or she will do so accordingly. The negotiator should in no way indicate to the owner that there will be an increase or decrease in the amount of the offer until the review has been made and a new offer approved.

8. Termination of Negotiations

- a. When it becomes evident that further negotiations with the owner, either through the first or second negotiator, would be fruitless, the negotiator should advise the owner that it will be necessary to acquire the property through the Probate Court in the particular county in which the property is located. The negotiator should then explain to the owner the condemnation procedure so that the owner will understand his or her rights and know what to expect.
- b. In order to give the property owner a reasonable opportunity to consider the Department's offer, obtain an appraisal if they desire, and present the Department any relevant information; negotiations will continue for a minimum of 30 days after the initiation of negotiations. If an agreement has not been reached after 60 days a petition of condemnation shall be filed.
- c. In some cases where an owner is not willing to convey the property for the amount of the approved offer, he or she may be willing to grant the Department of Transportation a letter of right of entry. The Right of Entry [ROW-14](#) is properly worded to give the Department of Transportation and its contractor the right of physical entry to the property, thereby preventing any delay in the construction schedule. The letter also assures the owner that he or she is not sacrificing any compensation that would be due in a negotiating procedure or in acquisition through eminent domain. When there is little time available and an agreement cannot be reached, it is sometimes necessary to attempt to get a letter of right of entry from the property owner.

D. Record of Negotiations

1. Negotiator Report - [ROW-RA-10](#)

- a. The negotiator shall maintain adequate records of negotiations for acquisitions and donations in writing on a tract basis by posting the Negotiator Report, Form ROW-RA-10, immediately after each contact with the property owner. The report should not be prepared in the presence of the property owner.

- b. The Negotiator Report should be filled out in detail. The dates of each contact and the place of each contact must be recorded, as well as any alternate offers made. Reasons settlement could not be reached, the maximum amount of any replacement-housing offer made, comments on the discussion of the relocation assistance program, as well as any other pertinent data should be included. If there is not sufficient space in the "Remarks" area, an additional sheet may be attached for this purpose.
 - c. Except in rare instances, the replacement-housing offer to an owner-occupant shall be made simultaneously with the acquisition offer for the real estate.
 - d. The replacement housing offer to a tenant shall be made as soon as feasible, but not to exceed 15 days, after initiation of negotiations with the owner. Only in rare instances and with prior approval of the ROW Bureau and certain safeguards, shall it be made prior to initiation of negotiations for the tract.
 - e. The Negotiator Report shall be prepared for each tract with the original sent to the ROW Bureau and a copy retained for the Region/Area Office files. This form shall be submitted to the ROW Bureau with the executed agreement and invoice for payment on negotiated tracts, and with the invoice for payment to Probate Court on condemned tracts. The invoice will not be processed unless the Negotiator's Report has been received in the ROW Bureau.
2. Relocation Assistance Contact Report - [ROW-RA-11](#)
Form ROW-RA-11, Relocation Assistance Contact Report, shall be prepared in duplicate for each relocatee, with one (1) copy for the Region Office files and the original for the ROW Bureau files. It should not be prepared in the presence of the relocatee. The substance of each contact regarding a particular relocation, including telephone calls and written inquiries, should be included on the form. This form shall be maintained by the Region/Area until such time as the final relocation contact has been made, at which time the original will be submitted to the ROW Bureau and the copy retained by the Region/Area Office for its files.
3. Agreement - [ROW-12-A](#)
 - a. When right of way is acquired by negotiation, all terms of the agreement between the Department of Transportation and the property owner shall be embodied in written instruments appropriately executed. The agreement is prepared on Form ROW-12-A.
 - b. Items to be acquired by the Department of Transportation and for which the owner is being compensated should be set forth in the agreement.
 - c. The agreement also should set forth any obligation by either party and/or any work to be performed by the Department of Transportation in addition to the payment for the property.

- d. The time limit which the owner will be granted to vacate the premises is an important factor and should also be spelled out.

IV. Administrative Settlements

A. General

1. An administrative settlement is a settlement made prior to condemnation. It is an approved amount greater than that previously approved for negotiations and offered to the property owner.
2. Administrative settlements may be considered if they are reasonable, prudent, and in the public interest, such as in those cases where there appears to be no significant difference in the Department's approved offer and the amount desired by the owner, especially if condemnation proceedings can be avoided.

B. Recommendation and Approval of Administrative Settlements

1. When a negotiator is unable to reach an agreement with the property owner based on the approved offer and the owner makes a reasonable counteroffer, an administrative settlement may be approved.
 - a. If the amount of the counteroffer does not exceed the Region's approval authority, the Region Right of Way Manager is authorized to make an administrative settlement.
 - b. If the total exceeds the Region's approval authority, the Region may recommend to the ROW Bureau that the tract be purchased on the basis of the owner's counteroffer as an administrative settlement in order to avoid litigation.
2. In deciding whether or not the owner's counteroffer is to be accepted by the State, items that are non-compensable under State or Federal law will not be considered in administrative settlements. In certain cases, especially involving large amounts of money or complex valuations, prior approval may be obtained from the Federal Highway Administration.

C. Documentation Required

When an administrative settlement is approved, a memorandum to the file is prepared citing the justification for the settlement. This memo is made a part of the tract file. If the administrative settlement is within the Region/Area's approval authority, the memorandum to file should be prepared by the Region/Area and submitted with the invoice and agreement. If the memorandum to file is not received by the ROW Bureau, the invoice will not be processed. If the ROW Bureau approves the administrative settlement the ROW Bureau coordinator will prepare the memorandum to file. Items which should be considered include the following:

1. All available appraisals, including the owner's appraisal or other documentation.

2. The approved estimate of just compensation.
3. Recent court awards for similar type property.
4. The negotiator's recorded information.
5. The range of probable testimony as to fair market value should condemnation be filed.
6. The estimate of trial cost.

V. Property Acquisition Alternatives

A. Early Acquisition

The Alabama Department of Transportation (Department) may initiate acquisition of real property prior to the completion of the National Environmental Policy Act (NEPA) document for the project that will be incorporated into the project for which surface transportation program funds are received.

An Early Acquisition Project can be comprised of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

The Department may undertake early acquisition projects before the completion of the environmental review process for the overall project for the purpose of corridor preservation, access management or other purposes approved by the Federal Highway Administration (FHWA).

The project may be bought with state or federal funds based on the requirements listed below. The purchase will not affect subsequent approvals required for the project by FHWA.

1. Alternative Methods of Early Acquisition

There are four alternative methods of early acquisition provided in federal statutes and regulations. The following are mandatory conditions that every alternative must meet:

- The property was lawfully obtained;
- Section 4 (f): A property was not a public park, recreation lands, wildlife or waterfowl or historic sites as described in 23 USC 138;
- The property was acquired in accordance with the Uniform Act.
- The Department complied with requirements of Title VI of Civil Rights Act of 1964;
- The property cannot influence the environmental review process for the proposed transportation project or limit the choice of reasonable alternatives in the NEPA analysis for the project;
- The property will be incorporated into a Federal-aid project.

a. State Funded without credit or reimbursement

The Department may carry out early acquisition entirely at its expense. However, the Department may maintain eligibility for future Federal assistance on a transportation project. To maintain

eligibility, early acquisition must comply with the following requirements:

- 1) Property lawfully obtained by the Department;
- 2) Not 4F property;
- 3) Acquisitions and relocations comply with the Uniform Act;
- 4) Department complies with Title VI of the Civil Rights Act;
- 5) FHWA concurs with the Department that the Early Acquisition did not influence the NEPA decision for the proposed transportation project including:
 - o The need to construct,
 - o The consideration of alternatives, or
 - o The selection of design or location.

The federal reference for this option is [23 CFR 710.501\(b\)](#).

- b. State Funded eligible for Future (matching) credit
Early Acquisition Project costs incurred by the Department at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds.
- 1) Property lawfully obtained by the State agency;
 - 2) Not 4F property;
 - 3) Acquisitions and relocations comply with the Uniform Act;
 - 4) The Department complies with Title VI of the Civil Rights Act;
 - 5) FHWA concurs with the Department that the Early Acquisition did not influence the NEPA decision for the proposed transportation project including:
 - o The need to construct,
 - o The consideration of alternatives, or
 - o The selection of design or location;
 - 6) Property is incorporated in the transportation project to which the credit will be applied; and
 - 7) The amount of the credit may be current fair market value or historic acquisition cost to acquire; however, this credit must be applied consistently within the transportation project subject to the requirements at 23 U.S.C. 323(b).

The federal reference for this option is [23 CFR 710.501\(c\)](#).

The federal reference for direct eligible costs is [23 CFR 710.203\(b\)](#).

- c. State Funded eligible for Future reimbursement
Project costs incurred by a Department prior to completion of the environmental review process for the transportation project are eligible for reimbursement from title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the Department

demonstrates, and FHWA concurs, that the following mandatory conditions are met.

- 1) Property lawfully obtained by the State agency;
- 2) Not 4F property;
- 3) Acquisitions and relocations comply with the Uniform Act;
- 4) State agency complies with Title VI of the Civil Rights Act;
- 5) FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed transportation project including:
 - The need to construct,
 - The consideration of alternatives,
 - The selection of design or location;
- 6) State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State plans and is consistent with the State transportation planning process under 23 U.S.C. 135;
- 7) The State selects the alternative for which the real property interest is acquired pursuant to NEPA;
- 8) Prior to approval for Federal participation, NEPA, section 4(f), and all other environmental review/approval requirements are complete (see https://www.fhwa.dot.gov/environment/env_sum.cfm and provisions in 771.119(g) and 771.125(a)(1) on reasonable assurances of compliance).
- 9) Reimbursement of acquisition costs is based on the usual costs to acquire—23 CFR 710.203(b)(1).

The federal reference for this option is [23 CFR 710.501\(d\)](#).

d. Federal Funded Early Acquisition (Stand-alone Project)

FHWA may authorize the use of funds apportioned to the Department under Title 23 for the acquisition of real property interest by the Department.

State certifies and FHWA concurs that the following requirements have been met:

- 1) State has authority to acquire under State law;
 - Is for a Title 23 eligible transportation project and does not involve 4F properties;
 - Will not cause significant adverse environmental impacts because of the EA project or from cumulative effects of multiple EA projects carried out in connection with the transportation project;
 - Will not limit the choice of reasonable alternatives for the transportation project or otherwise influence the decision of FHWA on any approval required of the transportation project;

- Will not prevent FHWA from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;
 - Is consistent with the State transportation planning process under 23 U.S.C. 135;
 - Complies with other applicable Federal laws (including regulations);
 - Will be acquired through negotiation, without the threat or use of condemnation.
 - Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;
 - The Early Acquisition project is in the applicable Transportation Improvement Program(s); and
 - NEPA for the Early Acquisition project is complete (including compliance with 23 CFR 710.501(e)(4)), and approved by FHWA.
- 2) Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken, and any such work requires prior FHWA approval under 23 CFR 710.501(f).
 - 3) If reimbursement is made and the real property interests are not incorporated in a transportation project within 20 years, pursuant to 23 U.S.C.108(d)(7) FHWA must offset the amount against Federal-aid funds apportioned to the State.
 - 4) Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Except as provided in 23 CFR 710.501(h), options to purchase and similar agreements do not create an immediate commitment and do not create relocation eligibility.

2. Hardship Acquisitions

a. General Conditions

Hardship acquisitions only apply prior to approval of the environmental document. After the document is approved, a Right of Way project must be authorized for the project acquisition.

Prior to the Department obtaining final environmental approval, the Department may request FHWA agreement to provide reimbursement for advanced acquisition of a particular tract or a limited number of tracts to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

- 1) The project is included in the currently approved State Transportation Improvement Plan.
 - 2) The Department has complied with applicable public involvement requirements in 23 CFR 450 and 771.
 - 3) The determination has been completed for any property subject to the provisions of 23 USC 138.
 - 4) Procedures of the Advisory Council of Historic Preservation are completed for properties subject to 16 USC 470 (f) (Historical properties).
- b. Requirements
- Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or selection of a specific location. The Department must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:
- 1) Supports the hardship acquisition by providing justification, on the basis of health, safety, or financial reasons, which remaining on the property poses an undue hardship compared to other property owners; and
 - 2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.
- c. Procedures
- 1) The property owner submits, to the Region/Area, a written request for hardship acquisition describing the nature of the hardship. The Region/Area will document the qualifications for the requested hardship acquisition based on health, safety, or financial reasons.
 - 2) The Region/Area shall forward the request and documentation for hardship acquisition to Central Office along with the environmental decisions and estimates for acquisition and relocation.
 - 3) Environmental Technical Section will be requested to prepare a categorical exclusion for acquisition of the tract for FHWA approval in accordance with 23 CFR 771.117 (d) (12).
 - 4) Documentation submitted to FHWA for concurrence and authorization.
 - 5) Following receipt of FHWA concurrence and authorization, the Department may proceed with acquisition.
3. Protective Purchase
- A protective purchase may be approved if development is imminent, and the department can clearly demonstrate that such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

a. Procedures

- 1) The Region/Area shall forward a request to Central Office explaining imminent development with projected cost involved after development along with cost estimates for acquisition and relocation before development.
- 2) The Environmental Technical Section is requested to prepare a categorical exclusion for acquisition of the tract for FHWA approval in accordance with 23 CFR 771.117(d)(12).
- 3) Documentation is submitted to FHWA for concurrence and authorization.
- 4) Following receipt of FHWA concurrence and authorization, the Department may proceed with acquisition.

B. Real Property Donations

1. General

A non-governmental owner whose real property is required for a project may donate the property to the Alabama Department of Transportation provided it meets environmental requirements as specified in 23 U.S.C. 323(d).

2. Conditions

- a. Prior to accepting a donation of property, the Department must advise the owner that he/she has the right to receive just compensation for the property being donated. The Department must obtain a completed donation letter from the property owner prior to accepting a donation.
- b. The Department is responsible for obtaining an appraisal of the donated property unless the owner releases the Department from this obligation by signing the acknowledgement in the donation letter.

3. Credit for Donations

Donations of real property may be credited to the Department's matching share of the project. Credit to the Department's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. For the Department to receive credit for its matching share an appraisal must be completed to document and support the credit applied. The total credit cannot exceed the Department's pro-rata share under the project agreement to which it is applied.

4. Exchange for Construction Features and Services

A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction

features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the Department's share of the project cost.

C. State and Local Contributions

1. General

Contributions of real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of the total project cost as set forth in 23 CFR 710.507.

2. Effective Date

Credits can be applied to projects where the initial project agreement is executed after June 9, 1998

3. Exemptions

Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

4. State Contributions

Real property acquired with State funds and required for federally assisted projects may support a credit toward the non-federal share of project cost.

a. Conditions

- 1) The Department shall certify by letter to FHWA that the acquisition satisfies the conditions set forth in 23 CFR 710.507(b).
- 2) Justification for the credit must be determined by either an appraisal determining the fair market value or documentation showing the acquisition cost incurred by the State to acquire title for the property.

5. Local Government Contributions

A contribution by a unit of local government of real property that is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought.

a. Conditions

- 1) The Department shall certify by letter to FHWA that the acquisition satisfies the conditions set forth in 23 CFR 710.507(b).
- 2) Justification for the credit must be determined by either an appraisal determining the fair market value or documentation showing the acquisition cost incurred by local government to acquire title for the property.

D. Functional Replacement of Real Property in Public Ownership

1. General

When publicly owned real property, including land and/or facilities, is to be acquired for a highway project, in lieu of paying the fair market value for the real property, the Department may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility. Examples are libraries, fire and police stations, city and town halls, and public schools.

2. Federal Participation

Federal-aid funds may participate in functional replacement costs only if:

- a. Functional replacement is permitted under State law (it currently is) and the Department elects to provide it.
- b. The property to be acquired is in public ownership and use.
- c. The replacement facility will be in public ownership and will continue the public use function of the acquired facility.
- d. The Department has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.
- e. The FHWA concurs in the Department's determination that functional replacement is in the public interest.
- f. The real property is not owned by a utility or railroad.

3. Limits Upon Participation

Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are:

- a. Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and
- b. Costs for land to provide a site for the replacement facility.

4. Procedures

- a. During the early stages of project development, a Region representative should meet with the owning agency to discuss the effect of the possible acquisition and potential application of the functional replacement option.
- b. At the earliest practicable time following FHWA authorization for right-of-way acquisition for the project, the owning agency must be informed of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.
- c. If the owning agency desires functional replacement, it must make a formal written application to the Region Engineer and fully explain

why it would be in the public interest to functionally replace its facility.

- d. The Region shall forward the request to the Central Office along with its recommendation.
- e. If the Central Office determines that functional replacement is in the public interest, it shall request concurrence from FHWA. This is required on all Federal-aid projects regardless of the current ALDOT-FHWA Project Stewardship and Oversight Agreement.
- f. Following receipt of FHWA concurrence, the Department should initiate an agreement with the owning agency setting forth the rights, obligations, and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall also set forth how the costs of the new facility are to be shared between the parties.
- g. The Department may proceed with acquisition of the replacement site, if necessary. Should the owning agency elect to purchase the replacement site on their own, the Region must monitor the acquisition for Uniform Act compliance.
- h. The development of detailed plans, specifications, and estimates (PS&E) should proceed as soon as practicable. An architect should be selected using the Department's consultant selection procedures. (Architect fees must not be based on a percentage of cost of construction in accordance with 23 CFR Part 172.9(c)(2)).
- i. The PS&E shall be submitted to FHWA for review and approval if required under the current ALDOT-FHWA Project Stewardship and Oversight Agreement. Advertising for bids and letting of the contract may follow the general procedures utilized by the owning agency, if acceptable to the Department and FHWA. The submission, where applicable, shall include provisions for periodic Department inspections during construction of the replacement facility.
- j. A final inspection of the completed facility shall be made jointly by the Region and a representative of the owning agency. A representative of FHWA should be invited on this inspection if appropriate under the current ALDOT-FHWA Project Stewardship and Oversight Agreement. The Region shall request a letter from the owning agency releasing ALDOT from any further responsibility.

E. Transportation Alternatives Set-Aside Program

1. The Department is authorized to expend surface transportation funds for Transportation Alternatives Set-Aside Program activities. Transportation Alternatives Set-Aside Program activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 24 and 49 of the Code of Federal Regulations.

2. Requirements

- a. Displacements for Transportation Alternatives Set-Aside Program activities are subject to the Uniform Act.
- b. Acquisitions for Transportation Alternative Set-Aside Program activities are subject to the Uniform Act except as provided in c, d, and e of this paragraph.
- c. Entities acquiring real property for Transportation Alternatives Set-Aside Program Activities who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).
- d. The requirements of the Uniform Act do not apply when real property acquired for Transportation Alternatives Set-Aside Program activities was purchased from a third party by a qualified conservation organization, and
 - 1) The conservation organization is not acting on behalf of the agency receiving Transportation Alternatives Set-Aside Program or other Federal-aid funds, and
 - 2) There was no Federal approval of property acquisition prior to the involvement of the conservation organization.
- e. When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the requirements of the Uniform Act apply as if the agency had acquired the property itself.
- f. When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

3. Conditions

Local Transportation Bureau is the lead bureau for coordinating the Transportation Alternatives Set-Aside Program. Appraisals prepared to establish the fair market value for the acquisition of property for these projects will be reviewed by the Appraisal Section of the Right of Way Bureau and returned to the Local Transportation Bureau.

F. Environmental Mitigation

1. All wetlands in Alabama fall under the Wetland Conservation Act of 1991. Regulated wetlands may not be filled or drained unless replaced by restoring or creating wetland areas. The acquisition and maintenance of land for wetland mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. Wetland banking is the form of replacement used to mitigate the acquisition of wetland areas.

2. Procedures

- a. When a determination is made for a need or planned future need for wetland mitigation, contact must be made with the Environmental Technical Section.
- b. Environmental Technical Section reviews the need to determine if wetland banking is necessary.
- c. When wetland banking is necessary, wetland sites are located and identified.
- d. The Region Right of Way Manager is requested to obtain title opinion and estimated wetland acquisition cost.
- e. The appraisal is completed to determine fair market value of the property.
- f. The offer is made to the property owner. The property owner must be informed that the State will not initiate condemnation proceedings should a negotiated agreement fail.
- g. Wetland replacement area is acquired by agreement.
- h. The Environmental Technical Section is the responsible party for maintenance of the Department's wetland bank.

G. Federal Land Transfer

1. General

The following procedures apply whenever the Department requires land for a project owned by the United States. These procedures apply to any project on the National Highway System, as well as on any project eligible for Federal-aid under Chapters 1 and 2 of Title 23, United States Code (USC). Sections 107(d) and 317 of Title 23, USC, provide for the transfer of lands or interests in lands owned by the United States to a State or its nominee (a county, in some cases) for highway purposes.

2. Procedures

- a. The appropriate Region office should contact the local federal agency having jurisdiction over the required tract at the earliest time possible to discuss the proposed project and to alert them to the fact that the Department intends to initiate a Federal land transfer for the land needed for the project.
- b. When the right of way map and legal description are ready, and environmental document requirements have been met, the Department will file an application with FHWA requesting a "Letter of Consent" from the land-owning agency. Note: If the land-owning agency has its own authority for granting interests in land, such as the military, the Department will make application directly to that agency. The FHWA should be notified in such cases for informational purposes.
- c. The application will include the following information:
 - 1) The purpose for which the lands will be used;
 - 2) The estate or interest in the land required for the project;

- 3) The Federal-aid project number or other appropriate project number;
 - 4) The name of the Federal agency having jurisdiction over the land;
 - 5) The right of way map with the area required clearly delineated. The number of copies will vary according to agency needs (5 copies if for the Forest Service);
 - 6) A legal description of the lands desired; and
 - 7) A statement of compliance with the National Environmental Policy Act of 1969 (42 USC 4332, *et seq.*), and any other applicable Federal environmental law, including the National Historic Preservation Act (16 USC 470(f)), and 23 USC 138, preservation of parklands.
- d. FHWA reviews the application, and if it determines that the Federal land transfer is *reasonably necessary* for the proposed highway project, it will send the application to the owning agency and request a right of entry. The land-owning agency has four months in which to designate conditions necessary for the adequate protection and utilization of the reserve.
 - e. FHWA returns the Letter of Consent to the Department with the agency's list of conditions.
 - f. The Department will prepare the deed, incorporating the owning agency's conditions. The deed shall contain the clauses required by FHWA and 49 CFR 21.7(a)(2). The map and legal description are referred to in the deed and should be stamped "Exhibit A" and "Exhibit B" respectively.
 - g. The deed is forwarded to the Legal Bureau for review and a written certification that the deed is legally sufficient.
 - h. The deed and certificate of legal sufficiency are forwarded to FHWA (or to the landowning agency the Department is dealing with directly) for review, execution, and notarization.
 - i. After the executed deed is returned, the Department will forward the deed to the appropriate county probate office for recording.
 - j. After recordation, the Department will forward two copies of the deed showing the recorded data to FHWA. FHWA will forward one of the copies to the land-owning agency. If the Department dealt directly with the land-owning agency, a copy of the recorded deed will be sent to that agency.

VI. Glossary

A. Terms and Definitions

Abandonment - The relinquishment of the public interest in right of way or activity thereon with no intention to reclaim or use again for highway purposes; sometimes called Vacation.

Abstract of Title - A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property, and all liens, charges, encumbrances, and releases.

Acquisition or Taking - The process of obtaining right of way.

Ad Valorem Tax - A tax varying with the value of goods or property.

Agreement of Sale - A written contract whereby the purchaser agrees to buy certain real estate and the seller agrees to sell upon terms and conditions set forth therein.

Airspace - That space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Appraisal - (1) An estimate and opinion of value, (2) Usually a written statement of the market value or value as defined by the appraiser of an adequately described parcel of property as of a specific date. A conclusion that results from an analysis of facts.

Assessment - (1) The valuation of property for taxation; also the value so assigned. (2) Nonrecurring charges levied against property to meet some specific purpose.

Back slope - That portion of the roadway between the side drainage ditch and the top of cut, usually measured as a ratio between horizontal and vertical distances.

Benefit –

General Benefit: Advantage accruing from a given highway improvement to a community as a whole, applying to all property similarly situated.

Special Benefit: Advantage accruing from a given highway improvement to a specific property and not to others generally.

Certificate of Title - A document based on a title search stating that the title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Cloud on Title - An outstanding claim or encumbrance which if valid will affect or impair the owner's title; a judgment or dower interest.

Compensable Interest - A property right which, if acquired for highway purposes, would entitle the owner to receive just compensation.

Condemnation - The process by which property is acquired for public purposes through legal proceedings under power of eminent domain.

Inverse Condemnation - A legal process which may be initiated by a property owner to compel the payment of just compensation where his or her property has been taken or damaged for a public purpose, for which they did not receive just compensation.

Control of Access - The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

Full control of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.

Partial control of access means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

Conveyance - A written instrument by which a title, estate, or interest in property is transferred.

Corridor - A strip of land between two termini within which traffic, topography, environment, and other characteristics are evaluated for transportation purposes.

Date of Taking - The date the application for condemnation is filed in Probate Court, if acquired by condemnation. Date deed signed by property owner if acquired by agreement.

Dedication - The setting apart by the owner and acceptance by the public of property for highway use, in accordance with statute or common law.

Deed - A written instrument conveying real property or interest therein, usually under seal.

Quitclaim Deed - A deed conveying, without warranty, any title, interest, or claim, which the grantor may have in the estate conveyed.

Warranty Deed - A deed containing a covenant by the grantor to the grantee to warrant and defend the title of the estate conveyed.

Direct Compensation - Payment for land or interest in land and improvements actually acquired for highway purposes; sometimes called direct damages.

Donation - The voluntary conveyance of private property to public ownership and use, without compensation to the owner.

Easement -

Permanent: A right to use or control the property of another for designated purposes.

Temporary: An encumbrance for the use for a limited, specified time, typically based on a rental rate. Typically for the use of the contractor whereby the contractor is responsible for damage or replacement of any improvements.

Effective Screening - Full or partial concealment of unsightly views to render them unnoticeable from the through traffic lanes, by means of natural objects, plantings, fences, or other appropriate means.

Eminent Domain - The power to take private property for public use without the owner's consent, upon payment of just compensation.

Encroachment - Unauthorized use of highway right of way or easements as for signs, fences, buildings, etc.

Environmental Design - A location and design of a highway that includes consideration of the impact of the facility on the community or region based on aesthetic, ecological, cultural, sociological, economic, historical, conservation, and other factors.

Fee Simple - The largest and most extensive estate, or full ownership, in property.

Fill Slope - The portion of the roadway between the outside of the shoulder and the toe of the slope.

Fixture - A movable chattel (such as a machine, heating plant, etc.) which by reason of its annexation to real property and adaptation to continuing use in connection with the realty, is considered a part of the realty.

Full Control of Access - The authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.

Grade Line - The slope in the longitudinal direction of the roadbed, usually expressed in percent, which is the number of units of change in elevation per 100 units horizontal distance. Also has a "general" use to mean the "highway profile."

Grade Separation - A crossing of two highways, or a highway and a railroad, at different levels.

Grantee - A person to whom real estate is conveyed; the buyer.

Grantor - A person who conveys real estate by deed; the seller.

Guaranteed Title - A title, the validity of which is insured by an abstract, title or indemnity company. (Sometimes called an Insured Title.)

Highest and Best Use - That use of land which may reasonably be expected to produce the greatest net return to land over a given period of time.

Historic Site - A building, monument, park, cemetery, or other site having public interest and national, regional, or State significance, which should be considered in the location and design of a highway.

Initiation of Negotiations - The delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

Inverse Condemnation - The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his property which was taken without payment of just compensation, as a result of a highway improvement.

Joint Estates - Two or more persons having concurrent and simultaneous estates or interest in the same parcel of land whether or not the estate in land is fee simple, a life estate, or an estate for years. Such cases of co-ownership are called tenancy by the entirety, joint tenancy, tenancy in common and community property.

Joint Tenancy - An estate in fee simple, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The distinct character of joint tenancy is survivorship, by which the entire tenancy on the decrease of any joint tenant remains to the survivors, and at length to the last survivor.

Just Compensation - That payment required by law for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes.

Lease - A contract, written or oral, for the possession of lands and tenements, on the one hand, and a recompense of rent or other income, on the other hand. It is a contract by which one person divests himself of real property and another person takes possession thereof for a determinable and limited time, though not necessarily a definite period of time.

Leasehold - Property held under tenure of lease. A property consisting of the right of use; occupancy of real property by virtue of lease agreement. The right of the lessee to use and enjoy real estate for a stated time under certain conditions, such as the payment of rent.

Lessee - one who acquires the right of use of the property of another. He is the one to whom the lease is granted or the property is rented under the lease. The lessee's interest is known as the leasehold.

Lessor - one who rents real property to another or one who conveys or leases the right of use of real estate to another. He is the landlord. He usually is the fee owner; however, this is not always so, as in the case of a lessee who subleases to another party. The original lessee then also becomes a lessor and the owner of a sandwich lease interest. The lessor's interest is known as the leased fee.

Letter of Right of Entry - Letter from property owner granting the right to enter and use his or her property for highway purposes prior to the State acquiring or taking possession.

Lien - A hold or claim which one person has upon the property of another as a security for a debt or a charge, judgment, mortgage, taxes, etc.

Market Value - 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.

Mortgage Deed - A deed by way of mortgage, which has the effect of the mortgage on the property, conveyed and imposes a lien on the granted estates.

Mortgagee - A person to whom property is conveyed as security for a loan. One who takes a mortgage or one who loans money secured by a mortgage.

Negotiation - The process by which property is sought to be acquired for highway purposes through discussion, conference, and mutual agreement upon the terms for transfer of such property.

Option - A written agreement granting a privilege to acquire property or interest therein at a fixed price within a specified period.

Partial Control of Access - The authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

Partial Taking - The acquisition of a portion of a property.

Plottage - The increment resulting from the combination of two or more parcels into a larger whole so as to develop one site having a greater utility than the aggregate of each when separately considered.

Property - Personal - In broad and general sense, everything that is the subject of ownership, not coming under the denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in realty, or any right of interest which one has in things movable.

Property - Real - The bundle of rights which arise by reason of the ownership of physical real estate. The rights and interests possessed in land and those things affixed to the land. Land, and generally whatever is erected or growing upon or affixed to land.

Proximity Damage - A damage to a property arising as a consequence of the nearness or proximity of a highway, or other type of construction, to the improvements on the property. The diminution of the market value of a property as a result of the encroachment and proximity of a highway or other type of construction.

Quitclaim Deed - A deed conveying, without warranty, any title, interest, or claim, which the grantor may have in the estate conveyed.

Remainder - The portion of a tract of land retained by the owner after a part of such tract has been acquired.

Right of Access - The right of an abutting landowner for entrance to or exit from a public road.

Right of Entry - The right to enter and use the property for highway purposes prior to acquisition or taking possession.

Right of Immediate Possession - The right to immediately enter upon and use property for highway purposes.

Right of Entry for Preliminary Engineering - The right to enter property temporarily to make surveys and investigations and studies for proposed highway improvement.

Right of Way - A general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.

Right of Way Appraisal - An expert opinion of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

Right of Way Map - A plan of a highway improvement showing its relation to adjacent property, the tracts and parcels or portions thereof needed for highway purposes, and other pertinent information.

Riparian Rights - The rights of an owner of water-fronting lands in the bed, banks, accretions, water access, moorage, and related items.

Roadside Control - The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve the attractiveness of the landscape.

Roadside Zoning - The application of zoning for roadside control.

Setback Line - A line outside the right of way, established by public authority or private restriction, on the highway side of which the erection of buildings or other permanent improvements is controlled.

Severance Damages - Loss in value of the remainder of a parcel resulting from a partial taking of real property.

Sign - A board poster or placard displayed to advertise or convey information.

Conforming Outdoor Advertising Sign: Any outdoor advertising sign erected and maintained in conformance with existing State law.

Illegal Outdoor Advertising Sign: Any outdoor advertising sign that is erected and maintained in a location prohibited by State law, or in violation of size, lighting, spacing, or other requirements established by State law.

Non-Conforming Outdoor Advertising Sign: A sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions.

Off-Premise Sign: An outdoor sign, display, or device advertising a service or product at a location other than on the property where such service or product may be obtained.

On-Premise Sign: An outdoor sign, display, or device advertising activities conducted on the property on which it is located or the sale or lease of that property.

Title - The evidence of a person's right to property or the right itself.

Certificate of Title: A document based on a title search stating that title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Guaranteed Title: A title, the validity of which is insured by an abstract, title, or indemnity company, sometimes called Insured Title.

Title Opinion - An analysis and interpretation by an attorney of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

Title Search - An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.

Tract Plat - A map of a single ownership of property or portion thereof needed for highway purposes, showing the boundaries, areas, the remainder, improvements, access ownership, and other pertinent information.

Uneconomic Remnant - A remaining part of the property in which the owner is left with an interest which has little or no utility or value to the owner.

Uniform Act - Federal law which sets forth regulations for the acquisition of properties and relocation of displaced persons on Federally assisted projects. (This act has also been adopted as State law for projects without Federal funding.)

Warranty Deed - A deed containing a covenant by the grantor to the grantee to warrant and defend the title of the estate conveyed.

Zoning - The division of an area into districts and the public regulation of the character and intensity of use of the land and improvements thereon.

Roadside Zoning: The application of zoning for roadside control.