CHAPTER 11
RIGHT OF WAY
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Figure 11-1 Acquisition of Real Property by Sponsors for Federal Aid Projects

NOTE: This Chapter has associated appendices and forms that can be found on our website at: [www.dot.ny.gov/plafap](http://www.dot.ny.gov/plafap)
Chapter 11 – Right of Way

11.1 INTRODUCTION

This chapter acquaints the reader with the process of acquiring additional right of way (ROW) for federally funded construction projects. It is intended as a guide and is not an all-inclusive manual. There are many federal and state laws and regulations the Sponsor or acquiring agency must have a working knowledge of to successfully complete the ROW acquisition process in a fully compliant manner. The United States Constitution, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (Uniform Act), Code of Federal Regulations (CFR), New York State Constitution, New York State Highway Law and New York State Eminent Domain Procedure Law (EDPL) are all instrumental in the process. Local and other laws may also dictate deviations or additions to the process. Do not rely on one source of information for this process as state and federal laws can differ.

The New York State Department of Transportation (NYSDOT) is responsible for the administration of federal highway funds and as such works with each Sponsor to mentor, inform and monitor for compliance with all applicable laws, rules and regulations. NYSDOT may sanction Sponsors for material non-compliance. Sanctions may include the loss of federal funding for the ROW phase, multiple phases, the entire project, or other federal aid projects, depending on the magnitude of the violation.

The Sponsor is responsible for monitoring and administering locally administered federal aid transportation projects in accordance with all federal requirements. If a Sponsor does not comply with all federal requirements, reimbursement may be withheld for any activity which does not comply with federal requirements. However, non-compliance with the Uniform Act may result in the withdrawal of all federal funding for a federal aid transportation project. Caution is given to never attempt to advance a task or a step in the guidelines enumerated in this chapter if you or your consultant lacks expertise or experience.

A Regional Local Project Liaison (RLPL) is the single point of contact for all project related communications with NYSDOT. However, the RLPL will refer all right of way acquisition questions to the Regional Right of Way Local Project Liaison (ROWLPL), but shall remain informed of all issues.

Sponsors who do not have knowledgeable qualified real estate specialists on staff must either contract the services of qualified consultants or request that NYSDOT acquire the ROW on their behalf (see Chapter 6 Consultant Procurement and Administration). The various acquisition services required may be split amongst consultant and NYSDOT forces. If relocation services are required, NYSDOT personnel should perform these complex tasks. If a Sponsor requests a consultant or chooses to use their own staff to perform relocation activities, NYSDOT pre-approval is required (see 11.4.1). All acquisition/relocation services provided by NYSDOT on behalf of a Sponsor will follow NYSDOT’s procedures.

An inter-municipal agreement may be necessary when a project, which is sponsored by one municipality, extends into the right-of-way of an adjoining municipality(ies). The specifics must be arranged and presented in an acceptable inter-municipal agreement prior to PS&E of the project. The agreement shall outline the responsibilities of each municipality. Contact the ROWLPL and RLPL for a list of requirements for inter-municipal agreements as well as some points of interest to consider when preparing said agreements.
11.2 GUIDELINES FOR ACQUISITION OF REAL PROPERTY BY SPONSORS (LOCAL PUBLIC AGENCIES)

Figure 11-1 – Acquisition of Real Property by Sponsors for Federal Aid Projects

RIGHT-OF-WAY INCIDENTAL PHASE

- Project Scoping
- Title Investigation
- Environmental Impacts/Public Involvement
- Relocation Planning
- Public Hearing
- Notice to Owner
- Appraisal
- Appraisal Review
- Establish Just Compensation

WAIVER VALUATION DETERMINATION DIAGRAM

Written Notice to Owner: Intent to Acquire

- Will Owner Donate? Yes → Proceed With Acquisition
- No

- Will Owner Waive An Appraisal? Yes → Proceed With Acquisition
- No

- Is Value Expected to be $10,000 or Less?
  - Yes → Prepare Waiver Valuation
  - No → Prepare Appraisal

- Is Valuation Problem Simple? (NYSDOT Appraisal must make determination)
  - Yes → Proceed With Acquisition
  - No → Prepare Waiver Valuation

RIGHT-OF-WAY ACQUISITION PHASE

- Settlement
- Close on Purchases
- Payment Before Possession
- Record Acquired Property Interest
- Right-of-Way Clearance Certificate
- Property Management (Post-Construction)
- Pro-Rata Tax Payments

- Condemnation
- Court Process
- If Waiver Valuation Prepared Initially, You MUST Prepare Appraisal and Complete Appraisal Review if Proceeding with Condemnation

CONSTRUCTION PHASE

- Property Management (Post-Construction)
- Terminate Temporary Easements
- Project Closeout
The figure is a flow chart of the phases and activities of a project as they pertain to property acquisition. Detailed descriptions of numbered activities follow.
11.2.1 ROW Incidental Phase

ROW Incidental Phase Authorization usually occurs during the Preliminary Engineering (PE) (Design Phases I-IV) stage and includes the following sequential activities which correspond to Figure 11-1. ROW Incidents are comprised of physical inspection of the proposed acquisitions, title searching, certification of property interests and appraisal/appraisal review activities. Though instrumental for acquisition activities, acquisition mapping and survey costs are associated with project design. The acquisition maps shall not be finalized until Design Approval has been granted.

1. Project Scoping/Design Phase I: The RLPL should be notified promptly if questions arise regarding acquisitions and/or clearance activities and shall consult the ROWLPL (see Chapter 8, Section 8.5 Project Scoping Stage and NYS Eminent Domain Procedure Law [EDPL] Article 2, Sec. 201-207. Once plans showing preliminary take lines have been created, a preliminary ROW Cost Estimate should be prepared (see Appendix 11-7). The cost estimate form must accompany the request to FHWA (through the RLPL) for ROW Incidental Phase Authorization. The preliminary cost estimate may be prepared by NYSDOT ROW staff, knowledgeable staff of the Sponsor or consultants hired by the Sponsor.

2. Title Investigation: Sponsors must order title data to determine the ownership and other possible interests in all property to be acquired, including all liens and encumbrances. A title curative effort may be required to address the title issues identified by the title search. The appropriate legal counsel or attorney will advise and certify the name(s) of the property owner(s) and interests in the property being acquired. The certifying attorney will determine the depth of title search required for each property (see NYS EDPL, Article 4, Sec. 403 when EDPL is invoked. NYSDOT utilizes the following search guidelines for the extent of title search with regards to anticipated compensatory value:

   A) Last Owner Search – up to and including $10,000. The Last Owner Search will begin with the last recorded deed that conveys a full fee interest to the last owner(s) of record. The Last Owner Title Search will not begin with a deed where the grantor and grantee are in some way related without full consideration having being paid.

   B) Certificate of Twenty-Year Search – $10,001 up to and including $40,000. The Twenty-Year Search will start with a deed that conveys complete and indefeasible title, which has been executed and of record at least twenty years prior to the search date, the Twenty-Year Search will not begin with a deed where the grantor and grantee are in some way related without full consideration having being paid.

   C) Full Abstract of Title – $40,001 and above. The Abstract of Title will start with a warranty deed that has been executed and of record at least forty years prior to the date of the search.

3. Environmental Impacts and Public Involvement: The National Environmental Policy Act (NEPA) and NY State Environmental Quality Review Act (SEQRA) mandate that the environmental impacts of a project be identified and evaluated (see Chapters 7 and 8). The Sponsor is responsible for compliance with both SEQRA and NEPA approvals,
which must be documented in order to proceed with final design, ROW acquisition, or construction phases of a project. Public Information Meeting(s) and/or Public Hearing(s) provide a forum through which citizens have input in the planning process (see 23 CFR 771.111). NYS EDPL, Article 2, addresses the need for public involvement when real property must be acquired. A NYS EDPL Public Hearing must not occur until the draft environmental document has been reviewed and approved by FHWA. However, Public Information Meeting(s) may be held anytime during the project development process.

4. Relocation Planning: If it becomes necessary to displace an owner or tenant from a dwelling or commercial building, the provisions of Title II of the Uniform Act apply, and a Conceptual Stage Relocation Plan\(^1\) (CSRP) is required (see 11.7.9.1). The CSRP must be prepared by a Relocation Specialist (see 11.4.1) who must also consult with the ROWLPL.

5. NYS EDPL Public Hearing: A public hearing is required on all public projects per NYS EDPL Article 2, unless a project qualifies for an exemption under NYS EDPL Section 206. The exemption determination shall be formalized by local resolution. When a public hearing is required, the process leading up to the hearing, the hearing itself and the process following the hearing must comply with the requirements set forth in NYS EDPL Article 2. Furthermore, EDPL is deemed to be invoked on the entire project when a public hearing is required under NYS EDPL Article 2.

6. Notice to Owner(s): Each owner is to be provided a written notice of the agency’s (the entity acquiring property on behalf of the Sponsor/Municipality) interest in acquiring real property (see Appendix 11-18). The acquiring agency should make all reasonable efforts to personally contact each property owner(s) or the owner's designated representative and schedule an appointment at a convenient time and place. The purpose of this contact is to explain the negotiation process to the property owner(s) as well as the responsibilities of both the acquiring agency and the property owner(s). One way to accomplish this is to provide the property owner(s) with an acquisition brochure (see Appendix 11-11). Additionally, FHWA’s Acquisition Brochure is available from FHWA’s Office of Planning, Environment & Reality (HEP)\(^2\).

7. NYSDOT’s negotiators utilize the Report of Physical Inspection (RPI) (see Appendix 11-3) during their initial visit with the property owner to gather important information about the property. The RPI may provide additional information to the certifying attorney which might not be discovered in the title investigation. This form is not a requirement, but it is highly recommended.

7a Appraisal: All appraisals must begin with a certified general appraiser (see 11.4.1. offering the property owner(s) or their designated representative the right to accompany the appraiser on an inspection of the property. The offer to accompany the appraiser can be accomplished by either telephone or letter. It must be documented in the appraisal by either including a copy of the letter or including a statement regarding the invitation to the owner and whether the owner(s) accompanied the appraiser or not. The appraiser shall establish an opinion of value for the damages due to the acquisition in an appropriate report format. The format shall be decided upon at the time the assignment.

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\(^{1}\) [http://www.fhwa.dot.gov/legsregs/directives/cfr49toc.htm](http://www.fhwa.dot.gov/legsregs/directives/cfr49toc.htm)

is given. An appraisal is not necessary if the property is donated and the right to have
the property appraised is waived in writing by the property owner.

**8a Appraisal Review:** A qualified NYS licensed Certified General Appraiser shall examine
and review the presentation of the market data and analysis in the appraisal. The
reviewer may reject the appraisal or accept the appraisal as is. The review appraiser
may also use the market information in the report to support a new recommended value
if unable to recommend the value in the submitted appraisal. The review appraiser shall
prepare a written report identifying the appraisal reviewed, documenting the findings to
be used by the acquiring agency for all legally compensable damages. The purpose of
the appraisal review is to develop a market value opinion of the real property rights to be
acquired. The amount approved by the review appraiser serves as the basis for the
establishment of the amount believed to be just compensation.

**7&8(b) Waiver Valuations:** A waiver valuation may be performed when a Sponsor's
qualified agent determines that an appraisal may not be necessary due to a low value
acquisition ($10,000 or less). Additionally, NYSDOT’s Appraisal Staff must determine
that it is an uncomplicated valuation problem with no severance damage to the
remainder parcel (49 CFR 24.102(c)(2)).

Note: referring to 7a, 8a and 7&8(b) above; appraisals, appraisal reviews and waiver
valuations can also be completed during the Right of Way Acquisition Phase.

**9. Just Compensation:** The acquiring agency must set the amount of just compensation
in writing. This task may not be delegated. The amount is based on the review
appraiser's approved appraisal amount, or the value established by a waiver valuation,
plus any other possible special circumstances pertaining to each individual acquisition.
In no event, when an appraisal is required, shall such amount be less than the highest
approved appraisal (NYS EDPL, Article 3, Sec. 303). It is recommended that just
compensation be approved by the Sponsor after Design Approval has been granted.

**11.2.2 ROW Acquisition Phase**

Design Approval must be granted, and if there are relocations, an Acquisition Stage
Relocation Plan (see 11.7.9.1) must be approved prior to ROW Acquisition Phase
Authorization. The ROW Acquisition Phase involves the following:

**10. Make Offers/Negotiate (49 CFR 24.102(a)) (NYS EDPL, Article 3, Sec. 301-305):**
The acquiring agency shall make every reasonable and expeditious effort to obtain the
necessary property rights by negotiation and agreement prior to utilizing eminent
domain. The full amount of just compensation previously set by the acquiring agency
must be offered at the first negotiating session. Relocation benefits must also be
extended at this time. Property owner(s) wishing to donate property must sign a waiver
acknowledging that they have been informed of their right to have their property
appraised and be compensated for the acquisition (see Appendix 11-4). Donations must
follow the same process as a compensable acquisition, the difference being the donation
agreement will be for one dollar payment waived and an appraisal may be waived by the
donor.

Negotiations shall be conducted by a knowledgeable qualified member of the acquiring
agency or qualified consultant as approved by the Regional Office of Right of Way (see
11.4.1). All negotiators are required to consult with the ROWLPL regarding any
procedural questions, requirements, or unusual circumstances. All meaningful contacts with the property owner, their legal representative or other property interest holder must be documented on a Contact Diary Form (see Appendix 11-8) and retained as part of the acquisition file.

When compensation for an acquisition exceeds the $10,000 threshold, neither the appraiser nor the review appraiser may act as the negotiator. This is considered a conflict of interest (49 CFR 24.102(n)(3)).

An informative booklet or brochure describing the acquisition and payment process must be distributed to affected property owners (see sample brochures on FHWA’s website\(^3\) or Appendix 11-11). The NYSDOT brochure (not included in this manual) is specific to the State appropriation process and should only be used if the State has agreed to perform the acquisitions.

If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, the acquiring agency shall offer to purchase that uneconomic remnant along with the offer for the property necessary for the project (see 11.7.7). The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the agency has determined has little or no value or utility to the owner (49 CFR 24.2(a)(27)).

If hazardous waste contamination is suspected or found on the uneconomic remainder, the RLPL and ROWLPL must be consulted for direction.

If the owner is unknown, the acquiring agency should proceed with condemnation proceedings as prescribed in EDPL 402 under Subdivision B.

10a. **Relocation Process:** The provisions of 49 CFR 24 Subparts C, D, E and F apply if relocations are necessary (see 11.7.9).

11a. **Settlement (Agreement):** The Uniform Act\(^4\) requires that every reasonable effort be made to acquire real property expeditiously by agreements with owner(s). Some flexibility exists to reach an agreement above the set just compensation amount if such a settlement is determined by the acquiring agency to be reasonable, prudent and in the public interest (see 11.4.2).

11b. **Condemnation:** If unable to reach agreement, the Sponsor’s attorney must start condemnation proceedings. Condemnation is a judicial process by which municipalities under the jurisdiction of the New York State Supreme Court exercise the power of eminent domain to acquire real property (see NYS EDPL Articles 4 and 5, Subdivision B procedures to be followed). In some instances, title must be acquired by eminent domain due to title issues. Property owners are willing to accept the offer, but they are unable to convey marketable title.

12a. **Close on Purchases (Transfer of Title):** Deeds, Affidavits, Release by Owners, Assignment of Claim and Releases or any document deemed necessary by the acquiring agency’s attorney are executed at this time. Payment of Just Compensation

3 [http://www.fhwa.dot.gov](http://www.fhwa.dot.gov/)
and reimbursement for expenses incidental to the transfer of property is made to the
owners.

12b. Court Process: The procedure shall be handled by an experienced attorney. Refer to
NYS EDPL, Article 5, Sections 501-513 and NYS EDPL, Article 4, Section 402.

13. Payment before Possession: Before requiring the owner to surrender possession of
the real property, the Sponsor must pay the agreed purchase price to the owner. In the
case of a condemnation proceeding, the Sponsor must deposit with the court for the
benefit of the owner an amount not less than the approved just compensation amount.
The only exception to payment before possession would be if the owner chooses to
donate their property (see Appendix 11-4). Where document delivery and payment must
be conducted by mail with absentee, out-of-state or other distantly-located owners,
executed transfer documents shall be recorded only after payment confirmation is
received by the Sponsor.

14. Record Acquired Property Interest: All real property interests acquired must be
recorded in the Office of the County Clerk where the property is located. Proof of filing
(libers/page or instrument number) is placed in the acquisition file.

15. Right of Way Clearance Certificate: The Right of Way Clearance Certificate (see
Appendix 11-5) must be signed by the Responsible Local Official (RLO) per the
Federal Aid Local Project Agreement, commonly known as the State/Local
Agreement (SLA), and it is countersigned by the NYSDOT Regional Real Estate
Officer (RREO). If the RLO elects to delegate this task, a written authorization
letter must be given to the RREO. Prior to advertisement for bids, typically, all
necessary ROW must be acquired, including legal and physical possession;
however, on occasion this may occur after advertisement with FHWA's approval
of a projection of the ROW. An Acquisition and Clearance Status Report is
attached to the ROW Clearance Certificate when all ROW has not been acquired
prior to the Plans, Specifications and Estimates (PS&E) but will be acquired prior
to Advertisement of the project (see Appendix 11-6).

When in those rare and unusual circumstances it is in the best interest of the traveling
public to advance a project to advertisement and award without having the entire
necessary ROW in the legal and physical possession of the Sponsor, a projection of
ROW (conditional ROW Clearance Certificate) may be approved by FHWA. These
requests are reviewed on a case by case basis and approved only for just cause. A
couple examples of circumstances out of the control of the Sponsor are bankruptcies
and acquisitions from entities they cannot condemn upon. Poor planning and scheduling
convenience are not acceptable reasons. Consult the RLPL and ROWLPL for further
guidance.

Any ROW Clearance Certificate which does not indicate the right-of-way is in the legal
and physical possession of the acquiring agency and clear of encroachments must be
followed up by a final certificate. The final certificate attests that all necessary property
rights have been acquired and/or encroachments have finally been cleared.

16. Property Management (Pre-Construction) activities include: inventory, maintenance
and protection of ROW, permitting or leasing of acquired property, and removal
(demolition) of improvements. A property inventory should include a record of all real
property and associated improvements acquired for the project (23 CFR 710.201(f)). In
rare cases where acquisitions can still be productive in the interim, permits or leases can be issued as long as utilization by outside entities does not impede project development. NYS EDPL Article 3 Sec. 305 regulates the use and occupancy of property acquired. The acquiring agency is responsible for property management until the project is turned over to the successful bidder for construction.

17. **Pro Rata Tax Payments**: Although not a requirement for ROW clearance purposes, NYS EDPL Article 7 Sec. 702 requires the reimbursement of real property and other taxes paid by the owner on property or property rights acquired by the Sponsor allocable to the period subsequent to the date of vesting or taking title, or the effective date of possession, whichever is earlier. These payments are made on fee and permanent easement acquisitions. Each Sponsor may choose to adopt a minimum pro rata payment amount; however, property owners are entitled to reimbursement no matter how insignificant the amount and it must be paid upon request from the owner(s). The ROWLPL should be contacted for questions of applicability or for computing the payment.

11.2.3 **Construction Phase**

18. **Property Management (Post-Construction)**: At the completion of construction, final “As-Built Plans” must be reviewed in order to identify any encroachments and potential surplus property. Property management involves the administration of acquired land and improvements, including subterranean, at-grade and overhead rights. The rights of either public or private entities to use these areas for interim or post-construction non-highway uses may be granted through the issuance of permits/leases. These permitted/leased non-highway uses must not interfere with the construction, operation or maintenance of the facility, or any anticipated future transportation need.

19. **Terminate Filed Temporary Easements**: When the purpose of any Temporary Easement (TE) filed in a County Clerk’s Office has been accomplished, the TE should be extinguished. If the Sponsor does not define the TE duration within the filed document, then the Sponsor shall file a document extinguishing the TE in the County Clerk’s Office. If the TE duration is defined within the filed document, the easement will expire after the indicated term has passed (see Appendix 11-15). TEs acquired by NYSDOT on behalf of a Sponsor must be terminated by NYSDOT.

20. **Project Closeout**: The records pertaining to project acquisition and relocation costs need to be retained for minimum of three (3) years. The retention period starts when the final reimbursement request is submitted. If any litigation, claim or audit is started within the three-year period, the associated records will need to be maintained until the issue is resolved, beyond the three year period, if necessary.

Post-construction permits/leases may be issued for the use of excess ROW but only if the proposed use does not interfere with the operation and/or maintenance of the facility or there is no anticipated transportation use for the subject parcel. These permits/leases will require a fair and reasonable fee, based on fair market value.

Compliance with SEQRA is necessary prior to the disposal of excess property, relinquishment of access control, and/or permit/lease of real property. Any and all such fees/rents collected from post-construction disposal of excess property, relinquishment of access control, and/or permits/leases shall be placed in a dedicated
account. The dedicated account is subject to audit and must reflect any appropriate credits that may be due to state and/or federal government.

11.3 UNIFORM ACT AND EMINENT DOMAIN PROCEDURE LAW

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on federal-aid projects. It should be noted that failure to comply with provisions of the Uniform Act may result in withdrawal of part or all federal funds relative to the magnitude of the violation(s) (see 11.1).

The Uniform Act is divided into three major parts or Titles, as follows:

**Title I - General Provisions and Definitions**
Title I covers general provisions, definitions and important limitations in the Uniform Act.

**Title II - Uniform Relocation Assistance - Declaration of Findings and Policy**
Title II contains provisions relating to the displacement of persons or businesses by federally assisted programs or projects. The NYSDOT or acquiring agency must assure that displaced persons are afforded the proper assistance and provided all the payments to which they are entitled.

**Title III - Acquisition Program Requirements**
Title III provides for the acquisition of real property and the basic protections and rights afforded to the property owners under the Uniform Act.

The provisions of the Uniform Act are codified in 42 USC 4601 and are regulated by the Code of Federal Regulations (CFR) in Title 49 (Transportation) Part 24 (49 CFR 24).

**NYS Eminent Domain Procedure Law (EDPL) – Appropriation v. Condemnation**

EDPL is the procedure governments and other entities in New York State must follow to acquire property for public purposes using the power of eminent domain. The NYS Eminent Domain Procedure Law, which constitutes Chapter 73 of the Consolidated Laws, is based upon Laws of 1977, Chapter 839, § 1. This law makes a distinction in acquisition processes to be followed based upon the court of jurisdiction of the acquiring agency. Counties, cities, towns and villages are under the jurisdiction of the New York State Supreme Court, and their use of eminent domain utilizes condemnation, a judicial process. State agencies are under the jurisdiction of the NYS Court of Claims. The state’s exercise of eminent domain is through an administrative process known as appropriation. This is an important distinction as NYSDOT’s appropriation process differs significantly from a municipality’s acquisition and/or condemnation process under the EDPL. The two are separate and distinct, and CANNOT be mixed.

11.4 ADMINISTRATIVE MATTERS

11.4.1 Right of Way Qualifications

Before commencing any right of way acquisition or clearance activities, the abilities and experience of those selected to perform these tasks will be evaluated by the Regional Right of Way Office.
The guidelines below will be used to determine if the Sponsor’s personnel or their consultants are sufficiently qualified to perform each of the following right of way activities:

**Title Searchers** – must be legally conducting business in New York State. If the business is a corporation, they must be registered with the NYS Department of State and be in good standing.

**Attorneys** – must be properly licensed to practice in New York State, have experience with real property title certification, preparing deeds and closing papers, condemnation proceedings and be familiar with the Uniform Act and NYS EDPL requirements.

**Appraisers** – must be NYS certified general appraisers and meet all Uniform Standards of Professional Appraisal Practice (USPAP) ([http://www.uspap.org/](http://www.uspap.org/)) requirements. Experience with EDPL partial acquisition appraising is required. Appraisers should submit a detailed résumé indicating education, experience and professional affiliations. Appraisers are to be available for court appearances, if necessary. Samples of prior appraisal reports are to be provided upon request. Those individuals on the NYSDOT appraiser list are considered pre-approved. This list can be provided by the ROWLPL upon request. Appraisers not already included on the pre-approved list, whether staff members or consultants, need to be approved by the Regional NYSDOT Office of Right of Way.

**Review Appraisers** – must be NYS certified general appraisers and have the ability to appraise the property they are reviewing. The review appraiser must be thoroughly familiar with legally compensable damages to recommend a value for setting “just compensation.”

**Waiver Valuation Preparers** – see 11.6.2 for Waiver Valuation qualifications.

**Negotiators** – must have prior experience with negotiating the purchase of property necessary for project purposes. Negotiators must be thoroughly familiar with the Uniform Act and NYS EDPL. A detailed résumé indicating experience, relevant education, successfully completed courses, professional affiliations and other pertinent information must be submitted. If relocation activities are to be performed, the résumé should indicate the appropriate prior experience. Inexperienced negotiators can gain experience by working directly with an approved negotiator until such time as the inexperienced negotiator has gained adequate experience/knowledge to be recommended for NYSDOT qualification approval. All work performed with the inexperienced negotiator must be co-signed by the approved negotiator.

**Relocation Specialists** – it is highly recommended that NYSDOT carry out any and all relocations; however, if the Sponsor and/or consultant can prove that they are capable and qualified to perform such tasks, then NYSDOT will approve.

**Property Managers** – must submit a detailed résumé demonstrating prior experience with the maintenance and upkeep of acquired parcels. Managers must also be familiar with the Uniform Act and NYS EDPL, and the different treatment under the law with regards to collecting rent from residential owner occupants, tenants and commercial owners. They must also be acquainted with the eviction process in the event an eviction becomes necessary.
It is the project Sponsor’s responsibility to compile the résumés of project right of way personnel in the project file and retain for a minimum of three years after project completion. The files shall be produced upon request for an FHWA or NYSDOT project compliance reviewer or program audit.

Once a consultant’s or Sponsor’s employee’s right of way personal qualifications have been accepted by the Regional Right of Way Office, further review may be necessary if a different specific right of way task is required. Experience performing these activities weighs heavily on the amount of NYSDOT oversight needed.

11.4.2 Administrative Settlements

There are times when meaningful negotiations between the Sponsor’s negotiator and a property owner reach an impasse. In those cases where a reasonable amount of additional compensation will avoid a condemnation action and having the outcome decided by the court having jurisdiction, an administrative settlement may be in order. The negotiator, prior to eminent domain proceedings, needs to request approval for additional compensation to reach agreement with the property owner. The request must include a written analysis for support of settlement. All expenditures of additional federal funding must be deemed as reasonable and necessary. Regardless of whether EDPL is invoked or not, an authorized agency official must determine if the proposed administrative settlement is reasonable, prudent and in the public interest. These settlements are higher than the approved just compensation amount and must be well documented and are subject to review by NYSDOT and/or FHWA. NYSDOT and FHWA review of administrative settlements are typically done after the property acquisitions have been completed, as part of the overall review. The Sponsor should contact the RLPL and ROWLPL if there are any questions as to what is appropriate (49 CFR 24.102(i)).

11.4.3 Legal Settlements

A legal settlement occurs after a condemnation action has been filed and prior to a decision rendered by the court having jurisdiction. The negotiations are between the acquiring agency's legal staff and the property owner and/or his or her attorney. All relevant factors must be considered, including the strength of each side’s case, the likely outcome and the dollar amount of exposure if the decision favors the property owner. The associated acquisition file(s) must be documented whenever a legal settlement is made, and the rationale for the settlement set forth in writing. Legal settlements based on new or revised appraisal data as the principal justification must be coordinated with and approved by the RLO of the acquiring agency. All pertinent data should be reviewed by the RLPL and ROWLPL to ensure that adequate documentation for federal aid funding is provided.

11.4.4 Right of Way Clearance Process

Title (23 CFR 635.309) establishes criteria which must be met before authorization to advertise and award a federally funded construction project. One such requirement relates to project right of way clearance and its related processes. To obtain ROW clearance, the Sponsor must prepare and have the RLO or designated local official, sign a ROW Clearance Certificate (see Appendix 11-5) attesting to the following:

I certify that; the right-of-way has been or will be acquired in accordance with the Highway Law, the Eminent Domain Procedure Law (when applicable), Uniform Relocation Assistance Real
Property Acquisition Policies Act of 1970 as amended, and Title 23 of the Code of Federal Regulations, Part 635, Section 309 and that the status of the right of way is as follows:

Select:  a, b, c, or d

(a) No right of way (including clearance of encroachments conflicting with the project construction within the existing right of way) is required for the project.

(b) All of the necessary rights of way, including control of access rights have been acquired (legal and physical possession). All payments/deposits are completed. If applicable, the “Statement of Donations” is attached. There are no improvements existing that need to be removed or demolished and/or all occupants have vacated the land and/or improvements and the acquiring agency has the physical possession and the right to remove.

(c) All the necessary rights of way, including control of access rights have not been completed, however, the acquisitions are being progressed and all legal and physical possession will be completed prior to advertisement of the contract (see ROW 9-15ALL “Acquisition and Clearance Status Report” in Appendix 11-6 for completion schedule). A final ROW clearance certificate will be required prior to advertisement of the project.

(d) Acquisition of one or more remaining properties has not been completed and will not be completed prior to project advertisement for bids. All eligible occupants of the residences, if any, on such properties have had replacement housing made available to them in accordance with (49 CFR 24.204), (see attached ROW 9-15ALL “Acquisition and Clearance Status Report” in Appendix 11-6 for completion schedule and ROW 9-16ALL “Special Note – Availability of ROW” in Appendix 11-14). The completion schedule will be included in the contract plans, engineering substantiation and a report of the quantity and quality of relocation assistance. A note designating the lack of availability shall appear on the specific plan sheet of each indicated property. If the project has federal aid in any phase of the project, FHWA approval of this (these) projection(s) is required.

(Reasons property may not be available by advertisement may include acquisitions from properties in bankruptcy, acquisitions from cemeteries, acquisitions from the federal/state government and relocations).

The RLO, or designated local official, is certifying that the Sponsor has complied with all applicable laws and regulations regarding the acquisitions, relocations and clearance activities for the project right of way. The RREO must countersign the ROW Clearance Certificate and will only do so after having completed a satisfactory review of all acquisition and clearance processes.

When in those circumstances it is in the best interest of the traveling public to advance a project to advertisement, award, and construction without having the entire necessary ROW in the legal and physical possession of the Sponsor, a projection of ROW (conditional ROW Clearance Certificate) may be requested by the Sponsor through the RLPL and must be approved by FHWA. These requests are reviewed on a case by case basis and approved only for just cause. Acceptable reasons include those of imminent danger to the traveling public such as slope failures, bridge closures and natural disasters. Circumstances out of the control of the Sponsor such as bankruptcies and acquisitions from entities they cannot condemn upon are also given consideration. Poor planning and scheduling convenience are not acceptable reasons. Consult the RLPL and ROWLPL for further guidance.
Any ROW Clearance Certificate which does not indicate the right-of-way is in the legal and physical possession of the acquiring agency and clear of encroachments must be followed up by a final certificate when all necessary property rights have been acquired and/or encroachments have been cleared.

A ROW Clearance Certificate is required for all federally funded projects, including those where no acquisitions or clearance of encroachments are necessary.

**11.4.5 Uniform Act Statistical Report**

In accordance with *(49 CFR 24.9(c))* , a statistical report of real property acquisitions, relocation activities and associated expenditures is required (see Appendix 11-16. The statistical form is to be completed and submitted to the ROWLPL within two weeks after the end the Federal Fiscal Year (FFY) which runs from October 1st to September 30th. If the project occurs (date of acquisitions recorded in the County Clerk’s Office) in more than one FFY, a report form will be required for each FFY. Contact the ROWLPL for questions about the information required. As a matter of efficiency, the Uniform Act Statistical Report can be delivered with the project checklist at the time Right-of-Way clearance is requested.

**11.5 PROJECT DEVELOPMENT**

When questions arise in the development stage of federal aid transportation projects that may involve property acquisitions and/or clearance activities, the RLPL and ROWLPL should be promptly notified.

**11.5.1 Environmental Planning Process**

Full and early compliance with NEPA must be documented and approved by FHWA to proceed with the final design and ROW acquisition phases of the project. All reasonable alternatives to avoid, minimize and mitigate any impacts to the environment and communities must be given full and objective consideration. Projects in New York State must also comply with the State Environmental Quality Review Act (SEQRA). The NEPA and SEQRA processes must be completed and approved before the Design Approval Document can be approved. See Chapter 7 Overview of Environmental Process and Studies and Chapter 8 Design Procedures for NEPA and SEQRA requirements.

**11.5.2 Public Involvement**

Public Information Meetings and Public Hearings provide a forum through which citizens have input in the project development process. An EDPL public hearing is necessary unless a determination is made that the project qualifies for one of the exemptions in section 206 of the EDPL. *NYS EDPL Article 2* addresses the need and procedure for public hearings when real property must be acquired. If a public hearing is required per NYS EDPL Article 2, it shall not be conducted prior to the completion of the Draft Environmental Impact Study (DEIS) or other appropriate environmental document. Sponsors should conduct their own Public Meetings in accordance with NYSDOT’s Public Involvement for Transportation Planning manual.

**11.5.3 Design and General Plans**

Once the selection of the preferred alternative is made, a detailed plan for the project to be constructed is designed. One of the products of the design process is the general plan (highway
boundary plan, etc.). The contract plans will document what right of way acquisitions were determined to be necessary to construct and maintain the project with the ROW acquisition maps serving as documentation of the actual right of way acquisition. Thus, the contract plans should include an accurate representation of all the right of way acquisition maps which demonstrate the properties which are to be acquired for that project. To provide this documentation, the contract plans should include a graphical presentation of all acquisitions on the general plans. Separate “Right of Way Plans” should be prepared for projects in which the general plans would otherwise be too congested to clearly portray both the construction improvements and the right of way acquisitions on the same plan sheets. In addition to the general plans or right of way plans, a “Table of Right of Way Acquisitions” shall be prepared. Prior to advertising for bids, FHWA requires the Regional Right-of-Way Officer’s signature on a ROW Clearance Certificate to ensure the appropriate property rights have or will be met to construct the project. A copy of the PS&E general plans and current right of way plans (if prepared) should be sent to the NYSDOT Regional Right-of-Way Officer at, or prior to, a request to advertise for bids.

11.5.4 Acquisition Map

The ROW acquisition map is instrumental in the acquisition process and, when need be, the eminent domain process. It contains a significant amount of information. It describes what is being acquired, including description/identification of the land and improvements, the property rights needed by the acquiring agency, the public use or purpose for which the acquisition is being made, by whom and for whom the acquisition is being made and what statutory authority is being used to make the acquisition. The map is invaluable to the appraiser as a precise indicator of the effects of the acquisition on the property and what items need to be compensated, and for the negotiator as an exhibit to explain the acquisition to a property owner, (see Appendix 11-13).

Acquisition maps are not required by NYSDOT unless the department is acquiring the property. If NYSDOT is acquiring property, maps are prepared according to the NYSDOT ROW Mapping Procedure Manual. Acquisition maps are required by the EDPL for NYSDOT to acquire the property and to help track the state’s ownership for future maintenance activities.

NYSDOT has shells and example acquisition maps posted on its website at: https://www.dot.ny.gov/divisions/engineering/design/design-services/land-survey/standards-procedures. They may be used as templates or guides for acquisitions performed by a local Sponsor or acquiring agency and modified to meet local needs (e.g., the County Clerk’s Office may have map requirements). The acquisition map shells are available in Microstation, AutoCadd, and PDF format.

If the local municipality is acquiring property, a deed may be used if permitted by the County Clerk’s Office. The deed must follow applicable laws, including local real property regulations, and the NYS Education Law, Article 145, Professional Engineering and Land Surveying.5

When acquiring by deed, local real property regulations may require maps for the subdivision of property. Map requirements are established by the County Clerk’s Office and must also follow the NYS Education Law, Article 145, Professional Engineering and Land Surveying.

Local agencies must follow the EDPL when using eminent domain to condemn property and shall refer to EDPL Section 402(B)(3) for vesting/mapping requirements.

5 http://www.op.nysed.gov/prof/pels/article145.htm
11.6 VALUATION, APPRAISALS AND APPRAISAL REVIEW

11.6.1 Just Compensation

The United States and New York State Constitutions both require that a property owner be paid just compensation when the government acquires private property. The “Uniform Act” requires that an “approved appraisal” be used to develop an amount the acquiring agency believes to be just compensation. The amount is to be based on, and not less than, the fair market value of the property, as determined by a professionally prepared, reviewed and approved appraisal. The acquiring agency and/or Sponsor may set a minimum offer amount for an acquiring agency or project recognizing the inconvenience to property owners. For example, NYSDOT’s current policy is established at a $500 minimum offer. This is an example only and local Sponsors are in no way obligated to use this amount as a minimum.

11.6.2 Waiver Valuation Procedure

A Waiver Valuation may be performed when it has been determined that an appraisal is unnecessary due to a low value and uncomplicated acquisition with no severance damage to the remainder parcel. At this time, the provisions of NYS EDPL, Article 3 Sec. 302 require an appraisal for all acquisitions made for public purposes requiring compensatory damages. Therefore, Waiver Valuations are not permitted in NYS when NYS EDPL is invoked. Please note: If a project does not qualify for any of the exemptions listed in EDPL Article 2 Sec. 206, then an EDPL public hearing is required and all properties with acquisitions must be appraised, except if a statement of donation has been signed waiving the appraisal. Additionally, if title cannot be cleared due to property owner opposition, liens, judgments, bankruptcies, etc., then condemnation proceedings must be commenced pursuant to EDPL; therefore, appraisals would be required for all properties acquired by condemnation.

However, when EDPL is not invoked, a Waiver Valuation is an option authorized under the provisions of the Uniform Act, Title III, 301(2) and (49 CFR 24.102(c)(2)(ii)). Waiver Valuations may be considered after: 1) the Sponsor’s qualified agent determines that the value of the proposed acquisition is estimated to be under $10,000, and 2) NYSDOT’s Appraisal Staff determines that the valuation problem is uncomplicated and there is no severance damage to the remainder parcel (determinations must be documented in the project file). Waiver Valuations are not appraisals as defined by the Uniform Act, Title I, 101(13) therefore, appraisal performance requirements or standards are not required for this type of valuation. The Waiver Valuation is not an appraisal, so appraisal-related requirements, such as giving the owner the opportunity to accompany the appraiser and an appraisal review are not Federal requirements. However, the Acquiring Agency must have a reasonable basis for the Waiver Valuation and the RLO must still establish the amount of just compensation.

It is a requirement that an appraisal must be prepared if the Waiver Valuation amounts to more than $10,000. If, through an Administrative Settlement, payment will exceed $10,000, an appraisal is required.

The Waiver Valuation Procedure allows for the same person to value the property and to negotiate settlement for the parcel if the agent is qualified to do both functions. This “single
The agent concept allows for property owners to be in direct contact with the person who valued the acquisition and is best able to respond to questions and concerns.

The Waiver Valuation Procedure offers the following Benefits:

- Administratively simple to implement
- Potential cost savings to the Sponsor
- More effective use of professional right of way staff
- Property owners better understand the simplified valuation process
- Right of way delivery time may be reduced
- One agent may perform valuation and acquisition (single agent concept).

The Waiver Valuation Procedure is not a means to reduce the amount of compensation that is paid for acquired property. The objective is to compensate property owners the same amount they would receive under the appraisal process. The Waiver Valuation procedure allows the Sponsor to achieve that objective more efficiently.

The procedure is primarily intended for projects on which the impact to abutting properties is minimal and the proposed acquisition and construction generate no changes in use or utility of the affected properties.

11.6.2.1 Application

The Waiver Valuation Procedure will be used only under the conditions set forth:

- EDPL is not invoked. Note: if EDPL is invoked on one or more properties on a project, Waiver Valuations can still be utilized on those properties where EDPL is not invoked, if all other conditions below are met
- It is an uncomplicated acquisition where damages can be calculated using a unit value supported by adequate comparable sales
- There are no severance damages to the remainder parcel except minor cost-to-cure items
- Sufficient comparable sales data is readily available
- Damages are anticipated to be less than $10,000

The Waiver Valuation Procedure will not involve complex valuation problems or situations when there may be severance damages to the remaining property. It is also not appropriate for use when the Highest and Best Use of the land is subject to question or change, when any severance damage cannot be mitigated by a minor cost-to-cure, when land values are not easily determined or when the valuation problem is complex. These determinations are to be made by NYSDOT’s Appraisal Staff. Although it is not a requirement, it is highly recommended that the agent preparing the Waiver Valuation offer the owner the opportunity to accompany him/her on the property inspection.

11.6.2.2 Qualifications Required for Individuals Performing Waiver Valuations

The intent of the Federal Regulation is that non-appraisers be permitted to prepare Waiver Valuations where the acquisitions are low value and non-complex, freeing appraisers to do more sophisticated work. Acquiring Agencies using waiver valuations for the first time must consult with their ROWLPL for approval prior to commencing the Waiver Valuation process.
An employee who completes Waiver Valuations should at a minimum have:

- Successfully completed the FHWA Sponsored internet course “Real Estate Acquisition under the Uniform Act, an Overview” (NHI Course Number: FHWA-NHI-141045)
- Completed at least 30 hours of classroom training in Basic Appraisal Principles
- Demonstrated ability to interpret right of way plans, design plans, cross sections and clearly explain the plans to the property owners and members of the public
- Demonstrated an understanding of the concept of severance damage and its causes
- Demonstrated an understanding of the concept of contributory value and the ability to accurately value property improvements
- Demonstrated adequate experience to identify and prepare the valuation analysis, or have sufficient direct oversight from a competent staff member

Staff members utilizing Waiver Valuations must submit their qualifications to their RLPL and ROWLPL for evaluation. An interview may be conducted at the ROWLPL’s discretion. Any decision by the ROWLPL to disqualify an applicant must include specific recommendations for the applicant to accomplish in order to gain approval. The ROWLPL may consult with the NYSDOT Appraisal Supervisor for guidance on qualifying agents to prepare Waiver Valuations.

11.6.2.3 Process Overview

Waiver valuations are not appraisals as defined by the Uniform Act, Title I, 101(13) or (49 CFR 24.103). Therefore, appraisal performance requirements or standards, regardless of their source, are not required for Waiver Valuations. Since Waiver Valuations are not appraisals, appraisal reviews are not required. However, a reasonable basis for each Waiver Valuation must be established and the amount of Just Compensation must still be established by the RLO.

Waiver Valuation Requirements:
- Inspect and photograph the acquisition area, including a photo which would be helpful in identifying the subject property (i.e. a picture of the residence or structure)
- Sketch of the acquisition area and any land improvements to be acquired
- Verified comparable sales must be attached (minimum of 3 sales)
- Must keep all documents and calculations in the project file

11.6.2.4 Identification of Parcels

At an early stage in the project, usually during design development, the Sponsor will identify properties on the project that fit the criteria for the Waiver Valuation. The Sponsor needs to be mindful of scheduling requirements and note that unsettled acquisitions utilizing Waiver Valuations will require appraisals prior to condemnation, which may have an impact on delivery milestones. At this point, their ROWLPL must be consulted to ensure proper use of Waiver Valuations. As stated previously, NYSDOT’s Appraisal Staff must determine the applicability of all proposed Waiver Valuations.

11.6.2.5 Initial Owner Contact and Preparation for the Waiver Valuation

Following the Notice to Owner (see 11.7.1 #3), the purpose of this meeting or contact is to inform the property owner of the acquiring agency’s intent to acquire property rights needed for the project. The agent will present the Brochure (see Appendix 11-11) and a map/sketch or plan
sheet showing the proposed acquisition and will also explain the acquisition process. This introduction will allow for a smoother discussion on the next visit when the Waiver Valuation is complete and the offer is presented.

11.6.2.6 Donation

Occasionally, property owners will elect to donate land to the Acquiring Agency and release the Acquiring Agency from its obligation to pay just compensation. In this case, neither an appraisal nor a waiver valuation is necessary, provided the owners acknowledge in writing that they understand their rights to an appraisal and just compensation, and that they release the Acquiring Agency from its obligation to provide an appraisal by checking the appropriate box and signing the Statement of Donation form in the Appendix 11-4.

11.6.2.7 Waiver Valuations Process (acquisitions estimated at $10,000 or less)

In cases where the values are determined to be $10,000 or less, the Waiver Valuation Process may be utilized. This process is outlined as follows:

1. The local real estate market should be surveyed for comparable sales data. This search can include in-house files, Multiple Listing Service, Brokerage houses, town records or other sources.
2. Basic sales information will include address of property, buyer and seller names and addresses, size of property, zoning, highest and best use, selling price, date of sale, and indicated unit value. All sales should be verified with a party involved in the transaction.
3. The sales data will be reviewed to determine indicated land values.
4. The subject property will be inspected, photographed and any improvements within the affected parcel will be noted.

11.6.2.8 Procedure for Waiver Valuation approval

The preparer will complete the Waiver Valuation Form (11-12), listing the parcels and items eligible for payment, the nature and size of the taking, the total damages, and verified sales data considered in arriving at the appropriate land value. The Waiver Valuation Form will be signed by the preparer and forwarded to the Sponsor’s RLO for determination of Just Compensation prior to making an offer to the owner.

11.6.2.9 Negotiations

The Sponsor, after confirming NEPA is complete, will assign responsibility for negotiating the parcel to either the agent preparing the Waiver Valuation (if he/she is a qualified negotiator) or a qualified Negotiator. The Negotiator prepares for negotiations in the same manner and extent as would be appropriate if the acquisition were based on an appraisal. The Negotiator meets with the owner and presents the Waiver Valuation Offer Letter and Settlement Agreement in the same manner as with other acquisitions. The property owner is informed of how the compensation was established and that an Appraisal Report was not prepared.

An owner accepting the offer signs the Waiver Valuation Offer Letter and Settlement Agreement. Subsequently, the owner contact and acquisition requirements are like any other acquisition of right of way (i.e. closing, payment, recording, etc.).

If the offer is refused with no possibility of further negotiation, the Acquiring Agency will direct that an appraisal be prepared, reviewed, and another attempt made to negotiate the acquisition. If this fails, the Acquiring Agency proceeds with the condemnation process.
11.6.2.10 Responsibility

An appropriate level of knowledge and responsibility is required for effective use of the Waiver Valuation Procedure. The value estimate is not subject to a formal review before an offer is made to owners, but still requires a Just Compensation determination. The Negotiator has broad latitude in responding to owner requests and concerns, and the process involving an administrative settlement should be considered to secure prompt acquisition. The Negotiator must fully and accurately describe the process so the owner’s decision to accept the offer is freely made based on full information and disclosure. The assignment of Waiver Valuation may be made to staff that have sufficient knowledge and experience in the right of way acquisition process, if they are to value and negotiate the claim.

11.6.2.11 Quality Assurance

Assuring the quality of right of way acquisition is a shared responsibility of every person who is involved in the process. Personnel responsible for Waiver Valuations will actively examine the process as outlined herein, to confirm that the process is fulfilling its goals of reducing time and costs, while still maintaining compliance with the Uniform Act and Code of Federal Regulations.

The following items are examples of specific quality assurance activities that may be undertaken by the RLO or designee:

- Conduct follow-up phone interviews with owners after construction is complete
- Identify training opportunities that would expand knowledge and skill in right of way acquisition
- Suggest refinement in acquisition practices that will make the process more efficient and effective
- Participate in informal workshops to exchange experiences and practices with other professionals involved in Waiver Valuation acquisitions
- Perform spot checks of closed files to identify successful and unsuccessful practices
- Conduct a letter survey of owners after acquisition

The NYSDOT Office of Right of Way conducts audits of acquisition files on Projects with ROW acquisitions, prior to signing the ROW Clearance Certificate.

The NYSDOT Office of Right of Way is also responsible for quality assurance activities for the Waiver Valuation function as part of its annual Quality Assurance Review.

11.6.2.12 Waiver Valuation (form 11-12)

The Acquiring Agency will assign preparation of the Waiver Valuation to a person who meets the qualifications previously outlined. The person who is assigned responsibility will be guided by the following instructions.

Data assembly consists of the following:
• Obtain a current dated set of project plans. The plans are a permanent record documenting the proposed design and construction features that will be considered in preparing the Waiver Valuation.
• Inspect the project and become familiar with the engineering features of the design. Work with project designer to gain information on what properties will be impacted by the design.
• View each parcel to determine the effects of the acquisition and proposed construction. Take photos of the acquisition areas, easement areas and improvements to be acquired, along with a photo that would help in identifying the subject property (example: house or structure appearing in photo, if possible).
• Although it is not a requirement, it is highly recommended that the agent preparing the Waiver Valuation offer the owner the opportunity to accompany him/her on the property inspection.
• Assemble sufficient verified comparable land sales for the various types of parcels within the project. Referencing comparable sales data from other projects in the area is permissible, when appropriate. Consideration should be given to Zoning Maps, Flood hazard maps, wetlands and other physical characteristics.

Much of this data can be compiled before the final design document is complete.

11.6.2.13 Preparation of the Waiver Valuation

The Acquiring Agency will prepare the Waiver Valuation (Appendix 11-12) using the data that has been accumulated above. The following steps will be followed:

1. Complete appropriate line items using the project information provided by the designer.
2. Describe the subject property, state the Highest and Best Use of the property and describe the acquisition area.
3. Attach the sales used to calculate the value of the property and attach a copy of the map depicting the area to be acquired.
4. List all of the map and parcel numbers, the type of acquisition(s), unit value and total.
5. The valuation form provides a place to indicate the value of land and land improvements acquired. Cost-to-cure items (if any) are listed and valued.
6. If it is discovered that severance damage or complex valuation issues exist, or if compensation will likely exceed $10,000, the parcel must be appraised.
7. The scope of the comparable data research and value analysis should be sufficient to estimate a unit value that reflects the current market. Show all calculations. Data research may extend beyond the town in which the project is located, to gather sufficient sales.
8. Required attachments include:
   • sketch showing the acquisition area and any site improvements acquired
   • photos of the acquisition areas, easement areas and improvements to be acquired, along with a photo that would help identify the subject property (example: house or structure appearing in photo)
   • sales data sheets (with attachments) for at least three verified comparable sales
9. Sign and date the Waiver valuation form, after making a final review to insure that all necessary data have been included and the calculations support the value conclusion.

11.6.2.14 Approval of Waiver Valuation
The Waiver Valuation is not subject to the appraisal review process. The assigned preparer is responsible to insure that the estimate represents Fair Market Value and that the factual data and calculations are correct.

The RLO will approve by counter signing the completed Waiver Valuation form, insuring that the form contains all necessary data and calculations. The RLO signature will serve as the determination of Just Compensation by the Sponsor. If the ROW Acquisition Phase is authorized, negotiations may begin at this time.

11.6.2.15 Just Compensation Updates or Revisions

Updates or revisions to the determination of Just Compensation could become necessary under situations such as the following:

- The property owner may have information that requires additional analysis based on the property characteristics or condition
- As project design proceeds, there may be changes that would alter the impact on the remainder property (approval from NYSDOT Appraisal Staff for use of Waiver Valuation will be necessary)
- The project may be delayed, thereby causing the data used to become outdated and a more current estimate to be warranted. Waiver Valuations must be updated if an offer has not been made within one year of the date of Waiver Valuation

In any of these situations, the individual responsible for the initial Waiver Valuation will complete and sign a new Waiver Valuation form. Revised and dated plan sheets, current photos and current sales will be incorporated into the new Waiver Valuation. The RLO will counter sign the revised Waiver Valuation, which will serve as the new determination of Just Compensation by the Sponsor.

11.6.2.16 Acquisition Process – Waiver Valuation Offer Letter and Settlement Agreement

At this point the Acquiring Agency has already made the initial contact as described in Section 11.6.2.5. The next contact comes after the Valuation process is completed. The prime objective for this visit is to negotiate the actual purchase.

The Negotiator should contact the owner and arrange a meeting to discuss the acquisition and present the offer of Just Compensation. The Waiver Valuation Offer Letter and Settlement Agreement will be presented at this time (Appendix 11-13). The Waiver Valuation Offer Letter and Settlement Agreement prepared by the negotiator contain the same basic information that is contained in the Waiver Valuation form. The negotiator should review the Agreement with the property owner point by point to insure complete understanding.

The owner will be advised verbally and in writing how the compensation was established and that an actual appraisal was not made. The Negotiator will discuss any improvements that will be affected by the acquisition. The Offer Letter and Settlement Agreement will be provided and explained in sufficient detail to insure that the owner is fully aware of the acquisition and the impact on the remainder property. If a personal meeting is not feasible, then the Waiver Valuation Offer Letter and Settlement Agreement may be mailed. In that case, a follow up phone call is necessary to explain the process, address any concerns, and insure that the property owner is fully aware of the acquisition and the impacts on the remainder property.
If the owner does not initially accept the offer, other avenues to agreement will be explored. If the owner makes a counteroffer, the Negotiator should neither accept nor reject it, but ask the owner for any factual information supporting the counteroffer. Further discussion with the owner may disclose a basis for an administrative settlement (see 11.4.2). Once the Agreement has been signed, continue with the ROW Acquisition process (see 11.2.2).

11.6.3 Appraisals

Before the initiation of negotiations, real property to be acquired must be appraised. The owner or owner’s designated representative must be given an opportunity to accompany the appraiser during the appraiser’s inspection of the property.

An appraisal is a written statement independently and impartially prepared by a qualified appraiser (see 11.4.1) setting forth an opinion of value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information (49 CFR 24.2(a)(3)). In addition to meeting this definition, an appraisal must contain as a minimum the following (49 CFR 24.103(a)(2)):

- An adequate description of the physical characteristics of the property being appraised, including items identified as personal property; a statement of the known and observed encumbrances, if any; title information; location; zoning; present use; an analysis of highest and best use; and at least a 5-year sales history of the property. In the case of a partial acquisition, an adequate description of the remaining property must also be included.
- All relevant and reliable approaches to value consistent with established federal projects and appraisal practice. If the appraiser uses more than one approach, there must be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser’s opinion of value.
- A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- A statement of value (not a range of value) of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- The effective date of valuation, date of appraisal, signature, and certification of appraiser.

In addition, the appraiser must disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired, or likelihood that the property would be acquired for the project, with the exception of decreases in value to physical deterioration which was within the reasonable control of the owner (49 CFR 24.103(b)). The appraiser must also include: a statement regarding the date the property owner was offered the opportunity to accompany the appraiser for the inspection of the property; how the property owner was contacted; and whether the property owner did, in fact, accompany the appraiser (49 CFR 24.102(c)(1)).

11.6.3.1 Appraisal Requirements

This section sets forth the requirements for real property acquisition appraisals for federally-assisted projects. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice.
USPAP\(^6\) is a publication of the Appraisal Foundation\(^7\), which is authorized by Congress as the source of Appraisal Standards and Appraiser Qualifications. The agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in defining the appraisal problem and developing the scope of work. The scope of work and development of an appraisal under these requirements depends upon the complexity of the appraisal problem.

The acquiring agency/Sponsor has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in § 24.2(a)(3) and the five requirements listed under (49 CFR 24.103(a)(2)) (also see Appendix A, (49 CFR 24.103 and 103(a)).

Defining the “appraisal problem” is the first step in the valuation process. It is the development of a clear understanding of the problem to be solved. This sets the parameters for the assignment. To solve any problem, the problem must first be identified, and only then can the appropriate solution to the problem be determined. In appraisal practice, problem identification logically precedes scope of work determination. Identification of the appraisal problem involves identifying each of the following:

- Client
- Intended users in addition to the client
- Intended use of the appraisal
- Type of value and its definition
- Effective date of the opinions and conclusions
- Identification of characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal (including its location, the property rights to be valued, and other features)
- Assignment conditions, including extraordinary assumptions, hypothetical conditions, and additional requirements to be followed (ref: The Appraisal Institute, The Appraisal of Real Estate 14th Edition or most current edition)

Scope of work refers to the type and extent of research and analysis in an assignment. It reflects the needs of the acquiring agency and the requirements of federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and the acquiring agency/Sponsor, both of whom must be competent to recognize the acquiring agency’s needs and respect valid appraisal practice.

The scope of work statement should include: the purpose and/or function of the appraisal; a definition of the estate being appraised; if it is fair market value, its applicable definition; and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in (49 CFR 24.103(a)(2)(i) through (v)) and address them as appropriate.

Although not a requirement, a pre-appraisal conference is a recommended meeting between the acquiring agency/Sponsor and the appraiser, for the purpose of deciding the appraisal

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\(^6\) [http://www.uspap.org/](http://www.uspap.org/)
\(^7\) [https://www.asc.gov/Resources-For/Real-Estate-Appraisers/AppraisalFoundation.aspx](https://www.asc.gov/Resources-For/Real-Estate-Appraisers/AppraisalFoundation.aspx)
problem and the scope of work. The meeting can be as simple as a phone call or a meeting between the Sponsor and the appraiser. If projects involve complicated appraisals, the engineering consultant, ROWLPL, RLPL or others deemed necessary should be included.

Notes:

1) An appraisal is not required if the property owner is donating the property and releases the acquiring agency from its obligation to appraise see (49 CFR 24.102(c)(2)(i)).

2) If rounding, appraisers, shall always round up in order to satisfy the just compensation requirement.

3) An appraiser shall recommend a single appraised value amount, not a range of value (49 CFR 24.103(a)(3)(iv)).

11.6.3.2 Appraisal Review

The term “review appraiser” is used rather than “reviewing appraiser,” to emphasize that “review appraiser” is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal agencies have long held the perspective that appraisal review is a unique skill which, while certainly building on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Sponsor's real property valuation needs and the appraiser.

A Sponsor’s review appraiser typically performs a more involved role than a technical appraisal review. They may be involved in devising the scope of work statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on acquiring agency policy and requirements, to appraisers, both staff and consultants. Additionally, review appraisers are frequently technical advisors to other acquiring agency officials; see Appendix A to (49 CFR 24.104).

The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted (49 CFR 24.104).

All appraisals must be reviewed in accordance with Standard Rule 3, Real Property Review Development and Reporting of the Uniform Standards of Professional Practice (USPAP).

11.6.3.3 Appraisal Format Requirements

USPAP addresses the content and level of information required in a report that must communicate each analysis, opinion, and conclusion in a manner that is not misleading. The Uniform Act requires that a written real property appraisal report be prepared. Refer to USPAP for the current USPAP requirements.

An appraiser must use care when characterizing the type of report and level of information communicated upon completion of an assignment. An appraiser may use any other label (title) in addition to, but not in place of, the label set forth in Standard 2 of USPAP for the type of
report provided. Some common terminology employed by NYSDOT for appraising total and partial acquisitions includes the following:

- **Full Appraisal** – Used in full acquisitions. Nothing further is required beyond an appraisal of the whole property with separation of interests where required and analysis of damages.

- **Before and After Appraisal** – Used in the valuation of partial acquisitions, typically when the value is expected to exceed $50,000 and/or the appraisal problem is complicated. The appraiser develops two opinions of value: 1) valuing the pre-acquisition scenario and 2) valuing the post-acquisition scenario. The difference is the value of the acquisition (Just Compensation).

- **Before and After Appraisal (land only)** – Used in valuation of partial acquisitions when the value is expected to exceed $50,000. While there is no severance damage to building improvements, there may still be severance damage to the remaining land.

- **Value Finding Appraisal** – Utilized for partial acquisitions which are generally $50,000 and under and uncomplicated. Sales grids are required for $25,000 and above.

11.6.3.4 Complex and High Value Acquisitions

NYSDOT recommends that two (2) appraisals be procured when the appraisal problem is complex and the anticipated damages exceed $150,000. When compensation exceeds $300,000, it is required that (2) appraisals be procured. When more than one appraisal is prepared, just compensation must be based on the highest approved and recommended appraisal.

11.6.3.5 Appraisal Life

Projects from time to time get postponed for various reasons. As a result, extended periods of time may elapse between the dates of appraisals and when the acquiring agency is actually ready to acquire. The New York State Comptroller’s Office has a policy that appraisals must be updated after one year from date of the appraisal. Updated Appraisals need to follow USPAP’s Advisory Opinion 3.

11.7 ACQUISITION

The primary goal of the acquisition process is to acquire property rights expeditiously through negotiations, not condemnation, whenever possible. These negotiations must be conducted by a qualified knowledgeable and experienced member of the acquiring agency’s or right of way consultant’s staff. All negotiators are encouraged to consult with the Regional Office of Right of Way regarding any procedural question, requirement or unusual circumstance which may arise [see (49 CFR 24.102(a))].

11.7.1 Basic Acquisition Requirements

1. Each acquisition shall have an individual property file (49 CFR 24.9(a)).

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2. A written diary (negotiators log) of all contacts must be maintained in the individual property file (see Appendix 11-8/23 CFR 710.201(f)(1)).

3. As soon as feasible, the Agency shall notify the owner in writing of the Agency’s interest in acquiring the real property and the basic protections provided to the owner by law (49 CFR 24.102(b)) (see Appendix 11-18).

4. Each notice which the Agency is required to provide to a property owner or occupant under 49 CFR Part 24, except the notice described above in #3, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

5. Following the written notice, the negotiator must explain to the property owner or the owner’s designated representative the acquisition process and provide an informative acquisition brochure tailored to the project at hand. Absentee owners may be accommodated through the mail, e-mail and/or telephone to the extent practicable. All affected property owners must be advised of the right to have their property appraised, except when the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the proposed acquisition is valued at $10,000 or less. When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation (49 CFR 24.102(c)).

6. The right to accompany the appraiser during inspection of the property must be explained. The appraiser must document the accompaniment offer by letter and/or in the appraisal report itself. The letter becomes part of the file (49 CFR 24.102(c)).

7. The owner must be provided with a written offer which includes what the acquiring agency believes to be just compensation for the real property to be acquired and a detailed summary statement of the basis for the offer. Appendix 11-10 should be attached to the offer letter (49 CFR 24.102(e)).

8. Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in (49 CFR 24.203(d)), the initiation of negotiations (defined in (49 CFR 24.2(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

9. The property owner must be given a reasonable opportunity to consider the offer (49 CFR 24.102(f)). The needed time can vary significantly, depending on the circumstances, but 30 days would seem to be the minimum time these actions can be reasonably expected to require (49 CFR, Appendix A to 24.102(f)).

10. No coercive action may be taken to reach an agreement (49 CFR 24.102(h)).

11. A property owner cannot be required to move without at least 90 days written notice (49 CFR 24.203(c)).

12. No property owner can be required to surrender possession of the property being acquired until payment is made or the money is deposited with the Supreme Court for the benefit of the owner (49 CFR 24.102(j)).

13. No agreement taken as an “Advance Payment” shall limit the property owner’s right to file a claim for additional compensation within the time specified by the court.

11.7.2 Donations

Property owners must be informed of their right to receive just compensation. The acquiring agency may ask without any coercive action or language if the property owner wishes to donate
the necessary property rights. The owners have the right to waive just compensation and may also waive their right to have an appraisal prepared for the donation. They may elect to donate but not waive the right to an appraisal. The Donation Statement can be signed by the owner at anytime after the first contact (see Appendix 11-4/(49 CFR 24.102(c)(2)(i))). However, finalizing such donations by execution of deed or easement document should not occur until after Design Approval. Sponsors/acquiring agencies should be cognizant of potential environmental issues associated with property to be donated.

11.7.3 **Donations in Exchange for Construction Features**

An acquiring agency may accept a property owner's offer to donate a whole or part of a property in exchange for services or facilities that will benefit that owner.

For instance, an agency may require a narrow strip of land for a street-widening project. The property owner and the agency may negotiate an agreement that would require the agency to provide an additional driveway, entrance, or other features in lieu of cash compensation. The agency should compare the donated property's value and the cost of additional construction features to ensure that construction costs do not exceed the value of the donated real property. In this situation, an appraisal of the parcel(s) to be acquired and an estimate of construction features must be completed to ensure that the owner is not receiving more than just compensation.

11.7.4 **Dedications**

Dedication is the process of reserving a parcel of land for a future public use. A dedication is usually made as part of the subdivision or zoning approval process.

An acquiring agency may accept, as part of a Federal or federally assisted project, a parcel that a developer has dedicated or proposes to dedicate. The agency also may accept land dedicated pursuant to the local planning process or at the request of the property owner for land use concessions that are consistent with applicable local and Federal project and environmental regulations.

Real property obtained through normal zoning or through subdivision procedures requiring dedication of strips of land in the normal exercise of police power, is not considered to be an acquisition in the constitutional sense and does not call for payment of just compensation or compliance with the Uniform Act. Land acquired in this manner may be incorporated into a federally assisted project without jeopardizing participation in other project costs and may be eligible for obtaining the cost sharing/credit.

11.7.5 **Functional Replacement**

New York State Highway Law, Section 10, Subsections 24 and 27 authorize the Commissioner of Transportation to use functional replacement with federally funded highway projects. The authority to use functional replacement is not extended to local project Sponsors unless NYSDOT carries out the functional replacements and acquisitions associated with same. See 11.7.6.

11.7.6 **Hardship, Protective Buying and Early Acquisition**
In New York State, the State Environmental Quality Review Act\(^9\) (SEQRA) precludes taking any action in connection with any project until environmental impacts have been reviewed and an environmental determination has been made. Therefore, no property can be acquired until the SEQRA process for the project has been completed, Design Approval has been granted and authorization to acquire has been secured (if applicable).

### 11.7.7 Uneconomic Remnants/Remainder

An offer must be made to purchase the remainder parcel when the acquiring agency determines a partial acquisition renders the remainder of a property to have little or no utility or little or no value to the property owner. If contamination is suspected on the remnant parcel, the RLPL should be promptly notified for the appropriate actions (49 CFR 24.102(k)) and (49 CFR 24.2(a)(27)).

If NYSDOT is the acquiring agency on behalf of the local Sponsor, the offer to purchase the uneconomic remainder should be made by the local Sponsor.

**Note:** In either situation local funds should be used to purchase uneconomic remnants. This will simplify future disposal of such properties without concern for reimbursement of federal funds.

### 11.7.8 Inverse Condemnation

The legal process by which a property owner may claim and receive compensation for acquisition of or damages to their property as the result of public improvement is known as inverse condemnation. This may occur when an acquiring agency, either actually or allegedly, acquires a property or property interest without either an offer to acquire through negotiations or the institution of condemnation proceedings. The Uniform Act prohibits an acquiring agency from intentionally making it necessary for the property owner to begin legal proceedings to prove that an acquisition had occurred (49 CFR 24.102(l)).

### 11.7.9 Relocation Assistance

Detailed information regarding relocation assistance can be found on FHWA’s website at the following address: [http://www.fhwa.dot.gov/realestate/lpaguide/ch7.htm](http://www.fhwa.dot.gov/realestate/lpaguide/ch7.htm).

It is strongly recommended that acquisitions involving relocations be handled by the NYSDOT Regional Right of Way Office. The Uniform Act is quite specific regarding protections afforded to displaced occupants. If a Sponsor elects to have a qualified consultant perform these complex activities, or if the Sponsor is qualified and approved by their NYSDOT ROWLPL, the relocation agent must consult the ROWLPL. A meeting between the relocation agent and the ROWLPL must be held at the beginning of the process to determine the scope, schedule and steps involved in the relocation process. There are various organizations that offer relocation training throughout the state and nationwide. Non-compliance with relocation procedures is the easiest way to jeopardize federal aid for an entire project. The federal requirements are outlined in (49 CFR 24 Subparts C, D, E, and F).

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\(^9\) [http://www.dec.ny.gov/permits/357.html](http://www.dec.ny.gov/permits/357.html)
Relocation is essential not only to the welfare of those to be displaced but also to the progress of the entire highway project. The relocation program consists of four main components: relocation planning, notices, advisory services, and payments.

11.7.9.1 Relocation Planning

Under federal regulations, relocation planning is required and a general outline is provided in *(49 CFR 24.205)*. For relocation planning, the Sponsor shall prepare a written analysis of the project’s relocations when the preliminary design alternatives have been determined and again once the final design is approved. The NYSDOT has titled these plans the Conceptual Stage Relocation Plan (CSRP) and the Acquisition Stage Relocation Plan (ASRP). Both relocation plans must be reviewed by the ROWLPL and then approved via signature by the RLO. The CSRP is prepared during the ROW Incidental Phase and is to be included in the Draft Design Report to be made available at the EDPL Public Hearing. Following the public hearing and selection of an alternative, all proposed displacees are personally interviewed prior to preparation of the ASRP to determine their needs. The ASRP must be submitted for approval after Design Approval has been granted, and it must be approved prior to requesting Acquisition Phase Authorization. These plans are formatted as follows:

1) Title Page (includes all of the project identification information
2) Introduction (purpose of plan)
3) Description of the project
4) Description of the area
5) Relocation Analysis (description of the properties to be acquired and any potential relocation problems)
6) Relocation Assistance and Services (a list of assurances that the federal regulations will be adhered to)
7) Conclusion (includes relocation time projection)
8) Maps, charts of relocation needs matched with available replacement properties currently for sale and/or rent, a list of sources used to compile the information contained in the plan and a list of agencies/organizations which may provide assistance

This is a suggested way to address the planning requirements. All of the above need to be included in both documents, but the order and form are at the discretion of the Sponsor/acquiring agency.

11.7.9.2 Notices

Sample notices used by NYSDOT may be obtained from the ROWLPL for a General Information Notice, a Notice of Relocation Eligibility, a 90 Day Notice and a Notice of Intent to Acquire. A 30 Day Notice is required if the 90 Day Notice does not provide a specific date the property must be vacated by.

11.7.9.3 Advisory Services

A relocation advisor must be assigned to each person to be displaced. The advisor works closely with each displacee in order to ensure that all payments and benefits are fully utilized and that all regulations are observed, thereby avoiding the possibility of displacees jeopardizing or forfeiting any benefits or payments. It is strongly recommended to extend all offers of relocation benefits to displacees in person in order to help the displacee better understand the relocation process and the benefits available to them. The relocation specialist should provide
the displacee with a relocation brochure during the initial interview. FHWA has a sample relocation brochure that can be obtained from the following link: http://www.fhwa.dot.gov/real_estate/publications/rights/yourrights.pdf.

11.7.9.4 Relocation Payments

Relocation payments are dependent upon the type of relocation (i.e. residential owner-occupants, residential tenants, non-residential, mobile homes, etc.). Relocation payment amounts are subject to change and should be verified by referencing 49 CFR 24 Subparts D, E and F.

11.8 PROPERTY MANAGEMENT

Property management is the administration of acquired land and improvements including subterranean, at grade and overhead rights.

11.8.1 Pre-Construction

The first order of business in the role of property management is to compile an inventory of the acquisitions and provide for their security and protection. The inventory may be as simple as a list of each acquired parcel on the project. There is an inherent time lapse between the completed property acquisitions and the award of the construction contract. The acquired parcels and accompanying improvements are valuable resources which must be protected. Ensuring public safety should be the number one concern of any Sponsor. It is not always feasible or possible for the occupants to relocate in a timely manner. Former commercial owners and tenants of acquired property are required by NYS EDPL, Sec. 305 to pay fair market value rent to the acquiring agency for their continued occupancy from the date of acquisition to the date the property has been vacated. Residential owner occupants may remain on acquired property rent free for ninety days post acquisition before any rental obligation begins. A fair market rental value may be established in or derived from the appraisal used in the acquisition process. The overwhelming majority of acquisitions will be vacant land abutting the existing highway requiring minimal property management effort.

In some instances, acquisitions can be economically productive during the pre-construction period. For prolonged periods between acquisition and advertisement for construction bids, it might be in the public interest to allow use of the right of way by permit or lease. These uses must not interfere with planned pre-construction activities or on-going highway maintenance and must be vacated for right of way clearance purposes prior to the advertisement date. Any proceeds realized from the use of project right of way purchased with federal and or state funds must be credited accordingly. Contact the RLPL/ROWLPL for the proper disbursement of such income.

If property is used by permit or lease by a private party, the acquiring agency must charge a minimum of fair market rent, although there can be exceptions for social, economic and/or environmental purposes. Additionally, if a permit or lease is made to a government entity for public purposes, the permit/lease may be made without charge or for less than fair market rent. The federal share of the rent proceeds may be used for activities eligible under Title 23 U.S.C. Highways; however, the federal share must be held in a dedicated account until such use occurs. The valuation of proceeds received from such rents, and the use of those proceeds by Sponsors for eligible activities, must be well documented by the Sponsor.
Demolition of acquired structures and removal of existing encroachments may be included as pay items in the construction contract. They may also be cleared earlier during the acquisition phase when deemed necessary and charged as a property management expense. Funding may be shifted from the construction phase to the acquisition phase to pay for this pre-construction work.

Responsibility for maintaining and securing the right of way generally shifts to the successful bidder at contract award for the duration of the project in accordance with the construction contract documents.

11.8.2 Post-Construction

When construction has been completed and the project accepted, property management responsibility returns to the Sponsor. As-built project plans will reflect any field changes made to the original plans. Land use permits and leases of Sponsor-owned excess (surplus) property may be issued or resumed. Excess right of way should be identified for disposal. Any proceeds from the use or disposal of project right of way purchased with federal and or state funds must be credited accordingly. Contact the RLPL for guidance. Uneconomic remainders purchased solely with the Sponsor’s funds may be utilized or disposed of without any approvals from NYSDOT and/or FHWA.

If property is leased or sold to a private party, the acquiring agency must charge a minimum of fair market value/rent, although there can be exceptions for social, economic and/or environmental purposes. Additionally, if a lease or disposal is made to a government entity for public purposes, the disposal/lease may be made without charge or for less than fair market value/rent. The federal share of the rent/sale proceeds may be used for activities eligible under Title 23 U.S.C. Highways; however, the federal share must be held in a dedicated account until such use occurs. The valuation of proceeds received from such rents/sales, and the use of those proceeds by Sponsors for eligible activities, must be well documented by the Sponsor.

Property managers work closely with maintenance forces having jurisdiction over the subject highway to maintain and protect the resulting facilities. Encroachments, unwanted activities, illegal signs, access control and routine property maintenance tasks should be continually addressed to protect the public investment.

11.8.3 Record Keeping

Maintaining complete and adequate records are an essential part of property management for both the pre- and post-construction phases. All related documents, permits, leases, inventories of improvements, expenditures, inquiries, etc. should be kept for as long as the property remains in the Sponsor’s ownership. Records of periodic inspections (annually at a minimum) should also become part of the permanent file. A photo-log helps to identify any subtle or not so subtle changes from year to year.

11.9 GLOSSARY

Access Rights: The rights of ingress and egress for a property adjacent to an existing street, highway or trail. Access rights cannot be denied or unreasonably restricted unless other access is available. If it is not, compensation is paid for this restriction of access.

10 The Federal Guide also has a Glossary: http://www.fhwa.dot.gov/realestate/lpaguide/glossary.htm
Administrative Settlements: A settlement which occurs prior to the invoking of the acquiring agency's condemnation authority. It typically is more than the acquiring agency's approved offer of just compensation but not excessively so, considering the expected cost of litigation and the potential cost of project delays. An administrative settlement should be considered when reasonable efforts to negotiate an agreed acquisition price have failed but there appears to be the potential for agreement.

Advance Acquisition: Early acquisition of the property needed for a project by the Sponsor; however, SEQRA prohibits advance acquisitions prior to completion of the environmental review process.

Appraisal Problem: What the client and appraiser agree that the appraisal must accomplish. (see Section 11.6.3 Appraisals).

Appropriation: The process by which NYSDOT exercises the state’s power of eminent domain to acquire real property.

Bundle of Rights: Ownership of real property includes many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, and the right of transfer by contract for a specific period of time. It is also referred to as the benefits to be derived by the occupancy and use of the real estate or property.

Coercion: An attempt to intimidate or unduly influence the property owner into accepting an offer, signing an agreement or donating the property rights needed. Negotiations must be conducted free of coercion. Any coercive action, verbal, written or physical may result in the loss of federal funding for the entire construction project.

Condemnation: A judicial process by which municipalities and other entities under the jurisdiction of the New York State Supreme Court exercise the power of eminent domain to acquire real property.

Conservation Easement: A restriction that limits the future use of a property to preservation, conservation, or wildlife habitat.

Dedication: Pursuant to the “police power” of government, this involves the setting aside of property for public use without compensation as a condition precedent to the granting of a permit, license, or zoning variance by a Sponsor. The property owner must initiate contact with the Sponsor for a request to develop before the Sponsor can proceed with dedication requirements.

Direct Damages: The market value of the acquired land and any improvements.

Donation: A conveyance of real property for an improvement project without compensation. The property owner(s) must have been advised of the right of compensation and signed a written waiver of that right. The property owner also has the right to have their property (acquisition area) appraised, but they may waive their right to an appraisal (see Appendix 11-4).

Easement: A non-possessory property interest that one party has in land owned by another, entitling the holder of the interest to limited use or enjoyment of the other's land.
EDPL Public Hearing (usually, but not always, combined with a NEPA Public Hearing): A formal meeting to comply with the provisions of NYS Eminent Domain Procedure Law Article 2. Public hearings are public meetings which meet prescribed requirements for notification, meeting content, public comment opportunities and formal transcripts.

Eminent Domain: The inherent power reserved by government to acquire private property rights by due process of law when the necessity arises. When exercising this right, two basic requirements must be met; the use must be public, and just compensation must be paid to the owner prior to taking possession of the property.

Encroachments: Items or improvements discovered to be on the real property of others without the legal right to be there. The most common items within the context of the projects addressed in this manual are signs, fences, sidewalks and traffic signal devices.

Environmental Mitigation: The act of lessening project-attributable damages to the surrounding area and its inhabitants (e.g., acquiring alternate sites to replace wildlife habitat or wetlands, or building sound walls for noise attenuation).

Escheat: The power of a state to acquire title to property for which there is no owner.

Fair Market Value (FMV): For the purposes of evaluating land and improvements taken under the power of eminent domain, “is the amount of money which, as of the date of valuation, an informed and knowledgeable purchaser willing, but not obligated to buy property, would pay to an informed and knowledgeable owner willing, but not obligated, to sell it.”

Fee Simple: An absolute ownership without limitations or restrictions, but subject to the inherent powers of government (i.e., eminent domain, escheat, police power and taxation).

Hardship: A situation where unusual personal circumstances not shared by others (e.g., financial or health) accrue to an owner of a property aggravated or perpetuated by the pending project and can only be resolved by early acquisition of the property by the Sponsor. This is generally not available in NYS due to SEQRA.

Hazardous Materials/Waste: A material is hazardous if it poses a threat to human health or the environment. The term “hazardous waste” is applicable to storage, deposit, contamination, etc., involving a hazardous material which has escaped or has been abandoned. It can be defined in general terms as any of the following:

- Flammable;
- Reactive (subject to spontaneous explosion of fire) substances;
- Corrosive;
- or Toxic.

Regulations require all toxic substances be removed in accordance with local laws prior to a public project proceeding to construction.

Highest and Best Use: The Use of Land which will result in its highest value. In appraisal this cannot be merely theoretical but must be realistic in that the use must be legal (proper zoning, etc.), physically achievable and financially feasible.

Highway Easement: Rights granted or taken (but not transferring fee title) for the construction, maintenance and operation of a highway.
Indirect Damages: The loss in value to the remainder in a partial acquisition of a property.

Informational Meeting: Provides an opportunity for an open dialogue with potential project stakeholders as a means to discuss not only identified transportation issues and needs, such as safety, congestion, deteriorated pavement, etc., but to identify for further exploration, community and environmental issues such as pedestrian facilities, integration with comprehensive planning activities or other community concerns.

Inverse Condemnation: The legal process initiated by a property owner to claim compensation for the taking of, or damages to, his or her property as a result of a public project.

Just Compensation: The value of the property taken and of all property rights lost or acquired. This is determined through the valuation of the fair market value of the property, before the acquisition and after, with the difference resulting in total damages to the property.

Legal Settlement: A negotiation option available following a condemnation, prior to a judicial decision.

National Environmental Policy Act (NEPA): NEPA establishes the requirement that all federal agencies' funding or permitting decisions be made with full consideration of the impact to the natural and human environment. It requires agencies disclose these impacts to interested parties and the general public (see 23 CFR 771).

Negotiation: The process of communication whereby an agreement is attempted or reached for the voluntary transfer of ownership at terms mutually acceptable to all parties of interest.

Partial Acquisition: The taking of only a part of a property under the power of eminent domain, and for which just compensation must be paid, not only for the part taken, but also taking into account the value of any allowable damages and/or benefits to any remaining property.

Permanent Easement: The acquisition of certain rights and interest to use or control a property for a designated purpose in perpetuity. In most cases, the property owner retains the use of the property for other functions which do not interfere with the purpose of the easement.

Preservation Easement: A restriction that prohibits certain physical changes in an historic property, usually based on the property’s condition at the time of acquisition of the easement or immediately after proposed restoration of the property.

Projection of Right of Way: The term applied to the remaining incomplete acquisitions when the project has been authorized to advertise for construction bids without all of the necessary property rights having been acquired.

Protective Buying: When substantial building activity or appreciation of vacant land value is likely and early acquisition by the Sponsor is needed to prevent development of the site and to avoid future higher acquisition, relocation or construction costs. This is not allowed in NYS due to SEQRA.

Real Estate: Physical land and appurtenances including structures affixed thereto.

Release (formerly known as Permit to Enter and/or Construction Permit): A document relinquishing a private property owner’s right to make claim against the project Sponsor, its
agents or contractors when temporary rights are needed to perform work on private property solely for the owner's benefit, refer to EI 11-010. The document provides no permanent rights to the project Sponsor and the work would otherwise be omitted from the construction project should the property owner not wish to sign. There is no monetary compensation associated with a release.

**Relocation Assistance:** Process by which a Sponsor meets the legal requirements for providing relocation services, moving cost payments, and increased costs to find and acquire replacement property, for all eligible individuals, families, and business displaced by a project (not to be confused with relocation of utilities).

**Remainder:** Property remaining in possession of the owner after an eminent domain partial acquisition.

**Right of Entry - Prior to acquisition:** The Sponsor, its officers, agents or contractors when acquiring real property in accordance with NYS Eminent Domain Procedure Law, or when engaged in work connected with a proposed public project, as described in this law, shall have the right to enter upon any real property for the purpose of making surveys, test pits and borings, or other investigations, and also for temporary occupancy during construction. At a reasonable time prior to such entry, the Sponsor shall deliver notice personally or by first class mail, to the property owner stating the necessity for the entry. The Sponsor shall be liable to the owner for any damages caused by the Sponsor as a result of the entry; but such damages shall not entail duplicate payment of damages to be compensated for by the Sponsor pursuant to Article 3 of this law. Entry damages, if any, shall not be deemed an acquisition (NYS EDPL, Article 4, Sec. 404). (Also see Appendix 11-9).

**Right of Way Certificate:** Written statement summarizing the status of all ROW-related matters with respect to a proposed construction project. This is a standardized form provided by NYSDOT in Appendix 11-5.

**Severance Damage:** The loss in market value to the remaining property due to partial acquisition of the original property, also referred to as indirect or consequential damages.

**State Environmental Quality Review Act (SEQRA):** New York's State Environmental Quality Review Act (SEQRA) requires all state and municipalities to consider environmental impacts equally with social and economic factors during discretionary decision-making. Further information can be found at: [http://www.dec.ny.gov/permits/6208.html](http://www.dec.ny.gov/permits/6208.html).

**Slope, Drainage or Utility Easement:** Easements to construct or maintain slopes, drainage or utilities which will either remain permanently under the acquiring Sponsor's control, or be relinquished, or conveyed to a utility owner by agreement.

**Temporary Easement:** A recorded interest in a parcel for a specific duration and a well defined purpose. The underlying fee owner may continue to utilize and enjoy the parcel as long as that use and enjoyment does not interfere with the purpose and intent of the temporary easement.

**Uneconomic Remnant:** Per the Uniform Act, an uneconomic remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.

### 11.10 REFERENCES
11.10.1 Federal Laws, Regulations, Guides and Policies

- National Environmental Policy Act (NEPA)
- Uniform Relocation Assistance & Land Acquisition Policies Act of 1970, as Amended
  http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim
- 23 CFR 635.309
- 23 CFR 710.201(f)(1)
- 23 CFR 771.111
- 49 CFR 24, Subparts C, D, E and F
  - 49 CFR 24.2, Subparts C, D, E and F
  - 49 CFR 24.104
  - 49 CFR 24.203(c)(d)
  - 49 CFR 24.204
  - 49 CFR 24.205

Federal Highway Administration - Project Development Guide (PDG)
(http://www.fhwa.dot.gov/realestate/pdg.htm)

Relocation Assistance- Project Development Guide (PDG)
(http://www.fhwa.dot.gov/realestate/pdg10.htm)

- Appraisal Guide
  - Your Rights and Benefits as a Displaced Person
    (http://www.fhwa.dot.gov/realestate/rights/index.htm)
  - Acquiring Real Property for Federal Aid Programs & Projects
    (http://www.fhwa.dot.gov/realestate/realprop/index.html)
  - Real Estate Acquisition Guide for Sponsors
    (http://www.fhwa.dot.gov/realestate/lpaguide/index.htm)

11.10.2 New York State Laws, Regulations, Guides and Policies

- NYS Highway Law, Section 10, Subsection 24
- NYS Transportation Law
- NYS Eminent Domain Procedures Law (EDPL), Article 2, Section 201-207;
  - Article 3, Section 301-305;
  - Article 4, Sections 403 and 404;
  - Article 5, Sections 501-513;
  - Article 7, Sec. 702
- NY State Environmental Quality Review Act (SEQRA)
- NYS Constitution
- 17 NYCRR Part 101
- 6 NYCRR Part 617 State Environmental Quality Review Act (SEQRA)
  (http://www.dec.ny.gov/regs/4490.html)

These are available at the following website:
http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS

NYSDOT Highway Design Manual, Chapter 5

11.10.3 Industry Guides

- Uniform Standards of Professional Appraisal Practice
  http://www.uspap.org/

The Appraisal Institute, ‘The Appraisal of Real Estate’ Thirteenth Edition