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Chapter One
ADMINISTRATION

1.1 GENERAL INFORMATION

1.1.1 Right of Way Manual Purpose and Use

This Manual provides direction and guidance to personnel who carry out the Right of Way program for the Utah Department of Transportation (UDOT). Its content is applicable to UDOT staff, contractors, consultants, grantees, subgrantees and other project partners including local agency personnel who acquire right of way. The Manual addresses all major right of way functions including acquisition, condemnation, valuation, relocation, right of way services contracts, property management, property disposal requirements and related procedures. It also covers important UDOT administrative processes and the role of Right of Way personnel assigned to self-directed project teams under UDOT’s project development process.

The provisions of this Manual comply with Utah and Federal statutes and regulations as of the last revision date. The Federal Highway Administration (FHWA) has reviewed and accepted the Manual as meeting the requirement (23 C.F.R. 710.201) that each State DOT maintain a manual that describes its policies and practices for all phases of the right of way program.

When UDOT is a grantee of federal funds under Title 23 of the United States Code, it must strive to ensure the prudent use of those funds when acquiring, managing, and disposing of real property. UDOT, and subgrantees that receive federal funds through UDOT, must adhere to the requirements of Title 23 C.F.R. parts 635, 710 and 810, the real property related provisions found at 49 C.F.R. part 24, and applicable Utah law. Title 23 Part 710 applies to programs and projects administered by the Federal Highway Administration (FHWA) and, unless otherwise stated in that part, to all property purchased with title 23 grant funds or incorporated into a project carried out with grant funding provided under title 23, except property for which the title is vested in the United States upon project completion. Grantees are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws.

The Manual is an authoritative guide that occasionally references other UDOT manuals or authorities. It includes electronic links to forms and other materials. All state and federal requirements for executing the right of way program are detailed or linked here. Since the authorities cited are subject to revision, the most recent version of any state or federal law cited must be reviewed and shall prevail over any conflicting provisions herein. Staff and consultants who work under its scope are required to comply with the
provisions of this manual and current state and federal law. UDOT recognizes that projects sometimes present situations that cannot be anticipated or addressed in formal policy. Staff, contractors and other project partners must individually consider complex or unique cases involving acquisition, valuation, relocation or other phases. Right of Way staff will inform the Project Manager and other leadership positions about special situations as soon as they are identified to allow prompt decisions to resolve issues. Decisions on such cases will comply with laws, meet the intent of this Manual, and be fair to all parties.

1.1.2 Manual Revisions and Updates

This Manual will be updated as necessary to conform to changes in law, regulations, and UDOT organization. It will also be revised to incorporate better practices identified through Quality Control/Quality Assurance (QC/QA) activities. UDOT will certify to the Federal Highway Administration every five years that the Manual conforms to existing practices and that procedures comply with Federal and State laws and regulations. Each person using the Manual has a responsibility to contribute to its improvement. Users are invited to make suggestions supported by comments to the Director or appropriate Deputy Director of Right of Way and/or to Right of Way Lead Agents.

The Director of Right of Way is authorized to interpret, clarify, or approve exceptions to provisions of the Manual. This may be done where applying written policy might be misunderstood or have an unintended effect when applied to special situations. All interpretations, clarifications, and exceptions must comply with requirements of State or Federal laws or regulations.

1.1.3 UDOT Strategic Goals and Right of Way Vision and Mission

1.1.3.1 UDOT Strategic Goals

The Right of Way Division strives to advance the strategic goals of UDOT in performing its function of delivering right of way for project development. The elements in UDOT’s strategic goals are stated below:

1. Employee Centered
   We are individually and collectively UDOT’s most valuable resource.

2. Customer Focus
   We provide quality leadership to meet and balance Utah’s transportation and related challenges.

3. Quality Service
   We build quality and continuous improvement into everything we do.
4. **Great Performance**

We lead the field in providing constantly improving, cost-effective services using new technologies.

Each year UDOT identifies 15 to 20 Priority Strategies. These are specific achievement goals and actions to advance the Strategic Goals. All UDOT organizational units and leaders use the Priority Strategies to focus their Unit’s operations on achieving the Department’s Strategic Goals. UDOT Regions and Groups will include appropriate Priority Strategies in their Annual Performance Plans. The Right of Way Division will address and contribute to the Priority Strategies as an element of its Quality Control/Quality Assurance plan.

### 1.1.3.2 Right of Way Mission and Vision

The Right of Way Division Vision and Mission statements stated below embrace and advance UDOT’s Strategic Goals:

1. **Right of Way Vision**

   We anticipate and fulfill the Right of Way needs of our customers. We accomplish this by fostering a dynamic environment in which employees exhibit personal leadership to achieve the goals and objectives of the Division.

2. **Right of Way Mission**

   To clear the right of way for Utah’s transportation needs according to the highest professional standards. We strive to provide a positive experience for our customers, minimize any stress caused by the acquisition process, and respect our fiduciary duty to the taxpayers of Utah.

The Right of Way Mission and Vision statements emphasize commitment to customer service, quality performance, and responsibility to taxpayers. These are core organizational values of the Right of Way Division. Departmental Quality Strategies that pertain to these values will be adapted for inclusion in the Annual Performance Plan. The Right of Way Director will communicate the Priority Strategies and the Performance Plan at the start of each state fiscal year. Each Right of Way staff member is responsible for being familiar with the Annual Performance Plan and actively contributing to its accomplishment.

### 1.1.4 UDOT Organization and Right of Way Placement

UDOT operates from the Central Office in Salt Lake City and four Regional Offices. The Executive Director administers the Department under policies established by the seven-member Transportation Commission. The Governor, with the consent of the State Senate, appoints the commissioners for six-year terms. The Governor appoints the Executive Director with recommendations from the Commission and approval of the
Senate. Commission meetings are held monthly at locations that rotate to include all regions of the State.

The Right of Way Division is a component of the UDOT Project Development group. This group includes the organizational units that are responsible for implementing UDOT’s capital improvement program along with related support services. A UDOT organization chart indicating the placement of the Project Development Group and the Right of Way Division which also includes the utility relocation function can be viewed on the UDOT website at: http://www.udot.utah.gov/main/f?p=100:pg:5115546398024109250:::1:T,V:1507

1.1.5 Right of Way Organization

The Right of Way Division is located within the Project Development group and the unit’s organizational chart can also be found on the above UDOT website. The Right of Way Division is organized and staffed to efficiently carry out its Mission to clear the right of way for Utah’s transportation needs according to the highest professional standards. Explicit in the Right of Way Mission is superior delivery of services to external customers such as property owners and tenants and internal customers including UDOT Region Project Managers. The commitment to high professional standards requires that staff at all levels treat affected property owners and tenants sensitively and provide full services, payments, and benefits to which they are entitled along with cooperating and assisting UDOT project development by clearing right of way for project construction on-schedule and within budget.

The Right of Way Division is structured to the principle of delegating maximum authority and responsibility to the people who perform the mission tasks at the project level. This is reflected in the Right of Way Division organization chart which is available from the office of the Director of Right of Way. The Right of Way organization is project-oriented. There is a single administrative program level at the UDOT Central Office in Salt Lake City, Utah. This is comprised of the Director and two Deputy Directors of Right of Way and the UDOT employees who report to them. Other positions are project-focused including several Right of Way Project Coordinators at the central office who provide support to Right of Way Lead Agents personnel.

The primary right of way position at the project level is the Right of Way Lead Agent. Other specialist personnel including Review Appraiser, Acquisition or Relocation Agents may be assigned to the Project Team depending on the scope and extent of right of way.

1.1.6 Key Right of Way Positions

1. Director of Right of Way Responsibilities:
   • Manage and oversee Right of Way Program.
• Manage and oversee utilities acquisition and relocation in connection with projects.
• Execute Right of Way Mission and Vision.
• Approve settlements after filing condemnation through the Attorney General’s Office.
• Approve all negotiated settlements on behalf of the Right of Way Division.
• Approve administrative settlements in excess of fair market value.
• Develop and update Right of Way policies and operating practices.
• Assure adequate Right of Way staffing that is balanced and scaled to the workload.
• Negotiate longitudinal access to the Interstate System for telecommunications installation.
• Coordinate with other UDOT group and function managers on common or intersecting responsibilities.
• Participate as member of Transportation Preservation Advisory Council Committee for administering the UDOT Corridor Preservation Fund.
• Manage outdoor advertising control.
• Manage acquired property, including demolition of structures in connection with project needs, permitting encroachments, access, and special events, and selling surplus property.

2. Responsibilities of Deputy Director Managing Property Acquisitions (a.k.a Acquisition Services):
• Perform Director’s responsibilities in the Director’s absence.
• Manage the acquisition and relocation program under the direction of the Director.
• Manage Right of Way Lead Agents.
• Assign projects to the Right of Way Lead Agents.
• Update the Right of Way Manual of Operations to reflect current policies and procedures.
• Assist the Director with the administration of the Eminent Domain process in coordination with the Attorney General’s Office, Right of Way Lead Agents, Consultant Agents and Project Managers.
• Interpret and clarify right of way policy in questions raised on unique or complex cases arising on projects.
• Provide policy and administrative support to project Right of Way Lead Agents and Right of Way Project Coordinators.
• Monitor performance of Right of Way Lead Agents on their assigned projects to assure right of way is clear at construction project advertising date or dates per each limitation.
• Monitor performance of Right of Way staff and right of way functions from a programmatic point of view to assure compliance with established policies and procedures.
• Monitor performance of project right of way quality assurance activities.
• Coordinate with staff of local agencies concerning Utah and Federal requirements for right of way acquisition and relocation.
• Ensure representation at public meetings where ROW issues will be discussed.
• Manage staff training program.

3. Responsibilities of Deputy Director Managing Property Management:
• Perform Director’s responsibilities in Director’s absence.
• Manage Statewide Permitting Program Management function and guide permitting officers who work in each of UDOT’s four region offices (encroachments, including airspace, access, special events).
• Manage Statewide Permits Officers.
• Manage efforts to inventory UDOT property and facilitate management of the same.
• Manage leasing of UDOT property and ensure safe conditions for tenants.
• Manage maintenance of UDOT property.
• Manage disposal of surplus property.

4. Right of Way Lead Agent Responsibilities:
• Staffing, coordinating, and accomplishing project goals on assigned Right of Way projects.
• Assign Right of Way Consultants to the various acquisition and valuation processes from the current UDOT Right of Way and Local Government Pool.
• Oversee the contracting process for all Right of Way Consultants in conjunction with Consultant Services and the Project Manager.
• Assign Right of Way staff to Project Teams in cooperation with Project Managers.
• Interpret and clarify right of way policy in questions raised on unique or complex cases arising on projects.
• Monitor performance and verify certification of right of way on projects to assure right of way is clear at project advertising date.
• Recommend approval of administrative settlements, contracts for right of way services, and updating valuations.
• Coordinate with the Utah Property Rights Ombudsman on just compensation, relocation or additional right of way issues.
• Expert resource for advice on specific right of way functions for team projects such as property management, relocation, valuation, etc.
• Coordinate with legal support to resolve condemnations on assigned projects.

5. **Additional Right of Way Lead Agent Duties:**
   • Perform or oversee project level right of way activities from project conception through project advertisement.
   • Attend public meetings for assigned projects.
   • Participate with Project Team members from other disciplines in establishing project scope, budget, schedule, and quality.
   • Ensure that all project details and elements are entered into the ROW Electronic Project Management System (ePM) and ProjectWise as per current UDOT standards.
   • Coordinate with Right of Way Lead Agent to update project status at regular intervals in ePM.
   • Recommend approval of contract services and administrative settlements.
   • Point of contact with Project Manager on right of way status.
   • Ensure that all right of way for the project has been acquired and prepare certification for the approval of the Project Manager and Director of Right of Way.

6. **Right of Way Consultant Agent Responsibilities:**
   • Perform professional assignments involving one or more right of way functions as qualified by training and experience such as Acquisition/Relocation Agent, Closings and Condemnation Agent, Appraiser, and Review Appraiser.
   • Attend public meetings for assigned projects as directed by the Right of Way Lead Agent.
   • Coordinate with and inform the Right of Way Lead Agent regarding the status of activities under assignment on project assignments.
   • Make recommendations for settlement or entitlements to the Right of Way Lead Agent.

7. **Right of Way Design Manager Responsibilities:**
   • Manage the right of way design function.
   • Provide support to the Director of Right of Way for the eminent domain condemnation process.
   • Manage the scanning and document records functions of the division.

8. **Project Coordinator Responsibilities Duties:**
   • Quality Assurance / Quality Control for all acquisition files.
o Administrative support for all acquisition files that are submitted to the ROW Division for approval of contracts or other signed documents to ensure that the files have been prepared by UDOT ROW staff or consultant agents in compliance with UDOT expectations and written policies and procedures.

o All files are scanned and placed in ProjectWise as per the current UDOT Right of Way ProjectWise Guide.

- Quality Assurance / Quality Control for all relocation files.
  o Quality Assurance and Administrative support for all Relocation Claims or other relocation related documents which require Department Approval.
  o All files are scanned and placed in ProjectWise as per the current UDOT Right of Way ProjectWise Guide.

- Administration of the ROW ePM System.

- Contract support for all Right of Way consultant acquisition, relocation, appraisal, appraisal review, consultant lead agent contracts.
  o This activity is performed in conjunction with Consultant Services.

- Other duties assigned in support of the Director, the Deputy Director of Right of Way over acquisitions and Right of Way Lead Agents in support of the Right of Way Division’s goals and objectives.

Most Right of Way staff members, as Right of Way Lead Agents, are expert in two or more functions such as acquisition, relocation, closings, appraisal, appraisal review, and property management. The multi-disciplinary staff provides flexibility to service a project workload that varies in scope and scale from year to year.

The responsibilities of the Right of Way Lead Agent will differ with project size and scope. The Right of Way Lead Agent may be the sole Right of Way staff on projects with minor right of way involvement and may perform all functions, except direct payment distributions, including valuation only if Administrative Compensation Estimates (ACE) under $10,000 are involved. The Right of Way Lead Agent on large projects will coordinate work of several other staff members that are assigned to perform specialized functions.

The Right of Way Lead Agent may be assigned more than one project as determined by the right of way requirements and workload on individual projects. Assignments will be made by the Director or appropriate Deputy Director of Right of Way.

The primary responsibility of Right of Way Lead Agents is allocating resources to projects and providing support services to project right of way staff, selecting and contracting Right of Way Consultants in conjunction with Consultant Services and the
Project Manager. Although these are generalist positions, Right of Way Lead Agents as team leaders have expert knowledge in one or more specialist functions such as appraisal or acquisition. The Right of Way Lead Agent may be designated as topic experts in carrying out quality assurance activities or in advising Right of Way Leadership, other Consultant Agents, Project Managers, staff agents, or additional consultants on unique or specialized questions or issues.

1.1.7 GENERAL DEFINITIONS

Pursuant to 23 C.F.R. § 105(a), terms defined in 23 U.S.C. 101(a) and 49 C.F.R. part 24 have the same meaning where used here, except as set forth below. The terms used here have the following meaning on federal-aid projects or where a project is federally assisted. These definitions shall also apply where there is no definition in state law and implementing the definition will not create a conflict with state law.

**Access rights** means the right of ingress to and egress from a property to a public way.

**Acquiring agency** means a State agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

**Acquisition** means activities to obtain an interest in, and possession of, real property.

**Best value** means the proposal offering the most overall public benefits as determined through an evaluation of the amount of the concession payment and other appropriate considerations. Such other appropriate considerations may include, but are not limited to, qualifications and experience of the concessionaire, expected quality of services to be provided, the history or track record of the concessionaire in providing the services, timelines for the delivery of services, performance standards, complexity of the services to be rendered, and revenue sharing. Such appropriate considerations may also include, but are not limited to, policy considerations that are important, but not quantifiable, such as retaining the ability to amend the concession agreement if conditions change, having a desired level of oversight over the facility, ensuring a certain level of maintenance and operations for the facility, considerations relative to the structure and amount of the toll rates, economic development impacts and considerations, or social and environmental benefits and impacts.

**Concession agreement** means an agreement between a highway agency and a concessionaire under which the concessionaire is given the right to operate and collect revenues or fees for the use of a federally funded highway in return for compensation to be paid to the highway agency. A concession agreement may include, but not be limited to, obligations concerning the development, design, construction, maintenance, operation, level of service, and/or capital improvements to a facility over the term of the agreement. Concession agreement shall not include agreements between government
entities, even when compensation is paid, where the primary purpose of the transaction is not commercial in nature but for the purpose of determining governmental ownership, control, jurisdiction, or responsibilities with respect to the operation of a federally funded highway. The highway agency's determination as to whether an agreement between government entities constitutes a concession agreement shall be controlling.

*Concessionaire* means any private or public entity that enters into a concession agreement with a highway agency.

*Damages* means the loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

*Disposal* means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. A disposal must meet the requirements contained in § 710.403(b). The term “disposal” includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

*Donation* means the voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

*Early acquisition* means acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 C.F.R. 710.501 and 23 U.S.C. 108.

*Early Acquisition Project* means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under § 710.501. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

*Easement* means an interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

*Excess real property* means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.
**Federal-aid project** means a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in, chapter 1 of title 23, United States Code.

**Federally assisted** means a project or program that receives grant funds under title 23, United States Code.

**Grantee** means the party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

**Mitigation property** means real property interests acquired to mitigate for impacts of a project eligible for funding under title 23.

**Option** means the purchase of a right to acquire real property within an agreed to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

**Person** means any individual, family, partnership, corporation, or association.

**Real Estate Acquisition Management Plan (RAMP)** means a written document that details how a non-State department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 ROW and real estate requirements for its project or program of projects. The document must be approved by UDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 project or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

**Real property or real property interest** means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used here, the terms “real property” and “real property interest” are synonymous unless otherwise specified.

**Relinquishment** means the conveyance of a portion of a highway ROW or facility by a grantee under title 23, United States Code, or its subgrantee, to another government agency for continued transportation use. (See § 620, subpart B.)

**Right-of-way (ROW)** means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.
ROW manual means an operations manual that establishes a grantee’s acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with 23 C.F.R. 710.201(c).

ROW use agreement means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 C.F.R. 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

1. An administrative settlement is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.
2. A legal settlement is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.
3. A court settlement or court award is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

State agency means a department, agency, or instrumentality of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State department of transportation (SDOT) means UDOT.

Stewardship/Oversight Agreement means the written agreement between UDOT and FHWA that defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

Subgrantee means a government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable Federal requirements.
Temporary development restriction means the purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed to time period, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

Transportation project means any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary. As used here, the term “transportation project” does not include an Early Acquisition Project as defined in this section.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.


1.2 RIGHT OF WAY ROLE IN PROJECT DEVELOPMENT

1.2.1 Right of Way Role in the Project Team

The process of project development involves a varied range of professional disciplines including planning (design), environmental review, project agreement/authorization, utilities, public involvement, right of way acquisition, construction advertising, construction and project management. See 23 C.F.R. § 710.301. Right of way is a critical function when real estate interests are required for the project.

Project development is accomplished through project teams. The teams are self-directed and staffed with professionals of all disciplines necessary to advance the project from conception through construction. Project Manager responsible for the development of the project scope, budget, schedule and quality, directs each Team.

The Right of Way Lead Agent team member is accountable to the Project Manager for accomplishment of project goals relating to scope, budget, and schedule. The Right of Way Lead Agent team member reports to the Director and appropriate Deputy Director of Right of Way for quality of technical performance, assignments, and for administrative direction.

The UDOT Project Team concept needs to be understood in contrast to the traditional hierarchical organizational structure. The traditional project structure allows control of the project to change from one group to another such as environment, design, and Right of Way as it advances toward construction. Each group performs its function relatively independently. The project is “handed off” from one group to the next but coordination and parallel work can take place. This method can result in project delays...
and increased costs. There is no distinct “ownership” of the project or clear designated responsibility for budget and schedule.

The Project Team concept provides a single, unified focus on project delivery. The project is under the authority of a Project Manager who has primary responsibility and accountability for project scope, schedule, budget, and quality. Right of Way staff members who are assigned to the Project Team are equal partners with team members from other disciplines. The team members, including Right of Way have a sense of commitment to the project and feel individually responsible for its successful progression.

Right of Way staff assigned to Project Teams have proficiency in several real estate related disciplines necessary to deliver a clear right of way for construction. They also possess the following interpersonal and organizational skills and abilities that enable them to work effectively within a team structure:

1. **Professional Independence**
   Team members make many decisions without consulting higher management authority in advance.

2. **Collaborative Attitude**
   Right of Way team members coordinate and integrate their work efforts with specialists from other disciplines. There is a collaborative, not authoritative, relationship among team members representing different project development functions.

3. **Personal Responsibility**
   Team members are responsible for achieving specific project goals. There is no chain of command that can obscure responsibility. There is little occasion for finger pointing or blame shifting.

4. **Focus on Project Schedule and Budget**
   Team members participate with the Project Manager in setting goals at the start of the project. Progress is monitored, and adjustments are made at milestone points. Team members commit to the schedule and budget. Achievement is not an exclusive management concern.

The Project Team concept encourages creativity, initiative, and teamwork from all participants. Members are empowered to perform their jobs without close supervision and they are responsible for results. The team concept is professionally rewarding for Right of Way staff that are prepared for these responsibilities. It also benefits the taxpayers and highway users through faster and less costly completion of projects.

### 1.2.2 Right of Way Role in Project Development – General

Project right of way operations take place during the project preconstruction stage, which includes the Concept Phase and the Design Phase. The project team members
work cooperatively under direction of the Project Manager to advance the project to advertisement for construction bids during the preconstruction period. Right of Way is involved in both the Concept and Design Phases but most responsibilities are in the Design Phase.

1. **Concept Phase**
   Activities that define the project in sufficient detail to estimate the project's cost and define its scope. Several alternative alignments may be initially considered at the Concept Phase with one or more discarded as the project moves to the Design Phase. The Right of Way Designer or Engineer will be responsible for the identification of ownerships and right of way conditions for alternatives under study. The product of the Concept Phase is the Project Concept Report. This will present the preferred alternative and define all the parameters including size, scope, estimated cost including right of way, and the level of effort needed to bring the project to completion.

Pursuant to 23 C.F.R. § 710.303, as a condition of Federal funding under title 23, the grantee shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisition using title 23 funds, including early acquisitions under § 710.501(e) and hardship acquisition and protective buying under § 710.503. For projects funded under chapter 1, title 23, United States Code, the grantee must prepare a project agreement in accordance with 23 C.F.R. part 630, subpart A. Authorizations and agreements shall be based on an acceptable estimate for the cost of acquisition.

2. **Design Phase**
   Activities that advance the project from a defined concept, as described above, to construction-ready condition. This includes production of various key project activities and corresponding right of way actions that take place during the Concept and Design Phases. The Sections that follow discuss right of way actions.

1.2.3 **Concept Phase – Right of Way Activities**

A Right of Way Lead Agent is assigned as a member of a Concept Team at the inception of a project. The Right of Way Lead Agent makes the assignment in consultation with the Project Manager. The factors considered for assignments include an assessment of skills needed to meet project needs and the desire to optimally utilize available right of way staff resources. The function of the Right of Way Lead Agent during the Concept Phase is to work with other Concept Team members to define the project scope and estimate cost of the completed project. The focus of right of way work at the Concept Stage is estimating right of way requirements, acquisition, and
relocation impacts and costs for different design concepts. A Right of Way Lead Agent may serve in this role on several projects at the same time that are in various stages of development.

The Concept Phase is the appropriate time for right of way input to beneficially influence project design. The observations of the Right of Way Lead Agent in identifying critical properties, assessing significant damages, deciding if partial acquisitions will cause displacement, etc., can help define right of way limits. This can avoid unnecessary displacement and result in lower right of way costs. It is generally not helpful to propose right of way changes after the project design is complete and plans are developed.

The acquisition of additional right of way for highway improvements is one of the most costly, contentious, and time-consuming issues undertaken by the Department. The right of way requirements for different design alternatives must be carefully evaluated. Methods for minimizing or mitigating right of way requirements and impacts are important considerations in evaluating designs and selecting a concept to move forward to design and construction. The efforts of the Right of Way Concept Team member will be a valuable contribution to ultimate project success in meeting transportation needs.

1.2.4 The Project Field Visit

The Project Manager will schedule a field visit and meeting shortly after the Concept Team is established. All members representing technical functions will participate, including right of way. The field visit will assess site and project conditions on each alternate alignment. This will allow team members to share information and observations about the issues and conditions from their individual technical perspectives.

The Project Manager may distribute documentation about the transportation need and project area conditions to the designated Right of Way Lead Agent in advance of the field visit. The advance documents may highlight areas for particular attention and review. The Right of Way member will review this data in preparation for the Team’s field visit.

The Right of Way team member will make observations about affected property conditions and values, potential displacement of businesses and residences, land service connections, possible land use changes after partial acquisitions, damages from severance, etc. It is important to look for the obvious such as special landscaping, tree lines, fuel tanks, and wireless towers.

The field visit is an opportunity for team members of varied disciplines to interact and exchange information, observations, and opinions about all aspects of the job. They will
ask questions of other team members and be open to challenging or probing questions from others.

There may be a designated note-taker on the project field visit but the Right of Way participant should take notes and not rely on that person to identify right of way concerns. The purpose of notes is to trigger memory on key project characteristics. The Project Concept Report will not accurately reflect the scope and cost of right of way for the project if important right of way characteristics are missed. Expect consolidated notes to be circulated within the team after the meeting to achieve a common understanding of important issues and to assure notes are accurate and complete.

Example

Right of Way Field Visit Notes:
- Parking area of convenience store at Allen Road will be reduced by 40%. Continued retail use is questionable.
- Four-unit building at Charles Street looks like low-income occupancy. There may be one or more large families based on toys and bikes in yard. These will be difficult relocations.
- Grade change in front of house at 45 McKinley looks like it will require replacement of driveway from curb to garage. Check with Design Engineer.

1.2.5 Right of Way Cost Estimate

The Right of Way team member will prepare a preliminary cost (shotgun) estimate of right of way and relocation costs for each alignment under consideration using the form developed for this purpose. Each property will be individually considered. The estimate will be based on the experience of the team member, consultation with the Right of Way Lead Agent or other staff, and consideration of other recent or current projects undertaken in the vicinity.

The right of way estimate will be combined with other estimates for elements including environmental mitigation, utilities, hydraulics, safety, structures, surfacing, etc., to arrive at a total project cost estimate.

Right of way may be a significant component of total project cost. Even though the estimate requires no or minimal value documentation, the estimate should be thoughtfully and fully considered in consultation with others as appropriate.

1.2.6 Public Meetings
There may be informational public meetings in the project concept stage. Designated representatives will attend public participation activities as directed by the Project Manager. The Right of Way member will describe UDOT’s property acquisition process at the meetings including the rights and protections afforded property owners. The Right of Way project team member will describe the Relocation Program if relocation of residents or businesses is anticipated. At this time there may be more than one location alternate under consideration and UDOT will have little information about characteristics of potential displacees. The Relocation Program discussion should therefore be brief and confined to the basic generic processes. Persons who request detailed information will be invited to discuss the Relocation Program with the Right of Way Lead Agent, or a Relocation Agent, either at the meeting or by phone, or personal contact at a later time.

Potential displacees should be told to not move from their residences or businesses unless advised by UDOT in writing that the property they occupy will be acquired and they will be displaced. Such notice will not be issued until the project is approved and affected property owners have been offered fair market value for their property. Premature relocation may disqualify displacees from receiving financial benefits to which they are otherwise entitled.

Property owners should be told to discuss their situation with the Right of Way representative if they have questions or comments relating to the inability to sell their property or the necessity to move in advance of project approval. Chapter Three of this Manual contains UDOT’s advance acquisition policy for hardship. Chapter Five contains policy for advancing eligibility for relocation benefits by issuing a Notice of Intent to Acquire. The Right of Way representative should review these references before discussing hardship situations.

Copies of the UDOT brochure, “Acquiring Property for Utah’s Transportation System and the Relocation Assistance Brochure” will be available at all public meetings and hearings. The brochure is also available on the UDOT ROW website. The Right of Way representative should provide contact information including the address, office hours, and phone number to all who have reason to know it.

1.2.7  Electronic Program Management System (ePM) – General

The ePM system was developed by UDOT to plan, assess, and direct the development of projects. It is a computer-based management tool that provides up-to-date and accurate information about the status of project schedule and budget. The ePM system permits the Project Manager and staff to identify potential problem areas and take corrective action before they become critical. It also enables planning of multiple projects with analysis of the variables that will optimize available resources.
All team members including Right of Way must fulfill the obligation to periodically update the system with current data. This is essential to enable correct project decisions and to provide information needed by the Transportation Commission and the Legislature to plan and fund the statewide transportation program. The ePM system will be used to schedule a date, set a resource budget for activity completion, and produce a Project Concept Report.

Accessing and entering data on various data screens updates the ePM system. The data screens and information inputs that are relevant to right of way in the Concept Phase are discussed briefly below. The Right of Way Lead Agent should refer to the ePM Users’ Manual for complete discussion.

1.2.8 ePM Right of Way Inputs – Conceptual Stage

Right of Way employees enter data into the following screen of ePM. Please refer to the ePM Users’ Manual for additional information.

Screen 220 – Updating In Progress Activities. The Right of Way Lead Agent will update the status of In Progress right of way on a bi-weekly basis, estimating the completion date and the number of hours required to complete the function. The team member will consider whether work realistically can be completed by the presently assigned date and whether the projected hours to complete work is reasonable given all existing conditions.

1.2.9 Quality Assurance in the Concept Stage

The Project Manager will begin quality project planning. This involves identifying which quality standards are relevant to the project and deciding how to satisfy them. Define the project Quality Plan early in the project Design Phase. The Project Manager may involve the Concept Team in defining quality standards. There are quality standards built into the right of way process such as appraisal review, Federal regulatory guidance, and the UDOT right of way policies defined in this Manual. Special quality control measures for Right of Way are described in Section 1.3, pertaining to design build projects. The Right of Way Lead Agent will participate in quality planning as the team becomes involved in this activity.

1.2.10 The Project Concept Report

The Project Concept Report is the main product of the Concept Phase. It will define the preliminary project scope, budget, and schedule for the project. It presents an approach to solving a transportation need that had been identified earlier in a Corridor Study. It is the basis for securing approval to proceed into the Design Phase. The Project Concept
Report will briefly define the right of way involvement and include estimated right of way cost.

1.2.11 Project Kick-Off Meeting

The Project Manager will schedule the kick-off meeting soon after the selection of the Project Team. This is a critical first meeting of the team. The Right of Way Lead Agent will attend along with all other project team members at the invitation of the region Project Manager. The kick-off meeting agenda will include discussion of the project scope, schedule, and budget. Additional topics will include the Quality Plan, Communication Plan, and the Project Charter. Drafts of these documents may be provided to team members in advance of the Meeting. The team members will identify and discuss risks and issues facing the project. The Right of Way Lead Agent will identify special right of way issues and challenges. Adjustments to the project schedule and budget will reflect project characteristics presented by team members at the meeting.

The Right of Way Lead Agent should discuss project issues or concerns with the appropriate Deputy Director of Right of Way in advance of the meeting. It is important at this time to determine need for consultant services and added right of way staff resources. The appropriate Deputy Director of Right of Way and other Right of Way Lead Agents should be informed on special right of way characteristics such as difficult relocation cases, high value acquisitions, anticipated condemnation cases, etc.

1.2.12 The Project Quality Plan

The Departmental objectives and responsibilities of the Project Quality Plan are discussed in the Project Delivery Network (2015). The Right of Way Lead Agent should review this document. Many Right of Way program quality elements are integrated into the established right of way process. These include appraisal standards, appraiser certification, appraisal review, relocation planning and appeals, and the Right of Way Action Plan. These should be identified in the Project Quality Plan to the extent they are relevant to the project. Quality control activities are discussed in more detail in Section 1-3 of this Chapter. Any activities that are cost effective, advance project quality, and can be performed with available right of way resources should be included in the Quality Plan. The appropriate Deputy Director of Right of Way will coordinate right of way quality activities on a statewide basis and will advise the Right of Way Lead Agent on project quality actions that can contribute to statewide efforts and avoid duplication of effort.

1.2.13 The Project Charter
The Project Charter identifies the objectives, scope of work, planned date of advertisement, and the design phase budget. The Charter will also identify each team member and his or her role in the project. The Right of Way Lead Agent, or his or her designee will sign the Project Charter representing the Right of Way Division, attesting to the following Charter statement:

By signing this Project Charter, I commit to meeting the objectives of the project within the constraints of project scope, schedule, budget, and quality. I have reviewed and approve the attached Project Concept Report, budget, schedule, and Quality Plan as a member of the Project Team.

The Right of Way Lead Agent should advise the Project Manager and the appropriate Deputy Director or Right of Way of any impediments or concerns regarding a commitment to the Project Charter. The team members will sign the Project Charter at the Kick-Off Meeting or shortly thereafter.

1.2.14 Communications Plan

The team will develop a workable plan for formal and informal communication. This will address frequency and modes of communication, documentation standards, and problem solving. The Right of Way Lead Agent should consider preferences for right of way communications such as email, fax, or phone with different locations specified.

The Right of Way Lead Agent will be the primary point of contact with the Project Manager on right of way matters throughout the life of the project. It is important to know the Project Manager’s critical information needs, preferred method, and schedule for communicating.

The Project Team operates through an information “matrix” in which communication is omni-directional. This contrasts with a traditional structured system where information passes primarily between lower and higher levels of authority. It is important that communication be defined and understood among all parties when the project is in an early stage.

1.2.15 Project Scoping Meeting

The Scoping meeting is held soon after the project kick-off meeting. All key technical team members will attend including right of way. The meeting will involve a detailed field investigation such as walking the site to confirm the concept and identify variations from the Project Concept Report. The Scoping Report will include a revised cost estimate based on observations from the field visit.

1.2.16 Public Hearings and Meetings
The Project Manager will communicate with the Right of Way Lead Agent about participating at public meetings and hearings that are conducted in the Design Phase. The Right of Way Lead Agent will explain the property acquisition and relocation processes at public meetings and answer questions about the right of way process as it affects owners and residents in the project area. Meetings or hearings conducted in the Design Phase will involve more detail about effects of acquisition and construction on specific properties.

The Right of Way Lead Agent will provide a sufficient supply of the Right of Way acquisition and relocation brochures for distribution at all meetings and community involvement activities and will provide contact information including phone number, email address, office location, and hours of operation.

1.2.17 The Design Phase – General

The project Design Phase includes all activities involved in moving a project from concept as described in the previous section, to advertisement for construction. It includes environmental studies, public involvement activities, natural resource permits, engineering studies, design and plans development, and right of way. The core right of way operations of valuation, acquisition, condemnation, relocation, and clearance take place during the project Design Phase.

The Project Manager will assemble a Design Phase Team in consultation with the regional engineering management staff and the managers of technical functions involved in the Design Phase. The appropriate Deputy Director of Right of Way will have a primary consultation role in the assignment of the Right of Way Lead Agent. The Right of Way Lead Agent assigned to the team may be the same member who performed that role during the Concept Phase. Staffing decisions will be based on the technical needs of the project and the availability of right of way staff to meet statewide needs.

Sections 1.2.11 through 1.2.22 discuss right of way program activities and coordination responsibilities during the project Design Phase.

1.2.18 Right of Way Updates of ePM During Design Phase

The ePM screens used in the Concept Phase are updated or revised by the Project Manager during the Design Phase. Updates of right of way costs will be made bi-weekly unless otherwise needed.

1.2.19 Preparation of Preliminary Right of Way Cost Estimates

The preliminary (shotgun) right of way cost estimate prepared in the Concept Phase will need to be updated to reflect current costs and to reflect the selection of a preferred
alternate alignment. The estimate for a preferred alignment may be prepared in greater detail and accuracy than when several alignments were under consideration.

Perform an estimate of the cost of comparable replacement housing if the project will involve residence relocation. This will be an element of the total right of way cost. It will also be used in the Right of Way Stage Relocation Plan. See Chapter Five for preparation and use of the Relocation Plan.

1.2.20 The Right of Way Action Plan

The Right of Way Action Plan is developed within the Right of Way Module of the ePM system. The Action Plan presents target dates for all significant right of way milestones from preparation of ownership summary data to right of way clearance date.

The Right of Way Lead Agent will prepare the Action Plan from data secured in the Concept Study and the standard durations programmed into ePM as modified. The Action Plan format includes standard “days to complete” for six ownership classifications that are differentiated by their relative complexity.

The Right of Way Lead Agent will consult with the appropriate Deputy Director of Right of Way in preparing the Action Plan and review the draft plan with the Right of Way Director. The Action Plan will determine the level effort required at each step and the type of right of way resources that must be committed to the project. The plan will assist in determining the services such as appraisals, relocation, and acquisition that will need to be contracted to consultants.

A key element in the Action Plan is the “Last Day” entry for appraisals, offers, title work, and condemnation. Adherence to the performance dates is critical to meeting the estimated project delivery date. The Right of Way Lead Agent or appropriate Deputy Director of Right of Way will monitor performance and consult the Right of Way Lead Agent as the project progresses. The Right of Way Lead Agent may augment resources by hiring consultant providers or reallocate staffing if slippage occurs. The project delivery date may be modified in consultation with the Project Manager as a last resort.

1.2.21 Right of Way Status Reports

The Right of Way Lead Agent will monitor the project right of way status bi-weekly to match the Project Manager’s report run schedule as published by UDOT unless another reporting period is approved. An actual report can be run from the Right of Way ePM system if needed. Summary information regarding the number of parcels cleared or remaining to be cleared etc. can be downloaded from the ePM system as needed at any time.
The Right of Way Lead Agent will produce a weekly update on all projects with active acquisitions to the Project Manager, Director and appropriate Deputy Director of Right of Way which provides an overall status of the right of way process to ensure the scope, schedule and budget of the project is on track or provide a list of issues and resolutions to ensure timely delivery of the right of way for construction purposes.

The Right of Way Lead Agent will produce a monthly update on all projects where the right of way has been cleared for construction but right of way activities are still pending to the Project Manager, Director and appropriate Deputy Director of Right of Way which provides an overall status of the remaining right of way processes along with planned solutions and timely completion of the overall project.

1.2.22 Managing the Right of Way Process

The Right of Way Lead Agent’s primary project goal is to clear the right of way by the mutually agreed date, within schedule and project budget. The management control over the process is within the team at the project level. The Right of Way Lead Agent on smaller projects will manage the process and may also perform operational tasks such as negotiating property purchases. The Right of Way Lead Agent may coordinate and coach specialized right of way staff and consultants on larger projects or may also perform some of the other project activities. Each consultant or staff person who will work on the project will be identified by the Right of Way Lead Agent as part of the project resource plan. The Right of Way Lead Agent will enter the resource plan data into ePM once the plan is formulated and approved by the appropriate Deputy Director of Right of Way or will instruct the project coordinator to enter that information.

The Right of Way Lead Agent will focus on the primary goal by securing feedback from the Project Manager on right of way performance and by personally monitoring the ePM indicators and progress against the Right of Way Action Plan. The Right of Way Lead Agent must consider options if there are early signs of slippage from important milestones and if internal Right of Way staff is fully occupied. This may include the possibility of temporarily augmenting project Right of Way staff or outsourcing work to consultants. The appropriate Deputy Director of Right of Way must be advised of project schedule problems before they become critical. The Deputy Director of Right of Way may provide administrative support and technical resources to support the Project Team if necessary or make recommendations to the Right of Way Lead Agent to enhance the productivity and success of the team. The Right of Way Lead Agent and the Deputy Director of Right of Way have a common interest and mission and will cooperate to achieve a clear right of way.

For federal-aid projects or those for which federal aid may be sought, the following certifications of right of way must comply with 23 C.F.R. 635.309 which address the
conditions that must be met and communicated to FHWA. See also Section 3.2.6 of this manual.

1.2.23 Unconditioned Certification of Right of Way

The Director of Right of Way will certify the ownership and occupancy status of right of way at the completion of project right of way activity or two weeks before the scheduled advertisement date. An unconditioned certification confirms that property rights have been acquired in accordance with law, UDOT has obtained either an executed contract for the purchase of the right of way or a Right to Occupy the properties needed for the construction of the project, and all people occupying property have received appropriate advisory assistance. The Certification is a prerequisite to advertising a project for construction. The following process will be followed when certifying a right of way:

1. The Right of Way Lead Agent will coordinate with the Project Manager that all right of way for the project has been acquired and provide all the necessary documentation for approval by the Director of Right of Way.

2. The Right of Way Lead Agent will send an electronic Right of Way Certification form to the ROW Project Coordinator Manager who will prepare the request for the Director of Right of Way.

2. The ROW Project Coordinator Manager will assure that information shown in ePM is accurate and that all ownerships and parcels have been cleared as shown on the Status screen.

3. The completed Right of Way Certification will be transmitted to the Right of Way Lead Agent for review with a copy of the project action plan and a copy of the project contract construction notes report which is generated from the ePM system. The appropriate Deputy Director of Right of Way or Right of Way Lead Agent will initial the Certificate indicating the document has been reviewed and is recommended for approval by the Director of Right of Way. The Certification request form, action plan, and contract construction notes report will then be returned to the ROW Project Coordinator Manager who will prepare a request memo and forward all to the Director of Right of Way for approval.

4. The Director of Right of Way will review and initial the memo in the “From” line and sign applicable lines on the Certificate. The signed Certificate is then returned to the ROW Project Coordinator Manager. Copies of the certification memo are then distributed as indicated on the certification memo.

1.2.24 Conditional Certification of Right of Way

The bid documents must indicate the contractor’s activities will be restricted in the vicinity of affected property if the Certificate shows people remain in occupancy or UDOT does not have legal possession of all right of way. The restriction will preclude
contractor access on the property and require continuance of utilities, ingress, and egress for occupants. This is called a Limitation of Operations Certificate. The restriction will continue until the certification is modified to confirm that UDOT has legal and physical possession of all property needed for the project.

The appropriate Deputy Director of Right of Way, the Right of Way Lead Agent, the Project Manager, and if warranted, the Region Director will meet with the Director of Right of Way before project advertisement if a Certification indicates need for a limitation of operations. This meeting will review the risks involved, actions proposed to eliminate the risks, and process improvements to prevent future limitations.

A Limitation of Operations Right of Way Certificate may increase construction cost and may delay completion of the project. All Right of Way efforts should be directed at delivering a cleared right of way. It is the primary Right of Way mission. The Right of Way Lead Agent must continue to work to clear the limited parcels and update ePM when each limited parcel is cleared if a Limitation of Operations Right of Way Certificate is issued. The Right of Way Lead Agent will provide a weekly status report for the project to the Director and the appropriate Deputy Director of Right of Way until all limitations have been cleared.

The Right of Way Lead Agent will re-issue an amended certification report for the Director of Right of Way’s approval once cleared. The approved amended Certification Report will then be forwarded to UDOT staff people including the Project Manager, designated Construction Division representative, and others on an as-needs basis as determined by UDOT so construction can commence on the newly cleared parcels. Refer to Section 1.5.13 for procedure for certifying right of way on local government projects.

1.3 RIGHT OF WAY UNDER DESIGN-BUILD AND PROGRESSIVE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (ALSO KNOWN AS PROGRESSIVE DESIGN BUILD) CONTRACT

1.3.1 General

A Design-Build highway project is contracted in a single phase that includes design and construction. Right of way acquisition and relocation may be included in design-build contracts. Such a contract will normally have the right of way function performed by a qualified subcontractor reporting to the prime design-build contractor. This arrangement must incorporate a process that complies to the Utah Code, this Manual, applicable Federal law, and implements the following regulations:

- The Federal Uniform Relocation Assistance and Real Property Acquisition Act and implementing regulations found in 49 C.F.R. Part 24*.
27 C.F.R. Part 710 in general and subsection 309 that contains specific requirements related to projects where the right of way acquisition is included in the design build contract*. 

* The C.F.R. requirements authoritatively interpret and implement the Federal Uniform Relocation Assistance and Real Property Acquisition Act and have the full force and effect of law.

The purpose of special right of way provisions under design-build set forth below is to enable benefits of the design-build concept to be realized while assuring that property owners and occupants have quality services and the same benefits and protections as would be provided if the right of way were administered under the traditional contracting process.

1.3.2  Design-Build Contract Provisions and Progressive Construction Manager/General Contractor (also known as Progressive Design Build)

Include the following in the request for proposals and/or the contract when right of way is included under a design-build contract:

1. The prime design-build contractor will be responsible for delivering right of way acquired and cleared in full compliance with the implementing regulations of 49 C.F.R. Part 24, 23 C.F.R. Part 710.309, the UDOT Right of Way Operations Manual, and in compliance with Utah Code, Title 72 Chapter 5. The Director of Right of Way may approve exceptions to the Manual in advance but only if there is full compliance with Utah and Federal Law and regulations controlling acquisition and relocation. Conflicts must be brought to the attention of the UDOT Right of Way Coordinator or Right of Way Lead Agent if there are any conflicts noted by the Design Builder between written authorities such as what is stated in the request for proposal (RFP) and the UDOT Manual or other implementing regulations.

2. People and companies performing valuation, acquisition, and relocation will be considered qualified if they are in UDOT’s current approved contract pool for the functions they will perform. A firm from the approved contract pool may request authorization to use additional agents who have not been prequalified as part of the contract pool. Each agent not in the current pools that the firm intends to use must meet the requirements established by UDOT under the most recent RFQ for Right of Way services. All resource plans for a design build project must be submitted to UDOT Right of Way Division for review and approval before agents identified in the resource plan may perform work on the project.

3. The Contractor will submit a right of way action schedule to the Project Manager and Right of Way Coordinator for review and approval before initiation of right of way acquisition. This will include:
- A relocation plan described in Section 5.2 of this Manual. The plan will also include time estimates for relocation based on individual displacee needs, housing availability, and regulatory notice to move requirements.
- Identification of buildable segments of right of way that may proceed to construction when right of way acquisition and relocation are complete and independent of right of way status on other project segments.
- A proposed time schedule that includes prioritization of activities and performance of acquisition and relocation.
- A cost estimate for performance of each right of way phase or function for which the contractor will be responsible.

4. The UDOT Right of Way Division will approve appraised values, just compensation amounts, contracts, administrative settlement amounts, relocation benefit amounts, and proposed use of Last Resort Housing for displacees.

5. The contractor will develop a right of way tracking system to provide ongoing project status of appraisal, acquisition, and relocation.

6. The contractor will develop a quality control system to assess performance of services and payments to owners and occupants and monitor progress in relation to the project schedule.

7. Proposed settlements above the established just compensation amounts and relocation program appeals will be referred to UDOT for decision or resolution.

8. The contractor will refer unsettled cases for condemnation through the Director of Right of Way based on criteria UDOT establishes for the project and the process described in Chapter 4 of this Manual.

9. The contractor will avoid construction that adversely affects health safety or quality of life on adjacent occupied property if work is authorized in buildable segments as right of way becomes available.

### 1.3.3 Design-Build and Progressive Construction Manager/General Contractor (also known as Progressive Design Build) Right of Way Specifications

Contractors are expected to fully comply with the specific requirements related to right of way acquisition and certification as stated in the FHWA regulations 23 C.F.R. Section 710.309.

### 1.3.4 Certification of Right of Way

A design-build project may be authorized for construction in buildable segments as right of way for each segment is available. A project segment will be unconditionally
authorized under the same conditions of right of way certification as are required for traditional contract projects. UDOT must have legal possession of all property on the segment and occupants must have vacated with full relocation benefits paid. The certification will be initiated by the design-build contractor for the right of way subcontractor and will be recommended and approved as discussed in Section 1.2.23.

1.3.5 Quality Control

UDOT is ultimately responsible for compliance with applicable laws and regulations concerning right of way and for retaining the high level of public trust in the fairness and quality of the Right of Way program. The following measures will be taken under UDOT’s existing quality program to assure owners and occupants are provided the same services, benefits, and protections as they would under traditional contracting process:

1. The Director of Right of Way will assign a right of way liaison representative or Right of Way Oversight Manager to provide timely advice and guidance to the design-build contractor and the right of way subcontractor on right of way law, regulations, and UDOT procedures.

2. The UDOT Project Quality Control Plan (Section 1.2.12) will include oversight reviews, monitoring, and follow up to assure compliance with law, procedures, and contract provisions concerning right of way. The Project Charter will identify responsibility for project right of way goals under the design-build procedures.

3. In-house training in right of way topics may be available to design-build contract right of way staff on the same basis that it is available to UDOT right of way staff. It is assumed that design-build contract staff will be fully qualified to perform the tasks assigned to them.

See Section 1.4 of this Manual for more detailed information on UDOT’s quality control procedures.

1.4 QUALITY CONTROL/QUALITY ASSURANCE (QC/QA)

1.4.1 General

Quality is the measure of how well the performance of an activity succeeds in meeting established standards, goals, or mission. Quality is often expressed as Quality Control/Quality Assurance or QC/QA. The definition of these terms for purposes of right of way administration is as follows:

1. **Quality Control** – Evaluation performed to determine whether individual work, products or tasks meet established standards.

2. **Quality Assurance** – Evaluation performed to determine whether a process or a work phase meet established standards, or whether the
standards are appropriate to properly evaluate the processes or work phases.

An example of a quality control activity would be the review of a Negotiations Contact Report before sending a file to the Attorney General for condemnation. The Right of Way Lead Agent normally performs quality control activities on project right of way tasks.

Another example of a quality assurance activity would be the statewide review of the appraisal function or an element such as support for valuation of partial acquisitions. A Right of Way Lead Agent is more likely to perform right of way quality assurance activities. However, a special team with participants from any level may be tasked to perform quality assurance reviews of a right of way process.

1.4.2 Core Quality Concepts

Quality has always been a value at UDOT. The right of way process has been subject to a wide range of quality standards and actions. Appraisal reviews, standard job qualifications and appraiser certification are examples of long established quality program activities. Over time, UDOT has increased emphasis on quality, and has formally integrated quality awareness and responsibility into every major program and process. The basic concepts that underlie UDOT’s quality program are discussed below.

1. Quality Improvement Is a Continuous Process – Quality is a constant striving; it is not a place of arrival. Achieving a stated performance goal is a measure of relative success. Over a long term, the standard and the performance must reach higher levels. A presumption is that every human activity can be improved to some degree. The improvement may be incremental and intermittent. One purpose of QA/QC activities is to identify or measure small improvements and demonstrate that quality is not a goal, but a process.

2. Quality Is Part of Everyone’s Job – Quality is not an exclusive management concern. Quality planning and execution of QA/QC is part of every position at every level in UDOT. The UDOT project development process delegates authority downward in the organization to the operational level. There is minimum supervisory oversight. A corresponding responsibility exists for each person to evaluate outcomes of completed tasks, and to contribute to improving task accomplishment and the overall process.

3. Quality Can Be Measured – A common concept is that administrative or interpersonal tasks cannot be evaluated objectively because they are intangible. In fact, such work may be more responsive to quality evaluation and improvement than jobs that produce a tangible product.
The tasks that comprise a job should be specifically identified or defined and then successful outcomes should be defined. This process is applicable to any organizational function.

4. **Quality Control/Assurance Is Always Constructive** – Quality is not about personal criticism, surprise audits, investigations or other activities that have negative components. Quality activities are aimed at improving the product or process, highlighting achievement and identifying best practices.

5. **Quality Requires Planning** – Planning means identifying standards that are relevant to the function and deciding how to satisfy them. QA/QC is never a “fishing expedition” nor is it a collection of nonspecific good intentions.

6. **Quality Relates to Unit Mission** – The formal mission statement expresses the basic goals of the unit. Good quality planning assigns priority to achieving those goals in a timely cost-effective manner.

7. **Quality Requires Openness to Change** – Management will examine and decide tolerance for change before embarking on a quality program. Effort is wasted if a quality program discloses better practices, which then cannot be implemented because they conflict with agency culture or firmly held procedures. Not all policies are subject to change. It is not productive to review effectiveness of a benefit in the relocation program that is mandated by law. It may be practical to examine how that benefit is determined or delivered.

### 1.4.3 Right of Way and the Project Quality Plan

Quality Control in project development takes place within the Project Team. The Project Manager is the overall steward of project quality who leads in the development of standards and monitors team performance. The Project Manager does this by assessing progress at project milestones for each function including right of way. The Project Manager guides development and execution of a Team Quality Plan. The Quality Plan defines standards, objectives and methodology for achieving and monitoring quality performance.

The Project Manager will propose a preliminary Project Quality Plan early in the Design Phase. The team will approve a Quality Plan at the first team meeting. It will be used as a guide throughout preconstruction. The development of the Quality Plan involves right of way along with other disciplines on the Project Team. The Right of Way Lead Agent is the key person who will commit to the plan at the project kick-off meeting on behalf of the Right of Way Division.

The right of way elements in the Project Quality Plan should align with the Right of Way Mission Statement:
• Commitment to clear the right of way according to highest professional standards.
• Emphasis on customer service to property owners, displacees, other project team members, etc.
• Respect for UDOT’s fiduciary duty to Utah taxpayers.

The right of way actions in the Project Quality Plan should be achievable, relevant, and specific. The Right of Way Lead Agent will consider resources that are available to perform quality tasks before committing to performance and in preparing Quality Plan actions. This is important in order to ensure that resources are available to perform activities and to enable the Right of Way Lead Agent to coordinate project Quality Control activities with the statewide Quality Assurance Plan.

The basis of a right of way Quality Plan is the action built into normal right of way operations. This includes appraisal standards, professional certifications, the appraisal review process, cooperation with the Ombudsman, relocation appeals, etc.

1.4.4 Right of Way Project Quality Control Considerations

The Right of Way Lead Agent will consider a wide range of quality control activities before deciding the most effective activities to propose for the Quality Plan. It is easy to overreach and commit to activities that cannot be performed effectively or completely or that are not relevant to project goals or the right of way mission. It is important to be specific. Avoid language that expresses a good theme and purpose but does not have concrete actions that can be performed.

Scale quality actions to the scope and duration of the right of way phase of the project. It is not effective to conduct a complex program of activities on a project with minor right of way involvement. Such a project may be an opportunity to apply and test practices that show promise from previous project quality activities.

The Right of Way Lead Agent will find the needs and priorities of the Project Manager and other Project Team members in considering quality actions. Is there a need for fast clearance of the right of way? Is there a public resistance to the project or concerns about construction effects on abutting property? Right of Way should be responsive to the issues and concerns impacting the project as an entity and not be narrowly focused on carrying out the right of way function as if it were the main goal of the project.

Concentrate quality efforts on activities where the greatest opportunity exists for improvement. For example, it is not effective to perform a comprehensive review on a sample of relocation cases if a known problem exists in a specific narrow element of
relocation such as identifying housing resources in a timely manner. Concentrate efforts on the known or suspected problem or obstacle to advancing the project.

1.4.5 Project-Focused Right of Way Quality Control Activities

The list below presents examples of actions that might be considered in developing the right of way element in a project Quality Plan. It is not exhaustive and represents a range of activities, one or more of which may seem appropriate as a right of way quality control measure.

1. **Post-Acquisition Survey**
   Send a mail survey to affected property owners or displacees after claims have been paid. The survey will invite constructive comment on the quality, timeliness, and helpfulness of service provided by project staff.

2. **Update Consultant Pool**
   The consultant list may include appraisers or other right of way consultants in the project area who are no longer available due to retirement, death, or they have moved. The list might be reviewed to reflect actual availability.

3. **Photo Library of Property Restoration Treatments**
   Many owners are concerned about the effects of grade changes, driveway reconnections, landscaping replacement, etc. Develop a digital image library of ‘after’ situations on similar projects in the same region to show as examples.

4. **Owner Callback Schedule**
   Negotiator callbacks may help accommodate property owner needs and optimize conditions for settlement. Estimate best interval, mode, place, and time for future contacts. Develop a schedule for the project. This may be more effective than standard one-week intervals for return calls.

5. **Mid-Point Right of Way Meeting**
   A meeting of the professionals working on a project including appraiser, reviewer, negotiator, and Consultant Agents at the mid-point of the right of way phase may improve communication, resolve misunderstandings, renew focus on project schedule, and develop new approaches to project problems.

6. **Project Contact Sheet**
   The circle of project contacts including both UDOT and external professionals becomes long and complex, with cell, fax, phone, and email to consider. Each person has preferences for mode of contact. The Right of Way Lead Agent can facilitate communications by compiling and circulating a list of communication preferences for all professionals involved in right of way on the project.
7. **Negotiations Resumption Plan**
Develop a project action plan after initial contacts are completed for resuming or continuing negotiations with owners who initially refuse offers without inviting future contact. Some may respond to a different type of approach. Consult the appropriate Deputy Director of Right of Way, Attorney General, or others for advice in resuming effective contact with owners to increase settlement rates, advance project clearance and reduce condemnation cases.

8. **Administrative Settlement Plan**
Develop and propose a comprehensive plan for administrative settlements on the project. This may include nominal payments to owners as inducement to settle at initial contact. The plan may set forth conditions and circumstances that will cause a consideration for settlement offers in excess of fair market value. The plan needs the recommendation of the appropriate Deputy Director of Right of Way and advance approval of the Director of Right of Way. All conditions for administrative settlements apply. See Chapter 3.

Quality Plan activities are not limited to work product reviews and evaluations. The Quality Plan may include pilot testing of innovative practices and measures that reach beyond established procedures and practices. The above examples show that quality is not a passive activity. Striving for new and innovative approaches and solutions achieve project goals and advance the right of way mission.

1.4.6 **Quality Assurance in the Right of Way Process Role of the Deputy Director of Right of Way Responsible for Property Acquisitions**

The Deputy Director of Right of Way over property acquisitions has the primary responsibility for advancing right of way quality at the program level and has overview of the right of way process on a multi-Region or statewide basis and knows quality initiatives that are planned and performed on the project level by the Right of Way Lead Agents. The Deputy Director of Right of Way can advance quality in the process by identifying successful project initiatives and encouraging their adoption on a wider basis. The adoption can be either as “best practices” for trial on other projects or by supporting procedure changes that will encourage statewide adoption.

The Deputy Director of Right of Way coaches and supports the Right of Way Lead Agents in planning and performing the project Quality Plan right of way activities. The Deputy Director of Right of Way develops effective ways to share knowledge gained and lessons learned at the project level so that benefits enhance the overall right of way program.
The sharing includes activities that did not have fully successful outcomes. It is not a failure to have performed a quality action that did not fully meet expectations. Less successful outcomes can enable future energy and resources to be channeled to actions that do work. Modifications and fine-tuning might improve the outcome when the activity is executed again.

The Deputy Director of Right of Way will fully acknowledge the efforts of all people who contributed to the success of project initiatives. Successful quality actions are the product of cooperation or collaboration among all involved parties. This may include project development staff outside right of way, administrative support staff, and consultants.

1.4.7 Right of Way Quality Actions at the Program Level

The Deputy Director of Right of Way responsible for property acquisitions and the Right of Way Lead Agents may plan and execute quality actions that enhance the right of way process Statewide. Quality activities at the program level will build on and not duplicate project level quality initiatives. The program level actions will be scaled and scoped to make best use of the limited time and staff resources.

The following program quality actions are presented as examples. They are intended to suggest types of actions that are appropriate to improve a process or the right of way program as a whole. Most require approval of the Director of Right of Way or above.

1. **Quality Conference (One Day)**
   Participants are Right of Way Leaders and Right of Way Lead Agents who will share information about project initiatives and highlight successes with presentations by people involved. Representatives of local agencies and consultants may participate. They will also record highlights and circulate to Project Managers.

2. **Joint UDOT/FHWA Review**
   Conduct statewide review of a specific right of way process in which there is a mutual UDOT/Federal interest. Examples are replacement housing payments or advisory service to displaced businesses. Review will be consistent with UDOT/FHWA Stewardship Agreement.

3. **Acquisition Process Review**
   Conduct a statewide review of a significant acquisition process such as administrative settlements or rate of settlement on Compensation Estimates.

4. **Quality Newsletter**
   Develop and circulate a newsletter explaining quality concepts and presenting innovative or successful practices. Circulation may include external customers.
5. **Post-Acquisition or Relocation Survey**  
Develop conclusions on programs from customer perspective. Surveys must be simple and postage paid to encourage response.

6. **Job Exchange**  
Encourage cross-training for selected mid-career employees by job exchange. This will include an orientation period to enable participants to be productive.

7. **Internship**  
Develop internship positions at the project level in cooperation with a college. Position will introduce right of way as a professional career option.

8. **Policy Advisory Council**  
Appoint professionals who represent a cross-section of right of way to revise policy and propose better practices.

9. **Peer-to-Peer Consultation**  
Project personnel might be assigned to visit counterparts in other projects to observe and advise. There will be no formal reports or evaluations. Consultations will be limited to positive and constructive idea sharing.

10. **360-Degree Evaluations**  
Invite all parties in an activity such as valuation to evaluate their counterparts regarding selected factors. Careful planning is required to keep this process positive and constructive.

Quality initiatives require advance planning, time, and commitment of staff resources whether project- or program-based. It is important not to over-commit to quality initiatives that will diminish interest in continuing a formal project- or program-based quality improvement program.

### 1.5 LOCAL AGENCY AND OTHER SUBGRANTEE ACQUISITIONS AND OVERSIGHT

#### 1.5.1 General

Local administration of right of way acquisition offers benefits to UDOT, local agencies and other subgrantees, and Utah taxpayers. Local officials are closest to affected property owners and residents. Their awareness of citizen concerns and knowledge of many property owners will facilitate property acquisition. Projects can be completed sooner and at a more reasonable cost. Having the work performed under local control allows UDOT Right of Way staff more time to work on State projects. UDOT strives for a partnership with subgrantees where the authority and responsibility for projects is with the subgrantee while providing assistance, support, and oversight as needed or required by 23 C.F.R. § 710.201(a).
UDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by UDOT’s subgrantees or contractors. This responsibility includes ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-UDOT grantees of funds under title 23 must comply with the requirements 23 C.F.R. Part 710, except as otherwise expressly provided therein, and are responsible for ensuring compliance by subgrantees and contractors with the requirements of this part and other Federal laws, including regulations. See 23 C.F.R. § 710.201(a) (program oversight).

The right of way functions such as appraisal, acquisition, and relocation performed by the subgrantee are determined by agreement with UDOT. The agreed responsibilities of UDOT and the local government are set forth in a Cooperative Agreement that is executed before local work begins. UDOT is responsible for all Federal-aid highway projects under 23 U.S.C. § 302, whether administered by UDOT or by a local government. The UDOT Right of Way Division will assure in advance that subgrantees are adequately staffed, equipped, and organized to perform the functions that are specified in the Cooperative Agreement.

The Right of Way Local Government Manager coordinates and assists locally administered projects. Resource material is provided to local staff on Federal and Utah laws and regulations. UDOT offers training opportunities by reserving places for local staff at the National Highway Institute in right of way courses scheduled for presentation in Utah. Right of Way Headquarters specialists are available to consult with local staff on project-specific issues.

The UDOT Regional Offices are responsible for direct oversight of local government and other subgrantee projects within their jurisdiction. This includes monitoring right of way activities from inception through the certification of completed right of way acquisition on the project. Every locally administered project is assigned a UDOT Project Manager who will be the point of contact with local officials for all phases of the project. Right of Way Division information and guidance to local agencies is provided on referral from the Project Manager by the Right of Way Local Government Manager.

1.5.2 Authority

The following Utah and Federal statutes and Federal regulations apply to the administration of subgrantee projects:

- **Utah Code** Title 72, Utah Transportation Code and Title 57, Chapter 12, Utah Relocation Assistance Act
- **United States Code**, Title 23
1.5.3 Compliance with Federal Uniform Relocation Assistance and Real Property Acquisition Act

Local agencies and other subgrantees must comply fully with the acquisition and relocation requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Act. The agency will also comply with parallel requirements of the Utah Relocation Assistance Act. The mandated services and benefits in the Federal law must be provided and the procedural requirements followed as a condition of Federal reimbursement on the project. Substantial noncompliance may result in the loss of Federal funding for the entire project if it is not correctable, including construction cost. It is vitally important that subgrantee staff know the Uniform Act requirements, that consultants hired for the project be experienced, and that the agency monitor consultant work as it progresses.

Property acquisition and relocation requirements are simple in concept. They can become complex when applied to the varied range of human situations and property interests that can be encountered on a project. Staff and consultants who perform right of way project work should bring unique or complex issues to subgrantee management attention for decision. UDOT Right of Way staff is available to consult on such issues.

The FHWA publication, “Real Estate Acquisition Guide for Local Public Agencies,” should be available in every local office where right of way work is performed. This provides practical guidance and answers many questions that arise on the project level. Copies of the Guide are available as a pdf file and can be downloaded from the FHWA website under the Office of Real Estate https://www.fhwa.dot.gov/real_estate/local_public_agencies/lpa_guide/index.cfm. An online, web-based training course is also available to local public agencies or others interested in acquiring property for local public agencies. The course “Local Public Agency Real Estate Acquisition” is available, free of charge, from the National Highway Institute, which is the training arm for the FHWA http://www.nhi.fhwa.dot.gov. See Course number 141047.

1.5.4 Acquisition Requirements in the Uniform Relocation Act

The items discussed below are basic Federal Uniform Relocation Assistance and Real Property Acquisition Act requirements for property acquisition. They are described here in minimum detail as a convenient reference. A complete discussion is found in the other Chapters of this Manual and in the publication “Real Estate Acquisition Guide for Local Public Agencies.” The “Acquisition Guide” is provided to agencies that work under Cooperative Agreements. The guide is available as a pdf file.
from the FHWA website. Hard copies are no longer available. The UDOT Right of Way Local Government Manager may make copies available as needed or links to that information on request.

1. **Offer to Accompany Appraiser**
The owner must be offered the opportunity to accompany the appraiser when inspecting property. This is a requirement of law. The appraiser should either send the owner a letter with offer to accompany at inspection or make a file note if offer is made on phone or in person.

2. **Estimate Just Compensation**
Just compensation cannot be less than the approved appraisal or the amount of the approved “compensation estimate.” The designated staff review appraiser will perform this function as provided in the Co-op Agreement if an appraisal is the basis of the compensation estimated. A review is not required if the agency determines the compensation to be offered using a compensation estimate and the estimated value is under $2,500 for an uncomplicated acquisition. The just compensation amount will still have to be determined by a staff review appraiser or an official of the Local Public Agency in accordance with the Cooperative Agreement. See Chapter 2 of this *Manual* for more information on the valuation process and the compensation estimate procedure.

3. **Prompt Written Offer to the Owner**
The written offer must include a description of the real property interests acquired. A summary statement must be provided that explains the basis for the offer and enables the owner to make an informed judgment concerning the amount of the offer.

4. **Provide Reasonable Opportunity for the Owner to Consider the Offer**
The agency may not insist on an immediate response to an initial offer. The agency should make at least three contacts with sufficient intervals to allow the owner to reflect on the offer and consult family or advisors. UDOT recommends that an owner be given at least 30 days to consider the offer as a benchmark.

5. **Negotiations Must Be Free of Agency Coercion**
The negotiator may not insist on a decision at the time of initial offer or use condemnation as a threat to induce settlement, advance the date of filing condemnation, or delay deposit of funds. All these acts are coercive in nature.

6. **90-Day Notice**
People displaced by acquisition must be provided 90 days advance written notice of the date they are required to vacate the property. This has important implications for scheduling construction. Project delay could result if issuance of notices is not managed carefully. See Chapter Five for policy on issuance of notices.
7. **Payment Before Possession**  
The agency approved fair market value amount (estimate of just compensation) must be paid to the owner or deposited in District Court for the benefit of the owner before the agency may take possession of the property.

8. **Uneconomic Remnants**  
The agency must offer to purchase any remainder that the agency determines will have little or no utility or value to the owner because of agency acquisition of the larger portion. The landowner does not have to sell, but must be made aware and presented an offer to purchase.

9. **Tenant-Owned Improvement**  
A separate compensation offer must be made if a tenant owns a real property interest such as a building, structure, or improvement on rented land. The owner of the land must disclaim interest in the improvement for the tenant-owner to be paid. Just compensation for the tenant-owned improvement is its contributory value to the whole property or the salvage value whichever is greater.

10. **Inverse Condemnation**  
The agency will not force an owner to file a claim of condemnation by refusing to acknowledge that an acquisition has occurred.

### 1.5.5 Donations of Real Property

The value of real property donated by a private owner may be applied to the State (non-Federal) share of the cost on the project on which the donation occurred. The amount of total credit for donations may not exceed the State’s matching share of project costs. The value of donations that exceed the State’s matching share will be used to reduce the total cost of the project.

The local government may solicit a donation of property or any part of the compensation that will otherwise be paid. The local government requesting or accepting a donation must inform the owner of the right to have the agency appraise the property and be offered payment of full fair market value. Tell the owner that the Internal Revenue Service might require an independent third-party appraisal to support any deduction from taxes if the motivation for donation is a tax reduction. The local government may reimburse the owner’s cost for an appraisal if this will facilitate a donation.

The agency may not take any coercive action to induce the owner to donate property. An example of a coercive act would be to tell an owner: “All your neighbors have agreed to donate. They are going to be unhappy to know this project is delayed because you refuse to donate.”

Project credit amount for donated real property will be determined by the earlier of:
a) The date the donation is effective
b) The date on which equitable title to the property vests in the local government.

The value will be documented in the same manner as if the property were acquired by purchase based on fair market value. A Compensation Estimate may be used for property valued under $10,000. The valuation of donated property must exclude increases or decreases in value caused by the project.

The subgrantee may accept conveyance of private property in exchange for construction features that will not otherwise be included in project design. Such a conveyance is a donation only to the extent that the value of the property conveyed exceeds the cost of the special construction features. The facts of a conveyance for construction features should be clearly described in the project records.

The following additional conditions apply to credit for donated property:

1. The property was not from a park, recreation area, wildlife and waterfowl refuge, or a historic site. This is commonly known as 4f land.
2. The property was acquired in compliance with provisions of 49 C.F.R. 24. This is the Federal regulation with implementing rules for the Federal Uniform Relocation Assistance and Real Property Acquisition Act.
3. The donation was performed in compliance with the requirements of Title VI of the Civil Rights Act of 1964.
4. The donation did not influence the environmental assessment for the project.
5. The property must be incorporated in the project for which the credit of its value is applied.

The subgrantee will submit a Certification for Local Government Real Property Contributions to Federal-Aid Project for each project on which there are donations of real property. The certification form can be obtained from the UDOT Project Manager or the Right of Way Division.

Additional and detailed information regarding donations of land from private sources is available in UDOT FLEXIBLE GUIDELINES FOR FEDERAL-AID PROJECTS at the follow web site:


1.5.6 Contribution of Real Property that is Pre-Owned by the Local Government

A subgrantee may contribute pre-owned real property for incorporation in the project. The value of the property can be applied as a credit to the State’s matching share of
total project cost. Credits are not available for lands acquired with any form of Federal assistance such as the Land and Water Conservation Fund. Locally owned land that is currently in transportation use is not eligible for credit. The amount of the credit for locally owned real property incorporated in the project is the fair market value determined by an appraisal or Compensation Estimate (under $10,000).

The subgrantee will submit to UDOT the certification that is described in Section 1.5.6. All rules that apply to donations of privately owned real property as discussed in this section are applicable to contributions of property that is pre-owned by the local government.

Additional and detailed information regarding donations of land owned by State or local agencies is available in UDOT FLEXIBLE GUIDELINES FOR FEDERAL-AID PROJECTS and the link to that source is: https://www.udot.utah.gov/main/uconowner.gf?n=7378421076725233

1.5.7 Negotiations with the Owner

Most property owners are willing sellers when approached to sell property for a transportation project. The process of acquiring private property for public use is always involuntary because the owner does not have the option not to sell. It is important that the agent prepare fully before presenting the offer to create the best atmosphere for settlement. The agent should explain the purpose and need for the project, the effect on remaining property, relate the process for payment, and explain how the offer amount was determined.

The agent should present the written offer in person, explain the project, and address any owner questions or concerns about the offer and the valuation process. The representative should also discuss the project schedule and any effects the acquisition or project will have on remaining property.

Offer by mail with follow-up phone call is acceptable if the owner does not live or work in the same or nearby county or if the owner has requested no personal contact. A complete discussion on negotiations with property owners is contained in Chapter Three.

1.5.8 Revised Offers and Administrative Settlements

The local authority should consider revising or updating the appraisal or compensation estimate and offer if a significant time of six months or more has passed since the appraisal review or value determination and there is a fast-moving real estate market.
A revised fair market value offer should be made if it is discovered that the appraisal did not fully consider an important element of value such as the Negotiations Agent finds there is a barn on the acquired site that is not in the appraisal report. Proposals for revised or updated appraisals or offers should be referred to the Review Appraiser. Revisions that will result in significant increase in project cost should be communicated to the UDOT Project Manager.

Administrative settlements are settlement amounts based on value related evidence, but may include factors other than appraised property value including but not limited to such things as the high cost of condemnation, trial risks, or need to expedite settlement to advance the project to construction. The subgrantee should consult with the UDOT Project Manager if it appears that an administrative settlement is in the public interest.

1.5.9 Utah Property Rights Ombudsman

The Utah Legislature has established the office of the Property Rights Ombudsman under the Department of Commerce. The Ombudsman protects the interests of citizens in dealing with government. Property compensation issues can be clarified and resolved without the need of condemnation through the Ombudsman. The agency and citizens may benefit from the services of an impartial facilitator who can help balance the issues and provide an independent perspective. The Ombudsman may offer mediation or arbitration services as alternatives to condemnation and may order a second appraisal for this purpose at project expense. An information sheet or outline of Property Owner’s Rights is available from UDOT that the local authority can provide to property owners which explains the services available from the Ombudsman and how they can be used.

1.5.10 Relocation

The complete relocation procedures are in Chapter Five. The local authority should hire a consultant from the UDOT Relocation Consultant Pool if it does not have staff experienced in Federal Uniform Act relocation.

The following basic principles apply to the Relocation Program:

1. Residential occupants may not be required to move until comparable replacement housing is available within the displacee’s financial means.
2. Every displacee must be provided a 90-day notice of the date required to move.
3. Relocation advisory services must be offered to all displacees including tenants, owners, and businesses.
4. Reimbursement for moving personal property from the acquired site must be provided to displacees.
The local authority should provide a “Relocation Assistance Brochure” at the earliest date to all displacees. This brochure should be available at all public meetings.

1.5.11 Eminent Domain

A local government should plan to undertake condemnation of unsettled parcels using an agency attorney or special counsel. The Co-op Agreement may provide that the condemnations be performed by UDOT in conjunction with the Attorney General’s Office. This will be determined on a case-by-case basis in consultation with the Right of Way Division and the Project Management as part of the Co-op Agreement discussions. The agency should ensure that the acquisition document set is complete and well organized for use in legal proceedings in either alternative. Review the negotiations record for completeness and clarity. Date and place of all owner meetings should be recorded along with a brief summary of discussions, disagreements, etc. The agency must provide a complete 40-year title search and must provide a complete list of all parties of interest which includes verified mailing addresses for each party of interest identified. Negotiations may resume after condemnation is filed with the concurrence of the attorney representing UDOT or the subgrantee.

1.5.12 Certification of Right of Way – Local Government Projects

The UDOT Project Manager will need to coordinate the certification of a subgrantee project with the Right of Way Local Government Manager. The Project Manager or the Right of Way Local Government Manager will instruct the local government on the certification process before the scheduled project advertisement date. The local government supervisor responsible for property acquisition and relocation will need to complete the appropriate certification form to indicate the completion status of acquisition and relocation. The local government supervisor will then initial the form opposite the information that they provide. The completed form will then be returned to the UDOT Project Manager who will forward the request to the Right of Way Local Government Manager. The Right of Way Local Government Manager will review the request and verify that right of way has been appropriately cleared in compliance with applicable regulations. The Right of Way Local Government Manager will forward the certification request to the appropriate Deputy Director of Right of Way with a recommendation for certification in memo form once the review is completed. All certification requests must be signed by the Director of Right of Way. Refer to Section 1.2.23 for discussion of the purpose and importance of the Project Right of Way Certification.

1.5.13 Forms

The local authority may use its own forms for right of way acquisition but UDOT forms are recommended providing that they are appropriately edited to indicate who is
approving the forms for the agency. Requests for copies of the UDOT forms can be directed to the UDOT Project Manager or to the Local Government Right of Way Manager. Use of UDOT forms will assure that all required program and claim data is recorded. UDOT forms will encourage consistent application of underlying UDOT policies on a statewide basis.

1.5.14 Acquisition of Federal Lands

Land owned or controlled by an agency of the Federal government or Indian Lands will be acquired or transferred by UDOT on behalf of the Local Public agency. The local authority should advise the UDOT Project Manager as soon as the need for such lands is identified. Acquiring rights to Federal Lands can take up to six months or more so it is imperative that these parcels be identified early in the design phase. Refer to Chapter 3 of the Manual for more information on Federal Land Transfers. Projects which use federal funds or which may seek federal funds at a later date are governed by 23 C.F.R. 710.601 and 710.603. Further references to these federal regulations pertaining to this type of acquisition are found in the Right of Way Design manual.

1.5.15 Quality Control/Quality Assurance

The UDOT Quality program involves all parties that perform services for UDOT programs and projects. The subgrantee will contribute by developing a project Quality Plan early in the Design Phase of the project. The UDOT Project Manager or a representative will assist the subgrantee to develop the plan. This is a comprehensive document. It should include a summary of planned or ongoing actions that ensures the acquisition process meets current standards and trends toward continuous improvement of the property acquisition function.

1.5.16 Records Retention

The local government will submit all documentation to UDOT that supports compensation to property owners and relocation benefits to project displacees. Project records remaining in possession of the local authority must be retained for a period of three years following the payment of the Federal final voucher on the project. The local government will provide access to records for audit by representatives of UDOT, the Right of Way Local Government Manager or designee, the Utah State Comptroller, and the U.S. Department of Transportation.

1.6 SPECIAL ELEMENTS OF ADMINISTRATION

1.6.1 Conflicts of Interest

The Utah Public Officers’ and Employees’ Ethics Act, Utah Code, Title 67, Chapter 16 addresses conflicts of interest. Right of Way staff and consultants should be alert to
the possibility of conflicts arising between their personal interests and professional governmental responsibility. Each employee or consultant is responsible for initiating disclosure of potential conflicts at the earliest time that they are identified. UDOT can determine if a conflict will in fact exist and act to prevent it by such means as reassigning the employee certain work tasks or case assignments.

Conflicts can arise from many sources and it is not possible to present an exhaustive list. Consider the following situations:

1. A close family member of a UDOT employee owns an interest in real property from which there will be a partial acquisition for a highway project. The employee is assigned to review the appraisal and establish fair market value.

2. A Right of Way employee is assigned to negotiate settlement of a parcel for which that person had established value as an appraiser, unless specifically authorized by approved procedures to do so.

3. A displacee responds to a published ad for a house for sale. The house happens to be owned by the UDOT Relocation Agent who is responsible for the displacee’s replacement housing claim.

4. A contract acquisition agent is assigned to acquire a property for UDOT. The UDOT Manager who makes the assignment is unaware that the property is listed for sale by the real estate firm that employs the contract agent.

5. A consultant agent who has been hired as the relocation agent works for a real estate company. The best comparables are listed with her firm.

6. A consultant relocation agent has a relative who is a mortgage broker. The relocatee seeks advice from the relocation agent regarding where to find a loan on the replacement home they plan to buy.

Each of the above is an actual or a potential conflict of interest situation that should be disclosed to the Project Manager and Right of Way Lead Agent. In no circumstance should an agency staff person or consultant hired by the agency receive direct or indirect compensation from the displaced person or grantors of property being acquired by the agency other than the fee negotiated with the agency or the salary earned from the agency. This includes but is not limited to finder’s fees, sales commissions, loan commissions, etc.

Federal regulations prohibit negotiating for the purchase of property by the same person who was responsible for its valuation. There is an exemption to this provision referred to under the regulation as a waiver valuation which allows the same agent to estimate or appraise, complete an appraisal review of a property with an estimated value under $10,000, and negotiate the purchase of that same property. UDOT will increase the limit of this provision to $25,000 for waiver valuations with a UDOT program waiver.
This program waiver makes it permissible for the agency to use the same agent to perform multiple activities if the compensation offered was developed under the compensation estimate provisions.

The just compensation amount must be approved by another agency official before the offer is made by the person that completed the waiver valuation in the event of a compensation estimate.

UDOT will allow a Review Appraiser or Right of Way Lead Agent to make the offer to the property owner where his or her knowledge of the property to be acquired and the valuation thereof will be helpful to the negotiation process if an offer to purchase is based upon an approved appraisal. These procedures may also be allowed where a separate trip for an exceptionally long distance of travel will be involved for the offer to be made by a separate acquisition agent.

This procedure involving the review appraiser or consultant agent will only be allowed where the review appraiser or lead agent has not made or suggested significant changes in the appraisal. The review appraiser cannot present the offer or conduct negotiations with the property owner in cases where the review appraiser or consultant agent does not accept, recommend, or approve the appraisal as prepared and presented to the review appraiser for review or to the consultant agent for approval of just compensation.

This approach will be very useful on complicated acquisitions where familiarity with the valuation of the property may be a key factor in accomplishing successful negotiations for the acquisition because of the review appraiser’s or lead agent’s ability to appropriately explain valuation considerations. The acquisition may also be appropriate where the acquisition is in a remote part of the state and it would be either time consuming or costly to send a separate agent to conduct the negotiation.

No dollar limit is imposed regarding the use of the procedure involving the review appraiser or lead agent as acquisition agent. All agreements reached in accordance with this or any other procedure are not final until approved by the Director of Right of Way or his designee.

People who have appraised a property, reviewed the appraisal, or negotiated the purchase of property are prohibited from delivering the payment of the related claim. People involved in determining relocation benefits may be allowed to deliver related payments to displacee claimants if the relocation claims are approved by the Director of Right of Way and/or designee providing that the payment is properly documented, and the payment is actually processed and ordered by a third party UDOT staff person. The preferred method of all payment disbursement is by a qualified title or escrow company handling the acquisition of property needed for UDOT transportation projects and the purchase of replacement housing.
1.6.2 Civil Rights

UDOT Right of Way operations are subject to Federal and Utah Civil Rights laws concerning housing, employment, and disability. The Utah Anti-Discrimination and Labor Division administers most Utah and Federal fair housing, employment, and disability laws. They include the following:

1. Housing (Relocation Program)
   - **The Federal Fair Housing Act** of 1968 prohibits discrimination against any person because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, leasing, financing, and advertising of housing or in the prevention of real estate brokerage services.
   - **Utah Fair Housing Act** prohibits discrimination on the basis of race, religion, color, sex, national origin, familial status, disability, or source of income in the rental, purchase, and sale of real property. The Division is authorized to enforce the provisions of Title VIII of the 1968 Federal Fair Housing Act based on a memorandum of understanding and a cooperative agreement with the US Department of Housing and Urban Development.

2. Employment (Staff Hiring and Consultant Contracting)
   - **Utah Anti Discrimination Act** of 1965 prohibits employment discrimination on the basis of race, color, national origin, gender, religion, age, and disability. Utah law also prohibits employment discrimination on the basis of pregnancy, childbirth, or pregnancy related conditions.

3. Disability Relocation Program
   - **Americans with Disabilities Act** makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also forbids discrimination against individuals with disabilities in State and local government services, public accommodations, transportation, and telecommunications.

4. **Civil Rights Act** of 1964 (Crosscuts All Programs)
   - Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance:
     
     No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

   - Several options are available if any Right of Way program beneficiary believes they have a discrimination complaint based upon any of the foregoing requirements:
Informal Complaint. Complainants must be informed of their right to file a formal written complaint. Such informal complaints and any attempts to resolve them will be summarized by the Right of Way Division’s, Title VI Designee and forwarded to the Title IV Coordinator in the Civil Rights Section.

Formal Complaint. Complainants or their authorized representative can sign and file a complaint with the UDOT Title VI Coordinator in the Civil Rights Section within 180 days after the date of the alleged discrimination. A UDOT-Title VI Complaint form is available from the Civil Rights Section.

Authority and the specific procedures for handling such complaints and Right of Way Program responsibilities in the civil rights area can be found in the approved UDOT Title IV Program.

- Title 23 (Highways) C.F.R. Subchapter C - Civil Rights, Part 200 - Title VI Program and Related Statutes - Implementation and Review Procedures, Section 200.9(b)(4) requires the collection of statistical data for Right of Way Program beneficiaries related to race, color, religion, sex, and national origin. Request this information for all owners receiving compensation and tenants and owners receiving relocation benefits.

This information will be collected using the Division’s survey questionnaire that is used to collect other information regarding property ownership, occupancy, and tenancy necessary to implement the payment of compensation and relocation assistance benefits.

1.6.3 Public Information

Records maintained by the Department are subject to the Governmental Records and Management Act (GRAMA). This is a comprehensive law that balances the public’s right to access government information with the need to protect the privacy of citizens from whom personal information is collected. The GRAMA is implemented by UDOT through policy UDOT 05B-5.

UDOT Right of Way personnel in all positions and Right of Way consultants create or have access to records that contain personal or business information about property owners and residents. It is important to protect the confidentiality of these records. Right of Way records of any kind are not subject to public release unless authorized by the Project Manager, Director of Right of Way, or the Attorney General. Relay requests for release of records on the project level to the designated Assistant Attorney General. Relay requests made at the headquarters to the Director of Right of Way through the Right of Way Executive Secretary.
UDOT personnel and consultants must take precautions to secure and protect records. Do not leave parcel and project records unattended outside the office. Store confidential paper records in file cabinets except when they are in active use. Secure electronic records or data as instructed by the UDOT information technology office. All who create reports of interviews or negotiations will strictly limit comments to the purpose of the record. Record data only on approved UDOT forms.

1.6.4 Records Organization and Retention

The Right of Way Project Coordinator will create a project folder and parcel files at the project initiation. The project documents will be organized in the following manner:

1. Project File
   - Project map
   - Funding approval
   - Right of Way Action Plan including the project staff resource plan
   - Correspondence to and from the Project Manager
   - List of parcel summaries with dates received
   - Invoices for appraisals and consultant work
   - Right of Way Certificate at completion of project

2. Parcel Files
   The parcel files will contain folders for acquisition and relocation if there is a displacement.
   a. Acquisition Folder (in the order listed)
      - Checklist stapled to the left side of folder all other items are on the right side of the file
      - Signed Contract
      - Signed Administrative settlement if needed
      - Signed Right of occupancy agreement or right of entry agreement
      - Signed Right of Way settlement invoice
      - Agent’s log (record of negotiations)
      - Initial Interview Questionnaire (attach to agent’s log)
      - Correspondence or letters to or from the Grantor (attach to the agent’s log)
      - Appraisal or compensation estimate, appraisal review, and just compensation determination
      - Appraisal Waiver – if appraisal is over $10,000 and under $25,000
      - Ownership record
      - Signed and Notarized Deeds (one copy of each to be executed)
• Waiver of Right of First Consideration – if “T” or “ST” parcel
• Acquisition summary
• Offer of purchase
• Statement of Just Compensation
• Property Management Information Sheet – if “T” or “ST” parcel
• Maps
b. Relocation Folder
  • Left side
    Checklist stapled to the left side of folder. All other items are on the right side of the file in the order listed.
  • Right Side
    Required documents for owner or tenant relocations.
    1. Owner Moving Claim Expense form for Owners or Tenants
    2. Owner Replacement Housing Payment form for Owners or Tenants
    3. Claim spreadsheet
    4. Agent’s Cover Letter/Memo – This is a typed summary of the claim you are submitting. Include a justification statement in the memo if Last Resort Housing is recommended for the occupant.
    5. Relocation Summary Report
    6. Agent's Log and correspondence
    7. Interview and Meeting Checklist
    8. Certification of Legal Residency
c. Relocation and Housing
  Additional Document for Owner Relocation – Required As Needed
  • Notice of Eligibility (Form R-17)
  • Payment Recap
  • Relocation Comparison Grid with MLS sheets attached
  • Explanation of comparisons used – Grid Analysis
  • Price Differential or Supplemental Housing Study
  • Incidental Expenses – Attach a Good Faith Estimate from lender
  • HUD-1 – once the displacee closes the replacement home purchase
  • Mortgage Interest Differential Claim
  • Replacement Housing Payment form
d. Moving Expense
  • Application for Moving Expense – Plan A – Fixed Payment by room
  • Plan B – Actual Moving Expenses –commercial or receipts
• Bids for estimate – invoice required within 30 days of move for Plan B
• Moving Claim Expense form – Insert a copy. No invoice is needed for a scheduled move.

e. Inspections and Notices
• DSS Report
• 90-Day Notice
• 30-Day Notice

f. Tenant Relocation and Housing
Additional Document for Owner Relocation – Required As Needed
• Tenant Interview
• Obtain copy of current lease
• Notice of Eligibility
• Tenant Payment Recap
• Tenant Comparison Grid
• Grid Analysis
• Rental Supplemental Housing Study
• Computation for Rental Assistance
• Replacement Housing Payment form

g. Moving Expense
• Application for Moving Expenses – Plan A – Fixed Payment by room
• Plan B – Actual Moving Expense – Commercial or receipt
• Moving Claim Expense form

h. Inspection and Notices
• DSS Report
• 90-day Notice
• 30-day Notice

i. Business Relocation
Checklist stapled to the left side of folder. Stack the following required documents on the right side.
• Moving Claim Expense form
• Re-establishment Claim form
• Claim spreadsheet
• In-Lieu Expense Claim – Payment can be made for proof of net income (original)
• Agent’s Cover Letter – A typed summary of the claim you are submitting
• Agent’s Log and Field Notes
• Relocation Summary Report – Summary of all deadlines
• Legal Residency form

j. Additional Documents for Business Relocation – Required As Needed
• Business Relocation Recap – Eligibility and check disbursement breakdown
• 90-Day Notice of Eligibility – Combined NOE and 90-day notice
• Business Occupant Interview – Explain different options for the occupant
• In-Lieu Expense Claim – Payment can be made for proof of net income – insert a copy
• Re-establishment Expense Outline – list of reimbursable expenses
• Commercial bids and inventory list
• Moving expense worksheet
• Self Move
• Searching Expense
• Moving Contractor Totals
• Inventory Worksheet – List all inventory. Add additional pages if necessary
• Contractor worksheet – list items for relocation
• Notice to Proceed – once inventory has been listed and checked
• Moving Claim Expense form
• Re-establishment Claim
• 30-day Notice to Vacate
• Pictures
• Past Claims

The Right of Way Project Coordinator will organize all completed files when the right of way phase is complete. Destroy extra copies of documents or unnecessary papers. Transfer informal notes to the appropriate official record. If the Right of Way Project Coordinator is a consultant, the consultant project coordinator will then transfer the files to the Right of Way headquarters.

The Office of Right of Way will retain project files until all actions pending on parcels are completed, including condemnation actions. The project records are then sent to the Central Records Retention Facility, pending ultimate disposition in accord with Federal retention requirements and the UDOT Retention Schedule.

The designated Right of Way Records Officer will prepare the project files in the manner described in policy "UDOT 05B-3, Central Records Retention Facility."
Chapter Two

VALUATION

2.1 PURPOSE AND ORGANIZATION

2.1.1 The Valuation Function – Purpose and Scope

The valuation function within the UDOT Right of Way Division provides supported estimates of just compensation to compensate owners for property acquired as highway right of way. Valuation serves a mandated constitutional role. It is the key means by which UDOT complies with the Fifth Amendment of the US Constitution:

…nor shall private property be taken for public use, without just compensation.

UDOT valuation staff and consultants treat property owners fairly and equitably in meeting this constitutional mandate. Fair treatment through supported valuations maintains the bond of trust between the UDOT and the public that enables the highway transportation program to progress with minimal conflict. This will be accomplished using a scoping process. A scope of work will be developed for the valuation of the property that will be acquired for each project.

Developing a scope of work will incorporate the best suited property valuation for the type of property, the complexity of the acquisition, and its effect on remaining property. Full or multiple appraisals may be performed for high value acquisitions or for properties where the acquisition will have a significant effect on the utility of the remaining property according to the scope of work development process. The scoping process may indicate Administrative Compensation Estimates that can be performed in a timely manner and at a moderate cost to provide adequate support for low value and non-complex acquisitions.

The valuation function at UDOT shares certain common elements with appraisals performed for institutions such as banks, mortgage companies, and firms with large real estate holdings. Acquisition for transportation projects has some unique characteristics that require a more formal and structured approach than required for appraisals prepared for private institutions including:

1. **Partial Acquisition**
   Highway acquisitions frequently involve partial acquisition. The valuation problem involves the use and value of the remaining severed parcel as well as the part acquired.

2. **Court Review**
   UDOT has the power of eminent domain. All valuations are subject to
court challenge and review under the owner’s constitutional right to due process and just compensation.

3. Regulations
Right of way acquisition and the valuation function are highly regulated. UDOT complies with Federal laws and detailed regulatory requirements that define the structure, scope, and content of valuation services and work products in addition to requirements of Utah law that pertain only to property acquisition for transportation.

2.1.2 Legal Authority

The valuation function at UDOT is performed in compliance with the following laws and regulations:

1. United States Constitution
   • Fifth Amendment. Takings clause.

2. Utah Constitution
   • Article 1, Section 22. Private property shall not be taken or damaged for public use without just compensation.

3. Utah Code
   • Title 57-12-13. Procedure for Acquisition of Property.
   • Title 57-12-14. Dispute Resolution/Additional Appraisal.
   • Title 61-2g-101-505. Real Estate Appraiser Licensing and Certification Act.
   • Title 63G-10-410. Condemnation, inverse condemnation settlements involving the Department of Transportation
   • Title 63L-3-101-202. Private Property Protection Act.
   • Title 78B-6-522. Dispute Resolution.

4. Code of Federal Regulations
   • 49 C.F.R. 24.102-105. Basic acquisition policies, criteria for appraisals, review of appraisals, acquisition of tenant owned improvements.
   • 23 C.F.R. 710. —Right-Of-Way and Real Estate
   • MAP-21 – Moving Ahead for Progress in the 21st Century.

2.1.3 Appraisal Standards and Guidance Documents

The following documents are adopted by UDOT as appraisal standards. They provide technical guidance for the preparation of real estate appraisals and they define acceptable appraisal process and content.

1. Federal Regulations at Title 49 C.F.R. Part 24, Section 24.103 to 105
   The cited regulations issued by the FHWA comprise the Federal regulatory requirements that are the primary authority to be followed in the
preparation of appraisals and the conduct of appraisal reviews for federally assisted projects. The standards referenced in the following sections are secondary to these requirements. The regulations can be accessed at:

https://www.fhwa.dot.gov/real_estate/index.cfm, or
https://www.ecfr.gov/cgi-bin/text-idx?SID=7624e40c53a1bc37284fe44fb9a556a4&mc=true&node=sp49.1.24.b&rgn=div6

2. **Uniform Standards for Professional Appraisal Practice (USPAP)**
   Published by the Appraisal Standards Board of The Appraisal Foundation. A pledge of compliance with the USPAP is required for certification and licensure of appraisers in Utah under **Utah Code** Title 61-2g-304. Reference is:

3. **Uniform Standards for Federal Land Acquisition** (“The Yellow Book”)
   Published by the Interagency Land Acquisition Conference composed of representatives from Federal agencies engaged in the acquisition of real estate for public uses. This document is specifically applicable to direct Federal acquisition, but its content may be relevant to State sponsored projects. They may be referenced for UDOT appraisal preparation as appropriate to the extent that these standards may be applicable to UDOT project valuations.
   https://www.justice.gov/file/408306/download

4. **“FHWA Project Development Guide”** Chapter 7, Property Valuation
   Published by the Federal Highway Administration. This is an information document that is specific to administering Federal assisted highway projects. The Project Development Guide addresses “best practices” as well as requirements in law and regulations.

The above documents are the resources for preparation of appraisals for UDOT property acquisition. Copies of Items 3 and 4 can be downloaded from the FHWA website at

2.1.4 **Organization**

The valuation function in UDOT is administered within the framework of self-directed and multidisciplinary Project Teams. The Project Team concept encompasses within the teams, all the skills and authority needed to bring a project from concept through
construction. The valuation products, administrative compensation estimates (ACE’s), or appraisal reports are performed under guidance of the assigned project Right of Way Lead Agent. A review appraiser assigned to the Project Team performs the appraisal review function.

The Right of Way Division operating from the UDOT Central Office provides specialized support and guidance on valuation. The appropriate Deputy Director of Right of Way and Right of Way Lead Agents recommend project assignments and approve resource plans which include qualified staff agents as waiver valuation preparer, appraisers, review appraisers, and appraisers or Consultant Agents selected from the consultant services pools for right of way services. The Director of Right of Way, Deputy Director of Right of Way responsible for property acquisitions and Right of Way Lead Agents may also advise on unique situations. Qualified staff Review Appraisers may provide specialized staff support for policy questions and complex issues. Appropriate UDOT valuation staff and consultant appraisers also participate in the appraisal scoping process.

2.1.5 Scope of UDOT Property Valuation Services

The primary role of valuation in UDOT is to establish the fair market value of property that will be acquired for transportation projects. UDOT’s property valuation function has the following significant additional value-related roles and responsibilities:

- Recommend and approve the UDOT appraisal
- Approve offers of just compensation for UDOT
- Develop general project right of way cost estimates
- Perform staff appraisals
- Perform appraisal review services
- Advise on proposed administrative settlements
- Determine incremental value of access control modifications or new points of access to property
- Advise staff of local governments on Federal and State valuation requirements or criteria
- Provide expert witness testimony in eminent domain proceedings
- Assign, oversee, and evaluate consultant appraisal services
- Value uneconomic remnants
- Advise on fair rents for UDOT-owned property under management
- Respond to public and official inquiries about the valuation process
- Revise valuations arising from plan changes
- Determine market rents or other value allocations for certain relocation benefits
- Value surplus property before disposal
• Determine the value of fiber optic leases

2.1.6 Appraiser Qualifications

UDOT will analyze appraiser qualifications for both staff and consultant appraisers prior to assigning appraisal work. The Right of Way Lead Agent will evaluate the various considerations and factors with respect to the appraiser’s ability to perform the assignment in any assignment for which an appraiser is considered including but not limited to:

• Competency
• Experience
• Education
• Training,
• Certification and licensing – consultant appraisers must be state licensed or certified
• Professional designations

Consultant appraisers will be evaluated according to the listed considerations and factors as well as other criteria outlined in Section 2.4.11 of this Chapter and Chapter 7 of this manual pertaining to the establishment of a Right of Way Services Pool for qualified appraisers.

The qualifications and the expertise required for each appraisal assignment will also be addressed in the development of the appraisal scope of work as discussed in Section 2.2.3 of this Chapter.

2.1.7 Quality Assurance in Valuation

Quality assurance in valuation is most visibly and continuously exercised in the Right of Way Division’s appraisal review process. This process acknowledges the primary importance of factual accuracy, consistency, and fairness in determining just compensation.

Quality assurance in valuation extends beyond appraisal review. It is an inclusive and ongoing process of evaluating performance across the range of services identified in Section 2.1.5. Quality assurance is a responsibility that is shared by all people and administrative levels involved in the valuation function. The Director of Right of Way and staff will establish goals and provide policy guidance for improving the level of quality in the valuation process. The appropriate Deputy Director of Right of Way and Right of Way Lead Agents will propose and coordinate quality assurance activities that will involve all valuation staff.
Quality assurance actions are scaled to the staff resources and current project workload. All professional staff will perform specific quality assurance tasks focusing on one or more of the factors listed below:

- Evaluate and improve coordination and communication with the Project Manager and Project Team members responsible for other project development activities.
- Assign Staff and consultant appraisers in a timely manner.
- Promote effective use of information technology to improve efficiency, lower administrative costs, and improve product delivery time.
- Assess appraisal-related training needs of staff personnel.
- Identify critical path tasks involving appraisals and valuation to eliminate barriers to timely completion of these activities.
- Evaluate performance of consultant appraisers concerning support for value, quality of documentation, depth of analysis, and timely delivery of appraisal products.
- Effectively and constructively evaluate staff valuation personnel and participate in setting performance goals.
- Develop and understand valuation requirements, policy, practices, and agency forms that support the effective and expeditious acquisition of right of way.

Quality assurance tasks performed by professional staff are reported in a manner determined by the Director of Right of Way or a person designated as a quality coordinator. The goal is to continuously improve the performance level of valuation activities such as appraisals, appraisal review, and estimates in terms of cost efficiency, timeliness, and quality of work. Performance standards will be continuously refined to establish meaningful and achievable goals and measure progress in meeting goals.

2.2 VALUATION PROCESS

2.2.1 General Concepts

UDOT’s process of determining fair market value involves the development of a written scope of work that can include two valuation formats that correspond to the complexity and the estimated value range of the acquisition. The Administrative Compensation Estimate (ACE) also known as the Waiver Valuation and appraisal differ in level of detail and documentation. Both result in an estimate of just compensation that is supported and fairly arrived at and meets Constitutional obligations and Utah statutory standards for just compensation.

The Appraiser will be familiar with and comply with the guidance on special topics provided in Section 2.4.3 in addition to the instructions on valuation provided in this
Section. These provisions apply to valuations performed under all formats and are required by *Utah Code* or Federal law or regulation or both.

### 2.2.2 Fair Market Value Defined

The Term “Fair Market Value” is defined in the *USPAP* as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not influenced by undue stimulus.

Implicit in this definition is the consummation of a sale on a specified date and passing of title from seller to buyer under conditions whereby:

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

Pursuant to 23 C.F.R. 710 Subpart G, UDOT or any other public authority with jurisdiction over a federally funded highway shall receive fair market value for any concession agreement involving a federally funded highway. Any determination of fair market value involving concession agreements shall comply with 23 C.F.R. § 710.709. When used in conjunction with concession agreements, fair market value means the price at which a highway agency and concessionaire are ready and willing to enter into a concession agreement for a federally funded highway on, or as if in, the open market for a reasonable period of time and in an arm's length transaction to any willing, knowledgeable, and able buyer. A concession agreement based on best value shall be deemed fair market value.

### 2.2.3 Appraisal Scope of Work

UDOT’s process of determining fair market value initially involves the development of a written scope of work that is prepared cooperatively with the appraiser and the UDOT appraisal staff.

The scope of work is a written statement agreed upon by the appraiser and UDOT describing the work the appraiser is to do. It should be developed cooperatively by the
assigned staff or contract appraiser and the UDOT appraiser or review appraiser who is competent to both represent UDOT’s needs and respect valid appraisal practice.

The scope of work statement will include the purpose and function of the appraisal, a definition of the estate being appraised (if it is fair market value, include its applicable definition), and the assumptions and limiting conditions affecting the appraisal. The scope of work should consider the specific requirements in the URA definition of “appraisal,” referenced in 49 C.F.R. § 24.2(a)(3), the criteria for appraisals in Sections §§ 24.103(a)(1) and (2) and 24.103(b), addressing each as appropriate.

The scope of work will describe what the agency and the appraiser each are to do and the mutually expected outcome of the assignment or contract. It will include parameters for the data search and identification of the technology including approaches to value that are to be used to analyze the data. These are areas where UDOT can provide input to assure it gets what it really needs without going overboard on appraisal work and in effect buying more appraisal than necessary.

UDOT appraisal formats can continue to be utilized if they fit the approved scope once a “scope of work” has been developed, approved. Presently UDOT utilizes three valuation formats that correspond to the complexity and the estimated value range of the acquisition. The formats are:

- Administrative Compensation Estimate (ACE) or Waiver Valuation
- Appraisal Report

The formats differ in level of detail and documentation. All result in an estimate of fair market value that is the basis for the determination of just compensation that is supported and fairly arrived at and that meets constitutional obligations and Utah statutory standards for just compensation.

It is important to determine the appropriate valuation format as early as possible. A preliminary decision as to whether a property may be valued using the ACE or whether it requires an appraisal is made when the right of way project preliminary general cost estimate (shotgun estimate) is performed.

The general cost estimate is performed early in the design phase of project development. A list can be compiled at that time of non-complex and low-value (under $25,000) acquisitions recommended for an ACE and of more complex and higher value properties that will require a limited appraisal report or a full appraisal. The list can be discussed with the Right of Way Lead Agent and adjustments may be made. The lists of parcels proposed for ACE and for appraisals will be considered in development of the Right of Way Action Plan. See Section 1.2.20.
Parcels requiring a Personality/Realty Report will be worth noting as early as possible in a project’s development, along with the other appraisal assignment criteria.

### 2.2.4 Administrative Compensation Estimate (ACE) – General

The Administrative Compensation Estimate (ACE) or Waiver Valuation is a documented value approach that is applicable on uncomplicated acquisitions where the value is expected to be under $10,000. ACE’s may also be used if the value is expected to be between $10,001 and $25,000 with authorization of the property owner (in the form of a signed Appraisal Waiver form.) *The Administrative Compensation Estimate (ACE) is Not an appraisal.*

The use of the ACE recognizes that many properties acquired by UDOT do not require the depth of analysis and detailed documentation that is required in a formal appraisal. The use of the simplified format allows a more timely performance of valuations, expeditious negotiations, and quicker delivery of right of way for project construction. Property owners easily understand the ACE and they are in a better position to make an informed decision to settle.

The requirements for applicability of an ACE are:

1. Total value to be paid for the real property does not exceed $25,000.
2. Highest and best use is the present use and will not change as a result of the acquisition for the proposed project.
3. The valuation is uncomplicated.
4. Damages are considered nominal or temporary if they can be appropriately addressed as a “cost to cure” issue.
5. The acquisition involves vacant land or land with improvements that are not significantly impacted.
6. The acquisition may also involve site improvements such as landscaping or paving. Items that are not included otherwise in the estimate of value may be added as separate line items and compensation may be estimated based on the estimated cost to replace them (cost to cure). The costs to cure are not subject to the $10,000 or $25,000 limit.
7. The value can be adequately estimated by sales comparison with only minor adjustments.
8. Owners of properties meeting the criteria for an ACE in the value range of $10,001 - $25,000 must be offered an option to have an appraisal.

These ACEs are assigned to experienced Right of Way agents who are familiar with the real estate market in the project area. They need not be State-certified appraisers. The person performing the estimate will sign the valuation and certification.
The ACE is applicable on projects administered by local governments providing that the local government agency has trained Right of Way staff who are capable of completing waiver valuations or if the agency uses pre-approved Right of Way consultant agents to prepare the ACE. The local public agency may only utilize an ACE for properties with estimated values of $2,500 or less if the agency does not have trained staff or does not use qualified right of way consultants to prepare the waiver valuation or Administrative Compensation Estimate.

The limit is $10,000 or less if the local public agency does have trained staff or does use qualified Right of Way consultants to prepare the Administrative Compensation Estimate.

2.2.5 Administrative Compensation Estimate (ACE) – Process

The ACE is a simplified administrative process, but it must be supported by factual data and analysis and requires a careful, disciplined approach. UDOT must assure the owner of every property acquired, regardless of value, that just compensation has been fairly and fully determined.

It is generally important to personally inspect the property shortly before performing the ACE. Minor improvements may have been installed or removed if several months have passed since the last inspection. The agent will attempt to gain permission from the owner before entering the property if it is necessary to enter the property to perform the inspection. The UDOT agent is not legally required to invite the owner to accompany the agent on the inspection that is required for appraisal but will do so as a matter of courtesy unless it is clear the owner is otherwise occupied.

The ACE form is included in the Right of Way Module of ePM. The completion of the major elements of an ACE is briefly discussed below:

1. Property Description
   Include project and parcel numbers, address of property, and owners mailing address. This information is secured from the Plan Sheet and the Ownership Report. Photographs are recommended but not required.

2. Land Value Basis
   State the support for the unit value assigned to the land to be acquired. This may be sales data from a recent appraisal on the same or nearby project, recent sales or listings provided by a real estate agent, listing sheets, project data book if one exists, or advertisements. The supporting documentation is to be included in the parcel file.

3. Land Acquired
   The square feet or acres in the acquisition area multiplied by the assigned unit value as determined under Land Value Basis above.
4. **Improvements**
Value may be applied to minor improvements for items that will not be replaced such as fencing, sprinkler system, landscaping, storage shed, patio, deck, flagpole, etc. by a Compensation Estimate. Describe the improvement, its dimensions, and condition. Assign value with reference to a cost service (Marshall & Swift) or to an installed cost by a local vendor, less depreciation if applicable. The value preparer must determine the contributory value of each item acquired. Only the value of the land and actual improvements acquired that will not be replaced must be under the $10,000 or $25,000 limit for the purpose of the waiver valuation limit.

5. **Cost to Cure Items**
The agent will determine whether improvements such as fencing, sprinklers, sod, or other yard improvements etc. will be replaced under the construction contract before assigning value to the item. Improvements that will be replaced may be estimated on a replacement cost basis without depreciation. This is the “cost to cure” method. Cost to cure items may bring the total administrative cost estimate over the $10,000 and $25,000 limit when added to the value of the land acquired and improvements acquired since compensation for these items is made to replace those items. It needs to be understood that only items that are expected to be replaced by the property owner are included on a “cost to cure” basis. Items that will not typically be replaced by the property owner should be valued as depreciated improvements.

6. **Damages**
Minor damages resulting from a temporary easement or need to perform restorative work on property may be assigned as a judgment call with a one-sentence explanation. All damages identified must be cured by a cost to cure value allocation. **Damages other than a cost to cure required an appraisal.**

7. **Documentation**
The level of documentation will be determined by the appropriate Deputy Director of Right of Way or Right of Way Lead Agent on each project. General documentation will include photos of the subject property, comparable land sales, right of way maps, deeds, easements, ownership verification, zoning, and land use verification and an Excel spreadsheet showing all calculations.

8. **Uncomplicated**
Defined as having no damages except as described above for “uncomplicated” valuations.
9. Certification
The estimator will certify to independence in judgment, absence of personal interest, and to personal inspection of the property.

2.2.6 Administrative Compensation Estimate (ACE) Approval

The appropriate Deputy Director of Right of Way or a Right of Way Lead Agent will approve the completed ACE. The ACE amount may not be presented to the property owner as an offer unless the completed form is signed and dated by the acquiring agency.

The person approving the estimates will check for mathematical accuracy, completeness, and logical explanation. Consistency in unit values for the same item is particularly important. It may be practical to establish project unit values for common items such as fencing in advance of performing the estimates.

2.2.7 Administrative Compensation Estimate (ACE) – Delivery of Offer

The value arrived at by the ACE up to the maximum amount of $10,000 may be offered to the property owner by the same agent who developed the estimate once approved. Only ACE amounts of $10,000 or less can be handled without an approved agency waiver if the agent is the valuer and the negotiator. The Federal conflict of interest rule at 49 C.F.R. 24.102(n)(3) prohibits an appraiser from acting as a negotiator for real property that the appraiser has appraised, does not apply to a person preparing the ACE up to $10,000. The acquisition agent may not be the valuer if the ACE is between $10,001 and $25,000.

2.2.8 Appraisal Defined

_Utah Code_ § 61-2g-102(1)(a)(i) states:

"Appraisal" means an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate or identified real property.

The term “appraisal” is defined in Section 101(13) of the _Uniform Relocation Assistance and Real Property Acquisition Policies Act_ of 1970, as amended (the _Uniform Act_) as:

A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
Appraisals performed for UDOT must comply with the *Utah Code* as well as the *Uniform Relocation Act*. The above definitions are understood as mutually reinforcing.

### 2.2.9 Appraisal Applicability

A full appraisal is secured to support any property acquisition that does not meet the criteria for the ACE expressed at Section 2.2.4. A full detailed appraisal may also be secured regardless of value or complexity if acquisition by Eminent Domain is expected or if there is reasonable uncertainty as to the applicability of ACE criteria. Uncertainty as to applicability will be resolved in favor of securing a full detailed appraisal. The owner must be offered the option for an appraisal in cases where an ACE results in an estimate between $10,001 and $25,000. Cost to cure items may bring the total administrative cost estimate over the $10,000 and $25,000 limit when added to the value of the land acquired and improvements acquired since compensation for these items is made to replace those items.

### 2.2.10 Information Provided at Appraisal Assignment

UDOT will provide the appraiser with property data that is necessary to complete the assignment consistent with the scope of work discussed in Section 2.2.3. Provide the following items:

- Consultant Notice to Proceed (NTP)
- UDOT Right Of Way plan sheet(s)
- Ownership record showing ownership information
- Copies of all applicable deeds and easements

Provide other data about the parcel(s) if it is available. The appraiser is responsible to inform UDOT if the information provided is not sufficient to complete the appraisal assignment.

### 2.2.11 Appraiser Preparation

The appraiser is responsible to ensure that all property and ownership information necessary to perform the assignment has been provided. Contact UDOT project staff if needed information is absent or if it appears to be incorrect. The appraiser will review the ownership report and the project plans early in the assignment. Resolve any uncertainties by consulting with project staff. For instance, the appraiser should clarify whether fencing or landscaping removed for the project will be replaced as a construction contract item or be considered in the valuation as property acquired.

The appraiser may be expected to attend one or more meetings with UDOT project staff including a right of way team meeting. This will assure a common understanding of the project and the schedule. The meetings will also provide an opportunity to resolve
uncertainties and will enable the appraiser to complete the assignment efficiently and consistent with the mutually approved “scope of work.”

2.2.12 Appraisal Standards

Appraisals prepared for UDOT will primarily comply with requirements of 49 C.F.R. 24.103. The USPAP is subordinate to the Federal URA regulatory requirements but criteria of each are considered to be consistent. The appraiser will advise UDOT in advance if an assignment will require departure from USPAP standards or if there is a problem or conflict in application of the standards. This should be accomplished during the appraisal “scope of work” process. There must be full compliance with 49 C.F.R. 24.103 of the URA regulations using the USPAP jurisdictional exception procedure if necessary to remain compliant with those standards.

UDOT does not use a standard appraisal form. The presentation and organization of data in the appraisal report will be addressed in the appraisal “scope of work” or may be deferred to the judgment of the appraiser. UDOT may request a change in presentation or organization of reports if it will facilitate review or more clearly demonstrate the appraiser’s reasoning in support of value conclusion.

Following are criteria that apply specifically to appraisals prepared for UDOT and will be included in the appraisal “scope of work”:

1. **Report**
   The report body will be clipped with attachments and addenda presented separately. Special bindings or fastenings are not desired as they must often be removed to conserve file space. Three signed and dated report copies will be submitted unless otherwise advised at time of assignment. Submit an electronic copy of the appraisal by electronic mail or on a CD with a proper naming sequence as determined by the department. Each page in the report body must include a footer with the page number, Project Number, Pin, and Parcel Number.

2. **ePM Data Sheet**
   All appraisals must include an ePM data sheet completed with the allocated values.

3. **Floor Plan**
   The appraiser will include a floor plan if the property is improved with a residence, even if the improvements have, in the opinion of the appraiser, no contributory value.

4. **Form appraisal for “relocation purposes”**
   The appraiser is required to include a form appraisal for “relocation purposes” for owner occupied residential property to determine the hypothetical value (if the Highest and Best Use of the property is not as
improved for single family residential use) of the residence on a “typical residential site”. The appraiser will be required to provide an opinion of value in such cases for the residential improvements including the value of all out buildings, site improvements, and the hypothetical land value of a “typical residential home site if and when requested to do so. Typically, the appraiser will be asked to do so when the home is directly impacted by the project to the extent that the acquisition will cause the owner occupant to be displaced.

5. Rental and or Listing Data
The appraiser is required to include an opinion of the market rent for the subject property and comparable “for sale” listing information for Relocation Purposes when included in the scope of work.

6. Photographs
Color prints will be utilized and included in the report. Each photo must be indexed or labeled to indicate the acquisition area, improvements acquired, perspective from the existing highway or centerline of a new alignment, and the direction of each view. Project, parcel and pin number, ownership name, and the date taken will be identified on the index sheet or photo pages. Interior photos will also be included if the improvements are being acquired. The pictures should be representative of the condition of the property. Take photos of problem areas to document the damage if there are noted deferred maintenance or damage issues. Photos must be unaltered and unedited.

7. Qualification Statement
The appraiser’s current qualifications statement should be on file with UDOT. It is not necessary to include a qualifications statement with each appraisal.

8. Certification
The appraiser will provide a signed certification form and a Utah Appraisal Certification Number.

9. Inspection of Sales
UDOT requires that the appraiser state whether the sales used to determine value were personally viewed. The appraiser should indicate whether or not they were inspected internally or externally only.

10. Confirmation of Sales
The appraiser will state the manner by which sales information was confirmed. Confirmation by direct contact with buyer or seller is recommended but cannot always be performed. The appraiser will verify information with a knowledgeable party such as a real estate broker or attorney involved in the transaction. Appraisers are responsible for independently verifying information provided by people who were not parties to the transaction.
11. **Sales Map**  
The appraiser will provide a map indicating the location of comparable sales.

12. **State Rule**  
UDOT follows the “State Rule” and not the “Federal Rule” when valuing property to be acquired.

13. **Measure of Damage – Partial Acquisition**  
The measure of compensation resulting from a partial acquisition of property is the difference between the fair market value immediately before the acquisition and the fair market value of the remaining property after the acquisition. All elements that will diminish or enhance the market value before and after will be considered.

14. **Home or Property Inspections**  
UDOT may require a property improvement inspection by a Certified Property Inspector if the appraisal assignment includes the valuation of improvements. UDOT will notify the appraiser that an inspection has been ordered if applicable. The appraiser will then be given a copy of that report. The appraiser will read the report and consider the findings of the inspector in the appraisal report upon receipt. The appraisal report must acknowledge that the report was read and further state that the property was valued based on its actual existing “as is” condition. The Inspection Report must be included in the Appraisal Report as an addendum to that report.

15. **General and Special Benefits**  
Address all appraisals of partial acquisitions.

16. **Conflict of Interest Statement**  
Agents who perform ACEs, appraisers, and review appraisers have a responsibility to avoid actual and perceived conflicts of interest. UDOT requires every Right of Way Consultant to complete a conflict of interest statement prior to commencing work for UDOT on a UDOT project. The Conflict of Interest form is available as a downloadable document from the UDOT Right of Way website and will be provided to each consultant who is hired or assigned a Right of Way task associated with a UDOT transportation project. (See section 2.4.2 for more Conflict of Interest information).

2.2.13 **Benefits**

2.2.13.1 **General Benefits**

General benefits are those benefits that accrue to the community at large, to the area adjacent to the improvement, or to other property situated near the acquired property. These are not specific to individual properties but to the whole area near the project and
are not offset against any estimated damages to remaining property where a partial acquisition has occurred.

2.2.13.2 Special Benefits

Special benefits will be offset against severance damages but not against the value of the property acquired. Special benefits occur when the property remaining after a partial acquisition is enhanced by reason of the public improvement. An example is an acquisition from a single ownership for an Interstate highway interchange. The proposed interchange is totally within one farm ownership. Three of four remainders are at interchange ramp quadrants and are converted from a highest and best use as farmland to motel and restaurant locations. The enhancement value is set off against damages occurring to a fourth remainder. The property owner is paid the full value of the land acquired for the interchange. Special benefits occur infrequently. The appraiser should consult with UDOT for guidance if or when special benefits are recognized.

2.2.14 Property Contamination

The appraiser will advise UDOT project staff of any observations that may indicate contamination either on the part to be acquired or on remaining property. UDOT may make specialized examinations to evaluate conditions and determine remediation cost. The issues affecting compensation will be addressed in the appraisal report if applicable. Typically, the appraiser should value property as free from any contamination or environmental hazards.

2.2.15 Increase or Decrease In Value Due to Project Influence

Any decrease or increase in the fair market value of real property before the date of valuation caused by the highway project for which the property is acquired or by the likelihood that the property will be acquired will be disregarded in determining the compensation for the property. This does not apply to physical deterioration within the reasonable control of the owner. This requirement of the Federal Uniform Act is intended to prevent either a financial reward or a hardship from occurring to an owner as a result of the acquisition.

2.2.16 Cost to Cure Items

Physical damage to property may be valued on a cost to cure basis. Items that may be considered for cost to cure may include reconnected utilities, fencing, relocation or replacement of walkways, steps, handicap ramps, septic systems, drives, etc.
The appraiser will state the basis for any cost to cure estimate and the source of information used. This may be based on consultation with a named contractor, published cost service, reference to the cost of recent similar work, advertised installed prices, or application of unit costs confirmed locally. The appraiser’s estimate will be based on the estimated cost the owner will incur by hiring a qualified local contractor to perform the entire job, including any incidental expenses.

2.2.17 Opportunity for Owner to Accompany Appraiser

The appraiser will offer an opportunity for the owner or a representative to accompany the appraiser during an on-site inspection of the property. This contact may be accomplished by phone, email or by letter with a follow-up phone contact. The appraiser will record the date and the manner of the owner contact and the response that was received. This action is required by Utah Code Section 57-12-13(2) and by a similar provision in the Federal Uniform Relocation Assistance and Real Property Acquistion Act.

The appraiser will send a certified letter to the owner’s last known address if the owner cannot be contacted for any reason or the owner is not responsive. The appraiser will record all efforts to contact the owner and advise the Right of Way Lead Agent that though attempts were made to contact the owner, they were unsuccessful.

2.2.18 Uneconomic Remnants

An uneconomic remnant is a real property remainder after a partial acquisition that is determined by UDOT to have little or no value or utility to the owner. UDOT will offer to acquire any uneconomic remnant along with the part of the property needed for the project.

The property owner may be allowed by UDOT to retain ownership of an uneconomic remnant but if the property owner does not elect to retain ownership, UDOT will acquire the uneconomic remnant in accordance with the reviewed and approved appraisal.

It is important to note that an uneconomic remnant may have utility, market value, or both. The test is whether a remainder has utility or value to the present owner. The before-value remains the same whether or not the remainder is considered uneconomic.

Identify potential uneconomic remnants as early as possible in project development. The identification of and determinations relevant to uneconomic remnants should also be appropriately addressed in the appraisal scope of work. The agent who performs the general cost estimate should be alert to the presence of possible uneconomic remnants. Uneconomic remnants may be identified at any phase of the project including after negotiations for acquisition are initiated. The Review Appraiser or Right of Way Lead
Agent will determine or confirm that a remainder is an uneconomic remnant. The appraised value of the remnant will be recorded as part of the Appraisal Review.

### 2.2.19 Tenant-Owned Improvements

Buildings, structures, or improvements to real property that are owned by tenants may not be included in the appraised value of the property acquired unless the terms of the lease or circumstances of the property issues dictate that they should be appraised as a unit. Tenant-owned improvements will be listed individually in a separate analysis and appraised as to their contributory value to the property in most circumstances. The appraiser may be asked to estimate the salvage value of the tenant improvements in some cases.

Tenant-owned improvements need to be identified by appraiser during the appraiser’s property inspection. A dispute in regard to the ownership of certain items between the landowner and a tenant should be reported by the appraiser to the Right of Way Lead Agent. The Right of Way Lead Agent will instruct how these items should be treated in the context of the appraisal scope of work.

The appraiser will be asked to meet with the UDOT Relocation Agent and the Property Owner or the Owner’s representative in some instances, as noted in the scope of work, before the completion of the appraisal report to be sure that there is consensus among the parties in regard to the classification of the items as real property, personal property or trade fixtures.

### 2.2.20 The Appraiser and Quality of Service to Property Owners

The appraiser, as one of the first people representing UDOT to contact the property owner, is in a position to favorably influence the owner’s attitude toward UDOT and ultimate settlement. The owner may have previous knowledge of the project from public meetings or “across the fence” conversations with neighbors or other informal sources. This may have generated concerns and anxieties that will be evident when the appraiser contacts the owner. The appraiser’s tact, openness, and professionalism can relieve these stresses. The appraiser is not in a position to answer all questions but can assure the owner that concerns will be passed on to Project Team staff that will address them.

The appraiser can relate the project purpose and approximate schedule while explaining that schedules are subject to change. The appraiser can explain the acquisition by reference to the plan sheet and relate certain highway features such as edge of pavement, new right of way line, etc. to remaining features on the property. The appraiser can explain what the stakes indicate if the property is staked. The appraiser can explain how existing driveways will be tied in to new construction if the
plans show a grade change. It is important for the appraiser to briefly explain the appraisal process. Some owners may be reassured that the appraisal is an objective and independent analysis. The appraiser is legally and ethically bound to objectivity and independent judgment. There is no predetermined budget that controls right of way acquisition costs. The appraiser will estimate value based on analysis of market data and is not influenced by UDOT in setting value. The Uniform Relocation Act Section 301(4) requires that property owners be offered no less than the UDOT approved appraisal of fair market value.

The owner’s concerns about the project or its impact to their property must be reported in the appraisal. The appraiser should exercise extreme caution when discussing anything with the owner directly including specific concerns raised by the owner. The appraiser should only collect the information provided by the property owner and should not respond to or comment on the issues raised. The acquisition staff can address these matters with the aim of removing obstacles to amicable settlement.

2.2.21 The Appraiser’s Certification

The Appraiser’s Certification must be signed, dated, and attached to each delivered appraisal report. The Certification is the appraiser’s testimony as to the factual basis of information, absence of conflicts of interest and undue influence, confidentiality of findings and results, and compliance with controlling laws and regulations. The appraiser is responsible for advising the UDOT Review Appraiser of any element that cannot be certified and the reasons.

2.3 APPRAISAL REVIEW

2.3.1 Appraisal Review – General

The appraisal review function is an integral part of the valuation process. An estimate of fair market value by the appraiser serves as the basis of UDOT’s approved appraisal and Offer of Just Compensation on complex acquisitions. The property appraisal must be reviewed and recommended by a staff or consultant review appraiser. The appraisal is approved and the amount of just compensation is then determined by the staff Review Appraiser or other UDOT official before the initiation of negotiations to acquire property or the acquisition by Eminent Domain. Consultant review appraisers will be expected to recommend an appraisal for approval but will not be assigned responsibility for approving the appraisal or determining just compensation which must be done by an official of UDOT.

The assigned Review Appraiser performs the primary quality assurance role in addition to the determination of just compensation. The Review Appraiser conveys and interprets appraisal policy, participates in the development of the appraisal scope of
work, evaluates appraisal assignment performance, and provides information to the Right of Way Lead Agents, and the Director of Right of Way. The Review Appraiser will ensure consistency in unit values applied to land of equal utility throughout valuations on a project. The assigned person will also advise on the designation of uneconomic remnants and will advise appraisers and Right of Way staff on elements of damage or value that are not compensable under Utah law.

The Review Appraiser must remain independent and be free of undue influence or conflicts so that fair market values are consistent with Utah law and based on objective and informed professional judgment.

The Review Appraiser assures appraisal integrity and advances the programmatic goals of UDOT concerning valuation and just compensation.

2.3.2 Review Appraiser Qualifications

The Review Appraiser performs an oversight as well as an operational role in the valuation process. These roles require expert knowledge and communications skill. The Review Appraiser will be certified by the Utah Department of Commerce, Division of Real Estate, as qualified to appraise at the level of the appraised property under review.

The Review Appraiser regardless of the complexity of the appraisal issues, must be familiar with professional appraisal standards, UDOT policy, Federal regulations concerning appraisals, Utah law, and court decisions concerning compensability. UDOT may retain the services of consultant Review Appraisers to meet anticipated heavy workload demands or to provide specialized expertise. The consultant contract may pertain to a project, an area, or a period of time. The Consultant Review Appraisers will have the same responsibilities and authority as corresponding Staff Reviewers, except they can only recommend the acceptance of an appraisal and prepare the appraisal review report. Consultant Review Appraisers will not be authorized to approve just compensation to be offered to the property owner. This must be done by an authorized UDOT official.

Review appraiser qualifications will be analyzed in relation to the appraisal review assignment in much the same manner as it is done for appraisers as set out in Section 2.1.6 of this Manual. Similar considerations will also be applied to the employment of consultant review appraisers.
2.3.3 Project Review Appraiser Assignment

Review appraisers are assigned to projects by the Right of Way Lead Agents. Assignments are made on the basis of availability, level of experience with the type and complexity of properties being appraised.

Consultant review appraisers can be assigned in a similar manner to that of staff review appraisers providing that they too have the required training and experience.

2.3.4 Review Appraiser Responsibilities

Review Appraisers have technical and administrative responsibilities concerning property valuation. The primary function is establishing that the appraisal represents supported fair market value on properties to be acquired. The staff Review Appraiser approves “just compensation” except in Eminent Domain cases where that role is performed by the District Court.

The Review Appraiser may be assigned responsibility for the following actions and determinations on appraisals or other valuation documents:

1. Examine analysis and presentation of data to ensure that all appraisals submitted to UDOT contain the necessary documentation and address the issue of factual accuracy.
2. Ensure that all appraisal requirements are met as set out in Federal regulations 49 C.F.R. 24.103-104 and that the work product meets the appraisal definition in Federal regulations 49 C.F.R. 24.2.
3. Ensure that the Appraiser’s value conclusion contains only value and damage elements that are compensable under Eminent Domain in Utah.
4. Maintain adequate parcel and project records of the status of appraisals.
5. Secure corrections or addendums from appraisers to resolve omissions or errors noted in review.
6. Resolve divergent or conflicting appraisal conclusions when more than one appraisal is involved. The Review appraiser should not attempt to substitute his or her own judgment for that of the appraiser unless they are willing and able to develop opinions of value and become the agency’s appraiser of record. Appraisal reviewers must recognize that technical deficiencies can be found in nearly every appraisal report. Minor technical nonconformance with UDOT or Federal requirements or USPAP standards should not be the cause of disapproval of an appraisal report unless the deficiency affects the reliability of the value estimate or the value estimate itself. Minor technical non-conformance with these requirements or standards should never be used as an excuse to reject a report when the underlying reason for rejections is the reviewer’s differing opinion of the market value of the property appraised.
7. Approves or disapproves the appraisal as to fair market value of the part acquired and damages to the remainder.
8. Approves or disapproves the salvage value for improvements or structures that will be retained, sold back to the former owner, or sold for removal.
9. Approves or disapproves the contributory value for any tenant-owned improvements.
10. Approves or disapproves the cost to cure of elements of physical damage.
11. Approves or disapproves Specialty Appraisals to determine the contributory value of the specialty items to the value of the whole property.
12. Reviews appraisal reports secured and submitted by property owners, secured for court purposes, or ordered by the Utah Private Property Ombudsman.
13. Recommend action on proposed settlements above the established estimate of value.
14. Prepare parcel valuation documents and project summary reports.
15. Advise on borderline decisions as to appropriate valuation format (ACE or appraisal) to use in valuing property.
16. Evaluate appraisal quality on a project or program basis.
17. Review project right of way cost estimates and project appraisal fee estimates.

The Review Appraiser has administrative responsibilities in addition to the above that include maintaining well organized project valuation files, monitoring appraisal assignment due dates, and coordinating with the assigned Right of Way Lead Agent and or other Consultant Agents to assure timely delivery of the Offer of Just Compensation.

### 2.3.5 Property Inspection

The Review Appraiser must be personally familiar with the project area either from previous assignments or by inspections conducted specifically for the appraisals under review.

The Review Appraiser for non-complicated appraisals is not required to complete a field inspection or on-site review of the project. The Review Appraiser for non-complex appraisals should be familiar with the project, the project area, and the comparable sales as needed.

The Review Appraiser for other than non-complicated appraisals ideally should complete a “field inspection” or an on-site review of the project, the property appraised, and the major comparable sales as needed. The inspection should be performed as close as is feasible to the time the property is appraised. Earlier inspection just prior to
appraisal assignment will suffice if there are no indications of significant physical change in the property or the market influences in the area of the project.

Appraisal Reviews for complicated and non-complicated appraisals may be accomplished without a property inspection on non-complex projects in remote locations if the Review Appraiser is familiar with the area from previous projects. The Reviewer will rely on previous knowledge, the information contained in each appraisal, and other reliable sources.

The reviewer should communicate within the scope and certification of the review if a field inspection is not made.

The scope of review including the reviewer's inspection of properties should be approved and discussed with the Right of Way Lead Agent.

2.3.6 Appraisal Desk Review

The Review Appraiser for complicated and non-complicated appraisals will check the appraisal for documentation and accuracy as soon as possible after receipt of the appraisal and before making a determination of value. The purpose of the desk review is to ensure that the appraisal contains all required elements under UDOT requirements and USPAP standards and that factual information and mathematical calculations are correct. The Reviewer will promptly inform the appraiser of any errors or omissions revealed by the desk review.

2.3.7 Required Actions by the Review Appraiser-Appraisal Review Report

The review appraiser has three options in reporting the review:

1. Recommend it for approval as the Agency’s approved appraisal of the fair market value.
2. Accept the appraisal as complying with all requirements. This option should be used when there are multiple appraisals on a property and more than one meets all requirements. The review appraiser can accept two or more appraisals and recommend one.
3. The review appraiser who finds a UDOT ordered appraisal “unacceptable” should work with the appraiser to obtain an acceptable appraisal. The reviewer may reject the appraisal in the event the review is unsuccessful.

UDOT authorizes the staff review appraiser to approve the appraisal as the basis for the Agency’s establishment of the Offer of Just Compensation as part of the review and the written report. The staff review appraiser has the authority to develop and report the amount believed to be just compensation. The review appraiser formally categorizes the assessment of each report in the written appraisal review report and recommends or approves one report.
The consultant review appraiser can only recommend the appraisal be approved by the agency.

Approval of the appraisal is a meaningful term because the URA refers to the “approved appraisal” as being necessary for supporting the determination of the amount believed to be just compensation.

There is no direct requirement that a reviewed and accepted Agency appraisal automatically be the approved appraisal even if it is recommended for approval. An example situation is where the property owner’s appraisal is determined to be approved after agency appraisal review.

The review appraiser has a critical and powerful role in the acquisition process. He or she represents UDOT’s needs and interests to the appraisal process and represents and sometimes defends legitimate appraisal practice to the Agency.

The review appraiser is expected to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser’s development of an acceptable appraisal if the initial appraisal submitted for review is not acceptable. The review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

UDOT’s requirements allow the review appraiser to develop an independent approved or recommended value if the review appraiser is unable to obtain an acceptable appraisal from the appraiser. The review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, even an otherwise unacceptable appraisal. The review appraiser may independently present or analyze market data. The review appraiser must comply with § 24.103 of the URA appraisal requirements. Please see Section 2.3.13 of this Manual for additional discussion of this topic. The reviewer must also comply with USPAP requirements.

The independent value also becomes the approved appraisal of the fair market value for Uniform Act purposes when a review appraiser develops an independent value. It is within UDOT’s discretion to decide whether a second review is needed if the first review appraiser establishes an independent value.

Agency review appraisers typically perform a role greater than technical appraisal review. Those review appraisers who are licensed as Certified General Appraisers are often involved in early project development. Later they may participate in making appraisal assignments to fee or staff appraisers and be involved in devising the scope of work statements. They may also be mentors and technical advisors to staff and fee
appraisers especially on Agency policy and requirements. Review appraisers are frequently technical advisors to other Agency officials.

2.3.8 Approval of Just Compensation

Approval of just compensation is the primary mission of the Right of Way Lead Agent, the appropriate Deputy Director of Right of Way or the Director of Right of Way. Just compensation is established only after checking the appraisals for factual accuracy and evaluating the appraiser’s analysis and value conclusion as discussed in Section 2.3.4. The just compensation amount will be based on the total body of information available to the Right of Way Lead Agent not exclusively on the Appraisal Report. An independent determination will be performed as provided in Section 2.3.13 if the Right of Way Lead Agent or others who are reviewing the reviewed appraisal is led to a value conclusion that significantly differs from the appraisal value.

A local agency or other subgrantee must retain the approval of just compensation for local agency or other subgrantee projects. The approval must be performed by an official from that agency and may not be delegated to a consultant agent.

The approved just compensation amount will be entered on the cover sheet of the Appraisal Review once the appraisal has been reviewed and approved by the assigned staff or consultant Review Appraiser. The designated staff person will sign and date the approval of just compensation where indicated on the approval stamp.

2.3.9 Specialty Appraisal Reports

A specialty report is a valuation of some aspect of the property that is unique such as machinery, equipment, mineral rights, forestation, etc. Specialty items are not expected to be within the expertise of the appraiser assigned to value the property. UDOT will employ a specialist to value items when specialty property is included in the acquisition. The specialist report will be provided directly to the Right of Way Lead Agent who will review it for meeting contract requirements. The report will then be provided to the real estate appraisers who will consider it in determining the contributory value of the specialty property to the value of the whole. The amount in the specialty report will not be added to the real property value without consideration of the contributory value. The appraiser will attach the specialty report to the property appraisal report for submission to UDOT.

2.3.10 Corrections or Revisions

The Review Appraiser will notify the appraiser of any needed appraisal corrections, modifications, or revisions and set a reasonable date for an expected response.
2.3.11 Multiple Appraisals

UDOT may secure two or more appraisals to establish value on a property. This is done when the acquisition is highly complex, a high value is expected, or if there is an issue as to the highest and best use of the property. All appraisers should be given the same scope of work information on the assignment when multiple appraisals are secured. The Review Appraiser should hold a pre-appraisal meeting with appraisers to assure a common understanding of the scope of work, the appraisal problem, and identify differences in perspective that will have to be resolved in reviewing the completed appraisals.

2.3.12 Resolving Divergent Opinions of Value

One of the Review Appraiser’s most important responsibilities is to resolve or reconcile divergent value conclusions among appraisals of the same property. The analysis and judgment of the Review Appraiser is a key element in reaching a sound supported estimate of fair market value that will be the basis for an amicable settlement with the owner.

Widely divergent value conclusions may arise from differences among the appraisers on one or more of the following appraisal elements:

- Highest and best use of the property
- Utility or economic use of the remaining property
- Adjustments to comparable sales
- Personal vs. real property decisions
- Selection of comparable sales
- Selection of capitalization rate if income approach is used
- Judgments as to age of the improvements, potential of zoning change, leases, encumbrances, etc.

The Review Appraiser should clearly identify the basis for the difference in appraisal values and explain, reconcile, or resolve the divergent views. One or all appraisers may be contacted to discuss divergent elements. The Review Appraiser should not challenge the appraiser’s judgment. The objective is to explore and fully understand the appraiser’s reasoning, and to determine whether the appraisers have considered specific elements that the Review Appraiser considers relevant to value. The Review Appraiser should make notes of information provided by the appraiser during the contact or ask the appraisers to submit supplemental supporting information or analysis that will better explain the appraisal value conclusion.

The Review Appraiser will request the appraiser submit correction or reanalysis as appropriate if the value differential among appraisals is due to factual error, omission,
faulty analysis, or reasoning. Faulty reasoning means defect in logic or failure to provide complete reasoning not merely a difference in judgment between the appraiser and the Review Appraiser.

Differences in appraiser judgment as to highest and best use may occur in locations that are undergoing transition in land use due to population growth or economic activity. The Review Appraiser is the final authority in determining highest and best use after fully understanding the basis for contrasting appraisal judgments. The Review Appraiser should consider the current or currently zoned use as being the most likely highest and best use unless there is a specific compelling reason for a different use including the probability of rezoning the parcel. This would be supported by citing a master plan for the municipality or county in most cases.

The Review Appraiser may decide that differing value conclusions are not reconcilable after examining the appraisals and conferring with appraisers, as appropriate but they are both approvable and reflect a reasonable range of expert judgment. It is the Review Appraiser’s responsibility to determine which appraisal or amount within the range best represents just compensation for the acquisition. The Review Appraiser may determine fair market value within the range of the appraisals based on experience and explained judgment. The fair market value may reflect factors such as consistency with unit values established for other properties acquired or knowledge of recent settlements that may have established a pattern in unit value for the type of land acquired. The Review Appraiser will explain the basis for the fair market value conclusion in the appraisal review report stating the differences between the appraisals, efforts to resolve differences, and the reasoning for establishing fair market value at the concluded amount.

The Review Appraiser may recommend that UDOT obtain an additional appraisal to resolve the divergence between two or more appraisals. This is done only if there is a reasonable expectation that the new appraisal will help resolve differences in compensation. There is the possibility that the new appraisal will differ significantly from the previous ones and result in greater divergence.

2.3.13 Review Appraiser’s Independent Determination of Value

The Review Appraiser will determine and support an independent conclusion of value if it is not in agreement with the appraiser’s opinion of value. The Review Appraiser will confer with the appraiser in an effort to better understand reasoning and reconcile views before making an independent determination. The Review Appraiser will respect the appraiser’s professional responsibility to independent judgment and not apply undue influence to change a value decision.
A Review Appraiser’s determination of value may be based on value information provided by others and further supported by market information and analysis performed independently by the Review Appraiser. The review appraiser may also estimate a new value based on an analysis of the original appraiser’s data. A change in the market value estimate must be supported by written analysis by a certified general appraiser. A Review Appraiser’s independent determination will be supported to the same extent as would be required in the original appraisal.

An appropriate qualified Review Appraiser will recommend the independent determination on the review report stating the basis and documentation for the determination.

2.3.14 Review Appraiser’s Certification

The Review Appraiser will sign and date a certification statement for each parcel that states the following:

1. I (did or did not) make a personal inspection of the property that is the subject of the report under review.

2. I have no present or prospective interest in the property that is the subject of this review report and I have no personal interest or bias with respect to the parties involved.

3. The statements of fact contained in this review are true and correct to the best of my knowledge and belief.

4. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions stated in this review report and are my personal and unbiased professional analyses, opinions, and conclusions.

5. The person signing this review report received no significant professional appraisal review assistance.

6. My compensation is not contingent upon any action or event resulting from the analyses, opinions, or conclusions in or the use of this review report. My engagement in the assignment was not contingent upon developing or reporting predetermined results.

7. My analyses, opinions, and conclusions were developed, and the review report has been prepared in conformity with the USPAP.

2.4 ADMINISTRATION AND SPECIAL TOPICS

2.4.1 General

Valuation encompasses a broad range of activities that involve several functions in the project development process. The Relocation Program sometimes requires estimates of economic rent or the contributory value of certain external attributes of an acquired
property. Property management sometimes needs valuation of surplus property and uneconomic remnants. Project development requires preliminary cost estimates ("shotgun" estimates), of right of way costs to develop a project budget. Valuation also involves administrative requirements imposed by law, UDOT policy or standards of professional practice. This Section addresses these interactions and requirements.

2.4.2 Conflict of Interest

Agents who perform ACEs, appraisers, and review appraisers have a responsibility to avoid actual and perceived conflicts of interest. This is necessary to retain the highest level of public trust and confidence in UDOT and its right of way acquisition program. All who perform valuation services will be guided by the following whether staff or contract personnel:

1. No person involved in valuation will have any personal interest, direct or indirect, in real property in which that person is assigned to appraise or value.

2. Compensation for making an appraisal or estimate will not be based in any way on the amount of the valuation.

3. No person involved in appraising a property or establishing value may be involved in negotiating settlement for that property. This does not apply to Administrative Compensation Estimates of $10,000 or less nor when properties are appraised for $10,000 or less.

4. An appraiser or Review Appraiser will not engage in any business association with a person whose property is appraised or valued by that person.

5. A person involved in property valuation for UDOT will not acquire interests in real estate abutting or within the zone of economic influence of a contemplated highway improvement about which that person could be presumed to have special knowledge because of employment.

6. Conflict of Interest Statement

UDOT requires every Right of Way consultant to complete a conflict of interest statement prior to commencing work for UDOT on a UDOT project. The Conflict of Interest form is available as a downloadable document from the UDOT Right of Way website and will be provided to each appraiser who is hired or assigned an appraisal or other Right of Way task associated with a UDOT transportation project.

UDOT and Federal requirements now preclude appraisers, review appraisers, and those that prepare compensation estimates from being supervised by or having their performance evaluated by a person functioning as a negotiator. The purpose of this requirement is to assure these individuals are protected from inappropriate pressure in the performance of their valuation duties.
It is a responsibility of the individual involved to disclose potential conflicts of interest to UDOT. Such conflicts can be easily resolved by adjustments in work assignments.

2.4.3 Compliance with Civil Rights and Nondiscrimination Requirements

The real property valuation process is subject to the following Federal laws and Executive Orders pertaining to civil rights and nondiscrimination:

- **Section I of the Civil Rights Act of 1866.** (42 U.S.C. 1982, et seq.)
- **Title VI of the Civil Rights Act of 1966.** (42 U.S.C. 2000d et seq.)
- **Title VIII of the Civil Rights Act of 1968.** (42 U.S.C. 3601 et seq.), as amended
- Executive Order 11063. Equal Opportunity and Housing, as amended by Executive Order 12259
- Executive Order 11246. Equal Employment Opportunity
- Executive Order 11625. Minority Business Enterprise Executive Order 11988
- Executive Order 12250. Leadership and Coordination of Non-discrimination Laws
- Executive Order 12259. Leadership and Coordination of Fair Housing in Federal Programs
- Executive Order 12630. Governmental Actions and Interference with Constitutionally Protected Property Rights
- Civil rights compliance requirements in Section 1.6.2 of this Manual

2.4.4 Non-Compensable Items

The following value elements are not compensable as acquisition items under Utah or Federal law. Several items are addressed in the Relocation Program. The appraiser will not include any of the following items as elements of damage on Appraisal Reports submitted to UDOT:

1. Removal cost of personal property (may be paid as relocation cost)
2. Cost of replacement residential premises exceeding the value of the old premises (may be paid as a relocation cost)
3. Business or income opportunity loss
4. Business interruption
5. Inferiority of new location
6. Non-availability of acceptable replacement location
7. Loss of goodwill
8. Damages from loss of contracts
9. Owner inconvenience
10. Diminishment or loss of air or light exposure
11. Decrease in value of business on premises
12. Value to owner as opposed to market value
13. Damages due to the exercise of police power such as traffic restriction due to detours during construction or installation of traffic control devices as part of the highway project
14. Circuitry of travel (a business does not have a proprietary interest in the traffic passing its site)

2.4.5  Personalty-Realty Determinations and Report

The personalty/realty report is another appraisal requirement in UDOT requirements and federal regulations at 49 C.F.R. 24.103(a)(2)(i) that should be addressed in the context of the appraisal scope of work. The scope will develop parameters for the implementation of this requirement. This report must address creating an inventory of both personalty and realty items.

It is critical to achieve a responsible allocation of what is realty and what is personalty. The allocation will drive what is acquired versus what is relocated. Confusion and duplicate payments can result from situations where items acquired and owned by the agency are relocated at an additional unnecessary expense if this is not sorted out correctly. The determination of realty/personalty items as part of the appraisal process ensures proper handling of such items. The result is fair compensation or reimbursement of relocation expenses to the owners of the respective items. UDOT legal counsel should be consulted if there are any questions as to the status of a given item.

An on-site meeting of the appraiser and relocation staff is essential to accomplishing this process in some cases. The result is then included in the appraisal report and serves as a guide in this area for the balance of the acquisition process.

The appraisal report should include only the value of real property. The landowner or tenant retains ownership of personal property and is reimbursed under the Relocation Program for moving it from the acquisition site. The distinction between real and personal property may not be evident from observation. This arises most often on business property where there is installed shelving, machinery and business equipment, and fixtures that were installed for a specific business use. The decision as to real versus personal property should be made before the appraisal is assigned if possible, usually as part of the appraisal scope of work development. The appraiser should identify the items which are controversial or hard to classify if questions arise during the appraiser’s inspection of the property. Personalty/Realty decisions may be referred to the Review Appraiser for decision if they arise after an appraisal is assigned. The appraiser and Review Appraiser may need to discuss these items with the property owner/lessor and the property occupant/lessee/tenant if the property is occupied by people or businesses that may claim ownership of these items.
The Review Appraiser will apply the following general criteria in distinguishing real from personal property:

- Apparent intention of the parties when the property was installed on the site as to whether it would be ultimately removed
- Permanence of fixture of the property to the site
- The degree of potential damage to the site or the building that would result from the removal of the item

The UDOT counsel will be consulted if the Review Appraiser cannot resolve the status of items by application of the above criteria.

Determinations on property status as either personalty or realty will be promptly relayed to the appraiser and to the UDOT Relocation Agent. It is essential for the appraiser to receive this information in a timely manner so that he or she can appropriately prepare the Realty/Personalty Report as required by the assignment.

### 2.4.6 Design Changes

Appraisals are assigned after plans have been developed that identify the properties, acquisition areas, and the type or rights to be acquired. The highway design may be modified later in project development and the valuation must be adjusted to conform to the revised acquisition areas. The Review Appraiser will discuss design changes with the Right of Way Lead Agent. The appraiser will be provided a revised plan sheet and will modify the appraisal accordingly if the acquisition type or area is changed. The revised plan and valuation will be provided to all right of way staff that are affected, including property management and relocation staff.

Fee appraiser compensation may be increased to reflect additional work actually performed unless there is a provision in the Appraisal Engagement Letter.

### 2.4.7 Project Cost Estimates

A preliminary or “shotgun” estimate of right of way costs is prepared during the concept stage of project development. The estimate may be updated as needed during project development to reflect alternative alignments or design modifications. The Right of Way Lead or other experienced Right of Way staff person will perform the estimate. The estimate may be contracted to a fee appraiser or Consultant Lead Agent, on approval of the Director or appropriate Deputy Director of Right of Way.
2.4.8 Valuation in Support of Relocation and Property Management

Valuation services are needed in support of some relocation and property management activities as follows:

- Value estimates or appraisal of surplus property
- Estimate of market rent to be charged in lease of UDOT-owned property
- Estimate of economic rent of an owner-occupied dwelling in support of a rental replacement housing payment determination for relocation
- “Carve outs” or allocations of the appraised value for major exterior attributes or excess land etc. for the determination of the “base value” to be used in calculating relocation replacement housing payments
- Value estimate of a single-family residence on a “typical residential site including the curtilage” even if the residence is determined by the appraiser to have no contributory value. This is commonly needed for relocation purposes when the Highest and Best Use of the subject property is determined to be a Commercial or Industrial Use.
- Determination of the area/size which constitutes the typical residential site including the curtilage, (noted above) and the residential value attributable to that site assuming that it has residential value. (These assumptions and estimates may be necessary for the determination of the Relocation Base Value.)

The need for valuation services for other functions other than property acquisition will be coordinated through the Right of Way Lead Agent. UDOT appraisal staff may perform these services or contract the service to an outside appraiser.

2.4.9 Project Data Book

UDOT does not require appraisers to submit a project data book in support of an appraisal assignment. This topic is addressed here to provide a guidance framework should a need for a data book occur because of special project circumstances.

The project data book is an accumulation of relevant market data that is relevant to a group of parcels that have common characteristics. All appraisers and staff or consultant agents performing Administrative Cost Estimates on the project share the data book and use the data in the manner that they individually decide is warranted in completing their appraisal or waiver valuation assignments if a data book is created. Appraisers are not limited to use of information in the data book and are not required to draw from the data book in performing appraisals.

The development of a data book is warranted if it is effective in reducing appraisal costs and if it will result in better documented and supported value determinations. The concept provides for staff or fee agents to assemble project area sales information that will be applicable to parcels on a project. This will reduce the level of effort and cost of
this information being researched independently by several appraisers assigned to a project.

The project data book may develop unit value factors for homogeneous property such as agricultural land of a specific utility and productivity. It may also contain cost data for simple improvements including fencing. The data book will present raw sales data with no analysis beyond categorization as to land type or highest and best use.

The following items are appropriate to include in a project data book:
- Project neighborhood description
- Summary of economic impacts of acquisition on adjoining property and analyzed land sales data
- Improved property sales (unanalyzed)
- Unit values for land derived from an adequate number of sales that will be applied to acquisitions on the project
- Cost to cure of minor improvements such as fencing and minor landscaping items
- Before-condition photos of all parcels

It is assumed that UDOT staff agents will extract the sales data from actual appraisals that are performed by UDOT staff appraisers or consultant appraisers. The data book may be in the form of a shared spreadsheet which will be accessible to staff and consultants who may need to prepare Administrative Cost Estimates, Preliminary Cost Estimates (shotgun estimates), or Appraisals.

### 2.4.10 Determining Appraisal Fees

An estimate of appraisal fees is included in the initial preliminary “shotgun” right of way estimate. It is updated each time a revised project right of way cost estimate is developed. The appraisal fee estimate considers only the parcels that are subject to the detailed appraisal. An ACE may be prepared by UDOT staff or a Right of Way Consultant and will be reflected in the shotgun estimate. The person assigned to estimate fees will use the recent cost history for similar types of services by consulting with the Right of Way Lead Agents, staff, or consultant appraisers.

### 2.4.11 Appraiser Selection

Appraisers will be selected from the current UDOT Right of Way and Local Government Pool maintained by the Consultant Services Division for the Right of Way Division. The appraisers in the pool list are pre-qualified in accordance with Utah State licensing and certification criteria.

The Right of Way Lead Agent will select appraisers in consultation with the other Right of Way Lead Agents and the appropriate Deputy Director of Right of Way. The following criteria will be applied in the selection:
- Previous successful experience in appraising the type of properties which will be affected or acquired for the project
- Availability to perform and submit the appraisals within the time allotted in the project schedule
- Knowledge of UDOT policies
- Agreement to perform for a reasonable fee negotiated with UDOT
- Willingness to revise appraisals if there are plan changes
- Availability and ability to testify to value in District Court Eminent Domain proceedings or at a mediation hearing or arbitration if necessary

It is in the long-term interest of UDOT to develop a number of appraisers who are expert in a variety of property types and specialties, to employ appraisers from throughout the State, and to provide opportunities to appraisers who represent the diversity of the State. UDOT will strive to broaden the number of appraisers selected for appraisal assignments rather than rely on repeated employment of few appraisers. Additional criteria related to appraiser qualifications can be found at Section 2.1.6 of this Chapter.

2.4.12 Appraiser Licensing

Consultant appraisers engaged by UDOT will be licensed or certified by the Utah Department of Commerce, Division of Real Estate, to perform appraisals as indicated in the following table:

<table>
<thead>
<tr>
<th>Appraisal Types</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified Residential</td>
<td>Non-complex and Complex 1-4 residential units. May not appraise subdivisions for which a development analysis/appraisal is necessary. May not appraise properties with a partial taking analysis required.</td>
</tr>
<tr>
<td>Certified General</td>
<td>May appraise all types of residential and non-residential property.</td>
</tr>
</tbody>
</table>

All reports accepted by UDOT require a Certified Appraiser to sign the appraisal report.

2.4.13 Appraisal Engagement Letter/Contract

UDOT contracts for appraisal services by means of the Appraisal Engagement Letter. This embodies all of the terms and conditions of service. It is used for securing form appraisals, narrative appraisal reports or any other appraisal service. The following elements, which should be addressed in the appraisal scope of work and which are in the Right of Way Contracts will be discussed with appraisers on acceptance of an assignment.

1. UDOT commits specifically to provide descriptions, maps, names of owners, and the interests to be valued. Appraisers are responsible to request any further information that is needed to complete the assignment.
2. Appraisal will include consideration of damages or special benefits if the property appraised is part of a larger tract. Reasons will be stated and justified if the appraiser concludes the acquisition will have no effect on the remainder.

3. The stated per-day penalty for late delivery of the appraisal will be deducted without notice from the invoice for payment of the appraiser’s fee. The appraiser is responsible to advise UDOT in writing and request an extension of the completion date if the appraisal will be delayed for reasons beyond the appraiser’s control or if actions of UDOT caused the delay.

4. The stated appraisal fee includes reviews and meetings to discuss the value estimates before acceptance by UDOT. The fee does not include court testimony, pre-trial consultations, depositions, or appraisal updates.

5. The primary appraiser who has been pre-approved by the agency will sign the appraisal report and the required certification. All people who provided significant professional assistance to the appraiser will be identified.

2.4.14 Value Information Submitted by Property Owners

Value information submitted by property owners will be reviewed and considered to the same extent as if the information had been secured directly by UDOT. The fair market value may be adjusted to reflect the new information if the information is sufficient to warrant consideration. A fair market value estimate will not be reduced after the offer has been delivered to the property owner, unless there is a design change or other extraordinary circumstances.

2.4.15 Appraiser Performance Evaluation

The Review Appraiser will complete a performance evaluation report for each fee appraiser on completion of a project appraisal assignment. The evaluation will assess appraisal quality, timeliness of submission, and responsiveness to UDOT requests for information concerning the assignment. The evaluation will be completed using the Right of Way ePM system where it will be retained. This information will also be maintained in report form within Right of Way and will be available to the Consultant Services Right of Way Services pool file for consideration in future assignments.

A copy of the evaluation will be provided to the appraiser upon request. The Review Appraiser will meet with the appraiser to review the evaluation if requested. The purpose of the evaluation is to encourage communication and constructive exchange of views on improving quality of valuation products.

2.4.16 Confidentiality – Appraisal Disclosures

All appraisal reports and other valuation documents are confidential to UDOT. Information will not be disclosed to anyone other than the property owner(s), UDOT
Right of Way officials or the Federal Highway Administration unless specifically authorized.

The Utah Real Estate Appraiser Licensing and Certification Act, Utah Code § 61-2g-502(2) states the following as grounds for disciplinary action:

(j) Violation of the confidential nature of governmental records to which a person registered, licensed, or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency.

Further, the USPAP Ethics rule provides that “an appraiser must protect the confidential nature of the appraisal client relationship.”

2.4.17 USPAP Jurisdictional Exception

Certified and licensed appraisers in Utah and other States are required by certification statutes to comply with the USPAP, promulgated by the Appraisal Standards Board of The Appraisal Foundation. UDOT is required to comply with several other regulations and laws concerning property valuation. State and Federal laws and regulations have primacy if an appraiser sees a conflict with any requirements of the USPAP. The “Jurisdictional Exception” rule is a USPAP provision that retains applicability of the remainder of the Uniform Standards if any portion is determined to be contrary to law or public policy. This recognizes the preeminence of law and public policy and allows a certified or licensed appraiser to comply with UDOT Appraisal Standards 49 C.F.R. Part 24 without violating the USPAP. UDOT is not aware of any conflicts and this discussion is only precautionary.

The Appraisal Foundation requires an appraiser to identify the part or parts of the USPAP disregarded in applying the Jurisdictional Exception and to state the authority justifying this action. Appraisers who have questions or concerns about UDOT Appraisal Standards as they relate to the USPAP should address them to the Right of Way Lead Agent.

2.4.18 Support to the Attorney General

Appraisers and Review Appraisers will be available to meet with UDOT Right of Way staff and the Attorney General concerning acquisitions on which a Condemnation Resolution is filed. This can help all involved to better understand the valuation issues in the case. Good communication between appraisal personnel and the Attorney General will improve opportunity for settlement and enable the Attorney General to effectively represent UDOT in condemnation cases that proceed to trial. Valuation personnel, both fee and UDOT staff, are subject to be called to provide expert testimony at condemnation trial. The people will be guided by advice from the Attorney General and will attend any pre-trial meetings as requested.
2.4.19 Cooperation with the Utah Property Rights Ombudsman

The Utah Property Rights Ombudsman is an office created under Utah’s *Private Property Protection Act, Utah Code* Title 13, Chapter 43. The Ombudsman assists agencies and citizens in resolving property issues including acquisition of property under threat of eminent domain. The Ombudsman works with the parties involved to resolve valuation issues and thus avoid condemnation through the District Court. Mediation and arbitration are methods that may be employed to reach agreement. UDOT supports the mission of the Ombudsman and cooperates fully with dispute resolution efforts.

The property owner may apply through the Ombudsman to secure a second appraisal of acquired property. UDOT will pay a reasonable fee to a qualified appraiser if an appraisal is deemed appropriate. A UDOT approved Review Appraiser (staff or consultant) may review the second appraisal and reconsider the fair market value determination in light of any new information or analysis. The revised value determination, if any, will be provided to the Right of Way Lead Agent. The Right of Way Lead Agent may circulate it to other involved parties.

The Review Appraiser may be requested to discuss the process of establishing value for the parcel if the acquisition issue proceeds to arbitration or mediation facilitated by the Ombudsman. All contact with the Ombudsman will be conducted in a spirit of mutual desire to reach a reasonable settlement that is fair to the property owner and to Utah taxpayers.
Chapter Three

ACQUISITION

3.1 ACQUISITIONS POLICY – GENERAL

3.1.1 Purpose and Objectives

Acquisition of property rights is a core function of the UDOT Right of Way Division. The primary goal of property acquisition is the delivery of acquired property to meet project construction schedules while complying with all relevant State and Federal laws and regulations. This Chapter sets forth acquisition policies to guide UDOT staff, local government staff, and consultant personnel involved in real property acquisition.

It is UDOT policy to acquire property by friendly negotiations with owners based on fair market value. This requires personal contact with owners to advise them about the public necessity for the project, the effect of acquisition on their property, and the reasonableness of the purchase offer based on a supported valuation. This Chapter defines the practices to carry out UDOT acquisition policies and complete project acquisition in a timely manner.

UDOT’s acquisition practices reflect a commitment to treat property owners fairly, consistently and professionally while supporting citizen’s trust and confidence in the use of public funds for Utah’s transportation system. Concepts that advance this commitment include delegating decision-making to project level personnel, placement of acquisition within multi-disciplinary project teams, flexibility in negotiating with property owners, expedited administrative settlement process and a project-focused rather than specialty-focused management staff.

The Right of Way Division’s mission and vision statements emphasize customer service, quality performance, and responsibility to taxpayers. These are core organizational values for the Right of Way Division. Quality strategies that pertain to these values will be adapted for inclusion into the Annual Performance Plan. The Director of Right of Way will communicate the Priority Strategies and the Performance Plan at the start of each fiscal year to the Right of Way Division.

Acquiring real property requires coordination among a number of right of way functions including appraisal, acquisition, relocation, and property management. Other UDOT units and other State offices such as the Attorney General’s Office play a key role in the process. Achieving project development goals while maintaining core values requires professionalism and flexibility. Not every property will be acquired using the same approach. A number of different methods of acquisition and circumstances for appropriate use are discussed later in this Chapter.
3.1.2  Laws and Regulations

The acquisition of private property has a special place in the American system of law. The US Constitution provides particular protections for acquisition of private property by governmental action. The Fifth Amendment to the United States Constitution requires that:

No person shall ... be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

The 14th Amendment to the United States Constitution extends the due process requirement to the States as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Utah Constitution contains counterpart provisions. Article 1, Section 7 states that:

No person shall be deprived of life, liberty, or property without due process of law.

3.1.2.1  Federal Laws and Regulations

Private property will not be taken "or damaged" for public use without just compensation. (The italics indicate the provision of Utah’s Constitution that exceeds the protection afforded in the United States Constitution.)

The primary Federal law governing property acquisition is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly known as the Uniform Act or URA. The Uniform Act applies whenever the State or local agency carries out a project that receives Federal financial assistance in any phase of work. The Uniform Act’s provisions are implemented further in the Code of Federal Regulations at 49 C.F.R. Part 24. Federal regulations found at 23 C.F.R. 710 contain requirements for the administration of the Right of Way Program including the typical acquisition process, alternative methods of acquisition, approval of operating procedures, and Federal-aid Highway Program reimbursement provisions. Additionally, MAP-21 – Moving Ahead for Progress in the 21st Century Act was signed into law on July 6, 2012 and is in full effect as of October 1, 2014.
All acquisitions involving federal-aid shall comply with the procedures set forth in 23 C.F.R. Part 710, specifically including Section 710.305 (Acquisition), 710.307 (Construction advertising) and 710.309 (Design-build projects)

3.1.2.2 State Statutes

Right of way acquisition is specifically addressed in Utah Statutes. Title 72-2-111 of the Utah Code authorizes the State to carry out the provisions of Federal law relating to Federal-aid and highways. Title 72 Chapter 5, the Rights of Way Act provides comprehensive coverage of real estate acquisition for public projects. Section 103 of Title 72-5 provides the authority to acquire real property needed for temporary, permanent, present, and future transportation purposes by gift, agreement, exchange, purchase, condemnation, or otherwise. Title to property may be in fee simple or any lesser estate or interest. The interest acquired must be sufficient to construct, operate, and maintain the highway and to protect the traveling public and the facility itself. Utah has adopted the requirements of the Federal regulation 49 C.F.R. 24 as its own administrative requirements (Utah Administrative Rules, R. 933-1-2).

3.1.3 Basic Property Owner Rights and UDOT Obligations

Additional Utah statutes include Title 57-12-13 which provides the “procedure for acquisition of property”, and 57-12-14, which provides additional guidelines regarding “dispute resolution and additional appraisal."

The Uniform Act, Title III contains a number of critical provisions directly affecting the conduct of real property acquisition activities by UDOT. These key provisions, setting forth owner’s rights are stated below. They are described in detail later in this Chapter.

1. Owner Rights
   a. Owner will receive just compensation for the property acquired by UDOT.
   b. Value will be based on property appraisal or administrative compensation estimate of the fair market value as basis for just compensation.
   c. Owner will receive a written offer of the amount determined to be just compensation.
   d. Owner will be afforded sufficient time to consider and respond to UDOT’s offer. By Utah State Law, the owner is provided 30 days before any condemnation action may begin.
   e. Owner will receive an explanation of the basis for the determination of just compensation.
   f. Owner will receive prompt payment of the amount determined to be just compensation.
   g. Displaced owners and tenants will receive at least 90 days’ notice of the date by which the property must be vacated.

2. UDOT Obligations
   a. Acquire real property expeditiously by negotiation.
b. Provide the owner with a Notice of Intent to Acquire real property when appropriate (see Chapter 5).

c. Invite the owner to accompany the appraiser during the inspection of the property.

d. Negotiate fairly and in good faith, providing sufficient information about the acquisition and the project to enable the owner to make an informed decision whether to accept UDOT’s offer.

e. Update the offer due to error or changed market conditions when appropriate.

f. Pay full compensation before taking possession of the property (unless otherwise stated in the ROW Contract).


g. Offer to acquire uneconomic remnants.

h. Provide the owner with the “Your Guide to Just Compensation” a brochure provided by the State of Utah Office of the Property Rights Ombudsman.

3.1.4 Project Team Participation

Acquisition is performed operationally through staff participation on self-directed and multi-disciplinary project teams. The teams are composed of personnel from all organizational groups whose skills are needed to bring a project from inception to completion. Acquisition may be performed by the Right of Way Lead Agent who may also perform other tasks needed to deliver right of way for project construction if there are relatively few properties to be acquired. Negotiations may be performed by one or more agents dedicated to this task if the project involves extensive right of way or there are complex acquisitions. Specialized staff may perform other functions including valuation and relocation on large projects. UDOT’s Right of Way staffing is flexible and cross-trained to enable efficient assignment of trained staff to adapt to the project workload.

Right of Way staff members who are assigned to perform acquisition on project teams operate under the guidance and direction of the Project Manager on matters involving project scope, budget, and schedule. These staff members remain employees of the Right of Way Division and receive project assignments, training, policy direction, and performance evaluation by or through the Director of Right of Way.

Right of Way personnel are in a peer relationship with other team members when participating on project teams. The Project Team concept encourages personal initiative and responsibility and avoids layering of authority levels and linear forms of communication. The team structure delegates maximum authority to the people who perform the mission tasks at the operational level. See Chapter 1 for a detailed description of the Project Team concept.
3.1.5 Contracting Acquisition Services

UDOT’s Right of Way Division may contract for acquisition services when workload exceeds the capacity of the Right of Way Division’s staff if specialized acquisition skills are needed or the remote location of the project makes assignment of staff uneconomic for the Department. Contract Acquisition Agents are selected from the UDOT Right of Way and Local Government Services contracting pool. Refer to the project RFP or the Right of Way web page for additional information. All acquisition performed under contract will follow the process set forth in this Manual and current UDOT requirements (see Consultant Services for more information). Contract personnel operate as extensions of UDOT staff on a limited assignment basis and are subject to the same standards of work performance as to quality, quantity, and timeliness.

3.1.6 Acquisition Work Flow

The acquisition of right of way is performed in parallel with other activities in pre-construction project development. This is in contrast with the traditional placement of right of way in which responsibility to acquire real property is “handed off” when the preceding activity such as plan development is completed. The UDOT team concept provides for concurrent rather than sequential workflow as far as possible. Effectiveness of this process requires close coordination and effective communication among all team partners.

A qualified project team member will conduct a preliminary cost estimate in the early stages of project development to determine the extent of property needed for the project. These activities may be performed by the Right of Way Lead Agent or by a Right of Way Consultant Agent working with the Right of Way Lead Agent and or the UDOT Project Manager.

The Right of Way Action Plan is a key right of way planning and coordination instrument. This is a document providing budget and schedule goals for delivering right of way by the construction contract advertising date. It is prepared by the Right of Way Lead Agent in coordination with the appropriate Deputy Director of Right of Way and the Director of Right of Way. The Action Plan becomes a commitment by the Right of Way Division when subsequently agreed to by the Project Manager, to deliver needed right of way by the agreed date.

Right of Way Agents responsible for acquisition may participate in informational public meetings or formal hearings to explain project acquisition under all alternative alignments under consideration. Agents will explain and be prepared to answer questions about UDOT’s property acquisition process and the assured property owner rights and protections as directed by the Right of Way Lead Agent.

UDOT will notify owners of the intended acquisition of their property when it has selected the final alignment for the project and has identified the property to be acquired. UDOT will establish an amount of just compensation before making an offer.
to purchase the property. This amount will generally be based on an appraisal prepared by a State-certified appraiser and reviewed by an independent State-certified appraiser both from the UDOT Right of Way and Local Government Pool. “Just Compensation” must be approved by the Right of Way Lead Agent, appropriate Deputy Director of Right of Way or the Director of Right of Way. Valuation may be completed by an ACE for low value, non-complex acquisitions of $25,000 or less. The owner must waive their right to an appraisal if this procedure is applied to amounts ranging from $10,001-$25,000. The Acquisition Agent will contact the property owner to arrange a meeting with or to provide the valuation information to the property owner once UDOT has established this amount.

The Acquisition Agent will present informational materials and explain the overall right of way process and the rights and obligations of owners at this meeting. The agent will also present UDOT’s Offer to Purchase, citing a specific amount it has determined to be just compensation. The agent will make it clear to the owner that signing the offer constitutes acknowledgement of receipt only and not a contractual commitment. The owner may acknowledge by signing that he or she is waiving the right to an appraisal if the acquisition is in the range of $10,000-25,000.

An owner may accept the offer on the initial contact, decline the offer subject to further consideration, or reject the offer. The Acquisition Agent must try to maintain a cordial professional relationship and preserve openness to further discussion in case of rejection. UDOT will listen to and receive any additional information the owner may provide and will try to resolve questions and reach agreement on an acquisition price. The agent will schedule additional meetings with owners for further discussion as appropriate. The agent will encourage the discussion of any issues that are not resolved in meetings with the owner and seek a settlement once the issues have been resolved. It is a fundamental UDOT policy to encourage acquisition by agreement and resort to process of condemnation only when necessary to maintain the project schedule after providing reasonable opportunity for the owner to consider the offer. The condemnation process is described in Chapter 4.

### 3.1.7 Acquisition Modes or Methods

UDOT may acquire real property interests for highway projects in several different ways depending on project or program needs and the interests or desire of property owners. It is possible that more than one method or mode of acquisition may be used on a single project. The acquisition methods are described below:

1. **Negotiated Settlement Based on Approved Valuation** – This is UDOT’s preferred, normal, and common process for acquisition. UDOT will make an offer to the owner to purchase the property needed for the project for a specified price under this approach. The offer will be based on an approved appraisal of the property’s fair market value or an Administrative Compensation Estimate. UDOT will purchase the property at the offered price if the owner accepts this offer. UDOT will continue negotiations until final rejection or initiation of condemnation if the owner declines the offer.
The owner may provide additional value information or an appraisal that will cause UDOT to reconsider and possibly revise the original offer. Continuing negotiations will be aimed at helping the owner better understand the effect of the acquisition on remaining property and the basis for and reasonableness of the UDOT offer. This exchange of information and views often leads to an agreement on price and a settlement. This method is discussed more fully in Section 3.3.

2. **Administrative Settlement** – UDOT may consider making a higher offer based on additional facts that are presented to the agency which may increase the opinion of fair market value when reasonable efforts to negotiate an agreement on price do not succeed. The administrative settlement offer may also reflect a valid uncertainty of value and the limitations of the appraisal process. The Director of Right of Way or his designee, must approve all administrative settlements and conclude that the settlement is reasonable, prudent, and in the public interest. Administrative settlements are discussed in more detail in Section 3.3.9.

3. **Acquisition by Exchange** – UDOT may offer compensation, in whole or in part, based on a land exchange or added construction features in unusual cases where it would mutually benefit UDOT and an owner. This generally occurs with large corporate or utility owners that can benefit from land transfers. It is also applicable when the owner can benefit from added construction features that will enhance the system for the general public. The Transportation Commission must approve all land exchanges (Utah Code Title 72-5-111(1)(c)). UDOT will only transfer land that is not needed for future transportation use. Written approval or concurrence of the Project Manager or the Regional Design Engineer are required if transportation construction features are involved.

4. **Donation** – UDOT may accept the donation of real property from an owner. A donation may be offered by an owner for tax reduction, collateral economic benefit and support for the objectives of the project, or desire to contribute to betterment of the community. The offer must be voluntary. UDOT will inform the owner of the right to just compensation and to an appraisal of fair market value to determine such amount. Donations are discussed in detail in Section 3.8.1.

5. **Mediation or Arbitration** – UDOT or a property owner may call on the services of a qualified and disinterested third party to assist in reaching settlement. The Utah Property Rights Ombudsman may provide this service at no cost to the owner. The Ombudsman is authorized by statute (Utah Code Title 13-43-204) to mediate or arbitrate acquisition disputes and may order another appraisal at UDOT expense to assist the process. The owner is not limited to services of the Ombudsman. UDOT and the owner may agree to any alternative dispute resolution method or service that is qualified and available.

6. **Advanced Acquisition** – Acquisition does not normally begin until after the environmental review process is complete and the preferred project alignment is selected. It may be necessary to acquire properties sooner in
some cases. Advanced acquisition may be needed to relieve personal hardship to an owner that may result from continued ownership or to protect the State from high purchase costs if acquisition is delayed due to hardships involve pressing financial circumstances, job transfer, urgent medical problems, or similar situations. A Categorical Exclusion (CatEX) is required from FHWA if a property is to be purchased in advance of the completion of the environmental process. Advance acquisition is discussed more fully in Section 3.5.

7. **Condemnation** – UDOT may acquire the property through the constitutional process of Eminent Domain when reasonable efforts to settle through negotiations fail. UDOT must demonstrate compliance with two basic constitutional conditions. The acquisition must be necessary for a public purpose and UDOT must pay just compensation for the property as determined by the Utah District Court. The use of Eminent Domain requires that the Acquisition Agent coordinate closely with the Right of Way Lead Agent, the Director or appropriate Deputy Director of Right of Way along with the Assistant Attorney General, who is assigned to represent UDOT in the condemnation action. The condemnation process is discussed fully in Chapter 4.

8. **Acquisition for Corridor Preservation** – UDOT is authorized under Utah Code, Title 72-2-117 and 72-5-401 to -403, to acquire property up to a projected 30 years in advance of actual transportation facility construction. Funding is provided through the Marda Dillree Corridor Preservation Fund with the Transportation Fund. Corridor Preservation is a State-funded endeavor under current law, since Federal funding of right of way costs is limited to projects in an advanced stage of project development. Acquisition for Corridor Preservation is discussed in more detail in Section 3.6.

9. **Other Voluntary Transactions** – Right of way acquisition is normally performed “under threat” of Eminent Domain. This means the owner must sell to UDOT or UDOT will use the power of Eminent Domain if an amicable settlement cannot be reached. There are limited situations in which an offer to acquire real property does not involve the State’s intent to use Eminent Domain authority. This applies where UDOT has alternatives for placement of a facility. This may apply in location of a maintenance facility, a rest area, wetland replacement area, materials storage area, or a material borrow site. UDOT will inform the owner when a transaction is voluntary and not under the threat of Eminent Domain. UDOT will acquire only by settlement in these acquisitions. UDOT’s Corridor Preservation Program is exclusively voluntary as the Utah Code prohibits use of Eminent Domain for this Program if negotiations are not successful. Other voluntary transactions, unlike corridor preservation acquisitions or advanced acquisitions, are not subject to many requirements of the Uniform Act real property acquisition regulations, including the right to receive relocation assistance in the case of owners. Displaced tenants impacted by such transactions are entitled to relocation
benefits if they meet other eligibility requirements. The following criteria must be met for an acquisition to be considered a voluntary transaction:

a. UDOT does not need to acquire a specific site or property such as a site for a salt shed or a post office.
b. The property is not part of a project area where all or almost all of the area is to be acquired within specified time limits.
c. UDOT will acquire the property only if it negotiates an agreement with the owner and commits in writing that it will not use condemnation authority.
d. The owner is informed of what UDOT believes to be fair market value.

The complete requirements concerning voluntary transactions may be found in Section 3.5 and at 49 C.F.R. 24.101(b)(1).

10. **Incentive Payments** – UDOT may offer an Incentive to signing a Right of Way Contract based on the FHWA Realty Memorandum Dated April 26, 2006 (Policy and Guidance for Acquisition and/or Relocation Incentive Programs-Voluntary) and found in 23 C.F.R. 710.203(b)(2)ii. Incentive Programs are discussed in Chapter 8.

### 3.1.8 Quality Assurance

Quality is an element of critical importance to every UDOT and Consultant Right of Way agent. Quality is the measure of how well the activity performance succeeds in meeting established organizational mission, standards, and goals. Quality performance in the acquisition function is expressed in terms of the following three factors:

1. **Timeliness of Performance** — Completion of acquisition activities within the project schedule as expressed in the Right of Way Action Plan and the Project Charter.

2. **Quality of Performance** — Maintaining positive and productive professional relationships with property owners, project team peers, personnel in related right of way functions, and management staff. Quality performance also includes accuracy and thoroughness in completion of official documents, forms, and reports.

3. **Quantity Production** — People performing acquisition functions are expected to manage and complete a reasonable workload and meet certain standards that have been established by the Director of Right of Way and are determined by the Right of Way Lead Agent, Director and the appropriate Deputy Director of Right of Way.

Many of the Right of Way Program quality standards are integrated into the established project development and the right of way processes. These include the above-mentioned Right of Way Action Plan and the Project Charter. The Project Quality Plan is another instrument of quality performance. The acquisition documents also incorporate and imposes a standard for complete and thorough case documentation.
An important ongoing element of right of way quality assurance in acquisition is the right of way Project Report Card/Customer Survey-Project Manager. This is a questionnaire assessing right of way involvement and performance on completed projects. The Right of Way Lead Agent or the appropriate Deputy Director of Right of Way, with the assistance of the ROW Project Coordinator Manager, may present a hard copy of the survey to the Project Manager to complete or the survey may be conducted orally by telephone. Feedback from the surveys enables the Right of Way Division and project right of way staff to know where to focus efforts to improve project right of way acquisition, processes, and staff performance.

A basic principle of the Right of Way Division’s quality concept is performance standards and goals established with the active participation of the person who will perform the acquisition activity. A performance standard is not complete until the person who will carry it out has agreed that it is reasonable and attainable. The Right of Way Action Plan, the Project Quality Plan, and the Project Charter are developed in consultation with employees who will implement these plans.

The Right of Way Lead Agent is encouraged to propose specific quality control actions that will contribute to improving project settlement rates and improve the efficiency of the acquisition process. Specific examples of quality actions for acquisition are provided in Section 1.3.5. Other actions may be developed and carried out in consultation with the Right of Way Lead Agent, Director and appropriate Deputy Director of Right of Way.

3.2 ACQUISITION FORMS AND REPORTS

3.2.1 General

The Right of Way Division has developed an integrated electronic forms database to record all information related to each parcel acquisition. The data entered into the Right of Way Module of ePM for each acquisition and other project related information need only be entered once providing efficiency and accuracy.

The acquisition file serves as a repository of important information relating to the acquisition of property, support for payment of claims, and a permanent record of contacts between UDOT and the property owner. This file should include all completed parcel-related documents listed on the Acquisition checklist. The file should also contain parcel-related correspondence and internal memoranda concerning each acquisition and project in general.

The reports prepared during acquisition serve to coordinate acquisition with other project tasks or report the acquisition status. Property acquisition is a critical activity. Acquisition has the potential to directly affect the project advertisement schedule. Accuracy and timeliness of reports are important job quality elements.
Items in the file should be arranged in sequential order, providing a chronological record of the acquisition progress. The need for accuracy requires attention to good file maintenance including removing unnecessary materials prior to the closing and permanent file storage. Records should be detailed and demonstrate compliance with 23 C.F.R. Part 635, specifically including Section 635.309 (Authorization), 23 C.F.R. 710 (Right of Way Program Administration) and 49 C.F.R. 24 (Uniform Act) implementing regulations.

3.2.2 Information Confidentiality and Security

Parcel and owner data UDOT collects during acquisition often includes personal and confidential information. Data on income, rent, assets, employment, profits, housing, business relationships, and business practices may be in parcel acquisition files. It is important that UDOT and Consultant agents maintain such information in a secure and confidential manner.

Agents will only record or retain information in UDOT files that relates and is necessary to the negotiations or the property conveyance. It is not appropriate to record business or personal data that is purely background or supplemental information.

The agent should have the acquisition file only when actively working on the parcel acquisition file or claim. The parcel files should be kept in a lockable office or secure file cabinet. The agent should make print copies of documents only if necessary and be cautious not to leave multiple copies outside the file. The acquisition agent should also remove all extraneous notes, duplicate copies, and material from the file that are not relevant to the acquisition.

Property acquisition files should not be available or circulated internally except to the people who have a responsibility for the project and have a valid need to know. File information should not be provided to parties outside of UDOT except to the Attorney General, State auditors, or representatives of the Federal Highway Administration if the project is Federally funded or has federal oversight. An agent who is uncertain about information disclosure should consult with the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, Director of Right of Way or the appropriate designated UDOT attorney.

An agent should not respond to inquiries from any outside party, including media representatives, about the status of an in-progress or completed acquisition case. Refer inquiries to the Public Affairs Officer or the Director of Right of Way.

3.2.3 The Acquisition File

The acquisition documents are an integral part of the Right of Way process and ePM system. The agent assigned to a project will be able to access the documents needed for the tasks assigned. The agent will also be required to update the data into the system including entries into the agent’s log. The acquisition agent assigned to a
project will also be required to download and print all relevant documents for each ownership before project acquisition begins. An acquisition file must be assembled containing the documents needed to initiate and conclude negotiations. The top document in the file will be the Acquisition Check List form. Documents will be added to the parcel file as the acquisition process proceeds. The documents should be placed in the order called for in the “Sequence in File” column in the File Contents Check List. Adherence to the order of placement will assure correct and complete file content and will enable efficient location and search of documents.

3.2.4 UDOT Acquisition Documents

The standard acquisition documents and a brief description of the purpose and use of each document is presented below:

1. **Acquisition Check List**
   A control sheet that assures the content and sequence of placement of critical document in each parcel acquisition file. The Acquisition Agent will initial each item as it is performed or completed.

2. **Ownership Record**
   The Ownership Record and vesting documents are provided by the right of way design firm. It provides basic ownership information, a description of the parcel, vesting information and tax id number and original acreage or square footage of the parcel.

3. **Agent’s Record of Negotiations (Agent’s Log)**
   The agent must provide a brief narrative summary of each contact with the owner, the owner’s representative or any and all tenants. Phone as well as personal contacts must be recorded to document the negotiation process. Within the ePM system, the “Agent Log” tab provides fields to enter the date, recipient/milestone, the originator/agent, the type of log entry, any certification records, and the notes related to each agent entry made for each contact or negotiation made. Notes made need to be factual. It is not appropriate for the agent to include his or her personal opinions or notes from internal agency discussions in the record. It is appropriate for the agent to note issues raised by the property owner that may need to be addressed before the owner will agree to accept an offer of settlement from the agency. It is also appropriate to include notes in regard to the issues raised including how the issues were addressed and/or resolved. The complete record is evidence of good faith negotiations and is important if negotiations are interrupted or reassigned. The record also is required in preparing an Eminent Domain case. This log is to be completed online directly into the ePM system as soon after each contact with the property owner as possible to ensure the accuracy of the record.

4. **Owner Initial Contact Letter**
   This advisory letter is sent to each owner of record before the valuation is performed. Its purpose is to inform the owner of UDOT’s intention to acquire, pending contact by the appraiser. The agent contact information
allows the owner to know who to contact for answers to questions about the appraisal and acquisition process. This early notice in writing is a UDOT and Federal *Uniform Act* requirement.

5. **Offer Letter**
   This letter is provided to all property owners and outlines disclosure requirements mandated by State Law. The letter states the compensation amount, Property Right Ombudsman disclosures, transmits documents relating to the acquisition and offer, acquisition contact information and closing procedures.

6. **Interview and Meeting Checklist**
   A checklist for the agent to review to make sure that all relevant questions have been asked and answered when presenting the offer.

7. **Offer to Purchase Right of Way**
   The official offer to purchase at the amount established as “Just Compensation”. The owner is requested to sign and date a copy of the letter as a receipt of the offer for retention in the parcel file. An owner’s refusal to sign a copy of the letter, must be documented in the Agent’s Log.

8. **Statement of Just Compensation**
   The offer to purchase provides the owner with a statement of the areas and property interests the department is offering to acquire, a detailed breakdown of the value elements in the offer including the amounts attributed to land, improvements, and damages.

9. **Right of Way Contract**
   The owner’s execution of the contract to sell is an option for UDOT to purchase until it is signed as approved by the Director of Right of Way or Designee. The grantor must initial where indicated that this point is understood. The Project Manager or Resident Engineer must approve any construction work item which is included as an element of compensation if that item will require the project contractor to perform the work described. That approval must be in writing as a signature on the actual contract or with a file note that may be transmitted by email to the acquisition agent.

10. **Right of Way Settlement Invoice**
    The claim for payment of just compensation. It must be signed and approved by the Right of Way Lead Agent and the Director of Right of Way of Designee. It is then forwarded with the closing statement to the designated UDOT State Comptroller’s Office staff person for payment with a copy of the purchase contract or occupancy agreement.

11. **Right of Occupancy Agreement (ROO)**
    A document secured if settlement cannot be reached but the owner agrees for payment, to allow entry on the property for construction. The right of occupancy is voluntary for the owner. It allows time for further efforts in reaching a settlement while construction proceeds. The Department typically commits to initiate condemnation if settlement is not reached within two months of the executed right of occupancy agreement.
This time may be extended on a case-by-case basis to allow sufficient time for the owner to obtain an independent appraisal or other pertinent data. It is the agent’s responsibility to prepare and present a ROO Action Plan to the Right of Way Lead Agent with the signed ROO that will be completed during the next 180 days.

12. **Right of Entry Agreement (ROE)**
   A legal agreement used as a last resort after all other means to reach a negotiated settlement or Right of Occupancy agreement have failed. The agent must make sure that the occupancy period stipulated in the agreement allows sufficient time for the project to be completed. The agent is required to prepare and present a ROE Action Plan to the Right of Way Lead agent with the ROE.

13. **Administrative Decision for Property Settlement**
   The Director of Right of Way’s approval of a settlement for an amount in excess of fair market value. The approval statement must be supported by an owner’s counteroffer to the initial UDOT offer to purchase or with other pertinent information that justifies the need for a settlement offer. The Acquisition Agent or other Right of Way representative must provide written documentation in the Administrative Decision as to why the offer is reasonable and in the public interest.

14. **Condemnation Request Memo**
   Memorandum to the Director of the Attorney General’s Public Affairs Division states the need and the reason for initiating condemnation. Copies of the valuation and negotiation documents are attached to this memorandum.

15. **Right of Way Acquisition Summary**
   Completed by the Acquisition Agent upon settlement and turned in with the completed acquisition file. The Summary sets forth all parcels acquired for an individual ownership, the property interests acquired, and the approved compensation amounts. The agent certifies the settlement facts as stated and that the agent has no interests that are in conflict with the role as an agent of UDOT in the property transaction.

16. **Acquisition Four Options Letter**
   This is commonly referred to or called the “4 options” letter. The Acquisition Agent sends the “4 options letter” to the owner if good faith negotiations fail to result in a negotiated settlement. The owner is invited to settle based on the last written offer to purchase or submit an appraisal for UDOT consideration. Additional options are to sign a ROO, enter into arbitration or mediation to facilitate a settlement, or proceed with litigation and have the court determine just compensation. Note the letter holds open the possibility of settlement through continued negotiation during arbitration, mediation or if condemnation is filed.

17. **Acquisition Three Options Letter**
   Similar to the Four Options Letter above, this is used when the owner agreed to and signed a ROO but has not been able to reach a final agreement with UDOT. At this point the remaining 3 options are to enter
into arbitration or mediation to facilitate a settlement or proceed with litigation and have the court determine just compensation. Note the letter holds open the possibility of settlement through continued negotiation during the arbitration or mediation but that condemnation will commence.

18. Authorization to Release Mortgage Account Information
Once the owner has signed the contract the acquisition agent requests payoff information from the grantor except in cases where there is only a minor taking which will not require UDOT to pay off existing liens. The grantor will need to provide the loan numbers, social security number associated with the loans, and a signature from the grantor authorizing the lenders to release the payoff information to UDOT.

19. Settlement Statement/Distribution Invoice
A designated Closing Agent will perform the closing unless this task is delegated to a title company. The selling price is downloaded from ePM once the Director of Right of Way or Designee has approved the contract. A simplified single-entry format is used on the statement. UDOT will deduct amounts from settlement to pay the interests of any lien holders. The closing agent will add any amounts to be paid by UDOT, if required, needed to satisfy pre-payment penalties, roll-back taxes, or other costs which are in excess of the contract amount. These items will need to be approved in advance by the Right of Way Lead Agent and the appropriate Deputy Director of Right of Way, or the Director of Right of Way.

20. Incentive Offer Letter
On approved projects, an Incentive Offer Letter explaining both the need of the project and the Amount of the Incentive to be paid above the official offer to purchase amount will be given to the landowner. The owner is requested to sign and date a copy of the letter as a receipt of the offer and incentive for retention in the parcel file for verification of eligibility of the Incentive or denial thereof. An owner’s refusal to sign the Incentive Offer Letter or provide a copy of the signed letter must be documented in the Agent’s Record of Negotiations (Agent Log).

The following are additional approved documents and a brief description of the purpose and use:

Acquisition Brochure
Your Guide to Just Compensation is a brochure provided by the State of Utah Office of the Property Rights Ombudsman. It is a summary of rights with respect to the acquisition of property through eminent domain. By delivering this notice to property owners as soon as practical in the negotiation process, government and utility officials involved in the acquisition of property will comply with an express duty to provide property owners and displaced persons with the important disclosures as required by Utah Code Annotated Section 78B-6-505. This is a state law and a UDOT requirement.
Acquisition

**Appraisal Waiver**
This document must be signed by the property owner when the value of the compensation estimate is between $10,001 and $25,000. (See Section 2.2.4) The property owner hereby waives their right to an appraisal as allowed under Federal Regulations 49 C.F.R. 24, Section 24.102(c).

**Condemnation Checklist**
This document is the first document in the condemnation file that is turned into UDOT. It lists the stacking order that the documents in the file should be in.

**Condemnation Memorandum**
This memorandum is prepared by the closing agent. It is attached to the condemnation resolution that the closing agent has prepared.

**Compensation Estimate (Administrative Compensation Estimate)**
This is a documented value approach that is applicable on uncomplicated acquisitions where the value is expected to be under $10,000. (See Section 2.2.4 for values greater than $10,001 - $25,000) It is used on non-complicated properties acquired by UDOT that do not require the depth of analysis and detailed documentation that is required in a formal appraisal.

**Cost to Cure Contract**
A supplemental contract used in situations when a cost to cure item was not included in the original contracted purchase.

**CP-Voluntary Relo Acquisition**
This document is used for corridor preservation purchases where UDOT is interested in voluntarily acquiring property. It states to the property owner that UDOT will not pursue their eminent domain authority to acquire and is prohibited from doing so by Utah Code §72-5-402(2), that the sale is voluntary, and that the voluntary acquisition is not eligible for relocation assistance. The property owner understands and acknowledges the (s)he is not entitled to any relocation benefits.

**Donation**
An acknowledgment of the property owner that they agree to donate said property to UDOT without compensation and to deliver property executed deeds, with any and all releases necessary to provide clear title. Further they understand that they have the right to know the appraised value of the property being donated, however they are waiving their right to have the property appraised.
Escrow Instructions/Information
This document gathers information and sets forth the duties of the escrow agent, as well as the requirement and obligations of the parties, when a transaction is closed at a title company.

First Right Consideration Waiver
This document is used for "T" and "ST" parcels only. It allows the property owner to: 1. Waive their right to repurchase back the portion of their property that is deemed excess by UDOT or 2. To be notified when the excess property is declared surplus and will be sold at fair market value. An acknowledgement signature is required.

Permit to Construct
A permit to enter and construct is appropriate where temporary authorization is needed on short notice for a contractor to enter a property to do work that is mutually beneficial to the owner and the State. It must specify on the document the need for the permit. IE to tie in a private driveway to the road.

Project on Hold Letters
A notification letter sent to owners on a project which has been placed on hold due to declining state revenues and uncertainty of the immediate economic future.

Prop Management Info
An electronic form profiling information for T and ST parcels and would result in the need for management of the acquired property. It documents the purchase dates, the type of property, if there are tenants, if there are leases, relocations, property type, etc. When submitted, a printout is sent to the agent’s email to be put in the acquisition file for documentation.

Supplemental Contract
The supplemental contract is used after the ownership has been cleared in ePM. Sometimes a new parcel us uploaded into ePM under the cleared parcel which would require purchasing. This contract would identify that the additional purchase is a supplement for the original contract. Do not use this contract for additional cost to cure item on an ownership. (See Cost to Cure contract)

3.2.5 Conveyance Instruments
The Right of Way Division has developed a comprehensive file of standard recordable deeds and easement forms that are applicable to a wide range of acquisition situations. The most frequent forms used are the Standard Warranty Deed and the Standard Easement Form. These standard documents are included in the Right of Way Design...
**Manual.** Right of Way agents should become familiar with the range of specialized deeds, easements, and agreements and utilize a specialized instrument when it is relevant. The designated Right of Way Designer prepares the actual conveyance documents for the department. The Consultant Agent will inform the Right of Way Lead Agent if the Consultant Agent determines that the form or deed type provided by the Right of Way Designer is not correct. The Right of Way Lead Agent will then coordinate with the Project Manager regarding the needed documents.

### 3.2.6 Project Right of Way Certification

Right-of-way certification shall serve as project notification of all parcels acquired by contract or right of entry and vacated for the project, and specific identification of any parcels which are required for construction of the project yet remain to be acquired or vacated (identified by the right of way certification as “limitations”).

No less than 30 days prior to the Submit for Advertising Date (SAD) date identified by the Project Manager, the Right of Way Lead Agent shall prepare the ROW Certification Request and deliver the request to the appropriate Deputy Director of Right of Way. The Deputy Director of Right of Way shall review the ROW Request and submit to the ROW Project Coordinator Manager for the preparation of the ROW Certification Memorandum. The appropriate Deputy Director of Right of Way will submit both the request and the memorandum to the Director of Right of Way for approval. The Director of ROW shall review the Certification Request and, upon approval, sign the Certification Memorandum and return both documents to the ROW Project Coordinator Manager. The ROW Project Coordinator Manager shall scan the final documents and upload a pdf to the Right of Way file in ProjectWise located under:

- UDOT Projectwise v8i
- UDOT Projects
  - Region _ Projects
    - PIN Number
      - Right of Way

**The document shall be named as follows:**

- PIN_Project Number_ROW Cert_Date
  
  or, if local government

- PIN_Project Number_ROW Cert_LG_Date

**Document attributes shall be:**

- Document Type = Certificates +
- Document Subtype = ROW
- Doc. Multiple Subtype = With Limitations or Without Limitations

☑ Mark for Advertisement?

Upon completion of the ProjectWise upload, the ROW Project Coordinator Manager shall email a pdf of the documents and a link to the Gmail URN to; the Region Director,
Project Manager, Region PM Support, Right of Way Lead Agent, Program Finance, Construction, FHWA (if federal funding is identified on the Certification Request). To qualify for existing or future federal funding, compliance with 23 C.F.R. 635.309 is required prior to advertisement.

3.2.7  Project Right of Way Certification with Limitations

On occasion, the Project Manager and Right of Way Lead Agent may make a request to certify a project with limitations. Under these circumstances, the Right of Way Lead Agent shall follow the same process as outlined in section 3.2.6 Project Right of Way Certification (listed above) and include with the Certification Request the following 3 items:

1. Limitations Addendum
2. 0555 Spec
3. Action Plan addressing each individual limitation

The Director of Right of Way will review the completed package to determine if the Project Manager and Right of Way Lead Agent have thoroughly weighed the risks of advertising with limitations and have a satisfactory action plan in place to acquire each limitation. Failure to demonstrate each of these requirements will result in denial of the certification request. Once the Director of Right of Way is satisfied that the requirements have been met, the project will be certified, and identified above, with a “Limitation of Operations” and restrictions will be placed in the contract to prohibit the contractor from entering those properties not yet cleared.

The Right of Way Lead Agent shall give high priority to completing acquisition and relocation on projects that have been certified with limitations and provide the Project Manager with weekly status updates addressing each of the un-cleared parcels.

Note: Local Government projects cannot be certified with limitations.

See Sections 1.2.23 and 1.2.24 for more information about the certification process.

3.2.8  Electronic Program Management (ePM)

The Right of Way Lead Agent will electronically report right of way estimates and acquisition status through the Right of Way ePM system at specific points during project development. All project staff members and certain Consultant agents assigned to perform and complete acquisition related tasks are responsible for timely and accurate reporting of data pertaining to their individual assignments. Refer to Chapter 1, Sections 1.2.7, 1.2.8 and 1.2.18 for detailed information on the ePM data recording process.

All agents working on tasks associated with an acquisition, from the Right of Way Lead Agent to the closing agent, will need to enter actual data into the ePM system. This will require that all agents have access to the system using a personal computer.
3.3 NEGOTIATIONS

3.3.1 Assignment

Assignments to perform acquisition tasks will vary with the scope and complexity of project acquisition, project schedule, and the availability of staff. The project Right of Way Lead Agent, a Right of Way staff agent or consultant acquisition agent may negotiate the settlement of parcels to be acquired subject to the $10,000 limits to avoid a conflict of interest on projects with minor right of way needs. Projects with greater right of way involvement may require exclusive services of an Acquisition Agent. An agent may be assigned from the Right of Way Division or if staff is not available, acquisition will be contracted to qualified private service providers that are selected from UDOT’s Right of Way Services and local government pool.

The need for specialized right of way services, including acquisition, relocation, etc., should be planned early in project development. The staffing for acquisition may be identified at the time of the project field visit or after the project’s kick-off meeting (see Section 1.2). The Right of Way Project Lead Agent will make Consultant Agent assignments in consultation with the appropriate Deputy Director of Right of Way and with the assistance of the UDOT Project Coordinator.

3.3.2 Preparation for Negotiations

Careful and complete preparation is essential to successful negotiation. A well-prepared agent will be able to provide the owner with information about the purpose and need for the project, the project schedule, explain the effects of the acquisition on remaining property, explain the settlement and payment process, and present the offer in a positive and favorable manner. Preparation instills an attitude of confidence in the agent. This in turn promotes trust and acceptance in the property owner. A confident positive attitude will project to the owner and will enhance the prospect for amicable settlement. It will also create a lasting impression of UDOT as a highly professional organization that deals with citizens fairly.

The Acquisition Agent should visually inspect the properties to be acquired in advance of first negotiations contact unless the agent is familiar with the properties from prior involvement. The field inspection should be performed with the plans and valuation document to develop a full understanding of the acquisition. The agent may, on a selective basis, inspect the primary comparable sales on high value acquisitions. This will further support the negotiator’s knowledge and provide a basis for informed discussion with the owner. The agent should become familiar with the ownership facts, the major parties of interest, and the correct pronunciation of names. The following presents the steps necessary to prepare for negotiations:

1. **Assembly and Review of Documents**
   The assigned agent will make an initial review of the parcels on the project, noting parcels that involve complexity and special circumstances.
The agent will identify ownerships that may require extensive negotiations, effort, and time, or where resistance to settlement is anticipated. This will enable the agent to prioritize offers to accommodate owners requiring extended negotiations while delivering right of way on schedule for project advertisement. The agent will assemble the parcel acquisition file package that includes documents to support the offer as well as documents that will be presented to each owner. The required documents include:

a. Offer to Purchase Letter
b. A right of way plan sheet or exhibit showing property, right of way lines, and acquisition areas
c. Ombudsman’s Acquisition Brochure – Your Guide to Just Compensations
d. Appraisal Report* or Compensation Estimate
   * Note: The agent will provide the owner with a copy of the appraisal for single family residential property. The agent may allow the owner to review the appraisal data for other property types, but the agent must have department approval before releasing a copy of the full appraisal report to that owner.
e. Statement of Just Compensation
f. Ownership Information Sheet
g. Legal description
h. Warranty deed, easement(s), or both
i. Offer cover letter
j. Right of Way Contract
k. Payoff information form, if applicable
l. Incentive Offer Letter, if applicable
m. Other forms as needed and established for use by the department.

The agent will become familiar with the project plans as they affect the property and the valuation documents. The agent will read the appraisal or administrative compensation estimate to ensure that he or she understands the basis for the value and the valuation process to the extent that will enable an informed response to anticipated owner questions. The agent will discuss the issues with the Right of Way Lead Agent or with authorization from the Right of Way Lead Agent, with the Appraiser or Review Appraiser if he or she does not fully understand the appraisal or the value conclusions well enough to explain the basis for the compensation to be offered.

The file should include memoranda addressing issues concerning the property such as real/personal property determinations and report, any correspondence with owners, tenants or their representatives, or any and all lease agreements that pertain to the property.
The Acquisition Agent should review the purpose and need for the project. This is addressed in the environmental document or in the Project Concept Plan.

2. Identifying and Resolving Errors or Inconsistencies – Quality Review
The agent’s pre-acquisition review is the last opportunity for correction of any errors before the offer is presented to the owner. The agent will carefully review the valuation as a qualitative check and understand the basis for the acquisition and the offer of compensation.

The agent should resolve any apparent factual error or omission in the plans or the valuation and any inconsistency among the documents. This may involve asking the appraiser, review appraiser, or design engineer to explain, clarify, or review items that are in an individual’s area of responsibility. The Acquisition Agent may ask the Right of Way Lead Agent or the appropriate Deputy Director of Right of Way to independently review items in question or for help in resolving such items.

3. Entering Data on Documents
Hard copies (signature copies and file copies) of the acquisition conveyance documents will be provided to the acquisition agent by the Right of Way Project Coordinator or Right of Way Lead Agent. They will be completed with parcel acquisition and ownership information that is extracted from the data system. Review the conveyance documents carefully to make sure that the correct deed or easement document has been provided to the agent and that the documents correctly identify the current owners. The conveyance forms are highly specific. Ask advice of the Right of Way Lead Agent or the Project Coordinator if there is doubt as to the correct standard document or the owners shown on the documents.

4. Identifying Special Needs
It is important for the Acquisition Agent to consider any known special needs of the owner before the initial meeting. Special needs include conditions that may impair an owner’s ability to understand and evaluate the effect of the project and the acquisition offer. It is appropriate to invite the owner to have a relative, trusted friend, or attorney present during negotiations. UDOT may arrange for a translation service to assist communications if there is a confirmed need.

3.3.3 Initial Negotiations
The initial offer meeting is the most important contact the Acquisition Agent will have with the property owner. It may determine whether negotiations will be productive, resulting in an amicable settlement or result in condemnation. The tone of the meeting and the agent’s approach is extremely important. The agent may need to overcome a negative attitude resulting from an owner’s prior contact with UDOT in some cases or an objection the owner may have expressed regarding the project or the acquisition. Building or creating a good relationship under stressful conditions is one of the challenges of the job.
1. **Attitude is Important**
The consistently successful negotiator has an underlying conviction that most people are reasonable and open to discussion about topics important to them when they are approached respectfully with a well-presented discussion of facts and issues. The successful negotiator will be personally convinced of the reasonableness of the Offer of Just Compensation and of the process used to determine the offer amount. This conviction will come from experience and knowledge of UDOT’s policies and practices. It also arises from the agent’s advance study of the valuation document and follow-up to resolve any questions or uncertainties. It is helpful for the agent to do a self-check before beginning a challenging acquisition assignment, to confirm the presence of a positive attitude, knowledge, and confidence. Pre-negotiation preparation may need to intensify if any of these elements are lacking. It is appropriate to discuss obstacles to negotiations with the Right of Way Lead Agent, the appropriate Deputy Director of Right of Way, or another experienced Right of Way staff member. Discuss with the Right of Way Lead Agent or appropriate Deputy Director of Right of Way any conditions that prevent an agent from having a positive attitude.

2. **The Meeting Environment**
It is useful to develop a general presentation plan. This will include a checklist of topics to discuss. The initial meeting cannot be scripted. Flexibility is necessary to allow the agent to respond to owner reactions and concerns. The property owner should set the pace and length of the meeting. Some owners will want only the essential facts presented. Others will want to question and probe the agent. The agent will have to judge the owner’s level of interest in the project and the acquisition process and tailor the presentation accordingly. The meeting should not be extended unnecessarily, nor should the owner be pressed for a decision at the initial meeting if there is a clear desire to consider it privately or consult with others.

The meeting environment is influential to success. It is appropriate that the agent suggest the television be turned down or that the dining room table or other place would be well suited to review documents if the meeting is at the owner’s home. The agent should inquire before the meeting who will be present. The owner may benefit by the presence of a trusted friend, advisor, or relative as discussed above under Special Needs. The agent should dress to the customary business style for the area and the location of the meeting. A suit and tie would be appropriate if meeting is in a law office. Less formal attire may be more appropriate for conducting business in many areas in Utah. The agent should use common sense to dress appropriately for each situation. The agent may accept an offer of refreshment or other expressions of simple hospitality. Anything further should be respectfully declined.
The agent should be mindful that owners generally are not familiar with engineering terminology or highway and right of way “jargon”. The agent should offer to explain any specialized terms that must be used. The level of owner’s familiarity and understanding of terms can be sensed as conversation progresses and the need to explain terms can be adjusted accordingly. It is important to respect the owner’s knowledge and experience and avoid talking down or demonstrating superior knowledge.

3. Discussion of Project and Acquisition
The Acquisition Agent should review the project in general before presenting the offer amount as well as the specific effect on the property. Topics discussed should include public purpose and need for the project, the scope of the project and its termini (beginning and end points), the project’s benefits and impacts on the overall community, UDOT’s acquisition process, and the project schedule. The agent will describe the acquisition areas, the property rights acquired, the effects on utility of remainder areas, grade changes, driveway tie-ins, landscaping, fence replacements, etc. in discussing the property acquisition. It may be effective to use color marked plan sheets to assist the owner’s understanding of the project and its effects.

The agent will confirm with the owner UDOT’s record of the status of ownership of the property, the names of co-owners, the nature of their ownership (e.g., fee title) and other interests such as easements or leaseholds. Supporting information should be secured from the owner if the agent discovers that any ownership information on parcel documents is incorrect. This information should be conveyed to the Right of Way Lead, and the Right of Way Project Coordinator requesting a review and update of the Title Report. This may result in a revision of the Offer to Purchase and Statement of Just Compensation. It may also be necessary to revise the appraisal before continuing negotiations in some circumstances.

4. Presenting the Offer of Just Compensation
The agent will normally deliver the just compensation offer after discussing the project and its effects. This may not be the proper sequence in all situations. Some owners will have difficulty concentrating on effects of the project until they have learned the dollar amount of the offer, for example. It may be wise to present the offer initially in these cases. The discussion of project effects can be resumed later if the owner desires.

The agent will present the Offer to Purchase and the Statement of Just Compensation. The agent should pause allowing the owner time to contemplate the offer and form a reaction after an offer is presented. There will be separate offer documents for each distinct acquisition if UDOT will acquire separate parcels from the same owner.
The agent can further explain and respond to concerns or questions. The agent should explain the components of the offer including amounts allocated to land and improvements, damage to remainders, and cost to cure items. The agent can present and explain the Right of Way Contract if the owner accepts the offer. The agent should present the contract and explain that it constitutes an option for the State to purchase the property until it is signed as accepted by the Director of Right of Way. The agent will need to have the owner initial the contract where indicated to acknowledge that this point is clearly understood.

5. Relocation
The discussion of relocation should be brief explaining that a UDOT relocation representative will provide more detailed information on benefits unless the agent is also providing relocation services on the project. Tell the owner that the tenants will be contacted about their relocation within two weeks if there are tenants on the property who will be displaced.

A 90-day notice will be provided if the owner will be displaced from the residence as a result of the acquisition. The notice will inform the owner occupant that they will be allowed to continue to occupy the property for at least 90 days from the date of the notice. A 30-day notice stating the specific date the State will take possession will follow this notice. Assistance will be provided to enable all residential displacees to relocate to comparable replacement housing within the notice period. The agent should provide a copy of the UDOT Relocation Brochure if the owner does not have a copy.

6. Handling Owner Objections
A variety of reactions are possible if the offer is not accepted. The most common response is that additional time is needed to consider the offer. The owner may also reject the offer as inadequate, may reject the necessity for the acquisition, or refuse the offer. An extreme negative reaction will probably be expressed early and result in a brief meeting. The agent has reason to expect that objections can be addressed and resolved successfully if the meeting has been cordial up to the time of offer.

The agent should explore objections to determine the basis for resistance to the offer if the offer is not accepted. The agent must also strive to preserve the goodwill that has been established to that point. An owner’s desire to consider the offer in private should be accepted at face value. The agent should allow the owner sufficient time to consider the offer and arrange to make a follow-up phone call in about three days in these cases. The agent will continue discussion of issues with the owner unless it is certain that further conversations will not be productive. An important objective is to clearly identify the obstacles to settlement. This may be a disagreement as to the effect on remaining property, belief that the offer amount is too low, concern about construction impacts, settlement of liens,
disagreement among co-owners, etc. The agent should not assume that the primary issue is price. The agent is able to narrow the focus of discussion and improve prospect for settlement once the barriers to settlement are confirmed.

7. Counteroffers
The owner may counteroffer UDOT’s Offer of Just Compensation. The agent, unless otherwise authorized, should state the limit of authority is to present the UDOT offer which is supported by an appraisal or administrative compensation estimate. The agent should also state that UDOT will seriously consider value information from the owner or other sources and may recommend a revised value if the new information warrants that action. The agent should ask the owner the basis for any counteroffer. Additional value information in any form should be recorded and referred to the Right of Way Lead Agent for internal agency review by the Project Review Appraiser or others as needed.

The agent should request a copy for UDOT review if the owner has secured an appraisal. The appraisal will be provided to the Review Appraiser and a revised value offer may be made if it is found to support a higher value for the acquisition. The agent can offer to provide a listing of State-licensed or certified appraisers in the area if the owner expresses intent to secure an appraisal. The owner should be referred to the Property Rights Ombudsman if the owner requests that the agency should provide a second appraisal. The owner should be told that the project schedule may not be extended to allow time for preparation and review of an additional appraisal. This is an appropriate time for the agent to suggest the use of a Right of Occupancy Agreement. The property owner should be encouraged to discuss the agreement option and should be made aware at this point that without an occupancy agreement or written settlement agreement UDOT may have to initiate a condemnation proceeding. Additional value information may be developed, and negotiations resumed after condemnation is initiated but before trial in District Court.

8. Non-Monetary Compensation
The owner may present non-value proposals for consideration by the UDOT in the form of requests for design features, such as driveway or landscaping to reduce the impacts of the project on the property. Other minor elements include requests to harvest existing crops, retention of shrubbery, household appliances, and fixtures not considered personal property.

Design changes should be discussed with the Right of Way Lead Agent, the Project Manager and the Region Design Engineer. UDOT must adhere to national design standards but there may be flexibility to add features that are minor cost items and do not impede safety or operation of the highway. Minor design concessions can be the basis for settlement.
Property concessions including retention of fixtures and minor improvements will be considered as a basis for settlement. The Right of Way Lead Agent should be informed of proposed retentions. The acquisition agent or the Project Coordinator, if retained, will inform the Project Management section regarding items that have been retained by the owner. The Director of Right of Way is the approval authority. Court.

9. Incentive Programs

The Acquisition Agent will present any and all Incentive Programs that have been approved for the project to the owner. Each Incentive Program will be explained in detail including any and all deadlines associated with each program. The Agent is required to have the owner sign a receipt of each Incentive Program were applicable and the agent will log all contacts and discussions in the Agent Login ePM and place the signed original documents in ProjectWise.

3.3.4  Follow-up Contacts

The Acquisition Agent will evaluate the case and decide on further action to encourage settlement after the initial meeting with each owner. There is a wide range of possible situations. The initial meeting may have identified key issues or the agent may be uncertain of the reasons for or depth of the owner’s resistance to settle. A subsequent contact should aim at clarifying any issues and resolving the specific barrier to settlement if possible. The most common action will be to make a follow up phone call after the owner has received the offer or after the owner has received answers to questions asked of the agent about the project or offer. The agent should ask whether a decision on settlement has been reached with each contact and offer to discuss remaining issues or provide further information about the project and the acquisition. The owner will have considered the offer and reached a decision to settle in many cases. The agent can then arrange for the owner to return the executed acquisition documents or offer to meet for the purpose of completing the documents.

There is no required number of contacts or set schedule of calls. This is a professional judgment as to what will prove effective in producing an amicable settlement. The number of contacts must be sufficient to constitute a reasonable good faith effort to reach a negotiated settlement. The agent should generally attempt three contacts with the owner before recommending condemnation. More than three contacts are appropriate when there are complex issues. The number of contacts will be influenced by the project schedule and the need for UDOT to obtain legal possession by condemnation before the project is advertised for construction.

All contacts with the owner must be recorded on the agent’s log or Record of Negotiations, whether by phone or in person. This is critical to documenting UDOT’s commitment to providing opportunity for amicable settlement. A record of contacts allows continuity when there are changes in assignments and helps the Attorney General prepare for condemnation.
3.3.5 Suspending Negotiations

Negotiations will be suspended if good faith negotiations have been conducted and the approaching construction advertisement date requires that UDOT request an Order of Immediate Occupancy from the District Court. It is necessary to initiate this process within six weeks of the Project schedule’s advertisement date. The agent should not hesitate to request an Order of Immediate Occupancy in a timely manner. Negotiations may be suspended before this time if the owner expresses a final decision to reject the offer and requests no further contact. The agent will then follow the process described in Chapter 4 of this Manual for administrative support for condemnation. It is particularly important that the agent’s Record of Negotiations be complete with all contacts adequately described before transferring the file for condemnation.

The agent should attempt to conclude the negotiations in a positive and professional manner preserving any goodwill that has been established, regardless of who breaks off the negotiations. The Attorney General will attempt to settle after condemnation is filed even if settlement is flatly refused. Chance of success will be greatly reduced if the final negotiations have been tense or acrimonious.

Negotiations may be resumed at any time up to the court trial date if the parties decide to further explore settlement. The Attorney General will take the lead in negotiations with the attorney representing the owner. The case can be referred back to the Acquisition Agent for further contact. The Acquisition Agent will not initiate further contact with the owner unless so instructed by the appropriate Deputy Director of Right Way or the attorney representing the Department.

There are reasons for the agent to suspend negotiations beyond the simple failure to agree. These include the owner who appears unstable, menacing, or otherwise is not able to work with the agent. Negotiations might also become suspended if the owner’s whereabouts become unknown or the owner refuses any contact from the agent. Negotiations may be suspended or not initiated if the owner is a minor, is incarcerated, or has been adjudicated as not competent. The agent should record the facts of each case in the Record of Negotiations but should be careful not to make judgments or assumptions about the owner that extend beyond the basic facts that are relevant to the acquisition. The Attorney General will be consulted as to how to proceed with such cases.

The acquisition agent may consider sending what is referred to as the “4 Options Letter” before negotiations are suspended completely. A template of this letter is included in the merged set of documents. The letter sets out the following 4 options for the property owner:

- **OPTION 1: Independent Appraisal.** You may provide UDOT with another independent appraisal of the property. The appraisal can be obtained by the owner or at UDOT expense through the Property Rights Ombudsman.
• **OPTION 2: Binding Appraisal Agreement.** UDOT may pay for a second appraisal under this type of agreement provided that you select a qualified appraiser. UDOT will then agree to stipulate that it will accept the opinion of the appraiser if you also agree to accept that opinion.

• **OPTION 3: Mediation/Arbitration.** Mediation or arbitration is available to settle the value issues. The process uses a neutral third party to mediate a settlement. In the case of arbitration, the third party will make a determination of value based upon the facts presented. The arbitration is binding unless either UDOT or the property owner appeals the decision to district court.

• **OPTION 4: Condemnation.** UDOT will proceed with the condemnation if you do not wish to use any of these options to reach a negotiated settlement and your just compensation amount will be determined by the court.

Please reference the requirements of Sections 4.2.3 relative to negotiations, contacts, and agreements reached subsequent to the filing of condemnation and the necessary coordination with the Attorney General by the negotiator assigned to the acquisition.

### 3.3.6 Negotiations by Mail

It is a general UDOT policy to make personal contact with property owners to deliver the acquisition offer. Circumstances may prevent personal contact or may cause unreasonable delay in delivering the offer. The following are conditions in which an offer may be delivered by mail, or by electronic transfer methods such as by e-mail.

1. The owner resides out of State.
2. The owner refuses personal contact.
3. The whereabouts of the owner cannot be determined.
4. An owner or attorney representing the owner requests the offer delivered by mail or by other means such as by electronic transfer (e-mail).

The agent will assemble the offer package consisting of the following documents if an offer by mail is necessary:

- Offer to Purchase Letter
- A right of way plan sheet or exhibit showing property, right of way lines, and acquisition areas
- Ombudsman’s Acquisition Brochure – Your Guide to Just Compensations
- Appraisal Report* or Compensation Estimate
- Statement of Just Compensation
- Ownership Information Sheet
- Warranty deed, easement(s), or both
- Offer cover letter
- Right of Way Contract
- Incentive Offer Letter, if applicable
- Other forms as needed and established for use by the department.
The acquisition document package will be sent with the standard cover letter modified to address the circumstances of each case. The documents should be sent to the owner’s address by certified mail with return receipt requested. The forms should be scanned and sent to preserve the actual record of what has been sent if sent by electronic transfer. The Acquisition Agent will consult with the Right of Way Lead Agent if the owner’s address is not known or if the initial mailing is returned undelivered, to determine the correct constructive delivery of the offer.

The negotiation by mail procedure is only effective if the documents are clearly understood and convenient for the owner to respond. The Acquisition Agent will make a follow-up phone call within three days after delivery of the offer package. This will confirm that the owner understands the offer and other information including the owner’s rights options and the effect of the acquisition on remaining property. Arrange for a personal visit if there is any doubt about the owner’s understanding or if the owner so requests if it is physically or economically practical to do so.

3.3.7 Coercive Practices Prohibited

It is UDOT policy to treat all owners in a fair and respectful manner and not use any tactic to induce settlement by threat or intimidation. The agent should be aware that UDOT acquisition is involuntary to the owner because the State’s power of condemnation underlies every acquisition offer. UDOT agents do not approach the owner as a party with equal power as would be the case in a private market real estate transaction. The agent should therefore not engage in tactics discussed below:

1. Comparing the owner’s position or decision with other owners on the project. It is inappropriate to say, “Your neighbor has settled for this amount. Why don’t you be reasonable as well?”

2. Challenging the owner’s good citizenship or community spirit by saying, “This project is going to help the economy of this town. You are not being very supportive if you reject this offer.”

3. Threatening to advance condemnation by saying, “You are not being cooperative with this project. I will have to refer your case for condemnation right away so the legal system can deal with you.”

4. Delaying the acquisition to provoke an immediate decision. You may not say, “Since you are resisting this offer, I am going to put your case back in the file for a year or so, until we really need it.”

5. Indicating exposure to the harsh judgment of neighbors is another illicit tactic. This is reflected in a statement such as, “Your neighbors have settled and they are going to be unhappy to know you are trying to delay this project.”

The agent should advise the owner of their full rights. It is not permissible to allow an owner to act in obvious misunderstanding or ignorance of their rights. An owner who says “I think it is too low, but I know a court will favor the State and probably give a lower amount, so I’ll settle” should be advised immediately that it is not the normal practice of District Courts to reduce the agency’s offer. It is also appropriate to say that
there may be costs and complications of court and UDOT is confident it will support its established value to the court.

3.3.8  Utah Property Rights Ombudsman

The Ombudsman is authorized by statute to assist and advise owners to resolve property rights disputes fairly, in accordance with existing law, and without expensive and time-consuming litigation. The Ombudsman is authorized by statute (Utah Code § 13-43-101) to mediate or arbitrate acquisition disputes and may order another appraisal at UDOT’s expense to assist the process. The owner is not limited to services of the Ombudsman. UDOT and the owner may agree to any alternative dispute resolution method or service that is qualified and available.

The agent should advise the property owner of the Ombudsman’s services in any case where there is an issue preventing settlement. An information sheet providing a summary of services and contact information will be provided to the owner (see the Executive Summary of Property Owners Rights which includes information about the ombudsman). The Ombudsman’s role in resolving relocation program appeals is described in Section 5.3.10.

The Property Owner and UDOT are not limited to services of the Ombudsman. UDOT has a flexible approach to resolving issues. The Department will cooperate with an owner’s attorney and may agree to mediation, arbitration, or other form of alternative dispute resolution if a possibility of settlement using alternate dispute resolution exists.

3.3.9  Administrative Settlement

An administrative settlement is an increased offer amount that is made to motivate amicable settlement with an owner and thus avoid recourse to Eminent Domain.

UDOT’s valuation process including the appraisal or Administrative Compensation Estimate and the review appraiser’s determination, assures that every owner is offered just compensation for property acquired for right of way. The Acquisition Agent can confidently present an offer to each owner, then explain and defend the offer as reasonable and representing fair market value for the property acquired and damages to remaining property. Real estate valuation is inherently a subjective, judgment-based process. There is room for reasonable disagreement on property values, even among expert appraisers. It is not unusual for property owners to disagree with UDOT’s offer. The Department does not have an inflexible “take it or leave it” position in dealing with citizens who are being required to provide property for public improvement. UDOT’s position is to listen to owners and be open to revising an offer if it is reasonable to do so and would result in settlement and otherwise serve the overall public good.

An administrative settlement must serve the public interest in a specific stated way.
An administrative settlement is not based on appraised value. Corrections to a deficient appraisal may also result in a revised Offer of Just Compensation. This is not an administrative settlement.

The Director of Right of Way is the required approval authority for all administrative settlements. The Director of Right of Way may authorize Acquisition Agents to explore and recommend proposed settlement terms with owners who have declined initial offers. The agent’s authority to discuss administrative settlements will generally be limited to amounts less than $2,500 or 10 percent of the initial just compensation offer, whichever is less. The agent will record the terms and details of any discussion of administrative settlement in the record of negotiations. Final approval of all administrative settlements is made exclusively by the Director of Right of Way or designee.

A revised contract and settlement invoice will be prepared if the agent reaches agreement with the owner to settle administratively within the limits above. The Administrative Decision for Property Settlement form will be completed. The agent will enter the reason why the proposed settlement is in the public interest directly into the Right of Way ePM system on the parcel screen as an administrative settlement note type. It is not necessary to revise the Offer to Purchase form. The owner will sign the contract. The owner will be told that the documents constitute an offer to sell. It is not an approved settlement until signed by the Director of Right of Way or designee.

The agent will transmit the parcel documents and acquisition file to the Right of Way Project Coordinator who will review the file to make sure it is properly documented and to verify that the Right of Way ePM system has been properly and completely updated by the acquisition agent. The file is forwarded to the Right of Way Lead Agent when the file is complete and the documents are properly executed who, upon review and approval will recommend approval to the Director of Right of Way or Designee.

The Right of Way Lead Agent should approve all proposed administrative settlements and must approve settlement offers which exceed 10 percent of the original offer before discussion with the owner. The agent should be in close communications with the Right of Way Lead Agent on the general status of administrative settlements on the project. The agent or the Right of Way Lead Agent should keep an informal project log of administrative settlements to aid in evaluating their overall project effectiveness and to assure that their use is not disturbing the overall equity in UDOT’s treatment of owners on the project.

### 3.4 FUNCTIONAL REPLACEMENT OF PUBLIC-OWNED FACILITIES

#### 3.4.1 General

The Functional Replacement Program funds the replacement of publicly owned facilities that are acquired for highway right of way. The actual cost of a new facility is the measure of just compensation under functional replacement rather than the fair market
value of the acquired facility. The program recognizes that many public facilities serve an essential service that must be replaced. The usual measure of just compensation based on fair market value may not sufficiently fund necessary replacement. Public facilities are often special purpose properties that do not conform to a market-based measure of value. The market value may be diminished by accumulated depreciation which represents an uncompensated cost to the owning agency that must replace with a new facility.

Functional replacement is applicable to public facilities owned by any level of government – local, state, or Federal. The Program is also applicable to UDOT facilities such as maintenance facilities and storage yards that are relocated for highway projects. The Program may replace park facilities, fire stations, maintenance yards, schools, post offices, etc. The Program is not applicable to rail facilities or utilities since these are addressed under specific Federal regulatory rules.

The use of functional replacement is optional on the part of UDOT and also the agency that owns the facility. UDOT fully complies with the constitutional mandate for payment of just compensation by offer of appraised fair market value and is not required to offer functional replacement.

3.4.2 Authority

Use of functional replacement is subject to determination of the Utah Attorney General and each specific project application that conforms to the Utah Code. Federal regulation concerning Federal reimbursement for functional replacement is in 23 C.F.R. 710.509.

3.4.3 Basic Criteria

The following basic criteria apply to functional replacement:

1. The facility must be in public ownership both before acquisition by UDOT and remain so after replacement. This Program is not applicable to property owned by a private non-profit organization or by quasi-public organizations such as volunteer fire departments. A property that is owned by a governmental unit but used by a volunteer organization may be considered as eligible.

2. The facility must serve an essential public service that would have to be replaced by the owning agency regardless of the method of compensation for its acquisition.

3. The replacement must be determined by UDOT to be in the public interest. This determination will be submitted to FHWA for concurrence. The determination will consider all the facts and circumstances, including the estimated cost in relation to the public benefits derived over the service life of the new facility and the ability of the owning agency to maintain and operate the replacement facility.
4. Functional replacement is an alternative to compensation based on appraised fair market value. An owning agency will not be required to accept functional replacement.

5. The standard is the replacement of the utility served by the acquired property for purposes of UDOT participation in costs. This includes upgrades necessary to meet specific current prevailing standards or to meet legal or regulatory requirements that apply to the type of facility.

6. UDOT will not participate in the cost of betterments or increases in capacity unless required by laws, regulations, or standards as described in Item 5 above. For example, costs attributable to an increase in size of a community center due to an expanded service area after replacement will be the responsibility of the owning agency.

7. The owning agency may be compensated for the site either on the basis of the appraised fair market value of the site acquired or the actual cost of a replacement site. UDOT may pay for the appraised market value of the pre-owned site if the owning agency uses a pre-owned site for replacement.

8. FHWA will perform the reviews and approvals that this procedure assigns to UDOT if a UDOT-owned facility is functionally replaced.

3.4.4 Procedures

1. UDOT will identify early in the concept stage of project development, any public facilities that are wholly or partly within the acquisition limits of the project. This may be done at the initial project field review. The Project Manager or an assigned representative will informally contact the agency owning the facility and advise the agency of the possibility of acquisition and the options available for compensation. The contact at this stage will be informational only. No decisions or commitments will be made. UDOT will then send the owning agency a copy of this procedure along with other information relating to the planned project.

2. UDOT will contact the owning agency to arrange a meeting to discuss acquisition options including functional replacement after a preferred alignment is selected and right of way limits are defined. The owning agency will be asked to provide a declaration of interest in functional replacement. UDOT will plan to compensate the owning agency based on appraised fair market value if no response is forthcoming in a reasonable period.

3. The owning agency will provide UDOT a letter from its chief executive addressing the following if it intends functional replacement:
   a. The agency requests functional replacement.
   b. Functional replacement is accepted in lieu of any other payment that would otherwise be due as just compensation for the facility acquired by UDOT.
   c. The facility performs an essential public service that requires replacement and is in the public interest.
d. A local government legislative body approves the request for functional replacement if it owns the facility.
e. Commitment that the owning agency will pay any costs beyond what is compensable from UDOT.

4. UDOT will make the determination as to whether functional replacement is in the public interest while requesting FHWA concurrence in determination. Send a copy of the document to the Attorney General requesting a review of how functional replacement complies with State code.

5. UDOT and the owning agency will develop an agreement. The following items will be addressed:
   a. Define the scope of the replacement in terms of the size and major features.
   b. Develop a schedule for replacement construction.
   c. Estimate the total cost and UDOT reimbursable cost.
   d. Develop a statement of replacement site needs and basis of reimbursement for site acquired as right of way.
   e. State the respective agency responsibilities.
   f. Determine the basis for cost breakout of non-compensable items such as betterments and capacity increases.
   g. State the process for progress payments to the owning agency.
   h. Develop a committee to address issues that arise during development and construction.
   i. Identify the standards, codes, and regulations that will influence the “reasonable prevailing standards” test for UDOT reimbursement of betterments.
   j. Address other items that are relevant to the specific project.

6. UDOT will develop the replacement facility:
   a. Replacement site is purchased.
   b. Plans and specifications are developed, reviewed, and approved. Cost breakouts for betterments and capacity increases are identified.
   c. Project is advertised. The bidding procedure of either UDOT or the owning agency may be used as mutually agreed.
   d. Inspections and progress payments are made to owning agency based on work completed.
   e. Owning agency and UDOT make final inspection. Project is declared complete and final payment is released.

3.5 ADVANCED ACQUISITION

3.5.1 General

Normal project right of way acquisition begins after the environmental process is complete and plans are developed. Advanced acquisition is the purchase of individual parcels before the project’s environmental process has been completed but only after
the preferred alternative alignment is identified or public participation has been conducted. Advanced acquisition is performed to relieve hardship to individual owners who are unable to sell property because of public knowledge of pending highway acquisition. It is also performed to protect UDOT from incurring significantly increased acquisition cost or limited choice of highway alignment due to imminent development of property. UDOT will claim Federal reimbursement for advanced acquisition so it is important that the process described in this Section be followed.

Advanced acquisition is distinct from the Corridor Preservation Program. Corridor Preservation is a group of activities including most often, acquisition undertaken to protect priority corridors from higher cost or from development that would conflict with future transportation use. Corridor Preservation has a long-range goal of protecting transportation corridors up to 30 years in advance of highway construction. Corridor Preservation is undertaken exclusively with State funds.

A parcel may be considered for Corridor Preservation funding if it is initially proposed for advance acquisition but does not meet strict criteria set forth below.

When advance acquisition of property is contemplated for a federal-aid project or for which federal funds may be sought at a later date, compliance with the following sections is required: 23 C.F.R. Part 710, specifically including Sections 710.501 (Early acquisition), 710.503 (Protective buying and hardship acquisition), 710.505 (Real property donations), 710.507 (State and local contributions), 710.509 (Functional replacement of real property in public ownership), and 710.511 (Transportation Alternatives Program).

3.5.2 Basic Criteria

Following are threshold criteria that apply to advanced acquisition for either hardship or protective purchase purposes:

1. Applies to acquisition of a single parcel or a limited number of parcels.
2. Property purchased in advance must be on a preferred alternate alignment.
3. The project is on the currently approved Statewide Transportation Improvement Plan (STIP) and the construction is scheduled to be within three years.
4. UDOT has undertaken required project public involvement activities.
5. The parcels proposed for acquisition are not Section 4f properties such as parks, recreational areas, or wildlife areas nor are they historic properties unless review procedures for these types of properties have been completed.
6. UDOT will not advance acquire if the acquisition would influence the environmental assessment of the project including the selection of a specific location or the decision to construct the project.
3.5.3 Criteria for Hardship Acquisition

UDOT must confirm that a property owner is caused undue hardship compared to others by the inability to sell the property at fair market value because of the public knowledge or perception that the property would be acquired for highway right of way. The hardship may be health, safety, or financial reasons. Following are typical examples of hardship situations:

1. An elderly homeowner is not able to safely climb stairs to the bedroom and bathroom on second floor. He wants to move to a retirement community, but two realtors have refused to list the property because of the pending highway project.

2. A man has taken a job in a city 100 miles away. He must sell his house to afford a house near his new employment. He has had his house on the market for three months and has not received an offer. His realtor told him that prospective buyers like the house but are afraid of planned highway acquisition. He is told to drastically reduce the price if he wants to sell.

3. An owner of a small 4-unit apartment building has had two tenants move out in the past three months. New tenants are deterred from renting because of publicized highway development within two years.

It is not necessary that an owner prove inability to sell property by unsuccessfully offering it on the market for an extended period of time. Should the property be listed and not sold, the owner can use this information to support a hardship claim. UDOT will evaluate the facts of a situation and acquire for hardship based on judgment of the probability of hardship.

3.5.4 Criteria for Protective Purchase

Protective purchase will be performed when development of a property is imminent and would greatly increase its cost when acquired for right of way or would limit choice of alternative alignments. Imminent development may be indicated by the following examples:

1. An owner of a 10-acre tract applies for zoning change that will permit construction of a high-rise office building on land that is now vacant. The developer submits plans for a building permit at the same time. Highway acquisition on the preferred alignment would require removal of any building.

2. The Planning and Zoning Board has declared it will consider re-zoning a certain large tract that will enable its redevelopment as a regional shopping center. It is now farmland. The planned highway will require acquisition of a large strip on one side of the property. The proposed zoning change will not preclude development of the shopping center and the highway but will greatly increase the cost of right of way.
3.5.5 Process for Hardship and Protective Purchase

Hardship Acquisition

UDOT may become aware of a hardship situation from inquiry of a property owner during preliminary field reviews for the project or as a result of public involvement process. A Right of Way Agent will be assigned to interview the owner and determine the facts and circumstances of the case, regardless of the source. The agent will draft a written request to acquire for the owner’s signature if the conditions for hardship exist and if the project is in a stage of development defined in Section 3.5.2. The request will state the hardship and document the inability to sell the property.

The agent will consult with the Regional Design Engineer and the Project Manager either before or after the interview to confirm that the property is partly or wholly within acquisition limits of the proposed highway, that the project is on the STIP, and that projected project right of way acquisition will not have been approved before a hardship acquisition would be completed.

The owner’s request and the agent’s report will be provided to the Right of Way Director. The Director will request FHWA approval after review of the merits if it is a Federally-funded project. The Director will authorize appraisal and acquisition after securing Federal approval.

Protective Purchase

Awareness of imminent development of a property that will be needed for highway right of way may come from a variety of sources. Local government authorities or Metropolitan Planning Organizations (MPOs) may routinely alert the UDOT Region Offices of pending zoning and building applications. Proposed development may appear in print or television media. Ongoing project planning activity may follow development trends and proposals. The proposal to acquire for protective purchase will probably originate outside the Right of Way Division.

The Director of Right of Way will assign staff to perform a cost estimate of present value and an estimate of projected future value should proposed development occur and acquisition proceed in accordance with the project schedule when the need for protective purchase is identified. The Director of Right of Way will present this information to the appropriate Deputy Director of Transportation for decision.

The Right of Way Division will acquire using the same process as for normal acquisition if there is a decision to advance purchase for protective purposes.

3.5.6 Coordination – Relocation and Property Management

All people, business, and non-profit organizations displaced as a result of advance acquisition will be eligible for relocation advisory service and relocation payments as if
the acquisition resulted from normal project acquisition. The Right of Way Lead Agent or the appropriate Deputy Director of Right of Way will assign an agent to provide relocation services when the acquisition is approved.

The Manager of the Property Management Section or designee will be advised of any pending advance acquisitions. The Property Management Section will arrange for services such as property security, rodent control, and building clearance as the circumstances warrant.

3.6 CORRIDOR PRESERVATION

3.6.1 General

Corridor Preservation is the protection of highway transportation corridors from incompatible development or increased cost that would imperil meeting future highway transportation needs. Corridor Preservation has a 30-year outlook and is a tool of long-range transportation planning rather than a strategy of meeting present highway project needs.

Corridor Preservation may be implemented through a range of activities as determined applicable and effective in particular situations. The acquisition of property rights is among several strategies that may be employed to protect corridors. The Right of Way Division will be involved if property rights are acquired or controlled. Other UDOT functions including planning will have the primary role if non-acquisition methods of preservation are used.

Corridor Preservation is not used to fund property acquisition for projects on the currently approved State Transportation Improvement Plan. Individual parcels considered for protective purchase or hardship acquisition (see Section 3.6.5) that do not meet all Federal criteria for advance acquisition may be acquired as Corridor Preservation if approved by the Transportation Commission.

3.6.2 Authority

The following Utah Statutes define, authorize, and fund Corridor Preservation:

1. **Utah Code § 72-2-117** – Establishes the Corridor Preservation Revolving Loan Fund. Establishes the Corridor Preservation Advisory Council to assist and coordinate the corridor preservation efforts and to provide recommendations and priorities to the Transportation Commission.

2. **Utah Code § 72-5-403** – Defines Corridor Preservation powers. Declares that corridor preservation is a public purpose. Authorizes acquisition of property rights and prohibits use of condemnation authority.

3. **Utah Code § 63B-7-503** – Authorizes $10 million bond obligations for acquisition of property rights for Corridor Preservation with revenues of the Corridor Preservation Revolving Loan Fund as the primary source for repayment.
4. Utah Code § 59-12-1201 – Authorizes a motor vehicle rental tax

The Federal regulatory support for Corridor Preservation is at 23 C.F.R. 710.501 titled Early Acquisition. This provision does not provide direct Federal funding for Corridor Preservation but if certain conditions are met, allows State costs to be credited to the State’s share of a Federal-aid project cost.

3.6.3 Right of Way Responsibilities for Corridor Preservation

The Right of Way Division will acquire property rights for Corridor Preservation as authorized by the Transportation Commission and under the guidance of the Corridor Preservation Advisory Council. The Director of Right of Way is a member of the Advisory Council.

The Right of Way Division may be tasked to estimate current value of property rights being considered for acquisition under Corridor Preservation. It may also estimate projected future values and acquisition costs if property is acquired.

3.6.4 Right of Way Process for Implementing Corridor Preservation

Corridor Preservation may involve acquisition of property rights from one owner or from many owners over an extended period of time. The Right of Way Director will assign a Right of Way Lead Agent to plan, coordinate, and manage acquisition activities. The Right of Way Lead Agent will develop an acquisition plan if there are ten or more parcels to be acquired. This will consist of:

- A listing of ownerships and needed property rights
- A performance schedule
- An acquisition cost estimate

The plan will be prepared for advance approval of the Right of Way Director. The plan will be submitted to the Corridor Preservation Advisory Council if the Council so directs or if the Right of Way Director seeks advice or concurrence of the Council. The Right of Way Lead Agent will implement the plan and regularly advise the Director of the Plan’s progress and of significant obstacles that develop in completing the Corridor Preservation Plan.

The Director of Right of Way will advise the Corridor Preservation Advisory Council when Corridor Preservation activities are completed or if problems prevent completion on schedule or within estimate.

The Right of Way Lead Agent will keep an accounting of Right of Way staff time and costs expended in Corridor Preservation projects. This allows for resources to be allocated that meet all responsibilities of the Right of Way Division.
3.6.5 Acquisition for Corridor Preservation – Special Characteristics

Corridor Preservation is performed to support UDOT's long-term transportation goals. It is therefore undertaken outside the project team framework that defines other property acquisition activities of the Right of Way Division. The following additional special elements of Corridor Preservation will influence the method and process of acquisition:

1. Corridor Preservation may require different forms of conveyance or methods of control than are used for project right of way acquisition. Temporary options, purchase of development rights, or right of first refusal may be utilized. The instruments of conveyance or agreement forms will have to be designed to meet requirements of a Corridor Preservation case or project.

2. UDOT is required by statute (Utah Code § 72-5-402) to acquire property rights on a voluntary basis. Eminent Domain powers may not be used for Corridor Preservation.

3. Non-acquisition methods of control may be utilized for Corridor Preservation. For example, a contract to reserve a land strip for future highway development may be negotiated that would be binding on the current owner but not be a deed condition that would encumber title. Innovative practices may be used to address unique situations.

4. Corridor Preservation includes the use of local zoning or planning processes such as control by map of reservation. Right of way will not normally be involved in planning approaches.

5. UDOT and local governments must observe all statutory and constitutional protections on private property rights including payment of just compensation.

6. UDOT is authorized to lease, sell, exchange, or otherwise dispose of property interests acquired for Corridor Preservation if it determines the property is no longer needed for transportation purposes. UDOT is not obligated to offer to resell to the original grantor or grantor’s heirs at the original UDOT purchase price (Utah Code § 72-5-111(2)(c)).

7. An owner from whom less than fee simple rights are obtained for transportation Corridor Preservation may petition UDOT or the local acquiring agency to acquire the entire fee simple interest on the affected property (Utah Code § 72-5-405(2)).

3.6.6 Relocation Services and Benefits – Eligibility

Residential owner occupants, businesses, farms, or non-profit organizations that are displaced as a result of acquisition of property rights for Corridor Preservation are not eligible for relocation benefits as displaced people. Tenant occupants may be eligible for relocation benefits in certain circumstances. The following rule is adapted to determine whether displacement has resulted from Corridor Preservation because of the long UDOT holding period of up to 30 years before ultimate transportation use:

1. Any person in occupancy that would be required to move when the highway project is initiated will be advised of relocation services and
benefits at the time of Corridor Preservation property acquisition. The people, residents, businesses, farms, or non-profits will be provided a three-month window of opportunity to declare themselves displaced as a result of the acquisition and receive full relocation benefits. They must then relocate within a period of three months following their declaration of displacement.

2. People who do not declare their displacement within three months or who do declare but do not relocate within the three months following their declaration, may continue to occupy as tenants of UDOT and will be considered not displaced. If such people subsequently move, they will not be eligible for relocation benefits. The move will be considered made for reasons other than UDOT acquisition.

3. People, residents, businesses, farms, or non-profits who rent Corridor Preservation property after UDOT acquisition will be advised at the initiation of the lease that the property is dedicated for future highway use. As tenants subsequent to UDOT acquisition who occupy with knowledge of ultimate highway use they are not considered displaced persons and are not eligible for relocation benefits.

3.6.7 Property Management

The long-term holding period for property acquired under Corridor Preservation presents special challenges for property management. UDOT has a public responsibility to maintain property in a safe and unblighted condition and to keep property occupied in a productive use that generates revenue.

Normally management of Corridor Preservation property will be contracted to a private property manager. The contract will be for a two-year period renewable on review of satisfactory service.

Revenues produced from rental of Corridor Preservation property will be credited to the Transportation Corridor Preservation Revolving Loan Fund.

3.7 CLOSINGS

3.7.1 General

Property acquisitions for fee takes that exceed $50,000 should be closed at a title company. The UDOT closing agent will coordinate with the approved title companies to assure the title report is acceptable. UDOT will pay for the title insurance policy and any roll-back taxes applicable.

The escrow agent from the title company will schedule a closing of the settled property acquisition at a date and place that is convenient to the property owner and the owner’s attorney or other representative. The settlement will apportion the acquisition amount to the owner and to all parties of interest including lien holders and tax jurisdictions. The
closing details will be listed on the Closing Statement form and included in the final acquisition file.

UDOT incurs or reimburses the cost of all expenses that are incidental to its purchase of real estate and that are reasonable and necessary to complete the transaction. This includes recording fees, transfer taxes, documentary stamps, necessary boundary surveys, mortgage prepayment penalties, and lien release fees. These fees will be paid directly by UDOT whenever possible so the owner will not have to pay out of pocket then seek reimbursement.

The agent will calculate and pay any amount due for the Utah Rollback Tax. There will be no deduction from owner funds for this obligation unless it is a voluntary acquisition.

3.7.2 Agent’s Document Review

The Closing Agent is solely responsible for the preparation and review of the settlement package. The closing agent will consult with the Right of Way Lead Agent and or the appropriate Deputy Director of Right of Way before closing if questions arise regarding prepayment penalties or other unusual payments which result from the purchase.

The completed Administrative Decision for Property Settlement form must be present and fully completed if the settlement involves an administrative increase in the amount offered for settlement. The attorney’s memorandum to the Director of Right of Way as “Justification of Settlement” must be present if there is a legal settlement after filing condemnation. A Judgment for Stipulation/Final Order of Condemnation and trial report must be included in the parcel file if the case was taken to trial and resulted in an award. An agent other than the agent responsible for the acquisition may be assigned to perform this review as a quality assurance measure.

3.7.3 Title Clearance

All parcels acquired for right of way that involves transfer of fee simple property interests will be acquired free and clear of liens and encumbrances. This reflects that UDOT’s valuation and offer was made on the basis of free and clear title. The appropriate Deputy Director of Right of Way and the Director of Right of Way will approve any exception to this general rule. Acquisition of minor property interests including easements, temporary easements, or permits may be accepted by UDOT, subject to existing encumbrances that attach to the total property. UDOT reserves the right to require free and clear transfer of easements if the nature or amount of the encumbrance would place a significant risk of collection against UDOT.

UDOT will, within reasonable limits, assist the owner in clearing title. Information can be provided from UDOT’s ownership report or title report on names and addresses of lien holders. Release forms can be provided to the owner. The agent may offer to be available for contacts from lien holders to explain the nature and extent of the UDOT
acquisition. This may help a lien holder understand that their security interest may not be significantly diminished by the highway acquisition.

Unusual title clearance questions should be discussed with the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Director of Right of Way before the settlement date.

3.7.4 Real Estate Taxes

The preferred practice for settlement of back-due real estate taxes is for the owner to pay the taxes before closing and provide the receipt to the Acquisition Agent. However, closing may proceed with taxes due. The amount of the taxes due, including the present year prorated to closing, will be stated on the closing form as a deduction from the owner’s funds.

3.7.5 Mortgages

The amount of any mortgage balances due for which the owner has not presented a release will be entered on the closing statement as a deduction from owner’s funds. The bank will be paid by UDOT as an incidental expense if the owner has paid a bank fee for providing a partial mortgage release. The amount will be recorded under the Miscellaneous Expense title in the closing statement.

UDOT pays any early payoff penalty charge on a mortgage. A concerted effort needs to be made during the acquisition process to determine if there are any pre-payment penalty clauses in the mortgage or lien documents. Due diligence is required for the purpose of identifying such clauses on the part of the agents responsible for preparing the preliminary title and final title inspections. Information about the clauses must be communicated to the Right of Way Lead Agent when they are discovered. Closings should be delayed if the delay will alleviate the requirement to incur a prepayment penalty if the acquisition can be delayed without adversely affecting the project construction schedule. The relevant page from the mortgage document should support the amount.

3.7.6 Signatures

The following rules will govern signature of official documents at closing:

1. All contracts and conveyance documents must be signed in a manner identical to that disclosed by the title report.

2. The spouse’s signature will be obtained on all documents in addition to the owner of record. The agent should instruct a wife to use her given name (“Janet Jones” rather than “Mrs. Robert Jones”) on conveyance documents.

3. The owner’s mark is acceptable if he or she unable to write their name. This must be signed and witnessed by two people other than the agent.
4. A black or blue ink pen is acceptable for signature. The agent should recommend using blue ink whenever possible. Do not use pencil under any circumstance.

3.7.7 Payment to Owner

The seller will be asked to review, sign, and date the completed closing statement certifying that the statement is true and correct and that all charges are properly itemized.

The seller will be required to sign and date the acknowledgement of receipt of payment on the bottom of the closing statement when the payment check is delivered or picked up at a UDOT office.

3.7.8 Recording the Deed or Easement

Signed and executed deeds, easements and or other recordable documents such as a Right of Occupancy Agreement shall be forwarded to the ROW Executive Secretary who is responsible for facilitating the recording process unless a title company is used. Documents to be recorded must be forwarded to the Clerk of the County in which the property is located immediately after closing requesting recording and the original mailed back to UDOT Right of Way. The return address is a preprinted block on the top of the instrument form.

3.7.9 Rollback Tax Payment

The *Utah Farmland Assessment Act* (*Utah Code* 59-2-5), also called the *Greenbelt Act*, allows qualifying agricultural property to be taxed based on its productive capacity as agricultural land instead of prevailing market value for any other use. The purpose is to prevent farming from becoming economically prohibitive when expanding urban development influences land value.

A “rollback tax” is imposed when land registered under the *Greenbelt Act* is withdrawn from agricultural use. This is a recovery of the tax benefit. It is determined as the difference between the taxes paid while registered under the *Greenbelt Act* and the taxes that would have been paid had the property been assessed at market value. A maximum of 5 years tax recovery is applied. UDOT is obligated to pay an amount equal to and in lieu of the rollback tax if a total property is acquired with one parcel having either a 'T', 'ST' or an or an 'S' extension.

The amount of rollback tax is determined by and payment is delivered to the assessor of the county in which the acquired parcel is located. The check is made payable to the County Treasurer.
The title company or Closing Agent responsible for closing will contact the county assessor to determine the Greenbelt Act status of the property. The agent will notify the assessor by letter that the property has been withdrawn from Greenbelt Act status. The UDOT notification must be delivered, by law (Utah Code 59-2-506) within 120 days after the day the property was withdrawn (date title vested with UDOT). The county assessor will determine the amount of the tax in lieu payment and notify UDOT by letter.

The roll back in lieu payment is due and payable on the day the assessor mails the notice letter and is subject to interest as delinquent if not paid within 30 days of the due date.

3.8 SPECIAL ACQUISITION TOPICS

3.8.1 Donations

UDOT may accept offers to donate real property that would otherwise be acquired by purchase for a project. UDOT may include donations in a Corridor Preservation Plan.

The Acquisition Agent must inform the owner of the right to receive just compensation for the property based on either an administrative compensation estimate (low value uncomplicated acquisitions) or an appraisal by a State certified appraiser before a donation is accepted. The owner will also be advised that a donation may have no effect on the decision to construct the project or on the priority for construction.

A property owner may be motivated to donate for tax purposes and request that UDOT provide an appraisal for documentation. Acquisition Agents should refer owners to tax authorities for detailed advice on all tax matters.

All offered donations of property should be accepted only after approval of the project’s environmental document to avoid inference that donations influenced the selection of an alternate or approval of the project.

A property offered for no monetary consideration, but for special highway design features, access treatment, landscaping, etc., is not a donation. The compensation for such property is the cost to the department of the features provided in exchange. Property donations are conveyed using the same settlement documents and conveyance instruments as property acquired by purchase. The acquisition agent must ask the owner to sign a Right of Way Donation form acknowledging that they have the right to receive just compensation, agree to donate the property without compensation, and to deliver properly executed deeds, with any and all releases necessary to provide clear title. Further, they understand they have the right to know the appraised value of the property being donated and are waiving their right to have the property appraised.
A credit to the State’s matching share can be made based on the fair market value on Federal-aid projects. This value cannot include any increases or decreases in value caused by the project. The fair market value should be based on an estimate that is prepared by a qualified staff or contract appraiser commensurate with the complexity of the underlying property acquisition.

3.8.2 Acquiring from Railroads, Utilities, and Wireless Communications Facilities

Railroads, utilities, and wireless facilities are entities requiring a special acquisition process. These entities are subject to special regulation or laws that affect transferring real property for a public purpose or are national companies and institutions with which UDOT has recurring contact and has developed a process of acquisition.

The processes for dealing with utilities, Federal lands, Indian lands, and railroads are found in the Right of Way Design Manual. The Right of Way Director will assign responsibility for coordinating the acquisition when a property is identified as being owned by a special entity.

3.8.3 Acquiring Federal Lands

Land under Federal ownership or administration occupies over 36 million acres or ⅔ of the total land and water area in Utah. The Bureau of Land Management is the largest landholder with 23 million acres. Other major land holding agencies are the National Forest Service, Department of Defense, and the Bureau of Indian Affairs. Transfer of rights for highway use in these areas is done by a process set forth in agreements with individual Federal agencies or by application to FHWA to obtain the needed grants for highway use through its contacts with the Federal agencies. The UDOT process complies with requirements set forth in 23 C.F.R. 710.601. UDOT has Memorandums of Understanding (MOU) with the Bureau of Land Management and with the National Forest Service.

Right of way staff assigned to project teams may be assigned liaison responsibilities with Federal agency staff or may assist in assembling information or preparing the formal application for transfer of property rights. The detailed procedure for securing rights on Federal lands is discussed in the Right of Way Design Manual. The Design Manual also contains information on required application content and supplemental information that will support the application for land transfers.

UDOT may require property rights in Federal lands for operational rights of way, material sites, or storage and maintenance facilities. UDOT recognizes the interests of
landholding agencies by involving representatives of the responsible Federal agency in all aspects of project development from the earliest planning stage and by timely filing of application for grants and permits. The formal application to utilize Federal land should be filed at least 12 months before advertisement for bid to assure sufficient time for agency review and authorization, and to resolve any issues that may arise during earlier reviews. UDOT’s letter of application to the Federal agency will include an explanation of the need for expeditious action if it is necessary to secure property rights more quickly.

UDOT communicates directly with Federal land-owning agencies during project development and involves representatives in field activities relating to their interests and responsibilities for programs they administer. All requests are processed through the local representative for FHWA.

The BLM does not have the authority to make binding determinations on the right-of-way claims pursuant to R.S. 2477. The BLM may, however, make informal, non-binding, administrative determinations for its own land use planning and management purposes. State code provides for the acceptance of a right-of-way across public lands not reserved for public purposes when a right-of-way had been used by the public for a continuous 10-year period.

3.8.4 Tenant-Owned Improvements

Any improvements that are considered to be real property if owned by the landowner are also to be considered real property if they are owned by a tenant. UDOT will acquire the same interest in, and compensate for, improvements owned by tenants as it would if the landowner owned them.

Tenant-owned improvements should be identified early in the project and so noted on the Ownership Record. The tenant ownership may be identified at a later stage, during negotiations with the owner, or during relocation contact with the tenant. The process for separate offer and payment must be followed regardless of when identified.

It is a common practice for commercial tenants to lease space that is essentially vacant or unfinished and to convert the interior to meet their particular business needs. The tenant may install permanent fixtures such as loading docks or walk-in freezers. The tenant is entitled to payment for these improvements unless otherwise precluded by the lease agreement.

A tenant may own outbuildings on residential property such as storage sheds or above- or below-ground swimming pools. The negotiator and appraiser will inquire from the landowner as to the status of these items.
The basis for the amount of the offer for a tenant-owned improvement is the higher of the contributory value of the items to the whole property or the value for removal, also known as salvage value. The payment for an improvement should not result in compensation exceeding that which otherwise would be paid if the property were in common ownership. See Section 2.2.19 for instruction on valuation of tenant-owned improvements. See Section 2.4.5 relative to the Realty/Personalty report that will be prepared by the appraiser and will define which improvements are real estate, personal property and trade fixtures. The appraisal report should also address the ownership of any such real estate improvements as to whether they belong to the land owner or the tenant owner. This report will provide an inventory of the improvements categorized as real estate, personal property, or trade fixtures.

The landowner must disclaim any interest in the tenant-owned items as condition for payment to a tenant. The Acquisition Agent will draft a statement specifying the property items disclaimed and present it to the landowner. The agent will note in the record of negotiations if the landowner declines to sign the disclaim statement and notify the tenant by letter of the items and their contributory value or salvage value amount that was included.

The tenant owner of improvements must transfer ownership to UDOT before payment of compensation. The standard settlement documents will be used and modified as needed to reflect the nature of the transaction. The Acquisition Agent or the Right of Way Lead Agent should notify the Property Management Team of the acquisition of improvements so that arrangements can be made for security, salvage, or disposal.

### 3.8.5 Uneconomic Remnants

An uneconomic remnant is a remaining part of a property which UDOT determines will have little or no remaining utility or value to the owner after right of way acquisition. UDOT will offer to acquire any remaining property that is determined to be an uneconomic remnant.

Uneconomic remnants should be identified early in project development if possible so that the Acquisition Agent can present the remainder acquisition option to the owner at the initial offer meeting. The Acquisition Agent should resolve the question with the Right of Way Lead Agent and the appraiser before meeting with the owner if there is uncertainty as to continued value and use of a remainder. The option to purchase the remainder property may be presented as an option for the owner. The agent should use good judgment in deciding whether to present this alternative option.
The Property Management Team and the Project Manager should be advised of UDOT acquisition of uneconomic remnants. The remnant will be added to UDOT’s surplus land inventory or it may be included in the right of way for continuous maintenance.

### 3.8.6 Permits to Enter and Construct (Work Permits)

A permit to enter and construct is appropriate where temporary authorization is needed on short notice for a contractor to enter a property to do work that is mutually beneficial to the owner and the State. This is used when the need to enter is recognized after the project is in construction. The permit to enter and construct must be secured by a Right of Way Agent if, for example, a private driveway must be tied into a reconstructed driveway or a private fence or mailbox is relocated. A minimum payment may be made as compensation to the owner.

It is best to identify the need to enter on property during project design so that the right to enter can be acquired by means of a temporary easement.

### 3.8.7 Procedure for Deceased Owner of Record

Acquisition of property where the owner of record is deceased may have to be performed through Eminent Domain. This may be avoided if the Acquisition Agent is successful in securing a death certificate and an affidavit of survivorship from a joint tenant or trustee. These documents must be filed in the recorder’s office of the county where the property is located. Negotiations may then proceed with the surviving owner in the normal manner. The owner or Acquisition Agent will secure a death certificate request form from the Utah Department of Health, Office of Vital Records and Statistics at the following address:

Office of Vital Records and Statistics  
288 North 1460 West  
PO Box 141012  
Salt Lake City, UT 84114-1012

The owner should provide the decedent’s full name, place and approximate date of death, and provide the agent’s contact information for response.

The affidavit of survivorship must be a format that corresponds to the vested position of the surviving owner as trustee, joint tenant etc. UDOT has several approved affidavit formats. The Acquisition Agent should contact UDOT to obtain the correct form. Sample cover letters are available that can be modified to accommodate circumstances.
The Acquisition Agent may provide a blank affidavit form or the surviving owner may provide a form from a private attorney or other source. The agent should offer the proper form and provide notary service. The Acquisition Agent must not provide legal advice. The executed documents, affidavit and death certificate will then be mailed to the county recorder for recording. The Acquisition Agent will proceed with negotiations with the surviving owner in the normal manner after the affidavit has been accepted for recordation.
4.1 INTRODUCTION TO CONDEMNATION

4.1.1 UDOT Eminent Domain Policy

UDOT has the right of Eminent Domain. This constitutionally derived power authorizes the Department to condemn private property for transportation use, which is considered a public use. The Department exercises this power only when all reasonable efforts to acquire property by negotiations based on fair market value have been unsuccessful. By exercising the right of Eminent Domain, the Department is required to protect the rights of owners and tenants, and other parties having an interest in property that is condemned. This includes providing relocation services and benefits to persons displaced and providing advance written notice of dates by which property must be vacated.

The condemnation process, while initiated by the Department, is the constitutional shield protecting a citizen’s right to own property. The *United States Constitution*, in the 5th and the 14th Amendments assign the same level of protection to property ownership that is afforded to life and liberty:

…nor shall any person…be deprived of life, liberty or property, without due process of law.

UDOT staff, and its agents, will never refer to condemnation in a negative manner to induce a settlement, nor suggest that an owner who exercises the right to due process is anything other than a good citizen. It is the Department’s responsibility, in initiating condemnation, to support the public need for the property, and to support the amount it has determined as just compensation.

4.1.2 Legal Authority

Authority for the power of Eminent Domain is in the *United States Constitution*, the *Utah Constitution* and *Utah Code* as follows:

1. *United States Constitution*.
   - 5th Amendment: …nor shall private property be taken for public use, without just compensation.
   - 14th Amendment: …nor shall any State deprive any person of life, liberty, or property, without due process of law.

2. *Utah Constitution*.
   - Article I, Section 1: All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess
Condemnation

...and protect property...

- Article I, Section 7: No person shall be deprived of life, liberty or property, without due process of law.
- Article I, Section 22: Private property shall not be taken or damaged for public use without just compensation.

3. **Utah Code.**
   - Title 78, Chapter 34, Eminent Domain:
   - Title 72, Chapter 5, Rights–of–Way Act

Specific rights of way that may be acquired by condemnation.

### 4.1.3 Prerequisites to Securing Possession by Condemnation

The following conditions must be met before property can be taken by condemnation:

1. **Property Use.** The use to which the property is applied must be a use justified by law. This condition is met by:
   - a. The project must be included in the State Transportation Plan which is approved by the Transportation Commission, and has received environmental clearance; and
   - b. The property is needed for a State transportation purpose as defined in Section 4.1.4 below.

**Necessity**

Acquiring property is necessary to the highway project. The project plans must clearly show that the property is within the right of way limits of the project or is otherwise necessary to maintain design and right of way standards for the operation and safety of the highway.

**Negotiation**

It is necessary to conduct negotiations in good faith with property owners. The owners must have been presented the fair market value offer and the purpose and need for the property explained. The effects of the project on the property must have been described as well as a reasonable time period allotted for the owner to consider the offer. Refer to Chapter Three for complete information on negotiations.

In order to acquire property by condemnation, UDOT must obtain an Order of Immediate Occupancy (see Section 4.3) and also comply with notice and relocation requirements as follows:

1. **Notices Provided to Occupants.** Property occupants (i.e., owners, tenants, business operators) must be provided 90 days’ Notice from the date they are required to move. Residential owners must have been provided a referral for comparable replacement housing before the Notice is delivered. See Chapter Five for detailed information. The delivery of
Notices must be timed and coordinated with expected issuance of an Order of Immediate Occupancy in order to secure earliest possession of property.

2. **Relocation Benefits Offered.** Replacement housing payment amounts should be communicated to residential occupants. Notwithstanding UDOT’s power of condemnation, residents may not be required to vacate until they are offered the amount that will enable them to purchase or rent comparable housing. See Chapter Five for further information.

### 4.1.4 State Transportation Purpose

Real property may be acquired by condemnation for any of the following State transportation purposes:

1. Highway and public transportation rights of way, including those necessary within cities and towns.
2. Construction, reconstruction, relocation, improvement, maintenance and mitigation from the effects of these activities on State highways and other transportation facilities under the control of the Department.
3. Limited access facilities, including rights of access, air, light, view and frontage and service roads to highways.
4. Adequate drainage in connection with any highway, cut, fill or channel change.
5. Maintenance of any highway, cut, fill or channel change.
6. Weighing stations, shops, offices, storage buildings and yards and road maintenance or construction sites.
7. Road material sites, sites for the manufacture of road materials and access roads to the sites.
8. Maintenance of an unobstructed view of any portion of a highway to promote the safety of the traveling public.
9. Placement of traffic signals, directional and other signs, fences, curbs, barriers and obstructions for the convenience of the traveling public.
10. Construction and maintenance of storm sewers, sidewalks and highway illumination.
11. Construction and maintenance of livestock highways.
12. Construction and maintenance of roadside rest areas adjacent to or near any highway.
13. Mitigation of impacts from public transportation projects.

### 4.1.5 Court Jurisdiction for Eminent Doman

Eminent Domain cases are under the jurisdiction of the District Court of the County in which the property is located. Appeals from the District Court are heard in the Utah Supreme Court. Cases sent to the Utah Supreme Court may be sent to the Court of
Appeals before being heard by the Utah Supreme Court.

4.1.6 Inverse Condemnation

Inverse condemnation is a legal action initiated by a property owner against a public agency. The purpose is to establish that the agency has acquired/damaged the owner’s property but has not paid just compensation. It is UDOT policy not to cause inverse condemnation. Inadvertent action, or delay in beginning a project may result in an owner’s perception that an acquisition has effectively occurred, even without a physical taking of the property. UDOT, by project planning and communicating with property owners, will prevent this situation from occurring. UDOT’s hardship advance acquisition policy will alleviate the potential for inverse condemnation. See Chapter Three for further details on UDOT’s hardship advance acquisition policies.

UDOT will reimburse the owner’s litigation and incidental expenses, including reasonable and actual attorney fees, engineering fees and appraisal fees if the court rules in favor of a property owner in an inverse condemnation proceeding against UDOT. UDOT will also reimburse the owner’s costs if it elects to settle an inverse condemnation case before a court ruling and award.

UDOT will pay owners fees and expenses if the court rules that the Agency cannot acquire the real property by condemnation, or the condemnation proceeding is abandoned by UDOT for reasons other than an agreed settlement.

4.1.7 Federal Condemnation

UDOT, through the Utah Attorney General, may request Federal acquisition including condemnation of certain property needed for highway right of way. This may include land and improvements needed for right of way over Indian reservations, or Federally-controlled property. The procedures at 23 C.F.R. 710.603 will be followed in all requests for Federal acquisition. Federal acquisition may be requested for acquisition on the Interstate System, or for defense access roads where Utah for a stated reason is unable to acquire the needed right of way or is not able to obtain possession with sufficient promptness. This circumstance is not anticipated to occur in Utah.

4.1.8 Causes for Condemnation

The primary reason for initiating condemnation is the inability to reach amicable settlement within a reasonable period of negotiations. There are several other causes of condemnation action, including:

- A lack of clear title to the property
- The property owner is not legally competent, which may occur if the owner is a minor, has a mental incapacity, or is incarcerated
Condemnation

- An estate holds the property
- The owner is in bankruptcy
- The owner cannot be located

4.1.9 Condemnation Timing

It is important that the Order of Immediate Occupancy be secured from the District Court before the project is advertised for construction. To accomplish this, the following actions must occur:

1. **Unsuccessful Negotiations** – Reasonable negotiations with the owner have been unsuccessful in reaching settlement. Sufficient time must have been provided for the owner to consider the effects on the property, the offer amount, and to seek advice from others on UDOT’s offer.

2. **Title Examination** – The ownership of the property and all parties in interest including mortgagees and other lien holders must be obtained through a detailed title examination and report.

3. **Resolution and Court Orders** – Each party in interest must be served the Resolution and Court Orders including parties residing out of State.

4. **Condemnation Resolution** – A Condemnation Resolution must be prepared, approved, and delivered to all parties including the Attorney General. The Resolution is UDOT’s official certification of public need for the property and its request to the Attorney General to start the condemnation process on behalf of UDOT.

5. **Notices**. Relocation notices, services and benefits must have been provided to occupants before the Department can take possession (see Section 1.1.3).

Normally six weeks are required from the time of notification that negotiations have failed to the issuance of an Order of Immediate Occupancy by the District Court. A longer time may be required if there are title complications or relocation problems. It is very important that the UDOT staff or contract agent responsible for negotiations keep project and program leaders advised of current negotiation status.

The property owner has 20 days (30 day for out-of-State owners) to respond to the condemnation from the time of summons and complaint.

4.2 ADMINISTRATIVE SUPPORT FOR CONDEMNATION

4.2.1 Right of Way Division – Responsibility in the Condemnation Process

The role of the Right of Way Division is to identify the need for eminent domain and support the Attorney General in undertaking legal actions necessary to complete the process. The Right of Way Division assures condemnation prerequisites are met;
prepares the Condemnation Resolution; prepares maps, property descriptions and exhibits needed for condemnation. Right of Way also coordinates with other Divisions within UDOT and with agencies involved with the Attorney General’s office. The Division records the Order of Immediate Occupancy and the Final Order of Condemnation and makes payment of settlement or award and interest amounts. Division staff is available as expert witnesses or can secure the services of consultant valuation witnesses. UDOT decides whether to accept any proposed stipulated settlements or appeal awards in consultation with the Attorney General.

4.2.2 Relationship With the Attorney General

The Attorney General has an attorney-client relationship with UDOT as defined in the Utah Code § 67-5-17. The Attorney General represents UDOT in all condemnation proceedings and advises UDOT concerning settlements, awards, and appeals. The Attorney General keeps UDOT informed of the status of pending condemnation cases, explains legal issues and related matters to the extent that will enable UDOT officials to make informed decisions regarding representation.

UDOT has the responsibility for acceptance of settlement proposals and for decisions as to whether to appeal District Court awards under the attorney-client relationship. The Director of Right of Way is the UDOT acceptance authority for Eminent Domain settlements and awards.

4.2.3 Settlement After Filing Condemnation

Efforts to reach settlement with owners will continue after filing the condemnation action and may extend to the date of a trial for Final Condemnation Order. A negotiated or stipulated settlement is usually preferable to exposing the State and the property owner to the costs and uncertainties of a trial.

After a condemnation action is filed, the Right of Way Division coordinates with the Attorney General before resuming negotiations. Also, the Attorney General is advised of any approach by a property owner to settle by contract through the attorney representing the property owner. The Attorney General advises the Right of Way Division of any settlement offers and provides recommendations to either accept or reject the offers. The recommendation is based on the relative risks and costs of continuing condemnation action.

An agreement may be reached with an owner after a condemnation case has been filed. Such an agreement will be coordinated with the appropriate representative of the Attorney General before it is consummated.
The Attorney General will be provided a copy of the Right of Way contract or written settlement agreement if this occurs. The Attorney General will prepare a Notice and Order of Dismissal which is sent to the court and all parties of interest.

The notice will be sent to the address where they were served if parties of interest have not responded to the summons. The notice to an individual owner will be sent directly to them. This will be the case even though they may have an attorney, which would be known if they had not responded to the summons.

4.2.4  Reserved

4.2.5  Negotiator Responsibilities

The negotiator’s primary goal is to reach settlement with owners based on the established fair market value, or on an authorized administrative settlement amount. Even if a settlement is not attainable, the negotiator will attempt to resolve any non-valuation issues by providing information and explaining the effect of the acquisition on the property.

The negotiator should keep the Right of Way Lead Agent and Project Manager advised of properties where settlement is not anticipated. This should not preclude further negotiation efforts, but will facilitate preparation for possible condemnation action, and thus maintain the project schedule.

The negotiator should strive to maintain a congenial professional relationship with property owners who decline to settle. Efforts to settle may extend beyond entering condemnation and will have little chance of success if the parties have become alienated or antagonistic during the period of project negotiations.

The Negotiations Log should record every contact with property owners. The log should reflect the topics discussed and areas of disagreement and agreement. It is particularly important that the log indicate good faith negotiations with sufficient contacts to inform the owner of the necessity for the acquisition, the effect of the project on remaining property and provide opportunity to consider the offer and reach a decision.

The negotiator should review the log to assure it is thorough and complete before the file is entered for condemnation.

4.2.6  Maps and Exhibits

Special maps and exhibits are necessary to accurately and clearly show the acquisition and to support the Attorney General in representing UDOT. People may not have a
highway engineering or right of way background will review and evaluate trial exhibits. They should be marked and labeled using non-technical terms whenever possible.

At a minimum, evidence maps should show the following data:

- Full property lines of tracts
- Contiguous tracts where there is a conformity or unity of use, singular economic use or common ownerships
- Roads in place
- Easements
- Buildings, structures and other improvements
- Location and type of underground installations
- Acquisition areas with types of easements denoted
- Present access openings
- Internal roads
- Important topographical features

Exhibits may include vertical, oblique or ground photographs, or aerial photographs. Overlays or markings may be needed to show easements, acquisition areas or distinct use areas.

The Right of Way Division should consult with the Attorney General well in advance of trial to determine the type of trial exhibits that are needed.

### 4.2.7 The Property Rights Ombudsman

Utah’s Property Rights Ombudsman was created by the legislature in 1997 to assist public agencies and citizens in identifying and resolving private property issues. One of the goals of the Ombudsman is:

…to resolve property rights disputes fairly, in accordance with existing law, and without expensive and time-consuming litigation.

UDOT supports this goal and cooperates fully with the Ombudsman to resolve cases that might otherwise result in court action.

The Ombudsman may enter an action at any time before settlement or before a Final Order of Condemnation is handed down by the District Court.

The Ombudsman may order a second independent appraisal of the property, at UDOT cost, if requested by the property owner.

The Ombudsman offers all parties a range of alternative dispute resolution methods.
The most straightforward method is a simple review of the facts and issues, followed by consultation with the parties in an effort to reach agreement. An agreement reached with the assistance of the Ombudsman or a mediator must provide a written summary or report by the mediator or ombudsman of the mediation which clearly describes the terms of the mediated settlement to all parties involved in the mediation.

The Ombudsman or UDOT may propose mediation. During mediation, each party is able to offer whatever evidence, argument or analysis they wish in an informal setting. The Ombudsman then works to find common ground and facilitate a resolution agreeable to all parties. A conclusion is not imposed on either party. The case will proceed to Court if agreement is not reached.

Arbitration may be proposed. This process can be more formal than mediation, but faster, less expensive and more informal than litigation. Arbitration will usually require an advance commitment by the parties that they will accept the conclusion established by the process. Arbitration is binding if the result is not appealed to court within 30 days and the Ombudsman orders it. The parties may, but need not, be represented by attorneys.

A provisional payment may be made upon the owner-occupant’s written agreement that the Purchase Supplement will be recomputed using the acquisition price determined by arbitration or Court as compared to the actual price paid or the amount determined by UDOT as necessary to acquire a comparable dwelling. This provision is also included in the Notice of Eligibility which is issued to the displaced person once the housing study has been completed. See Section 5.7.26 for more information about "Provisional Relocation Payments" for displaced owner occupants of residential property.

Property owners should be advised of the availability and role of the Ombudsman in the course of negotiations. Contact information will be provided to owners that indicate an interest.

The property owner may be represented by private counsel and may also request the assistance of the Ombudsman.

The Ombudsman may examine UDOT parcel records only on specific authorization of the involved property owner. A form authorizing a release of information is available from the Ombudsman.

Property owners need not be represented by the Ombudsman to undertake alternative dispute resolution with UDOT. UDOT will participate in mediation, arbitration or other facilitated settlement methods conducted by qualified parties when this will lead to a fair and expeditious settlement.
4.3 CONDEMNATION PROCESS

4.3.1 Process Overview

An overview of the major steps in the condemnation process is provided below. A more detailed explanation showing responsibilities of parties involved in the process is provided at Section 4.3.8.

The Right of Way Division initiates the condemnation process. The Right of Way Lead Agent advises the Right of Way Director that settlement by contract appears unattainable, or the approach of scheduled project advertisement requires that UDOT obtain an Order of Immediate Occupancy.

The Right of Way Director executes a Condemnation Resolution and transmits it to the Attorney General along with a voucher for payment of established fair market value, an updated Title Report, plans, property descriptions, negotiations records and other documents supporting the condemnation. See Section 4.3.3 for more detailed information on a Condemnation Resolution.

The Attorney General secures an Order of Immediate Occupancy from the District Court in the County in which the property is located. The Right of Way Division mails the Order of Immediate Occupancy to the County Recorder. The Right of Way Division also receives and files the recorded instrument and distributes copies to all interested parties within UDOT.

The Right of Way Division prepares exhibits and maps, photos and other information preparatory for trial, and provides it to the Attorney General. The Attorney General consults with Right of Way concerning witnesses and documentation needed for trial. The Attorney General represents the State at the condemnation proceeding and secures a Final Order of Condemnation. Right of Way will request a voucher for final payment if the Court award exceeds the amount that was deposited with the Condemnation Resolution.

The Right of Way Division will then mail the Final Order of Condemnation to the County Recorder. Title will vest in the State at recordation. Right of Way will distribute copies to the Regional Office and to the Project Manager.

4.3.2 Necessary Information

The following items must be assembled or secured by the Right of Way Division and transmitted to the Attorney General to support a condemnation proceeding. Other items
may be required on complex or special cases.

1. **Negotiator’s Record** – Show the complete sequence of contacts and a brief summary of topics and issues discussed.
2. **Appraisal Reports** – including the agency’s appraisal and review appraisal, appraisals ordered by the Ombudsman and or any reports prepared for the grantor if the agency has obtained copies of a grantor’s appraisals.
3. **Title Report** – Consult with the Attorney General as to specifications and criteria.
4. **Voucher** – Must be for full amount estimated as just compensation (not lower than approved appraised value).
5. **Plan Sheet** – Show property line, right of way line and construction detail.
6. **Field Survey of Property**
7. **Photos** – Show all improvements and land areas with visual points of reference.
8. **Personal/Real Property Determination** – If applicable.
9. **List of Access Openings** – Support by attaching plans or noting the fact that no openings are provided.
10. **Construction Features** – List and describe construction features that are provided to mitigate or cure damages (e.g., fencing, driveways, landscaping).
11. **Condemnation Resolution** – See Section 4.3.3

### 4.3.3 Condemnation Resolution – Purpose and Content

The Condemnation Resolution initiates the process of acquisition by Eminent Domain. It is a comprehensive document that requests the Attorney General to acquire property by condemnation and provides supporting data and exhibits. The Condemnation Resolution provides data necessary for the Attorney General to secure an Order of Immediate Occupancy and a Final Order of Condemnation from the District Court. Specifically, the instrument performs the following requests:

- That the Attorney General obtain an order from the District Court permitting UDOT to have immediate possession of the property
- That the Attorney General acquire the property in accord with Utah Eminent Domain law
- That the State Finance Director prepare a warrant in the amount of established value of the property acquired, payable to the District Court, for the use and benefit of land owners and lien holders.

The Resolution contains the following elements:

1. A narrative discussion establishing the public interest and necessity for
acquiring the property.
2. A description of the property rights being acquired.
3. A legal description of the property and the part(s) acquired.
4. Identification of the owners, lien holders and any other parties in interest.
5. The following supporting items and exhibits that are attached to or accompany the Resolution:
   a. A plan sheet showing property lines, construction effects, all buildings, fences and other improvements. The plan shows ties from buildings to the proposed right of way line and is marked to show conformity of use tracts and economically dependent tracts. All access openings will be shown by size and location.
   b. Voucher for full amount representing just compensation for the property as determined by UDOT
   c. Photographs showing major improvements, topographical features and acquisition areas with identified visual reference points
   d. Appraisal Report
   e. Title Report
   f. Negotiator’s Log
   g. Descriptions of improvements
   h. Other documents necessary to describe the property and interests acquired

4.3.4 Preparing the Condemnation Resolution

All documents supporting the Resolution must be checked for completeness and accuracy. Apparent conflicts between documents must be resolved. Conduct a thorough check of the legal description for bearings, distances, area and conformity to legal and construction requirements. The right of way prints that accompany the Resolution must be checked for true representation of the lands and physical features.

A condemnation number is assigned when preparing the draft of the Condemnation Resolution. The following provides an example of a condemnation number:

Example:  CO*297*1:A, 2:A, 2:E

In the above example:
1. CO refers to an original Condemnation Resolution (not amended).
2. The asterisk (*) is used as a separator.
3. 297 represents the mileage or project base number.
4. 1:A, 2:A, etc. indicates parcel numbers reflecting the base tract number and the type of taking. See the Design Manual for parcel numbering conventions.
The identification number is placed in the upper right of each page of the Resolution.

### 4.3.5 Amendments to the Resolution

A condemnation action may require amending after it has been submitted to the Court. This may arise from a change in the parcels to be acquired, identification of additional parties in interest, changes in design or correction of an error in property description.

An amended Resolution is indicated by the placement of a revised condemnation number on the upper right corner of the Resolution with the original number immediately below. The revised condemnation number will be designated C1, C2, etc., replacing CO in the original number.

Some of the required changes in wording, papers, and prints for amended Resolutions are indicated below:

1. Revise or add parcels:
   a. Summary, description, and maps
   b. No title sheet required for condemnation
   c. Include new resolution, owner and description pages

2. Delete an instrument from the condemnation:
   a. Summary and maps
   b. No second page unless requested on amendments

3. Change an approved appraisal
   a. Front page of Resolution
   b. Second page with descriptions

4. Add parties in interest:
   a. Full Resolution including descriptions and maps
   b. Inform the Attorney General

5. Delete parties in interest or change recorded owner:
   a. Full Resolution
   b. Full Resolution with maps if change in owner

6. Change parties in interest, regular destination of the summary, instrument and maps are needed.

7. Change the point of beginning tie in description:
   a. Full Resolution with maps (inform Attorney General)
   b. No title sheet
   c. Full distribution of regular summary, deeds and maps

8. Add a special limitation in the Resolution, full distribution of the first page in Resolution is needed.

### 4.3.6 Condemnation Resolution – Control of Access Only

UDOT requires only the acquisition of full or partial access rights from the owner in
some projects. The Resolution will state that the purpose is to acquire the property owner’s rights of access. The Resolution package should contain all parties in interest, the approved appraisal, the description and maps.

Control of access clauses used in condemnation actions include the following clause for complete control of access:

Together with any and all rights appurtenant to the remaining portion of said entire tract of property by reason of the location thereof with reference to said freeway, including without limiting the foregoing, all rights of ingress, egress from said remaining portion, contiguous to lands hereby conveyed, to or from said freeway.

Partial control of access clauses for primary or limited access projects include the following for expressways:

Together with any and all rights appurtenant to the remaining portion of said entire tract of property by reason of the location thereof with reference to said freeway, including without limiting the foregoing, all rights of ingress, egress from said remaining portion, contiguous to lands hereby conveyed, to or from said freeway. EXCEPTING and reserving to the owners of abutting lands, their successors and assigns, the right of access to the nearest roadway of said expressway over and across both right of way lines for _____ section, and _____ sections which said section center at points directly opposite Highway Engineer Stations _______(easterly side) and ________ (both sides) respectively.

Use the following clause with proper designation as shown in the parenthesis when a frontage road is involved with the inner through traffic lanes:

Together with any and all rights appurtenant to the remaining portion of said entire tract of property by reason of the location thereof with reference to said (expressway) freeway, and with all abutters rights of access in and to the inner two traffic lanes of said (expressway) freeway, PROVIDED however, that such remaining property shall abut upon and have access to a frontage road which will be connected with said inner through traffic lanes only at such points as may be established by public authority.

4.3.7 Condemnation Resolution Acquiring Improvements on Remaining Land

A house, barn, garage or other building that is located on remaining land must be removed in some instances, in a partial acquisition. The following demolition clause
must be added to the Resolution in the fourth paragraph of the second section when this occurs:

To obtain, from said court, an order permitting said Department to take “immediate possession” and use of such real property, or interests in such real property, for highway (or other) use, or purposes incidental thereto (add) and to further permit the right to enter upon remaining real property and improvements thereon, to facilitate the demolition and removal of any and all improvements which, by this resolution, the Utah Department of Transportation is authorized to acquire.

4.3.8 Condemnation – Steps in the Process

Following are the sequential steps in the condemnation process, identifying the positions or offices that are responsible for the required actions:

1. Determination of Need for Condemnation – The Right of Way Lead Agent will notify the Project Manager that a negotiated settlement is not achievable within the project schedule. The Project Manager and Regional Right of Way Engineer are notified that negotiations are suspended contemplating condemnation. The Right of Way Lead Agent will identify the 100% appraisal amount to be deposited in the Court. The Right of Way Lead Agent will recommend condemnation to the Director of Right of Way.

2. Request for Preconstruction Review – The Right of Way Engineer notifies the Preconstruction Engineer of request for condemnation and requests a preconstruction staff review.

3. Preconstruction Review – The Preconstruction Engineer orders the staff to conduct a field and plan review. The purpose is to show that requirements indicated on the right of way map are adequate to satisfy the needs of the roadway design, hydraulics, traffic, materials, construction and maintenance. This step is very important to avoid a need to revise and re-file condemnation documents after they are submitted to the Court.

4. Verify Field Survey – The Preconstruction Engineer and the Right of Way Engineer will verify that a field survey has been completed.

5. Verify Design – The Roadway Design Support Engineer verifies and notifies the Right of Way Engineer, with respect to the property, that the project design is finalized; no design changes are expected; and approval of all construction and design changes have been received. Any exceptions will be resolved before the Condemnation Resolution is prepared.

6. Prepare the Condemnation Resolution Package – The Right of Way Division condemnation support staff will perform the following actions:
a. Obtain current evidence of title and identify parties in interest for property to be condemned.

b. Compile, and review for completeness, all data relative to the parcel, including design and construction features, maps, plans, title report, photos, appraisal and negotiator’s record.

c. Prepare the Resolution with appropriate clauses, references and attachments. Access openings are identified by size and reference to the Engineer’s Centerline Stations on the plans. The Resolution will state if there are no openings. The *Right of Way Instruments Manual* is the source for the specific type of Resolution and guidance on preparation.

d. An agreement will be executed by all parties agreeing to repay any award or settlement amount exceeding the acquisition cost of the dwelling used in the replacement housing differential calculation if the property owner has requested and was paid an advance replacement housing differential payment. This document will be included in the Resolution package.

e. Transmit the assembled Resolution package to the Right of Way Director.

7. **Approval of Resolution** – The Right of Way Director records the Resolution and returns the memorandum and the certified copy of the Condemnation Resolution to the condemnation support staff.

8. **Enter in Record and Distribute** – The Condemnation support staff will enter the Resolution into record and transmit the condemnation file according to the approved distribution list. Parties in distribution include Deputy Attorney General, Right of Way Lead Agent, Project Engineer and District Engineer.

9. **Just Compensation Voucher** – The Director of Right of Way will prepare a voucher for 100% of the appraisal amount and forward it to the Attorney General.

10. **Prepare Condemnation Package Documents** – The Attorney General’s office will prepare the following items:

    a. Summons for each named defendant (separate packets to husband and wife owners)

    b. Complaint for filing with the Court

    c. Motion for Order of Immediate Occupancy

    d. Memorandum in support of Order of Immediate Occupancy

    e. Affidavit of Director of Right of Way (attached to the memorandum)

11. **Filing Documents** – Generally the Deputy Attorney General will submit all condemnations to the court and prepare the documents for service. In lieu of the Attorney General submitting the documents. The UDOT Courier will file the condemnation package documents with the District Court in the
Condemnation

County in which the property is located. The Courier will record the Civil Number and the Judge’s name in the appropriate place in the packet for each named defendant.

12. Service to Defendants – Generally the Deputy Attorney General will submit all condemnations to the County Sheriff’s for service. In lieu of the Attorney General submitting the documents to the sheriff for service the UDOT Courier will deliver the service documents to the County Sheriff’s office where defendant(s) reside with a cover letter requesting service of each defendant. This may require sending to more than one County or sending to out-of-State jurisdictions. If service cannot be performed because the parties’ whereabouts is not known, or they live out of state, or a qualified person cannot be found to accept service, the Right of Way Division will request the Court through the Attorney General to authorize service by publication. The Right of Way Director will provide an affidavit to the Attorney General supporting this action, which sets forth the efforts made to identify, locate and serve the parties, and the circumstances that made it impractical to serve all the parties. The Attorney General’s Office may, with the approval from UDOT, hire a private investigator to locate and serve a property owner which cannot be found.

13. Order of Immediate Occupancy – The Attorney General files motion for Order of Occupancy. The Order is granted, and the amount deposited as estimated just compensation vests in the owners and other parties in interest and will be paid on application. The Court may impose terms or restrictions, which UDOT or owners are required to comply. These may pertain to liens, rents, assessments, insurance or other matters. The Clerk of Court sends a certified copy of the Order to the Attorney General, who transmits the Order to UDOT Right of Way Division. An owner’s acceptance of an advance payment of the amount UDOT has deposited in the Court is considered, under statute (Title 78-34-9(6)(b)), an abandonment of all defenses except a claim for greater compensation.

14. Recordation – The Right of Way Division sends the Order of Immediate Occupancy to the Recorder in the County where the property is located. At recordation, the property owner is no longer responsible for taxes on the property acquired. Interest will accrue, from the recordation date, on the part of a Court award that is in excess of the amount deposited by UDOT with the Condemnation Resolution.

15. Stipulated Settlement – UDOT and the Attorney General will continue to work with the property owner and owner’s attorney in an effort to agree on compensation. The Attorney General will prepare a Judgment of Stipulation, if agreement is reached. A Final Order of Condemnation is prepared and approved by UDOT, then filed with the Court. The Right of Way Division will process a voucher for payment for the remaining amount
of the settlement.

16. **Court Trial – Final Order of Condemnation** – The District Court will hear the case if settlement cannot be reached. A Finding of Fact is prepared when trial is completed. The Right of Way Division prepares a voucher for payment in the amount of the award. Satisfaction of Judgment is prepared and the Final Order of Condemnation is sent to the County Recorder. The title to the property passes to the State of Utah on recordation.

### 4.3.9 Expert Witnesses

The type of property, effect of the acquisition on remaining property, and the issues being contested will determine the type and number of expert witnesses necessary at trial. Experts may include an appraiser, engineering specialty, project negotiator, etc. In addition to technical expertise, trial experience and testimonial skill will be considered in contracting for expert witnesses.

The Attorney General consults with the Right of Way condemnation support staff in determining the need for expert testimony. Normally, the Right of Way Division will contract with an appraiser if valuation testimony is needed. Valuation witnesses are selected from the prequalified appraisal pool unless specialized appraisal expertise is needed. Right of Way participates at any pretrial orientation of witnesses, as necessary.

Right of Way staff may attend condemnation trials to evaluate the quality of expert witness testimony for the Right of Way Quality Assurance and Control Program. Right of Way may ask the Attorney General to provide a written or an informal evaluation of expert witness performance.

UDOT employees or contract project personnel may be called to testify at condemnation trials. It is most likely that valuation witnesses (e.g., appraiser, review appraiser) will be called, but persons involved in any phase of project development are subject to testify. This includes the Project Manager, Right of Way Leader, Design Engineer, Right of Way Engineer, etc. The Attorney General or Right of Way Division will conduct a pretrial orientation to assist potential witnesses in preparation of their testimony.

### 4.3.10 Appeals

UDOT will not normally appeal an award of a District Court. The decision may be appealed up through the Utah Supreme Court if an important matter of law is in question or an award that is substantially higher than UDOT’s valuation does not appear justified by the evidence. The Director of the Right of Way Division will approve an
appeal in consultation with the Attorney General.

4.3.11 Interest on Award

The Court, as part of the compensation award, includes interest at the rate of eight percent per annum or in some states it is tied to the prime rate, on the amount awarded as the value of property and damages. Interest is paid from the date of recording the Order of Immediate Occupancy to the date of the Final Order of Condemnation. The amount of estimated just compensation that UDOT previously deposited into Court for the benefit of owner will not be included in the base amount on which interest is due.

4.4 SPECIAL ELEMENTS IN CONDEMNATION

4.4.1 Property in Possession of a Local or State Agency

Property owned or controlled by another public agency is also subject to condemnation. UDOT must show to the District Court that the intended public use is more necessary than its present public use. It is UDOT policy to involve other agencies early in project planning and work out solutions that best meet the needs of each agency, and best serve the overall public interest.

UDOT may condemn real property for the purpose of exchange for real property held by another public agency when the property held by another agency is needed for a transportation use.

4.4.2 Release or Exchange of Appraisals

UDOT will provide its appraisal to the owners or their attorney when it determines that it is in the best interest of the State, or when so ordered by the Court. Exchange of appraisals may facilitate a settlement when both parties have secured appraisals. The Director of Right of Way will authorize disclosure of the State appraisal.

4.4.3 Provisional Relocation Housing Payments

The Court must be advised if the property being condemned is an owner-occupied residential property which the owner occupant vacated prior to the Condemnation Hearing if a “Provisional Relocation Housing Payment” was paid to the displaced person. This notice must be provided to avoid a duplicate payment should the court determine that the just compensation amount awarded to the Displaced Owner Occupant exceeds the agency’s offer of just compensation. Refer to section 5.7.26 of this Manual for more specific information about “Provisional Replacement Housing Payments.
4.4.4 Abandonment of Condemnation

The Order of Immediate Occupancy does not relieve UDOT’s responsibility to provide 90 days advance notice to occupants of the date they are required to move. UDOT must provide relocation benefits including payments and referral to comparable replacement housing when residential displacement is involved. Relocation services must be closely coordinated with condemnation actions to assure the property is available to meet project schedule.

A condemnation action may be abandoned by UDOT at any time before Final Order of Condemnation. A plan change removing the necessity for acquisition is the primary cause of abandonment. UDOT is obligated to pay all owners’ expenses including reasonable attorney fees if a condemnation is abandoned. An abandoned action may cost the State more than if the property had been acquired. It is therefore important that project staff confirm the need for the property before a Condemnation Resolution is prepared.
Chapter Five
RELOCATION

5.1 GENERAL PROGRAM INFORMATION

5.1.1 Introduction

UDOT tries to minimize displacement from homes, businesses, or farms in planning and designing highway projects. UDOT delivers a comprehensive program of services and benefits to affected people when relocation is unavoidable. The purpose of the Relocation Program is to perform timely, orderly, and humane relocation of residential displacees and successfully reestablish displaced businesses, farms, and non-profit organizations. Relocation program benefits are defined in Federal law and Utah statute. Relocation benefits are separate from and in addition to just compensation paid to owners for the acquisition of interests in real estate.

UDOT objectives for residential displacement are to make displacees “whole” economically, assist relocation to comparable housing, and minimize personal problems in adjusting to relocation. All who work in relocation understand that displacement is stressful and can be highly disruptive to affected families, even with benefits and services of the relocation program. UDOT and Consultant agents are sensitive to problems experienced by displacees. They efficiently deliver program benefits to relieve personal disruption while assuring timely delivery of property needed for highway construction.

UDOT Relocation Program objectives for businesses, farms, ranches, and non-profit organizations are to help locate suitable replacement sites if possible and reimburse for the eligible actual, necessary, and reasonable costs of relocating or moving personal property.

This Chapter defines policies and practices to deliver relocation benefits and services in a consistent and cost-effective manner. These practices express the official policies of the Department. Relocation agents will not deviate from guidance in this manual unless expressly instructed by the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or the Director of Right of Way.

5.1.2 Authority

The UDOT relocation program carries out provisions of the Utah Relocation Assistance Act, Chapter 57, Section 12. The program also conforms to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and its implementing regulations that are found in 49 C.F.R. Part 24.
Additional legislation *MAP-21 – Moving Ahead for Progress in the 21st Century Act* was signed into law on July 6, 2012 and is in full effect as of October 1, 2014.

The *Utah Relocation Assistance Act* conforms to the provisions of the Federal *Uniform Act*. All States are required to provide services and benefits in the Federal law as a condition of receiving Federal funds for public projects. Local authorities that administer Federal funded projects have the same obligations as if the project were undertaken by UDOT.

The Federal Uniform Relocation Assistance and Real Property Acquisition Act is implemented through regulations published by the Federal Highway Administration in the *Code of Federal Regulations*, Title 49, Part 24 (49 C.F.R. 24). The *Utah Relocation Assistance Act* follows the guidance and interpretations that are found in 49 C.F.R. 24. There is no practical difference in the application of the Federal and Utah laws in regard to State or Federally funded projects. Local governments that undertake projects without State or Federal funds are obligated to provide some relocation benefits but the extent of those benefits are determined by the local agency. Each local agency determines the level of relocation assistance available under agency regulations under the Utah Relocation Assistance Act, Utah Code Title57 Chapter12 as amended. The agency relies on UDOT regulations and the policies and procedures included in this manual if the agency does not have its own regulations.

This Chapter provides the detailed instructions to provide advisory assistance and determine benefits. UDOT staff, consultants, and staff of local agencies who perform relocation will use this manual as their primary policy guidance.

Relocation is a human endeavor potentially involving an infinite variety of personal circumstances. Situations may arise that are not addressed in this manual or strict compliance may have an unintended effect. The Director of Right of Way will clarify or interpret policy within the limits of law and regulations to accommodate exceptional cases. Agents performing relocation should consult the Right of Way Lead Agent, Director, or his or her designee on unique cases so that solutions can be developed that best achieve the spirit as well as the letter of State and Federal law.

The provisions of the *Utah Relocation Assistance Act* apply to any person displaced as a result of a program or project with Federal or State of Utah funding in any phase of the project. Staff and consultants who perform relocation must understand that failure to provide benefits and services can disqualify the entire project, including construction costs, from eligibility for Federal funding. It is very important that personnel identify potential displacements early in project planning and provide a level of service that assures completion of relocation before the project is advertised for construction.
Local authorities may perform relocation if it is included as a local responsibility in the project Cooperative Agreement. Qualified local staff or consultants must perform the work. UDOT will accept a local project for construction only when the local agency certifies that all the payments and assistance required by this Chapter have been provided. Relocation benefits are provided under the local agencies’ policies and procedures for projects that are paid wholly with local funds unless the agency does not have relocation policies in place. The agency follows UDOT policies and the procedures described in this manual if it has not enacted relocation policies and procedures.

5.1.3 Overview of the Relocation Program

Residential relocation services and payments are oriented to the housing needs of individual displaced households. The goal of the residential relocation is to enable displaced individuals or families to purchase or rent replacement housing that is comparable to housing occupied before displacement and that additionally meets basic health and safety standards of being decent, safe, and sanitary. The definitions for “comparable” housing and “decent, safe and sanitary” are provided in Sections 5.1.5 and 5.1.6.

All classes of displacees including residential, business, farm, and non-profit organizations are reimbursed for the actual and reasonable costs of moving personal property from the site acquired for right of way.

Displaced businesses and farm owner displacees are also reimbursed for certain incidental, reestablishment costs, and related nonresidential eligible expenses that are explained further in this Chapter.

UDOT provides services to assist displacees in finding replacement homes and business sites and to adjust to relocation in addition to the financial benefits. Projects are scheduled and administered in a manner that protects occupants of property acquired for right of way. The following is criteria for the UDOT Relocation Program:

1. UDOT will not require any person to move from a residence until at least one comparable replacement dwelling is identified that is within the financial means of the displaced household. The replacement must also meet qualitative standards of decent, safe, and sanitary (DSS) housing explained in Section 5.1.6.

2. People required to relocate are provided a 90-day advance written notice of the date they are required to vacate. Utah uses a 90-day general notice followed by a 30-day date specific notice.
3. UDOT provides advisory assistance to help displacees and certain others affected, locate replacement housing or business site and to help adjust to the move.

4. People who disagree with relocation payment amounts or the determination of eligibility have the opportunity to be heard in a UDOT administrative appeal process. The person may choose assistance of the Utah Property Rights Ombudsman who will work with the parties to resolve issues.

5.1.4 Eligibility for Relocation Benefits

Displaced people are eligible to receive relocation program benefits. A displaced person is defined in the *Code of Federal Regulations* 49 C.F.R. 24.2(a)(9)(i) as:

Any person who moves from real property or moves personal property from real property as a direct result of the acquisition of that real property in whole or in part for a program or project undertaken by the Department. People who move as a result of a written notice of the Department's intent to acquire the property are also considered displaced persons.

The normal date on which all property occupants, tenants, as well as owners become eligible for relocation benefits is the date that UDOT delivers the written offer to purchase property. The agent negotiating the property should assure this important date appears correctly on all forms and file documents. It is also important that potential displacees be advised at the earliest contact such as during surveys or at public meetings that they should not move without first contacting UDOT Right of Way. This will prevent unintended disqualification from benefits.

UDOT may advance the date of eligibility for benefits to alleviate a hardship by issuing a letter to the displacee stating UDOT’s intent to acquire the property. Such letter will be issued on approval of the Region Director, Project Manager, and the Director of Right of Way after a review of circumstances of the case.

Displaced business or farm owners may need to relocate from adjacent property that is not acquired. An example is UDOT acquisition of property containing a furniture repair workshop. A large garage used to store materials and work inventory is on nearby property that is not acquired. Eligibility for relocation will extend to the contents of the garage because the facilities are dependent on each other and the displacement of the workshop causes relocation of the garage. The decision to approve relocation from property not acquired is based on the circumstances of each case. The key criteria are that there be a unity of use between the property acquired by UDOT and the facility off the right of way and the acquisition causes the need to relocate from both.
Tenants displaced as the result of a voluntary acquisition as described in 49 C.F.R. 24.101(b) may be eligible for relocation assistance benefits.

The following is a list of people who do not qualify as displaced:

1. A person who moves before the date negotiations are initiated for the parcel from which displacement occurs unless UDOT issues a Notice of Intent to Acquire to advance the eligibility date for relocation assistance to relieve a hardship for the displaced person.

2. A person who initially enters into occupancy of the property after the date of its acquisition by UDOT.

3. A person who has occupied the property for the purpose of obtaining assistance under the *Uniform Act*.

4. A person who is not required to relocate permanently as a direct result of the project. Temporary housing must be decent, safe, and sanitary (see Section 5.1.6) if a tenant-occupant is not displaced but will be required to move temporarily in connection with the project. The tenant will be reimbursed for all qualified moving expenses and increased housing costs during the temporary relocation. The person is considered to be displaced person and eligible for relocation benefits if the temporary occupancy period extends beyond 12 months.

5. An owner occupant who voluntarily sells property to UDOT after being advised in writing that UDOT will not acquire by condemnation if the property cannot be purchased by amicable agreement. This provision of 49 C.F.R. 24.101(b) is only applicable if UDOT is purchasing property for purposes other than highway right of way. This may include purchase of property for last resort housing (see Section 5.10).

6. A person who UDOT determines is not displaced as a direct result of a partial acquisition.

7. A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced for a project. This notification will only be issued in a case where a person has not moved. UDOT will reimburse expenses incurred to satisfy any binding contractual obligations entered into after the effective date of the notice of relocation eligibility.

8. A person who retains the right of use and occupancy of the real property for life (under a life estate) following its acquisition by UDOT.

9. A person who is in unlawful occupancy or who has been evicted for cause before the initiation of negotiations.

10. A person who is not lawfully present in the United States is not eligible for relocation benefits as provided in 49 *C.F.R.* 24.208. See Sections 5.1.11 and 5.7.6 for complete discussion of this topic.
Questions on eligibility for relocation benefits frequently involve cases that have unusual circumstances. The Relocation Agent should consult with the Right of Way Lead Agent or appropriate Deputy Director of Right of Way as soon as such cases are identified. It is important that decisions be fair, consistent, and comply with all regulations. UDOT may involve the Utah Property Rights Ombudsman, as appropriate.

5.1.5 Relocation Program Definitions

Certain terms used in relocation must be understood in the strict manner intended by controlling laws and regulations. Some of these terms have common meanings that are different from their use in the Relocation Program. Some terms are used in a different sense than in other aspects of right of way. For instance, the word “comparable” is used in a different sense in appraisal than in relocation. Following are terms and their definitions as they are used in the Relocation Program:

1. Acquisition Date
   The date UDOT obtains title to the real property. This is not the same as the date the owner signs the agreement or the date UDOT takes possession of the property.

2. Business
   Any lawful activity except a farm operation (see Item 8 for definition of farm operation) that is conducted primarily:
   a. For the purchase, sale, lease, and rental of personal and real property.
   b. For the manufacture, processing, or marketing of products, commodities, or any other personal property.
   c. For the sale of services to the public.
   d. For outdoor advertising display purposes when the display must be moved as a result of the project.
   e. By a nonprofit organization that has established its nonprofit status under applicable Federal law, Utah law, or both.

3. Comparable Replacement Dwelling
   A dwelling that is functionally equivalent to the displacement dwelling. The term “functionally equivalent” means it performs the same function and provides the same utility. Although a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. The functional equivalency standard reflects the range of purposes for which the various physical features of a dwelling may be used. The relocation agent may consider reasonable tradeoffs for specific features when the replacement unit is “equal to or better than” the displacement dwelling in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling. A comparable dwelling must meet the following criteria:
a. Adequate in size to accommodate the occupants.

b. Located in an area that is not subject to unreasonable adverse environmental conditions.

c. Located in an area not less desirable than the location of the displaced person’s dwelling with respect to public utilities, commercial and public facilities, and is reasonably accessible to the person’s place of employment.

d. Located on a site that is typical in size for residential development with normal site improvements including customary landscaping. This may not include special improvements such as outbuildings, swimming pools, or greenhouses.

e. Currently available to the displaced person on the open market. A comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling will apply.

f. Within the financial means of the displaced person (see Item 11 for definition of financial means).

g. A dwelling that may reflect similar government housing assistance for a person receiving government housing assistance before displacement. Any requirements of the government housing assistance program relating to the size of the replacement dwelling will apply in such cases.

4. Date of Displacement
The date the displaced person is required to move from the acquired property or the date the property is vacated whichever is earliest.

5. Displacee
Any person who meets the definition of a displaced person as defined in Section 5.1.4. Status as a displacee or “displaced person” confers eligibility for relocation benefits.

6. Dwelling
A permanent or customary and usual residence. It may be a single-family house, a single-family unit in multi-family or multi-purpose property, a condominium or cooperative housing unit, a non-housekeeping unit, a mobile home, or any other type of residential unit. A seasonal or part-time residence such as a ski lodge unit or a hunting cabin is not normally considered a dwelling.

7. Dwelling Site
The term dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area (see 49 C.F.R. 24.2(a)(11)) and Appendix A. This will ensure more accurate
computations of replacement housing payments when a dwelling is located on a larger than normal site or when mixed-use properties are involved.

8. **Family**
Two or more individuals living together by mutual consent in a single-family dwelling unit. A family may or may not be related by blood or legal ties for purposes of relocation.

9. **Farm Operation**
Any activity that is conducted solely or primarily for the production of one or more agricultural products or commodities including timber for sale or home use and is customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

10. **Family Farm**
A farm operation that is conducted:
   a. on two sections (1280 acres) or less
   b. as a sole proprietorship or through an entity that is wholly owned by members of the same immediate family (**Utah Code** § 57-12-3(4)).

11. **Financial Means**
The following criteria apply in determining whether housing costs are within the financial means of a displaced person or family:
   a. Replacement housing cost for a displacee who owned his or her dwelling at least 180 days before initiation of negotiation is within financial means if the homeowner will receive the full price differential, eligible increased mortgage interest costs, and all eligible incidental expenses that are described in Section 5.7.2.
   b. A replacement dwelling rented by a displaced person is within the displacee’s financial means if, after receiving rental assistance as provided in Section 5.8.3, the person’s monthly rent and estimated average monthly utility costs for the replacement dwelling does not exceed the person’s base monthly rental for the displacement dwelling.

   Base monthly rental is the lesser of:
   1) Thirty percent of the displacee’s average gross monthly household income, if the amount is classified as “low income”
   2) The average monthly cost for rent and utilities at the displacement dwelling for the 90-day period before the Department acquired the property as set out in 49 **C.F.R.** 24.402(b).
c. Comparable replacement rental housing for a displaced person who does not meet displacement housing length-of-occupancy requirements for replacement housing benefits is within the displacee’s financial means if UDOT pays that portion of the monthly housing costs of a replacement dwelling that exceeds the person’s base monthly rent for the displacement dwelling as described in 49 C.F.R. 24.402(b)(2). Displacee circumstances can influence application of the definition of financial means. The Relocation Agent will consult with the Right of Way Lead Agent or appropriate Deputy Director of Right of Way when unusual cases are encountered.

12. **Household Income**
The term household income means total gross income received for a 12-month period from all sources (earned and unearned) including but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full-time students less than 18 years of age. See 49 C.F.R. Part 24 Appendix A, section 24.2(a)(14) for examples of exclusions to income.

13. **Initial Occupant**
Any person who occupies property at the initiation of negotiations by UDOT for the acquisition of the property or who has been given a written notice of UDOT’s intent to acquire the property. Contrast this definition with that of Subsequent Occupant defined in Item 25.

14. **Initiation of Negotiations**
The date UDOT presents the owner or representative with the initial written offer for acquisition of the property.

15. **Last Resort Housing**
Housing that is made available by UDOT by means that are outside the normal range of relocation replacement housing benefits. Replacement housing may be constructed, rehabilitated or purchased, or payments may be made to enable purchase or rental of comparable replacement housing once authority for Last Resort Housing is approved. See Section 5.10 for complete information.

16. **Mortgage**
A lien to secure money advanced to purchase real property under the laws of Utah, together with any credit instruments secured thereby.

17. **Mobile Home**
The term includes manufactured housing and recreational vehicles used as residences. Refer to 49 C.F.R. Appendix A section 24.2(a)(17) for further details.
18. **Nonprofit Organization**
An organization that is recognized under Utah law as a nonprofit organization and so is exempt from paying Federal income taxes under the *Internal Revenue Code 26 U.S.C. 501(c)(3))*.

19. **Owner**
A person who purchases or holds any of the following interests in real property:
- Fee title, a life estate, a 99-year lease or a lease including any option for extension with at least fifty years to run from the date of acquisition.
- An interest in a cooperative housing project that includes the right to occupy a dwelling.
- Purchaser of installment purchase contract or bond for deed, by which title passes to the buyer on completion of payments.
- Any other interest, including a partial interest that UDOT determines as ownership. The consultant agent should consult with the Right of Way Lead Agent or appropriate Deputy Director of Right of Way on questionable cases.

20. **Person**
A “person,” for relocation benefits, may be a legal entity such as partnership, company, corporation, or association as well as an individual or family.

21. **Person Not Lawfully Present in the United States**
A person who is not a citizen and who has not been admitted to the United States pursuant to the *Immigration and Nationality Act* or whose period of legal residence in the United States has expired.

22. **Rent Supplement** *(also known as the Rent Differential Payment)*
The amount in addition to current rent and utilities that is necessary to enable a displaced person to lease or rent and pay utilities at a comparable replacement dwelling.

23. **Replacement Housing Payment** *(also known as the Price Differential Payment)*. The amount, when added to the amount UDOT pays for the displacement dwelling, will enable the owner displacee to purchase a comparable replacement dwelling.

24. **Small Business**
A business having 500 or fewer employees working at the site that is being acquired or being permanently displaced by right of way acquisition. The site must be the location of economic activity. Sites occupied solely by outdoor advertising signs or devices do not qualify as businesses for purposes of reestablishment expenses.

25. **Subsequent Occupant**
A person who begins occupancy of real property after the initial date of
negotiations for UDOT to purchase the property. See definition of Initial Occupant in Item 13.

26. **Tenant**
   An individual or family who rents or is temporarily in lawful possession of a dwelling unit including a sleeping room.

27. **90-Day Owner Occupant**
   An initial occupant who has owned and occupied the dwelling from which he or she is being displaced for less than 180 days but not less than 90 consecutive days immediately before the initiation of negotiations.

28. **180-Day Owner Occupant**
   An initial occupant who has owned and occupied the dwelling from which he or she is being displaced for at least 180 consecutive days immediately before to the initiation of negotiations.

### 5.1.6 Standards for Decent, Safe, and Sanitary Housing

Decent, Safe, and Sanitary (DSS) is the term used to indicate basic health and safety standards for replacement housing. Residential displacees must occupy DSS replacement housing to qualify for Rent Supplement or owner Replacement Housing Payment. It is important that this key term is understood in order to apply it accurately and consistently.

A DSS dwelling meets applicable local housing and occupancy codes. The following criteria apply if there is no occupancy code in the local area or if any of the following standards are not met by the local code:

1. Structurally sound, weather tight, and in good repair
2. Contain a safe electrical wiring system that is adequate for lighting and other devices
3. Contain a heating system that is capable of sustaining a healthful temperature of approximately 70°F.
4. Adequate size with respect to the number of rooms and living space needed to accommodate the displaced person.
5. Includes a separate, well-lighted, ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and toilet, all in working order as well as potable hot and cold water that is properly connected to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator.
6. Contain unobstructed egress to safe, open space at ground level.
7. For a displaced person with a disability, be free of barriers that will preclude reasonable ingress, egress, or use of the dwelling by such displaced person.
Local standards must be honored for the abatement of deteriorating paint including lead-based paint and lead-based paint dust to protect public health and safety. Consider it a matter of public policy if local law does not mandate adherence to such standards.

5.1.7 Relocation Records and Files

Complete and accurate records are essential to a well-managed Relocation Program. They support relocation payments and advisory services and provide an auditable record for fiscal and quality reviews. The Right of Way Division has developed three sets of forms for relocation corresponding to cases involving residential owners, residential tenants, and non-residential displacements. The sets located on the Electronic Project Management (ePM) System and available from UDOT Right of Way as “merged document sets,” are fully integrated for merged data accumulation and electronic data entry. The merged form sets will be used exclusively and without alteration of data blocks as the official file record.

The form sets are organized for sequential recording of relocation case data. Each set has a cover sheet that is a checklist of required activities on the relocation case. The agent will initial each item in the checklist as it is completed and sign and date the checklist when the case is complete.

Develop the forms concurrently with the activity being recorded. Printed copies will be retained in a secure project file. The forms will be reviewed for completeness and combined with files of other right of way phases for transfer and retention with the combined project file when the project is complete.

5.1.8 Confidentiality and Security of Records

Relocation records contain personal and financial information that must be kept confidential. The agent will store relocation records in a locked cabinet or room when not under personal control. Do not share information from files with any other person including other UDOT employees except by authorization by the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Director of Right of Way. Refer public or media requests for records to the Director of Right of Way or the authorized UDOT Public Information Officer in each Region.

Relocation records on Federally-assisted projects will be available for inspection by representatives of the Federal Highway Administration (FHWA). People who are appealing a UDOT relocation action and their authorized representatives such as attorney or Utah Ombudsman will be provided reasonable access to the records that pertain to their claims.
The UDOT standard relocation forms plus all memoranda and correspondence concerning the relocation claim comprise the official file. Do not keep extraneous papers in the file. Retain original signed documents, not copies, in the record file. Relocation records will be controlled and retained as provided in Chapter One of this manual.

5.1.9 Civil Rights

The *Utah Fair Housing Act* (*Utah Code* Title 57 Chapter 21) declares it unlawful to discriminate on the basis of race, religion, color, sex, national origin, familial status, disability, or source of income in the rental, purchase, and sale of real property. Further, Title VI of the Federal *Civil Rights Act* of 1964 states that:

No person … shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

UDOT monitors its performance under fair housing legislation. At the conclusion of the relocation process, a customer survey will be delivered to the displacee. The survey will invite displacees to voluntarily state their religious affiliation and ethnic origin according to the five broad classifications established by the US Bureau of the Census. The self-identification is completely voluntary and may be declined with no effect on services or benefits. The agent will not question anyone’s decision concerning this matter. A displacee response on legal residency is required as a condition to receiving relocation payments and assistance (see Section 5.1.11).

Bring any complaint or inquiry of discrimination in the administration of the UDOT Relocation Program promptly to the attention of the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or the Director of Right of Way by whoever receives it. The Director of Right of Way will review the matter and attempt to resolve the issue quickly. The Right of Way Division will inform the complainant of their right to file a formal complaint or refer the issue to the UDOT Office of Civil Rights if the issue cannot be resolved. UDOT Right of Way staff and consultants will cooperate fully in any official review. Refer to the Civil Rights Section 1.6.2 for additional guidance on the handling of possible civil rights related complaints.

UDOT commits to comply with other Federal laws and Executive Orders in administering the Relocation Program. These are listed at 49 *C.F.R.* 24.8.

5.1.10 Assurances and Certifications

UDOT has provided assurances to FHWA as required by Sections 24.4 and 24.601 of the *Uniform Act*. These affirm UDOT’s commitment to comply with provisions of the *Uniform Act* and Federal implementing regulations contained in 49 *C.F.R.* 24. These
assurances of compliance also apply to local governments that acquire property and displace people for projects that are reimbursed with State or Federal funds.

Approval of this Manual in accordance with 23 C.F.R. 710.201 commits UDOT to comply with all Uniform Act requirements as well as specific FHWA requirements contained in 23 C.F.R. 710.

5.1.11 People Not Legally in the United States

The Federal Uniform Relocation Assistance and Real Property Acquisition Act prohibits relocation payments or relocation advisory assistance to people who are not legally in the United States. Each person submitting a relocation claim is required to certify status as either a citizen of the United States or an alien who is lawfully in the United States. An exception to the denial of benefits is permitted if UDOT determines that the denial will result in exceptional and extremely unusual hardship to the person’s spouse, parent, or child who is a citizen or an alien in legal residence in the United States. This is the sole exception to the prohibition of benefits.

The Relocation Agent will secure the certification concerning legal residency in the United States from each displacee or head of household at the initial meeting. The form, titled “Certification Concerning Legal Residency in the United States of America,” is provided in the relocation forms set. The agent will also make a notation in the Agent’s Log that the certification has been explained and secured.

The circumstances involving people who are not legally present can be complex and UDOT is committed to implementing provisions in a fair and nondiscriminatory manner. Any situation involving people not legally present in the United States should promptly be brought to the attention of the Right of Way Lead Agent or appropriate Deputy Director of Right of Way for review and determination. Refer to Section 5.7.6 for further guidance concerning this topic.

5.1.12 Multiple Occupants of a Displacement Dwelling

Two or more people who share occupancy of a displacement dwelling but move to separate replacement dwellings are each entitled to a reasonable prorated share, determined by UDOT, of any relocation payments that will be made if the occupants had moved together to a comparable dwelling. The occupants will have separate and independent eligibility for relocation benefits if UDOT determines that the occupants maintain separate households within the same dwelling. Refer questionable cases to the Right of Way Lead Agent for determination.
5.1.13 Process for Payment of Claims

The process for payment of claims for relocation benefits requires attention to detail. Each displacee may be eligible for two to six separate benefit amounts and each may have different eligibility or qualification criteria. The claims may be processed at different times in the relocation process. Reimbursable costs must be confirmed as actual, reasonable, and necessary. Claims must be paid and delivered in a timely manner to ensure that displacees have the means to purchase or rent replacement housing and pay for moving costs.

UDOT will process claims for payment expeditiously to avoid hardship from a displacee having to advance personal funds to pay relocation costs. The displacee will be promptly and specifically told what is required for payment if additional documentation is required to support a claim.

UDOT may accept an assignment for direct payment to a mover, a title company, or other contractor or may advance relocation funds to a displacee if this will prevent a financial hardship. The agent should record the circumstances of any hardship and promptly advise the Right of Way Lead Agent by memorandum, attaching all supporting information. Displacees should be advised that advances or assignments are approved on a case by case basis, depending on the facts and circumstances of each case.

Following are critical elements for processing claims. Failure to comply may result in loss of displacee eligibility to submit a claim or loss of Federal reimbursement to UDOT for the payment of a claim:

1. **Tenant Displacees**
   Tenant displacees must file claims for payment within eighteen months after the date of displacement.

2. **Owner-Occupant Displacees**
   Owner occupants must file claims within eighteen months after the later of the date of displacement or the final payment for property acquisition. The final payment for condemnation cases will be the later of the date of award or the date the former owner receives the final award payment.

3. **Advance Payments**
   The Relocation Agent must assure that advance payments are applied to the purpose for which the funds were advanced.

4. **Deductions to Relocation Claims**
   UDOT will not deduct from relocation claims any rent that a displacee owes the State. No deduction will be made from any relocation claim to satisfy an obligation to any other creditor unless so ordered by a court. This does not preclude UDOT from pursuing available recourses to recover amounts owed for rents or other obligations.
Agent should consult with the Right of Way Lead Agent or appropriate Deputy Director of Right of Way before reducing a relocation claim.

5. **Unapproved Claim**
The assigned Relocation Agent will promptly notify a displacee in writing if part or all of a claim is not approved. The notification will provide the basis for the UDOT disallowance and describe the procedure for appeal.

6. **Required Forms**
The Relocation Agent will offer to help a displacee complete any required forms relating to a claim for payment of relocation costs.

7. **Duplicate Payments**
A relocation payment will not be made if it duplicates a payment under Federal or State law that has the same purpose and effect as a payment under this Chapter. The Relocation Agent will bring cases to attention of the Right of Way Lead Agent or appropriate Deputy Director of Right of Way for UDOT determination.

8. **Reimbursed Moving Costs**
The displacee will not be eligible for duplicate costs paid by UDOT if a displacee has moving costs paid by an employer as a result of job relocation.

9. **Evictions**
Any lawful occupant evicted for cause after the initiation of negotiations will retain the right to relocation payments and other assistance unless UDOT determines otherwise. An eviction related to non-compliance with a requirement related to carrying out a project such as failure to move or relocate when instructed or to cooperate in the relocation process will not negate a person’s entitlement to relocation payments and other assistance. The Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Relocation Manager will decide based on UDOT’s obligations under the *Relocation Act* and the equities of the case.

### 5.1.14 Quality Control

Quality control in relocation is the process of evaluating performance and developing ways to continuously improve the accomplishment of program goals. Quality is a shared responsibility of all people involved in relocation including contract and staff agents, Right of Way Lead Agent, appropriate Deputy Director of Right of Way, and the Director of the Right of Way Division.

Quality advancement activities in relocation may include performing specific tasks that are defined in a Project Quality Plan or a Right of Way Quality Performance Plan. The following are examples of quality improvement actions:
1. Evaluate assistance provided to displacees by such means as follow up phone surveys or mail surveys. Surveys may focus on those having special needs including the elderly and disabled.

2. Inventory relocation related skills of personnel including experience in counseling, languages, and specialized experience such as businesses.

3. Inventory program needs including staff training, adequacy of contract personnel, and minority representation in program personnel.

4. Identify critical path tasks involving relocation including prioritizing caseloads so that more time is available to those having more serious relocation problems.

5. Evaluate performance of consultant staff employed by UDOT to perform relocation services.

6. Participate in process and performance evaluations including 360-degree evaluations.

7. Participate in continuous refinement of relocation practice and policy to reflect best practices.

5.2 RELOCATION PLANNING

5.2.1 General

Relocation planning is a process of obtaining and evaluating information on displacee needs and the resources required to meet those needs. All projects involving displacements require some degree of relocation planning. The scope and scale of planning will vary with the extent and complexity of relocation on the project. Relocation planning may involve only interviews conducted in advance of acquisition if there is only one displacee or there are several displacees on a project who have no special needs. Projects several displacements or projects that involve needs relating to income, complex business relocations, or other special needs such as large family size or disability require a more formal and involved relocation planning process. General Relocation planning will consider:

1. Time required to complete relocation on the project.
2. Relocation staffing levels and the need for a project office to serve displacees.

Residential relocation planning is undertaken to:

1. Ensure that sufficient replacement housing will be available.
2. Identify displacees who have special needs such as elderly, disabled, and low-income individuals.
3. Determine the need for special relocation services such as language interpretation and transportation to view potential replacement housing.
Nonresidential planning will address:

1. Availability of replacement business sites.
2. Special business move issues due to complexity or time required to relocate.
3. Need for move specialists to accomplish relocation.

Relocation planning is most effective if it begins soon after the potential need for displacement is identified. This will enable consideration of methods and strategies to alleviate problems before displacement occurs. Additional time will be required to plan and provide the housing if last resort housing is needed (see Section 5.10). Large families or low-income households may require additional time to find housing or may need intensive relocation services from UDOT. Even a large complex business move may require significant time to accomplish. Once identified through planning these cases can be given priority in the project schedule.

Proposing or requesting that displaced people waive their rights to relocation assistance or benefits is prohibited. The purpose of this requirement is to make sure displacees understand their benefits that such benefits are calculated and offered to them and they are not pressured into foregoing those benefits. UDOT or its representatives may not suggest or request a waiver. A displaced person may refuse the benefits on his or her own initiative.

5.2.2 Conceptual Stage Relocation Planning

There may be more than one highway location or alignment under consideration at the concept phase of project development. The objective of relocation planning at this phase is to develop a cost estimate for relocation on each alignment and estimate the number and type of dwellings and businesses that will be affected. Neighborhood and displacee characteristics are also identified from visual inspections and indirect sources such as newspaper reports, leaders of community organizations and census data. Interviews with individual displacees are generally not conducted at the conceptual stage.

Displacement may have significant economic and social impact on the community. The information developed in concept phase planning will be used in the Environmental Impact Statement (EIS) or the Environmental Assessment (EA) if these documents are required. They will also be used in hearings and meetings conducted for the project and to respond to public and media questions or concerns. The Conceptual Stage Plan also helps define the scope of relocation on the project so that the project budget accurately reflects project cost and staffing needs.

Concept stage relocation planning is normally performed without direct contact with the potential displacees. At this stage the project location is not approved. There may be
several alignments under consideration. Information is secured through observations and secondary sources.

Consider the following information in developing a Conceptual Stage Relocation Plan:

1. Estimate of households to be displaced and their characteristics including the total number of households, minorities, estimated income levels, owners or tenants, elderly, large families, etc.
2. Divisive or disruptive effects on the community such as separation of residences from community facilities and separation of neighborhoods.
3. Impact of project displacement on housing availability in the community.
4. Number of businesses, nonprofit organizations, and farms that will be acquired and the estimated number of employees affected.
5. Assessment of the effect the nonresidential displacements will have on the economy and stability of the community.
6. Assessment of the available replacement business sites in the community and if an adequate supply of replacement sites is not expected to be available, the impact of displacing the businesses should be considered and addressed.
7. List of businesses being displaced that will require advance coordination and planning so they can be contacted and advised of the studies being made by UDOT and of the opportunities for their input through public hearings and meetings.
8. Identification of businesses that will be complex, costly, difficult, and expensive to relocate and which may require special relocation services.
9. Description of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact with real estate firms, listing services, newspapers, housing agencies, and local community organizations may provide useful information.
10. Description of special relocation advisory services that may be necessary for identified unusual conditions such as a concentration of elderly displacees.
11. Description of the actions that may be needed to remedy insufficient relocation housing including housing of last resort if necessary. See Section 5.10.
12. Outcome of consultation with local officials, service agencies, and community groups regarding the impact on the community affected.
13. Estimate of the following relocation costs:
   a. Cost of moving personal property for residential units, businesses, farm operations and nonprofit organizations.
   b. Cost of replacement housing payments for displaced individuals and families including typical mortgage interest differentials and closing costs incident to the purchase of replacement facilities.
c. Cost estimate for search expenses incurred by businesses, farms, and nonprofit organizations.
d. Reestablishment costs for small businesses, farms, and nonprofit organizations.
e. Related nonresidential eligible expenses.

Conceptual stage data will be recorded on a form designed for that purpose. A narrative report may be prepared to summarize data and conclusions. Qualified staff or a consultant may prepare the conceptual report. The Right of Way Lead Agent or appropriate Deputy Director of Right of Way will review and forward the report with comments to the Project Manager.

5.2.3 Relocation Planning at Right of Way Stage

The right of way stage begins when a location for the project is approved. Relocation planning at the right of way stage identifies the housing needs, desires, and intentions of displaced people and businesses and develops priorities and strategies for meeting relocation needs. Right of Way staff or a consultant will prepare a formal relocation plan if the project requires significant relocation. The plan will be performed before the appraisal phase and starting negotiations to acquire property on the project.

The Relocation Agent will conduct interviews with displaced households and business operators and examine the real estate market for properties of the type and cost, rent, or purchase that will meet displacement needs. The interviews and inventory of available housing and replacement business sites are the basis of the Relocation Plan.

The Relocation Plan will be scaled to the anticipated complexity and nature of project displacement. Whether or not the relocation plan is a formal report, the Relocation Agent will conduct and document the following activities at the initial meeting with each displaced household and business operator:

General

1. Provide a copy of the UDOT relocation brochure at the visit and discuss points in the brochure that are relevant to the circumstances of the household or business. This can serve as the General Information Notice that is required to be provided to each potential displacee.
2. Explain the Certification Concerning Legal Residency (see Section 5.7.6). Present the Certification to the head of household or business operator for signature.
3. Develop an updated relocation cost estimate.
4. Identify Federal, State, and community programs that are active in the project area and discuss contacts with organizations that may be beneficial to project displacees.
5. Estimate the lead-time and staffing required to perform efficient delivery of relocation benefits, services, and to carry out a timely, orderly, and humane relocation program.

6. Assess the need for a field office. Consider the number of displacees served, the relocation problems that will be encountered, and the capacity to provide services from a Division Office.

7. Summarize the information above and specific analysis of residential and nonresidential relocation issues, providing conclusions and recommendations for consideration of UDOT management.

The completed Relocation Plan will be submitted to the Relocation Manager or the Right of Way Lead Agent for the project. The appropriate Deputy Director of Right of Way, Project Manager, and Director of Right of Way will approve special services or resources needed to perform relocation as recommended in the plan.

Residential

1. Personally interview each household. Information will be recorded on the appropriate relocation questionnaire, the Relocation Report/File Index, and in the agent’s log. Secure information on household composition such as gender, age, family status, dwelling characteristics, gross family income, employment location, housing cost such as rent and mortgage facts, utilities, desires and intentions for replacement housing, and concerns relating to age and disability or both.

2. Prepare a summary of the characteristics and needs of individuals and families to be displaced based on the standard of comparable replacement housing.

3. Develop an estimate of currently available comparable replacement housing. Include the type of buildings, number of rooms, and adequacy of housing as related to the needs of the people or families to be relocated. Address the type of neighborhood, proximity of public transportation, and commercial shopping areas and distance to any pertinent social institutions such as church and community facilities. This estimate should be developed to the extent necessary to determine whether relocation resources are sufficient to meet displacement needs.

4. Prepare a brief analysis and correlation of replacement housing needs and resources.

5. Outline the special residential relocation problems and challenges, particularly relating to income, disability, age, and house characteristics needed. Evaluate the possible need for last resort housing.

6. Identify economic activity or public/private projects in the area that may affect the supply and demand for housing or cause concurrent displacement. Evaluate the effects on project relocation.
Nonresidential Relocation

1. A personal interview is required with each business or farm operator. Include the following items in interviews with displaced business owners and operators:
   a. The business replacement site requirements, current lease terms and other contractual obligations, and the financial capacity of the business to accomplish the move.
   b. Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery or other personal property.
   c. For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to or at the time of the property appraisal. Reference 49 C.F.R. Subpart B, § 24.103(a)(2)(i) requires the appraiser to identify realty/personalty items. An Inventory of the personal property including movable business fixtures of businesses, farm operations, and nonprofit organizations will be made. Take a photographic inventory of complex business facilities. Use the realty/personalty report prepared by the appraiser to accomplish this task.
   d. An estimate of the time required for the business to vacate the site.
   e. An estimate of the anticipated difficulty in locating a replacement property.
   f. An identification of any advance relocation payments required for the move and the Agency's legal capacity to provide them.

2. Develop an estimate of currently available business sites for the various types of businesses that will be displaced.

5.2.4 Last Resort Housing Plan

It may be necessary to use the special authority of Last Resort Housing (LRH) to provide replacement housing if comparable housing is not available within a displacee’s financial means. The Relocation Agent will prepare a report in form of a memorandum to the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Right of Way Manager as soon as a potential need for LRH is identified. The report will present critical displacement needs and the housing options and methods available to meet those needs. The report will evaluate options and methods of providing housing, funding required, and the recommended action. The Right of Way Lead Agent in consultation with the appropriate Deputy Director of Right of Way will review the LRH report and recommend to the Director of Right of Way who has decision authority on
use of LRH. See Section 5.10 for more information. A copy of the LRH plan may need to be forwarded to the Federal funding agency for their review and approval if requested.

5.3 ADVISORY SERVICES

5.3.1 Purpose

Relocation advisory service is the personal assistance provided to displacees to assist in locating comparable replacement housing or replacement sites for businesses. The relocation agent provides information to displacees on program benefits, assists in the preparation of claims, and provides help in adjusting to relocation when providing advisory service. This Section provides guidance to the Relocation Agent in determining the scope and level of services needed and in planning and delivering advisory service to displacees.

The Relocation Agent will provide advisory services relevant to displacee’s individual needs and desires. Many displacees need little assistance and prefer to locate replacement housing or business sites on their own. Others will require greater assistance particularly if conditions are present such as low income, large family size, disability or advanced age.

Relocation services will be offered to all displacees and will be delivered without regard to race, color, religion, sex, familial status, handicap, or national origin. Advisory services will be offered and provided by personal contact. The assigned agent will record the efforts made to make personal contact and offer services if personal contact cannot be made.

5.3.2 Eligibility for Advisory Services

Relocation assistance advisory services will be offered to the following people:

1. Displaced person as defined in Section 5.1.4.
2. Any person occupying property that is adjacent to the real property acquired when the Right of Way Lead Agent or Project Manager determines that a substantial economic injury to that person will result from the acquisition.
3. Any person who moved from other real property used for a dwelling or moves his personal property from such other real property because of the acquisition of real property used for his or her business or farm operation.
4. Any person who occupies property after acquisition by UDOT on a short-term basis subject to termination when the property is needed for the project.
People determined not legally in the United States are not eligible for relocation advisory services. The Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Relocation Manager will make the determination based on the Certification Concerning Legal Residency and information from the Relocation Agent. A decision on status of a displacee as not legally in the United States is solely for the purpose of determining eligibility for relocation benefits. UDOT staff and consultants are not authorized to administer any aspect of immigration law.

5.3.3 Advisory Services

The UDOT relocation advisory services program includes a range of activities that are performed at a time corresponding to the displacee’s need. The main advisory service components are described below:

1. Provide a copy of the UDOT “Relocation Assistance Brochure” at the initial contact with the displacee.
2. Determine the relocation needs, preferences, and intentions of each person to be displaced (see Section 5.2.3). Specific interview requirements and services for both residential and nonresidential displacees are recited in section 5.2.3.
3. Explain the relocation eligibility requirements that pertain to benefits that are applicable to the class of displacement. Advise displacees that payments are not considered income for tax purposes.
4. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings. Explain that no one who qualifies as a displaced person will be required to move from the home they occupy until comparable replacement dwelling is available.
5. Inform the displaced person of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of relocation payments. The basis for the determination will be explained to the displacee.
6. Provide reasonable opportunity to minority people to relocate to DSS replacement dwellings that are not located in areas of minority concentration and that are within their financial means. UDOT will not provide a higher payment than is otherwise needed to enable a person to relocate to a comparable replacement dwelling.
7. Offer all displacees transportation to inspect housing to which they are referred.
8. Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial properties and locations for businesses.
9. Assist any person who is displaced from a business or farm operation to obtain and become established in a suitable replacement location if suitable locations are available to the extent possible.

10. Minimize hardships to people adjusting to relocation by providing information and advice as to other sources of assistance that may be available including referrals to professional agencies that may be available to provide appropriate professional assistance.

11. Inspect housing before referring it to the displacee to ensure that it meets applicable standards whenever feasible.

12. Provide people to be displaced with appropriate information concerning Federal and State housing programs, disaster loans, and other similar programs administered by Federal, State, and local agencies. Agencies that can be contacted include social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, the Department of Housing and Urban Development, the Veterans Administration, and the Small Business Administration.

13. Maintain contact with local information sources on replacement properties which are listed on the open market, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors, as needed.

The above list is illustrative of services that will be provided. Other services may be needed to resolve special displacee needs. The Relocation Agent should identify specialized services available in the community from non-profit organizations, church organizations, local agencies, veterans groups, etc.

Advisory services will be commensurate with the displacee’s needs. This may require minimum assistance when displacees are well informed and mentally, physically, and financially able to manage their displacement and who neither need nor desire UDOT’s assistance. A much greater degree and intensity of services and assistance will be provided to those who are elderly, infirm, immobile, or otherwise unable to cope with their displacement or economic problems.

The Relocation Agent must offer assistance to every displacee. The displacee may specifically say there is no need for assistance. Even then the agent must make a subjective judgment as to the ability of the displacee to competently locate, acquire, and occupy a DSS replacement dwelling. The agent should make added efforts to explain available assistance including reference to providers having specialized knowledge, skills, and programs if the agent does not feel that the displacee possesses the ability to relocate without help.
The Relocation Agent will record all discussions or actions in providing assistance including date, time, location, and activity in the agent’s log.

5.3.4 Relocation Payments – Not Income for Tax Purposes

Each displacee who is eligible for a relocation payment of any kind will be advised that relocation payments are not considered income for purpose of Federal or State income taxes. Reference 49 C.F.R. 24.209 for the Federal exclusion and Utah Code § 57-12-11 for the State exclusion.

Relocation payments are not considered in determining eligibility for assistance under the Social Security Act or any other Federal law except for any Federal law providing low-income housing assistance. Payments are not considered as income or resources of any recipient of public assistance under Utah law and such payments will not be deducted from the amount the recipient would otherwise be entitled.

5.3.5 Local Relocation Office

The volume of relocation, the needs of the displaced persons, or a remote project location may prevent effective delivery of services provided from a Regional Office. A project relocation office will be established if needed. The determination whether to establish a local relocation office will be made by the Project Manager consulting with the Director of Right of Way.

A project relocation office should be within walking distance of the project area if private vehicles or public transportation is not available. The project office will be open during convenient hours, including evening hours, when necessary. UDOT may hire a person in the project area who is familiar with local resources or can provide information in a language other than English, if needed.

5.3.6 Information Maintained on a Project Basis

The following information will be available to displacees of each project to the extent appropriate:

1. Current lists of replacement dwellings available to displaced people without discrimination drawn from various sources, suitable in price, size, and condition for displaced people to the extent they are available.
2. Current lists of comparable commercial or industrial properties and locations for displaced businesses.
3. Information on schools including schools accommodating any special needs of displaced families.
4. Information on location and contact information on houses of worship in the community.
5. Current data on costs for security deposits, closing costs, typical down payments, and interest rates and terms.
6. Maps showing the location of schools, parks, playgrounds, shopping, and public transportation routes in the area, where applicable.
7. Schedules and costs of public transportation, where applicable.
8. Copies of the UDOT relocation brochure and brochures explaining local housing programs and assistance.
9. Subscriptions for apartment directory services, neighborhood, and general circulation newspapers and Internet sites. Use multiple listing services where available.
10. Other important information of value to displaced people in the area.

5.3.7 Public Information

UDOT will present information and provide an opportunity for discussion of relocation services and payments at public hearings and meetings, provide copies of the relocation brochure, and give full and adequate public notice of the Relocation Assistance Program.

Public information will be published in English as well as the prevalent language of an area. The Project Manager may determine that an interpreter is needed at public meetings or a translator can accompany the agent on specific case calls.

The UDOT brochure describes the relocation program and the replacement housing policy contained in this Manual. The brochure will be distributed at all public hearings and separately to interested or affected individuals and organizations. The brochure states where information about State policies implementing the Relocation Assistance Program can be obtained.

5.3.8 Public Hearings

The following provides guidance on public hearings:

1. Corridor Public Hearings
   The purpose of a corridor hearing is to receive public input about a transportation need or a proposed project before there is a commitment to a specific location. Several alternative alignments may be presented for discussion. Relocation impacts and the measures UDOT will take to alleviate them will be discussed for each location or alignment under consideration. The Right of Way Lead Agent or other Right of Way staff or Consultant staff may be assigned to present right of way information at the meeting as decided by the Project Manager. The following information will be presented at the hearing:
a. The estimated number of individuals, families, businesses, farms, and nonprofit organizations that are to be relocated by each of the alternatives under consideration.

b. The availability of relocation assistance and services, eligibility requirements, and payment procedures.

c. Studies that have been or will be made and the methods that will be followed to ensure that housing needs of the displacees will be met.

The UDOT representative presenting the information above will be open to hear comments, questions, and concerns from people at the meeting. Comments and responses to questions will be limited to general acquisition and relocation policies and procedures.

2. Highway Design or Combined Public Hearings

The social, economic, and environmental effects of the project will be presented and discussed at the hearing that is conducted after the location has been selected or announced as a “Preferred” alignment or location. Displacement is a primary social and economic impact. The discussion on relocation will still be general in nature but it can be more detailed and focused than at the corridor hearing. Information will be presented on the scope of displacement on the project and the basic elements of the UDOT relocation program. The following information will be discussed to the extent applicable:

a. Number and type of displacements both residential and commercial.

b. General availability of replacement housing.

c. Estimated time frame in which acquisition and relocation will occur.

d. UDOT commitment to offer comparable replacement housing within financial means to every person who is displaced from a home.

e. Information on moving cost benefits and payment limits.

f. Owner Replacement Housing Payment (RHP) and Rent Supplements (RS) for tenants.

g. Business relocation benefits including moving costs, reestablishment expense payments, related nonresidential eligible expenses, and search expense payments with maximum claim amounts.

h. Mortgage interest rate differential eligibility requirements and payment.

i. Payment of closing costs incidental to the purchase of a replacement dwelling.

j. Availability and role of the Utah Property Rights Ombudsman.

k. UDOT appeal process Section 5.3.10.
1. The name, location, and phone number of a UDOT representative who can provide further information or answer questions that arise after the meeting.

5.3.9 Occupancy Criteria for Benefits

Relocation services are intended to assist people in relocating and must be offered to all displacees on the project. They may also be offered to all people occupying property that is immediately adjacent to the real property acquired if UDOT determines that the occupant suffers a substantial economic injury due to the acquisition. UDOT liberally applies this provision so that any person proximate to the project requesting assistance will be considered for this service based on the person’s expressed need. Monetary assistance is limited to those people who UDOT determines are actually “displaced” by the project. Others affected by the project may qualify for advisory assistance but typically will not qualify for monetary assistance.

Questions on eligibility frequently arise during advisory service discussions. The following points summarize the basic criteria for benefits:

1. Moving Costs
   Move cost reimbursement is available to all displaced owners and tenants in occupancy at the initiation of negotiations. The only exceptions are people not legally in the United States. All potential displacees should be advised not to move before a purchase offer is made by UDOT to the property owner. People should be encouraged to contact UDOT Right of Way with specific concerns or questions about their personal situation.

2. Residential Owner-Occupants
   Replacement Housing Payments for residential owner-occupants fall into two categories. A residential owner-occupant must have owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations to be considered for a Replacement Housing payment. A residential owner-occupant who owns and occupies for less than 90 days from the initiation of negotiations but more than 90 days will be eligible for the payment similar to that of a 90-day tenant-occupant.

3. Residential Tenant-Occupants
   Replacement Housing Payments for residential tenant-occupants will be available to tenants who were renting at least 90 days before the initiation of negotiations. A payment could be made to a tenant with less than 90 days occupancy in order to avoid a financial hardship under the last resort housing provisions.

4. Ineligible for Payment
   There is no payment eligibility for residential tenants who occupy after the
initiation of negotiations for the property unless they are determined to qualify under the last resort provisions for reason of housing not being available within financial means in accordance with 49 C.F.R. 24.404(c)(3).

5.3.10 Relocation Appeal Process

A person may appeal UDOT's determination of displacee eligibility status or the amount of the benefit that the person is eligible to receive. All potential displaced people will be given notice of their right to appeal and if interested, the procedure for making an appeal. This notification may be provided by the brochure but should also be stated in initial discussion with each displacee. Following is a summary of the law and procedure governing relocation assistance appeals:

1. Applicable Law
   a. **Utah Admin. Code R907-1** (Agency actions and Review)
   b. **Utah Admin. Code R933-1-2** (incorporating by reference **Title 49 C.F.R. Part 24**– Uniform Relocation Assistance and Real Property Acquisition For Federal and Federally-Assisted Programs)
   c. **Utah Code Ann. §§ 57-12-1-14** (Utah Relocation Assistance Act)
   d. **Title 42, Chapter 61 of the United States Code** (Uniform Relocation Assistance and Real Property Acquisition Policies For Federal and Federally Assisted Programs)

2. Administrative Appeals of the Department’s Relocation Assistance Eligibility Determinations
   a. **Requirements of 49 C.F.R. 24.10**
      i) **General.** The Department will promptly review appeals in accordance with the requirements of applicable law, including 49 C.F.R. Part 24.
      ii) **Actions which may be appealed.** Any aggrieved person may file a written appeal with the Department in any case in which the person believes that the Department has failed to properly consider the person's application for assistance under 49 C.F.R. Part 24. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under 49 C.F.R. Part 24. The Department will consider a written appeal regardless of form.
      iii) **Time limit for initiating appeal.** The Department may set a reasonable time limit for a person to file an appeal. The time limit will not be less than 60 days after the person receives written notification of the Department's determination on the person's claim.
iv) **Right to representation.** A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person’s own expense.

v) **Review of files by person making appeal.** The Department will permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Department. The Department may, however, impose reasonable conditions on the person’s right to inspect, consistent with applicable laws.

vi) **Scope of review of appeal.** In deciding an appeal, the Department will consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

vii) **Determination and notification after appeal.** Promptly after receipt of all information submitted by a person in support of an appeal, the Department will make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Department will advise the person of his or her right to seek judicial review of the Department decision.

viii) **Department official to review appeal.** The Department official conducting the review of the appeal will be either the head of the Department or his or her authorized designee. However, the official will not have been directly involved in the action appealed.

b. **Authority of Department to adopt rules under state law** (Utah Code § 57-12-9). A displacing agency may enact rules to ensure that:

i) the payments and assistance authorized by this chapter are administered in a manner that is fair, reasonable, and as uniform as practicable;

ii) a displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance; and

iii) any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have the person’s application reviewed by the head of the displacing agency.
b. **Requirements of Utah Admin. Code R907-1** (order of proceedings)

i) The hearing officer may set reasonable time limits under R907-1-10(9). A typical hearing will be set for two hours.

ii) The Department will send letter at least 20 days before the hearing notifying the applicant of the hearing date, time and location.

iii) Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant will have access to information contained in the Department’s files and to all materials and information gathered in any investigation, except as otherwise provided by law. Utah Admin. Code R907-1-4(1).

iv) Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs. The hearing officer may grant either party an extension of time for good cause shown. See Utah Admin. Code R907-1-4(2).

v) Format of hearing

1) Conducted informally under the Utah Administrative Procedures Act and Utah Admin. Code R907-1-1, unless converted to a formal hearing by the Hearing Officer.

2) Opening statement by both parties, presentation of evidence by both parties and closing argument.

3) All witnesses are sworn and subject to cross-examination.

4) Applicant presents first, since the applicant is challenging the Department’s determination regarding the applicant’s eligibility for relocation assistance benefits.

vi) After the hearing, the Department will issue a Final Order in accordance with R907-1-4(3). Contents of Final Order. The Hearing Officer will issue a final agency order as promptly as possible. The Final Order will contain:

1. a designation of the statute or rule permitting or requiring review
2. a statement of the issues reviewed
3. findings as fact as to each of the issues
4. conclusions of law as to each of the issues
5. the reasons for the disposition
6. whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded

7. the right to judicial review pursuant to Utah Code § 63G-4-402(1)(a) by filing a complaint in district court within 30 days.

vii) Any party may apply for reconsideration within 20 days following the procedures set forth in Utah Admin. Code R907-1-5.

viii) Utah Code § 63G-4-402(1)(a) provides that “the district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings . . . .” If any such review is sought, the complaint must be filed within 30 days of the issuance of the Final Order. Utah Code § 63G-4-401(3)(a).

3. **Dispute resolution** (Utah Code Ann. § 57-12-14).
   a. If the Department and the private property owner or displaced person disagrees on any issue arising out of Title 57, Chapter 12, the private property owner may submit the dispute for mediation or arbitration according to the procedures and requirements of Utah Code § 13-43-204 of the Property Rights Ombudsman Act.
   b. The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.
   c. If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:
      i) have an additional appraisal of the property prepared by an independent appraiser
      ii) require the Department to pay the costs of the first additional appraisal

5.4 **RELOCATION NOTICES**

UDOT will provide written notices to displacees at critical points in the relocation process. The purpose of the notices is to fully inform each displacee of the significant actions being taken by UDOT and of their eligibility for relocation payments and services. These notices provide the supporting information necessary to claim relocation benefits and enable displacees to plan their relocation. The written notices described in this Section must be furnished to each displaced person.
5.4.1 General Information Notice (Relocation Brochure)

The Relocation Brochure is provided to all affected people at the earliest time it is known that relocation may be required. It advises the recipient of the possibility of displacement for a project and summarizes the benefits available from UDOT to assist in relocation. This required notice is served by providing a copy of the UDOT relocation brochure. The agent will explain particularly relevant sections at the time it is presented and invite the displacee to ask questions about the relocation process, project effects, and project schedule.

General information about relocation is also provided at public hearings and meetings for the project. General availability of the brochure at the public meetings will not substitute for personal delivery and discussion with each individual household. The General Information Notice is normally delivered in person. The Notice will be delivered by certified mail with a return receipt requested if personal delivery is not possible.

The following information and essential elements of the Relocation Brochure should be discussed with the displacee:

1. Inform the person of possible displacement as a result of project acquisition.
2. Describe the relocation program benefits that are relevant to the displacee's circumstances.
3. Explain eligibility criteria and requirements for relocation benefits. Advise that UDOT will help prepare relocation payment claims if requested.
4. Advise the person of the types of relocation advisory services that will be given. These include housing referrals, assistance filing claims, and other necessary relocation assistance.
5. Inform the person that he or she will not be required to move from the affected residential property unless at least one comparable replacement dwelling unit has been made available for occupancy.
6. Inform the person that UDOT will provide at least 90-days written notice of the date that they will be required to move. Explain the timing and meaning of the 30-day and 90-day notices.
7. Explain the right to appeal relocation benefits and eligibility determinations.

5.4.2 Notice of Relocation Eligibility

Eligibility for relocation benefits begins on the date of initiation of negotiations to acquire the property. UDOT will promptly notify occupants of their eligibility for benefits when this occurs. The Notice of Relocation Eligibility will be on the form provided in the
merged document set and personally delivered if practical. The Notice will be delivered by US Mail where it is not practical to deliver in person. The agent must call the owner to make sure that the notice was received and note the date of receipt in the agent’s log if the notice is mailed. The notice will be sent by certified mail with return receipt requested if confirmation of receipt cannot be obtained by phone or other means.

The agent will request the displacee to sign and date a copy as a receipt of delivery when the Notice is personally delivered. Make note in the Agent’s Log/Field Notes if the relocatee refuses to acknowledge receipt of the Notice.

The Notice of Eligibility contains information corresponding to displacement status as described below:

1. **90-Day Owner Occupant**
   An explanation of the Relocation Replacement Housing Payment Determination, the amount of the maximum determined replacement housing payment, and the eligibility requirements to receive payments. Discuss with the owner occupant that eligibility for benefits is contingent upon their compliance with all governing relocation program requirements and the approval of the benefit claims by the Chief of the Right of Way Division or his/her designee. This requirement is recited in the Notice of Eligibility form which is provided to the eligible relocatee which they will be requested to acknowledge receipt thereof. The explanation will include discussions of increased interest costs, incidental expenses, and the option to rent replacement housing. The displacee will be provided with an explanation of the relocation services available and where they may be obtained. The actual Notice of Eligibility will be prepared by the relocation agent and forwarded to the Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Relocation Manager for review and authorizing signatures before it is delivered to the displaced person.

2. **90-Day Owner Occupant**
   The owner will receive a written explanation of the eligibility requirements to receive payments for replacement housing and of the option to receive a down payment and incidental expenses to purchase replacement housing. The eligibility requirements for the option to rent replacement housing will be provided. The displacee will be provided with an explanation of the relocation services available and where they may be obtained. The relocation agent will prepare the notice and forward it to the Right of Way Lead Agent or Relocation Manager for review and approval signatures before the notice is delivered to the displaced person.

3. **Residential Tenant Notice**
   The eligibility notice for tenant contains information on the amount and the basis for the maximum determined rent supplement payment. It also
summarizes the conditions necessary to submit a claim for payment. The notice provides an explanation of the down payment alternative to the rent supplement.

Discuss with the tenant occupant that eligibility for benefits is contingent upon their compliance with all governing relocation program requirements and the approval of the benefit claims by the Director of Right of Way or designee. This requirement is recited in the eligibility notice which is provided to the eligible relocatee which they will be requested to acknowledge receipt thereof.

The Tenant Notice of Eligibility should be provided by personal delivery or if this is not practical, by certified mail, return receipt requested. The eligibility notice should be delivered as soon as possible after delivery of the offer to purchase the property is made to the owner. Delivery of the notice to the tenant should be made promptly, usually within 15 business days, after the initiation of negotiations with the property owner which is after the written offer to purchase has been delivered to the owner.

The UDOT Agent will make additional personal contacts with each tenant within 30 days of the initiation of negotiations for the parcel to furnish any additional explanations or assistance necessary. This contact should be made before the 90-day notice to vacate.

Special procedures are applicable regarding the eligibility for relocation benefits which are outlined in Section 3.6.6 if a project involves early acquisition for corridor preservation.

5.4.3 Notice of Intent to Acquire

The purpose of a Notice of Intent to Acquire is to establish eligibility for relocation benefits before initiation of negotiations for the parcel. This is done to relieve a hardship situation. The hardship may arise from a change in employment requiring a move, illness, or infirmity making it difficult to continue to live in the property, financial hardship from inability to continue to pay ownership or tenant housing costs, or for other compelling reasons. The Notice of Intent may also be issued after authorization by the Transportation Commission to acquire property in advance of project need under Utah’s Corridor Preservation Program.

The Notice of Intent to Acquire will be in letter form. The relocation agent will deliver a copy of the relocation brochure with the letter. The agent must promptly provide, usually within fifteen business days, a Notice of Intent to Acquire to all tenants on the property when a Notice of Intent to Acquire is provided to an owner. Provide a copy of a Notice of Intent to the owner at the same time one is provided to a tenant.
Advanced acquisitions and corridor preservation acquisitions tenants will not be eligible for relocation assistance until the project for which the property was acquired is approved for actual construction. At that time, the tenant if still in legal occupancy will receive a notice of eligibility.

The Notice will contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property, and UDOT contact references to obtain additional information about relocation payments and services.

5.4.4 Notice to Vacate

Displacees are entitled by law to 90-days advance notice of the date they will be required to move. The Notice to Vacate is delivered on or after UDOT has informed the residential displacee of a specific comparable replacement dwelling that is available for occupancy that is within his or her financial means. Normally the 90-day notice is provided with the Notice of Eligibility discussed in Section 5.4.2.

UDOT uses a two-phase notification process. The 90-day notice in the merge file for owners and for tenants may be delivered any time after the above qualifying criteria are met. Coordinate it further with the project schedule. The UDOT 90-day notice provides that the recipient will be required to move no earlier than the date stipulated. The 90-day notice further advises that if the displacee remains in occupancy, UDOT will issue a subsequent 30-day Notice to Vacate. This will provide a firm date by which the property must be vacated. The 30-day notice will not be issued until UDOT has legal control of the property.

The two-phase 90/30-day notice provides the most effective consideration of displacees’ need for information about the required move date and offers flexibility to UDOT in managing delivery of right of way for project construction.

The 90/30-day notices are applicable to displaced businesses, farms, and nonprofit organizations as well as residential displacees. UDOT is not obligated to guarantee replacement site locations to nonresidential displacees. Best efforts in providing relocation advisory services to nonresidential displacees are required and will be made.

5.5 RESIDENTIAL MOVING COSTS

5.5.1 Purpose

Residential displacees are entitled to reimbursement for reasonable, actual and necessary costs to move household property from the displacement to a replacement dwelling. There are several cost elements and reimbursement options available. Also, there are certain requirements to document and support claims. This Section discusses important aspects of residential moving costs.
5.5.2 Basic Eligibility Conditions

Any owner or tenant occupying a residential unit who qualifies as a displaced person as described in Section 5.1.4 is eligible to receive payment for moving personal property from the displacement site. The length of occupancy at the acquired property does not determine eligibility for moving expense payment. All displaced people qualify for residential moving cost reimbursement.

The displacee has the choice of being paid based on the actual reasonable moving expenses of the move as explained in Section 5.5.5 or a fixed payment that is based on the UDOT room count schedule as explained in Section 5.5.6. The following general rules apply to all residential move reimbursement claims:

1. Single Move
   The displaced person is entitled to one move except in the rare instance where UDOT determines a subsequent move is necessary in the public interest. An example is a voluntary move to temporary housing to accommodate project construction schedule with a subsequent move to permanent replacement housing. The displacee must voluntarily agree to such a situation unless permanent comparable housing had previously been offered and refused.

2. Reimbursement Limited to 50 Miles
   There is no limitation on the distance a displaced person moves and can be interstate or intrastate. The actual cost move claim maximum is limited to the amount that will be charged for a move up to 50 miles. UDOT may extend this limit on determining that the move could not be accomplished within the 50-mile distance. This type of exception may only be allowed to the nearest available comparable property.

3. Time Limit for Filing Claim
   A displacee must file a written claim with UDOT on the UDOT form to receive payment. The claim must be filed within eighteen months after either of the following dates, whichever is later:
   a. The date the displacee moves from real property or moves their personal property from real property.
   b. The date of acquisition is complete and payment for the acquisition is made to the owner or deposited in court.

4. Claim Payment
   Moving expense payments will be made only after the move is complete unless UDOT determines that this will create a hardship. Arrangements can be made for advance payments or installment payments in hardship cases. Generally, all moving expense payments are made directly to the displacee but the displacee, the mover, and UDOT can arrange in advance for UDOT to make a direct payment or assignment of claim to the
mover. An invoice from the moving company must be filed with UDOT within 3 days after the move has been completed regardless of when the payment is made.

5. **Multiple Occupancy**
   Each occupant is entitled to a reasonable prorated share of any payment that would have been made if the occupants moved together when two or more occupants of a displacement dwelling move to separate replacement dwellings. The occupants may claim separate moving payments if they have maintained separate households within the same dwelling. The Relocation Agent will make the determination called for in this provision based on indicators such as income capable of supporting separate households, eating meals separately, splitting household and rent expenses, occupancy of all space in common, etc. The determination is subject to review and approval by the Lead Right of Way Agent or the Relocation Manager.

6. **Owner Retention**
   The cost of moving the dwelling onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property when an owner retains the dwelling for removal from the UDOT acquired site. The cost of moving personal property may be considered eligible for reimbursement if the displacee chooses to use the dwelling as a means of moving personal property. Payment in these cases will be on a fixed schedule basis.

5.5.3 **Eligible Moving Costs**

A displaced individual or family meeting the basic eligibility conditions above is entitled to receive a payment for moving personal property. This includes the following costs:

1. Reasonable cost associated with the preparation of moving bids.
2. Transportation costs not to exceed a distance up to 50 miles.
3. Packing, crating, unpacking, and uncrating of personal property including materials and labor costs.
4. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
5. Reconnection of utilities including phone, cable, and electric service.
6. Storage of personal property for a period not to exceed 12 months unless UDOT determines that a longer storage period is necessary.
7. Insurance for the replacement value of the personal property in connection with the move and necessary storage.
8. Replacement value of property lost, stolen, or damaged in the process of moving unless by fault or negligence of the displaced person, agent, or
employee. This is only applicable where insurance covering the loss is not available.

9. Any special services such as an ambulance to transport a disabled person to the replacement dwelling.

10. Other moving-related expenses that are not listed above as UDOT determines to be reasonable and necessary. The agent will consult with the Right of Way Lead Agent or Relocation Manager before approving other moving costs for reimbursement.

### 5.5.4 Ineligible Moving Costs

The following costs are not eligible for reimbursement:

1. Cost to move real property including swimming pools, landscaping, and outbuildings that were identified in the appraisal as part of the real estate.

2. Interest on a loan to cover moving expenses.

3. Search costs for a replacement dwelling.

4. Legal fees or other professional costs associated with reviewing the claim for a relocation payment or for representing the displaced person in a relocation appeal.

5. Personal injury experienced during the move.

6. Cost of storing personal property on real property that is already owned or leased by the displacee.

### 5.5.5 Residential Moving Expenses – Actual Cost

A commercial mover may perform an actual cost move or the displacee may perform the move directly using owned or rented equipment and hired labor or family. A combination of these two types of move can also be selected by the relocatee. The actual cost moving methods described here can also be combined with the Schedule type move described in Section 5.5.6. The following will apply to an actual cost move:

1. **Move Performed by Commercial Mover**
   The Displacee will obtain proposals, bids, or estimates from two reputable moving companies if a displaced individual or family desires to have a move performed by a commercial mover. UDOT will pay the cost of obtaining bids or estimates if necessary. The agent will ensure that all proposals received are on the same basis. This means the proposals are based on equivalent move specifications and the same personal property inventory. The maximum UDOT reimbursement amount will be the lowest responsible bid or estimate.

   The displaced person has the right to engage the services of any moving company. UDOT will pay the amount of receipted bills not to exceed the amount of the approved low bid or estimate. Exception may be approved
for unanticipated work or conditions during the move that differ from the assumptions in the estimates.

UDOT will make a separate payment for costs that are not included in a mover’s claim such as reconnection of utilities.

The displacee may present an unpaid mover’s bill along with the moving cost claim form to UDOT for direct payment to the mover with advance agreement among the parties.

UDOT may pre-select two or more qualified commercial moving firms to submit proposals for residential moves if there are multiple residential relocations on the project.

2. **Self Move**
Moves may be performed by the displaced person in one or a combination of the following methods:

3. **Fixed Residential Moving Cost Schedule** – Described in Section 5.5.6.

4. **Actual Cost Move** – Supported by receipted bills for labor, materials, and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The displacee may rent equipment and purchase moving materials such as boxes, pads, etc. Move helpers may be hired to perform the move. UDOT will only reimburse actual costs incurred based on receipted bills. This type of move will not be administered on the basis of the lower of two bids or estimates. All actual costs incurred must be reasonable, necessary, and sufficiently documented by receipts invoices or cancelled checks etc.

5.5.6 **Fixed Moving Cost (Schedule Move)**

A displaced individual or family may elect moving cost reimbursement based on the UDOT moving cost schedule as an alternative to or in combination with an actual cost move described in Section 5.5.5. The schedule amount reflects the number of furnished rooms in the dwelling unit plus basements, attics, and garages. The UDOT schedule is revised from time to time to reflect current actual costs within the State. The current schedule amounts are stated on the merge file claim form titled “Application for Payment of Relocation Moving Expenses.” The schedule is also printed in the UDOT Relocation Brochure.

The UDOT schedule for furnished apartments and rooms provides a lower per room reimbursement rate than for unfurnished units. This reflects the reduced amount of occupant-owned personal property in a dwelling that is rented as furnished.
The Relocation Agent should tell the displacee how the fixed schedule payment will be computed at the initial relocation visit. The agent should make a room count and advise the displacee the number of rooms on which payment will be based. This will enable the displacee to make an informed decision as to which reimbursement option to claim. The Relocation Agent will be fair and reasonable in the room count. A large space serving a combined function such as a living/dining room may be counted as two rooms. Open space basements may count as two or more rooms if the basement contains a large volume of possessions. Outside unenclosed storage areas, outbuildings, or detached garages can also be included in the room count if they contain personal property equating to a dwelling room. One of the actual cost move methods may be used in combination with the Schedule Move to accomplish the relocation if a large amount of personal property is stored outside of the dwelling.

There is no additional payment for items such as utility reconnection because these costs are included in the move cost schedule if the displacee elects to accept the fixed cost reimbursement based on schedule.

The displacee does not have to account for how the fixed payment schedule amount is spent. The displacee may retain the difference if the actual cost of the move is less than the schedule amount. There will be no additional reimbursement if the actual move cost exceeds the schedule amount.

The fixed move payment should be encouraged if it clearly would benefit the displacee. A professional move option is indicated for circumstances involving an elderly or disabled displacee.

This fixed payment option has benefits to UDOT because it is administratively simple and there is no need to secure movers’ estimates, confirm actual costs incurred, or process multiple claims.

Personal property in mobile homes may be moved together with the mobile home as a unit. Payment may be made on the basis of the room count schedule for these moves.

5.5.7  Moves of Personal Property Only (Dwelling Not Displaced)

Moving expenses are reimbursable for eligible people who are required to move personal property from real property but are not required to move from a dwelling, including a mobile home, as set out in Sections 5.5.3 and 5.6.13 if applicable. Examples of personal property only moves might be:
1. Personal property that is located on a portion of property that is being acquired but the residence will not be taken and can still be utilized after the acquisition.

2. Personal property that is located in a mini-storage facility that will be acquired or relocated.

3. Personal property that is stored on vacant land that is to be acquired.

The acquiring Agency may obtain estimates from qualified movers to use as the standard in determining the payment if a question arises concerning the reasonableness of an actual cost move.

### 5.5.8 Moving Costs – Payment Claim

The “Relocation Moving Expense Claim” will be completed for each move with the move reimbursement option specified. The claimant will date and sign the claim form. The Relocation Agent will verify by personal inspection that all personal property has been removed from the displacement site before processing the final claim for payment. Any exceptions to complete removal will be noted on the claim form for appropriate reduction in the claim amount or other resolution.

The agent will confirm that the occupant has left real estate intact, with no removals that will lower the value of the property or create a hazard. The occupant may remove certain items with prior agreement from UDOT as part of the settlement or by buyback as salvage. Any such items of real property that are removed are to be itemized on the acquisition purchase contract. These items will be pre-approved by the Director of Right of Way and the Right of Way Lead Agent as conditions to the real property purchase contract.

The Relocation Agent will receive the keys to the property from the occupant unless other arrangements have been made for transfer of possession.

The Relocation Agent will assist the displacee in the completion of the claim form and submit the signed claim to the Right of Way Lead Agent for review and approval by the appropriate Deputy Director of Right of Way. All claims including the moving claim must be approved by the Director of Right of Way who must sign the claim before it is forwarded to the Comptroller for payment.
5.6 NON-RESIDENTIAL MOVING COSTS

5.6.1 General

Owners or operators of displaced businesses, farms, or nonprofit organizations are entitled to receive payment for the following categories of actual costs associated with moving:

1. Moving costs for relocating all personal property including machinery, equipment, fixtures, and disconnect/reconnect costs.
2. Search costs for a replacement location not to exceed $2,500.
3. Reestablishment expenses not to exceed $50,000.
4. Related nonresidential eligible expenses.

All moving expenses must be actual, reasonable, and necessary. See Section 5.6.3. The assigned Relocation Agent should monitor the process of performing inventories, developing move specifications, securing and reviewing commercial moving bids and proposals, and observing the conduct of the move. The extent of monitoring should be commensurate with the cost of the move, more extensive monitoring on moves that are complicated, or that involve a substantial cost. Uncomplicated small business moves may require little or no on-site monitoring.

The displaced business, farm, or nonprofit organization that meets certain criteria may choose to receive a fixed payment in lieu of actual moving expenses not less than $1,000 or more than $75,000 as an alternative to the actual cost reimbursement as explained above. The specific amount is based on the net income of the displaced business, farm, or nonprofit organization.

The reimbursable actual moving expenses for a contract move, self-move, or combination thereof and the fixed payment in lieu of moving expenses are explained in detail in the following Sections.

5.6.2 Key Terms

See Section 5.1.5 for definitions of business, small business, and nonprofit organization. The term “business” as used in this Section also applies to farms and nonprofit organizations unless otherwise stated.

5.6.3 Criteria – Actual, Reasonable, Necessary

Nonresidential moves are reimbursed for costs that are actual, reasonable, and necessary. These criteria are defined as follows:
1. **Actual** – True incurred costs as opposed to estimated or potential costs. The actual cost of a move is indicated by a receipt, invoice, or canceled check.

2. **Reasonable** – Not extreme or excessive, not conflicting with reason. This is a judgment determination in response to the question “Would most people agree that something is reasonable given all the facts?”

3. **Necessary** – Logically unavoidable costs. Are the costs obligatory? Could the move have been conducted in a way that the cost elements would not have been incurred?

The three-part test and, in particular, the elements of reasonableness and necessity, can be difficult to implement in certain cases but they are basic program criteria and Relocation Agents are obligated to apply them consistently and fairly to business relocation claims. The Right of Way Lead Agent, appropriate Deputy Director of Right of Way, and or the Relocation Manager must be consulted before approving complex claims that involve substantial cost.

### 5.6.4 Business Moving Process – Contract Move

Business relocations are varied and may be very complex. Business operators are understandably concerned about their livelihood, the welfare of employees, retaining customers, and receiving adequate payment for relocation costs. The Relocation Agent should follow a process in administering relocation benefits in order to meet the challenges of business relocations. This will ensure fair and equitable treatment of displacees, confirm the reasonableness of costs claimed, and encourage mutual trust and confidence in dealing with displacees.

The following process is recommended for business moving by means of a contract mover:

1. **Advise the Displacee**
   Provide complete information to the business, farm, or nonprofit operator about benefits and options. Give the business owner a copy of the relocation brochure marked to indicate important sections. Secure information about the business and find out the owner’s concerns, priorities, intentions, and business constraints. Reference the interview information obtained from the business owners as required in Section 5.2.3. Provide assistance as the owner desires and needs. Secure help and advice from outside sources including specialists as necessary. Advise the displacee that a contract move can also be accomplished in combination with a self-move. Advise the displacee on the forms of documentation that are required by UDOT to support claims for payment. The displacee should be advised of the requirements to:
a. Prepare an inventory. See Item 3 and also reference the realty/personalty report that is in the appraisal referenced in Section 2.4.5.
b. Notify UDOT of the scheduled date of move.
c. Permit UDOT to monitor the move and inspect the displacement and replacement sites.

2. Make or Confirm Personal/Real Property Determinations
Many businesses have equipment and fixtures that may not be easily classified as real property or personal property. The realty/personalty determination and report required in the Appraisal Report should specify these items and their classification (Section 2.4.5). The agent should review the status of items with the displacee so there is no misunderstanding as to the items that must be relocated as opposed to items that will be acquired and paid for by UDOT. Any items that are not clearly classified should be brought to the attention of the Right of Way Lead Agent who in consultation with the appraiser or review appraiser will need to make the determination as to the classification. UDOT legal counsel should be consulted if necessary.

3. Perform Inventory
The business operator must provide a complete and accurate inventory of personal property to be moved unless a fixed payment option is selected. The Relocation Agent should assist in the preparation of an inventory if necessary and the business operator requests assistance. The Relocation Agent must then monitor or review the completed inventory to the extent necessary to confirm that it is accurate and complete. The inventory should be reconfirmed if fluctuates before the move takes place to ensure that the move claim reflects the facts at the site on the date of the move. Photographic documentation and video of the inventory may be helpful in accomplishing this task.

4. Develop Moving Specifications
Specifications define the manner in which the move is performed. They specify the time span for performing the move and identify items needing special handling, including detach and reinstall work. Move specifications also identify special trades required such as plumbing, electrical, or millwrights. The development of specifications will ensure that all movers submit proposals, bids, or estimates on the same basis. Specifications will avoid misunderstandings about reimbursement or the manner in which the move is performed. The move specifications should reference the property inventory. Very small business relocations may not require formal written specifications. The Relocation Agent should always thoroughly discuss the details of the performance of the move with the business operator before proposals are secured from movers.
5. **Secure Moving Proposals**
Moving bids or estimates should be secured from at least two qualified commercial movers. The movers should be provided with the inventory and specifications and instructed to determine a price based on the specifications, but they should also identify any options or observed inconsistencies.

An estimate is not the same as a bid. Most proposals received for relocation are not bids in that they are not secured under competitive circumstances in which the job is contracted to the low responsible bid. The agent and the displacee should be alert to the possibility that movers who think they have low probability of securing the work may not provide a reasonably priced proposal. UDOT may pay a fee for estimates by a qualified mover consultant without expectation that the estimator will perform the move in unusual circumstances of a high-cost move in which it is not feasible to obtain timely or reasonable proposals.

6. **Monitor the Move**
The Relocation Agent is responsible for personally monitoring the performance of the move other than small low-cost relocations. This means that the agent will be on-site when the move is being performed. The responsibilities include confirming that the move is performed in accordance with agreed specifications and that the inventory moved reasonably conforms to that on which the move cost proposals were secured. The agent will also confer with the displacee about any concerns or questions involving claims for payment.

On very complex moves where there are significant costs assigned in the specifications to special work such as anchoring machinery, constructing pits and pads, or performing a premium time move, the work should actually be performed or be deducted from the claim. Ensure that this is clear to the parties before the proposals are secured.

The Relocation Agent may verify the need and reasonableness of the cost for reimbursement if work develops during the performance of the move that is necessary but was not anticipated in the specifications. This should occur infrequently on a well-planned relocation.

5.6.5 **Business Moving Process – Self Move**
A displacee may elect to take full responsibility for the move and be paid an amount not to exceed 90 percent of the lower of two reasonable and responsible bids or estimates. UDOT will not normally require receipts under this provision. Receipts for all expenses
claimed must be provided to UDOT once the move has been completed if the displacee claims 100 percent of the low bid amount. UDOT will pay the out-of-pocket costs to the displaced business operator as part of the reimbursement of the actual expenses. This will include the following:
1. Cost of packing materials and move equipment
2. Rental cost of equipment and vehicles
3. Salary or wages of displaced business employees engaged in move activities
4. Cost of outside specialists or trades required for the move
5. Reinstallation costs for equipment, telephones, computers, etc.

Documentation required for the above items consists of receipted bills and logs showing employee time and cost. Employee overhead may be included in the claim. The process defined in Section 5.6.4 for contract moves also applies to self-moves.

5.6.6 Eligible Moving Costs

The following items are eligible for reimbursement as moving costs if they are reasonable and are actually incurred during the moving process:

1. Transportation Costs for Moving Personal Property
   The transportation charges will normally be reimbursed for up to the first 50 miles of travel. All estimates will be prepared and claims paid based on a move of 50 miles when the move exceeds 50 miles. The mover’s bill must be detailed to show transportation costs for the first 50 miles as well as the cost for the remainder of the distance. Reimbursement will be allowed to the nearest adequate and available site when UDOT determines that the business cannot be relocated within a 50-mile limit. The agent will consult with the Right of Way Lead Agent, Relocation Manager, or appropriate Deputy Director of Right of Way before approving reimbursement for more than 50 miles.

2. Packing, Crating, Unpacking and Uncrating the Personal Property
   The packing will be limited to the extent reasonable and necessary to move property efficiently and without damage.

3. Disconnecting, Dismantling, Removing, Reassembling and Reinstalling Relocated Machinery, Equipment and Other Personal Property
   This includes machinery, equipment, substitute personal property, and connections to utilities available within the building. It also includes modifications to the personal property including those mandated by Federal, State, or local law, code, or ordinance necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site as well as modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing
utilities from the right of way to the building or improvement are excluded as a move cost but may be eligible as a related eligible expense. See Section 5.6.11.

4. Storage Costs
Reimbursed storage costs, including moving property in and out of storage is limited to twelve months unless UDOT determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased, or controlled by the displaced person are not eligible for reimbursement.

5. Insurance
This insurance is for the replacement value due to the loss, theft, or damage to the personal property in connection with the move and necessary storage. The replacement value of property lost, stolen, or damaged in the process of moving may be paid unless the loss results from fault or negligence of the displaced person or his or her agent or employee where insurance is not reasonably available.

6. License, Permit, or Certification Costs
This is the cost of any license, permit, fees, or certification required at the replacement location. The payment will be based on the remaining useful life of the existing permit, license, fees or certification.

7. Professional Services
These costs are associated with any professional service necessary for planning the move and moving and installing personal property at the replacement location. This can include the time of the displacee or employee-provided time logs and UDOT monitoring supports the claim.

8. Property Loss
Actual direct loss of tangible personal property that is not relocated from the displacement site or substitute personal property to replace items of property not relocated. See section 5.6.9 for further information on this benefit.

9. Cost of Re-lettering of Advertising or Business Identification Signs on Trucks or Other Vehicles
New vehicle signage may be reimbursed if vehicles are traded in coincidental to the move.

10. Replacement Cost of Stationary
This applies to stationary that was on hand at the time of the move that was made obsolete by the relocation. The Relocation Agent will verify the inventory of obsolete stationary if this is a significant cost.

11. Other Moving-Related Expenses
These are moving-related expenses that UDOT determines to be reasonable and necessary. Items listed as ineligible in Section 5.6.7 below may not be reimbursed. The Relocation Agent will consult with the
Right of Way Lead Agent or Relocation Manager before approving reimbursement of other moving related expenses.

5.6.7 Ineligible Moving Expenses

The following items are not eligible for reimbursement as moving costs:

1. Additional expense incurred because of operating at a new location except as provided as a business reestablishment expense.
2. Cost of moving structures, improvements, or other items of realty retained by the owner.
3. Interest on loans to cover moving expenses.
4. Loss of goodwill including loss of customers, clients, or revenue.
5. Loss of trained or skilled employees.
7. Personal injury to persons engaged in the move.
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant to the Department.
9. Physical changes to the real property at the replacement location of a business or farm operation except as provided under actual or fixed moves or reestablishment expenses.
10. Refundable security and utility deposits.
11. Costs for storage of personal property on real property already owned or leased by the displaced person.

5.6.8 Search Expenses

A displaced business, farm operation, or nonprofit organization is entitled to claim actual expenses and time spent in searching for a replacement location in addition to other reimbursements described in this Section. This payment may not exceed $2,500. Eligible search expenses include:

1. **Transportation**
   A mileage rate determined by UDOT will apply to the use of an automobile. Consult the Relocation Manager, appropriate Deputy Director of Right of Way, or Right of Way Lead agent for the current mileage rate.

2. **Per Diem**
   Meals and lodging away from home will be paid on a per diem basis.

3. **Time Spent Searching**
   Time spent searching will be reimbursed based on reasonable salary or earnings. The person performing the search must be a paid employee of the organization in the case of a nonprofit organization.
4. **Time Spent in Obtaining Permits**
   Time spent in obtaining permits and attending zoning hearings will be reimbursed based on reasonable salary or earnings.

5. **Time Spent Negotiating**
   Time spent negotiating the purchase of a replacement site based on reasonable salary or earnings will be reimbursed based on reasonable salary or earnings.

6. **Fees**
   Fees paid to a real estate agent or broker to locate a replacement site are reimbursable. This does not include commissions related to the purchase of the site.

Documentation for a move search claim will be a log of times, dates, and locations related to the search and receipts for out of pocket costs. It is only necessary to support the maximum reimbursable amount of $2,500.

Certain additional categories of searching costs may be considered for reimbursement in special cases where UDOT determines it to be reasonable and necessary. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney fees required to obtain such licenses or permits are also reimbursable. Time spent in negotiating the purchase of a replacement business site is also reimbursable based on a reasonable salary or earnings rate.

UDOT may consider requesting a waiver of the cost limitation under the § 24.7, waiver provision in those instances when such additional costs to investigate and acquire the site exceed $2,500. Such a waiver should be subject to the approval of the Federal-funding Agency in accordance with existing delegation authority.

5.6.9 **Substitute Personal Property and Direct Loss of Personal Property**

A business, farm, or nonprofit organization may suffer an economic loss if the owner elects not to relocate an item of property to the replacement site. This may occur if the item is at the end of its useful life, obsolete, or installed so that it cannot be moved economically. It may be reasonable not to move the item in any of these circumstances but to abandon it or sell it as salvage and replace it with a newly purchased item at the replacement site. The business may decide not to replace the item if it is not critical to continued business operations after relocation.

UDOT will pay the displacee the lesser of the cost of replacing property that was not moved including substitute personal property or for loss due to salvage sale or
abandonment of the item (direct loss of personal property) and the estimated cost of relocating the items not moved including detach and reinstall expenses depending on the situation at the displacement site according to the following requirements. The reasonable cost incurred in attempting to sell an item that is not to be relocated can also be reimbursed in both situations 1 and 2 described in the following.

The following rules apply to substitute personal property and direct loss of personal property:

1. **Substitute Personal Property**
   The displaced person is entitled to payment of the lesser of an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site:
   a. The cost of the substitute item including installation costs of the replacement site minus any proceeds from the sale or trade-in of the replaced item.
   b. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. This estimated moving cost can include upgrades that are necessary to meet code requirements. The estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate at UDOT’s discretion.

2. **Direct Loss of Personal Property**
   Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will consist of the lesser of:
   a. The fair market value in place of the item as is for continued use, less the proceeds from its sale. The claimant must make a good faith effort to sell the personal property unless UDOT determines that such effort is not necessary to be eligible for payment. The market value will be based on the cost of the goods to the business, not the potential selling prices when payment for property loss is claimed for goods held for sale.
   b. The estimated cost of moving the item as is but not including any allowance for storage or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site (see 49 C.F.R. Part 24, Appendix A, § 24.301(g)(14)(i) and (ii)). The estimated cost of moving the item will be based on a moving distance of 50 miles if the business or farm operation is discontinued.

In the situation of direct loss of personal property, if the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be
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based on the cost to install the equipment as it currently exists and shall not include the
cost of code required betterments or upgrades that may apply at the replacement site.
As prescribed in the federal regulations, the allowable in-place value estimate (49
C.F.R. § 24.301(g)(14)(i)) and moving cost estimate (§ 24.301(g)(14)(ii)) must reflect
only the “as is” condition and installation of the item at the displacement site. The in-
place value estimate may not include costs that reflect code or other requirements that
were not in effect at the displacement site; or include installation costs for machinery or
equipment that is not operable or not installed.

The property may be abandoned if a sale of displacement items under Items 1a or 2a
above is not made because no offer is received. Payment for the actual direct loss of
the item may not be more than the fair market value of the item for continued use at its
location prior to displacement or the estimated cost of moving the item 50 miles,
whichever is less, plus the cost of the attempted sale, irrespective of the cost to UDOT
of removing the item. The owner must attempt to sell the item that was not relocated
from the displacement site as a condition of claiming the direct loss or substitute
property payment. UDOT may exempt a displacee from this requirement if it
determines that the item has no net market value. UDOT will not charge the displacee
for removal from the site for project construction in this circumstance. The Right of Way
Lead Agent, Relocation Manager, or appropriate Deputy Director of Right of Way will be
consulted before exempting a displacee from this requirement.

It is important to fully support the estimates required for the direct loss or substitute
property provisions. It may be necessary to employ a specialty appraiser to determine
value for continued use or to estimate detachment and reinstallation costs of large or
complex items of equipment.

The direct loss or substitute property reimbursement should be fully explained to
business operators who may benefit from its provisions. This includes businesses that
have older machinery and equipment, custom fixtures and personal property that will
not be appropriate in a replacement site, or equipment that has been rendered obsolete
by wear or by more efficient or cost-effective items on the market.

5.6.10 Reestablishment Expenses

A small business, farm, or nonprofit organization may be eligible to receive a payment
for expenses that are actually incurred in reestablishing operations at a replacement
site. Under Federal law the reestablishment payment may not exceed $25,000. Under
Utah State law the reestablishment payment may not exceed $50,000 for
reimbursement of qualified Reestablishment Expenses up to $50,000. (See Utah Code
Section 57-12-4.) The new limits, for relocation purposes, are assumed to be effective
as of the date of displacement providing that the date of displacement was on or after
May 5, 2008. This benefit is in addition to reimbursement for moving expenses and exceeds the new limits defined in \textit{MAP-21 – Moving Ahead for Progress in the 21st Century Act}. The following describes the criteria for the reimbursement of reestablishment expenses:

1. \textbf{Eligible Reestablishment Expenses}
   Reestablishment expenses must be reasonable and actually incurred; and may include the following items:
   a. Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance such as special wall or floor materials required for a restaurant kitchen.
   b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. This includes most “build out” type costs of modifying interior spaces.
   c. Construction and installation costs for exterior signing to advertise the business.
   d. Redecoration or replacement of soiled or worn surfaces at the replacement site including paint, paneling, or carpeting.
   e. Advertisement of replacement location.
   f. Increased costs of operation during the first two years at the replacement site for items such as:
      1) Lease or rental charges
      2) Personal or real property taxes
      3) Insurance premiums
      4) Utility charges, excluding impact fees
   g. Other items that UDOT considers essential to the reestablishment of the business. The agent will consult with the Right of Way Lead Agent, appropriate Deputy Director of Right of Way or Relocation Manager before approving other items as reestablishment expenses.

2. \textbf{Ineligible Reestablishment Expenses}
   Following is a non-exclusive listing of reestablishment expenditures that are not eligible for reimbursement as reestablishment expenses:
   a. Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade fixtures.
   b. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
   c. Interest on money borrowed to make the move or purchase the replacement property.
   d. Payment to a part-time business in the home that does not contribute materially to the household income. See Section 5.6.15
or 49 C.F.R. 24.2(a)(7) for a definition of “contribute materially to income.”

### 5.6.11 Related Nonresidential Eligible Expenses

The following expenses will be provided if the Agency determines that they are actual, reasonable, and necessary in addition to those provided by Section 5.6.10 for business reestablishment:

1. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person’s business operation including but not limited to, soil testing and feasibility and marketing studies excluding any fees or commissions directly related to the purchase or lease of such site. A reasonable pre-approved hourly rate may be established at the discretion of the Agency. Reasonable hourly rates established should compare with the rates of other similar professional providers in the area.

3. Impact fees or one-time assessments for anticipated heavy utility usage as determined necessary by UDOT.

### 5.6.12 Moves of Personal Property Only (Business not Displaced)

Moving expenses are reimbursable for an eligible people who are required to move personal property from real property but is not required to move from a business, farm, or nonprofit organization include those expenses described in Sections 5.5.3 and 5.6.13 if applicable.

Examples of personal property only moves might be:

1. Personal property that is located on a portion of property that is being acquired but the business will not be taken and can still operate after the acquisition

2. Personal property that is located in a mini-storage facility that will be acquired or relocated

3. Personal property that is stored on vacant land that is to be acquired.

The owner of the personal property for a nonresidential personal property only move has the options of moving the personal property by using a commercial mover or a self-move. UDOT may obtain estimates from qualified movers to use as the standard in determining the payment if a question arises concerning the reasonableness of an actual cost move.
5.6.13 **Moves of Low Value/High Bulk Personal Property**

The allowable moving cost payment will not exceed the lesser of the following when the personal property to be moved is of low value and high bulk and the cost of moving the property will be disproportionate to its value in the judgment of UDOT:

1. The amount that would be received if the property were sold at the site.
2. The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include but are not limited to stockpiled sand, gravel, minerals, metals, and other similar items of personal property as determined by the UDOT. The displacee will be required to remove the material if UDOT elects not to use this provision.

5.6.14 **Outdoor Advertising Signs – Special Provisions**

On-site advertising signs located in compliance with State and local laws and regulations that are personal property are eligible for relocation benefits. The following special restrictions apply:

A site occupied solely by outdoor advertising signs, displays, or devices does not qualify as a business for purposes of the reestablishment benefit.

The amount of loss of tangible personal property involving a sign is the lesser of:

a. The depreciated reproduction cost of the sign as determined by UDOT less the proceeds from its sale.

b. The estimated cost of moving the sign with no allowance for storage.

5.6.15 **Fixed Payment in Lieu of Moving Expenses**

The fixed payment or In Lieu Payment is an alternative to reimbursement based on actual cost of moving. It is a lump-sum payment based on the net income before taxes of the displaced business including farm and non-profit businesses. Under Federal Law the Fixed In-Lieu Payment may not be less than $1,000 or more than $40,000.

Effective May 5, 2008, a higher limit for the fixed or in Lieu Payment was established by Utah State Statute. The higher maximum amount established for the in-Lieu Payment by this statute is $75,000. UDOT will allow the payment not to exceed the maximum amount established by Federal and Utah state statutes providing that the prescribed qualifying criteria are met. (See Utah Code Section 57-12-4. The new limits, for relocation purposes, are assumed to be effective as of the date of displacement providing that the date of displacement was on or after May 05, 2008. This benefit is in
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addition to reimbursement for moving expenses and exceeds the new limits defined in MAP-21 – Moving Ahead for Progress in the 21st Century Act)

The Fixed In-Lieu Payment is often! a beneficial option for small business operators with non-complex moves or relatively small amount of personal property to move. It is also attractive to businesses that discontinue operations at time of displacement. Discontinuance is not a condition of receiving this payment. UDOT encourages reestablishment of displaced businesses. The displacee claimant for a fixed in lieu payment does not need to account to UDOT for how the payment is used. The claimant must meet all eligibility criteria as noted below under Eligibility Criteria to be qualified for a Fixed In-Lieu payment.

The recipient of a fixed in lieu payment is not eligible for actual moving costs, related nonresidential eligible expenses, search expense, or reestablishment expense reimbursement. The decision to claim the fixed in lieu payment option is the voluntary choice of the displacee once UDOT determines that the eligibility criteria have been met. The following presents the criteria in determining a fixed in lieu payment. There are two tiers of Criteria:

Tier 1:
The eligibility criteria found in the Uniform Relocation Regulations found in 49 C.F.R. Part 24 Section apply as stated in the URA Regulations for a fixed in lieu payment of $1,000 to $40,000.

1. Tier 1. Eligibility Criteria for the fixed payment from $1,000 - $40,000.
   a. The business owns or rents personal property that must be moved and for which an expense would be incurred in a move and the business vacates or relocates from its displacement site.
   b. The displaced business cannot be relocated without a substantial loss of its existing patronage, clientele, or net earnings. A business is assumed to meet this test unless UDOT determines for a specific reason that the business will not suffer a substantial loss of its existing patronage.
   c. The business is not part of a commercial enterprise having more than three other entities that are not being acquired by UDOT and that are under the same ownership and are engaged in the same or similar business activities. Any remaining business facility that did not contribute materially (see Item 1e) to the income of the displaced person during the two taxable years prior to displacement will not be considered “other entity” for purposes of this rule.
   d. The business is not operated at the displacement dwelling or site solely for the purpose of renting the dwelling or site to others.
e. The business contributed materially to the income of the displaced person. Contribute materially means that during the two taxable years prior to the taxable year in which displacement occurs or during another period as UDOT determines to be more equitable, a business:
   1) Had average annual gross receipts of at least $5,000
   2) Had average annual net earnings of at least $1,000
   3) Contributed at least 33 percent of the owner or operator’s average annual gross income from all sources.

Tier 2
2. The eligibility criteria is noted below for a fixed in lieu payment of $20,001 to $75,000:
   a. The business owns or rents a “substantial amount” of personal property that must be moved and for which an expense would be incurred in a move; and the business vacates or relocates from its displacement site.
   b. “Substantial amount” for the purposes of this section means the estimated cost to move the personal property plus the estimated cost to reestablish the displaced business must be equal to or greater than the amount claimed for the fixed or in lieu payment. The displaced business cannot be relocated without a substantial loss of its existing patronage or clientele. A business is assumed to meet this test if and only if the displaced business is a business which requires its customers or clients to physically go to the actual business site to receive the product or service the business provides. Unless UDOT determines that the business will likely suffer a substantial loss of its existing patronage due to the displacement the fixed or in lieu payment under this tier will not apply.
   c. The business is not part of a commercial enterprise having more than three other entities that are not being acquired by UDOT and that are under the same ownership and are engaged in the same or similar business activities. Any remaining business facility that did not contribute materially (see Item 1e) to the income of the displaced person during the two taxable years prior to displacement will not be considered “other entity” for purposes of this rule.
   d. The business is not operated at the displacement dwelling or site solely for the purpose of renting the dwelling or site to others.
   e. The business, operated in whole or in part at the displacement site, contributed materially to the income of the displaced person. Contribute materially means that during the two taxable years prior
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to the taxable year in which displacement occurs or during another period as UDOT determines to be more equitable, a business:
1) Had average annual gross receipts of at least $5,000
2) Had average annual net earnings of at least $1,000
3) Contributed at least 33 percent of the owner or operator’s average annual gross income from all sources.

2. Determining the Number of Businesses
All pertinent factors will be considered in determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed in lieu payment including the extent to which:
a. The same premises and equipment are shared
b. Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled
c. The entities are held out to the public and to those customarily dealing with them as one business
d. The same person or closely related people own, control, or manage the affairs of the entities

UDOT will make a decision after consideration of all of the relevant indicators and so advise the displacee. The Relocation Agent will inform the appropriate Deputy Director or Right of Way, Right of Way Lead Agent or Relocation Manager of situations where multiple businesses are presented as sharing facilities or are co-located at a single site.

3. Fixed Payment Amount
The amount of the fixed in lieu payment is calculated as the average annual net earnings of the business for the two years preceding the year in which displacement occurs. The term “average annual net earnings” means half of all net earnings of the business or farm before Federal, State, and local income taxes.

UDOT may use a period that will be more representative if the two years immediately preceding displacement are not representative. Proposed construction may have caused a recent outflow of business customers resulting in a decline in net income for the business.

Average annual net earnings include any compensation that is paid by the business to the owner, spouse, or dependents during the two-year period. Earnings include any compensation that is paid to the spouse or dependents of the owner of a majority interest in the corporation in the case of a corporate owner of a business. Stock held by a husband, wife, and children will be treated as a single unit for the purpose of determining majority ownership.
Net earnings will be based on the actual period of operation at the displacement site during the two taxable years before the year of displacement, projected to an annual rate, if the business, farm, or nonprofit organization was not in operation for the full two taxable years prior to displacement.

The minimum payment of $1,000 will be provided if the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than $1,000, even $0 or a negative amount.

4. Fixed In-Lieu Payment – Farms and Nonprofit Organizations.
   a. Farms
      A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses in an amount equal to its average annual net earnings computed as described above. The fixed payment will be made in the case of a partial acquisition of land that was a farm operation before the acquisition only if UDOT determines that:
         1) The acquisition of part of the land caused the operator to be displaced from the farm operation on remaining land.
         2) The partial acquisition caused a substantial change in the nature of the farm operation.
   b. Nonprofit Organizations
      “Existing patronage” means membership or clientele for a nonprofit organization. A nonprofit organization is assumed to meet the test as to net loss of existing patronage resulting from displacement unless UDOT determines otherwise based on the facts of a particular case.

      The payment amount is the average of two years annual gross revenues less administrative expenses. Gross revenues for a nonprofit organization include membership fees, class fees, donations, titles, receipts from sales, or other forms of fund collection that enable the nonprofit organization to operate. Administrative expenses are for administrative support such as rent, utilities, salaries, advertising, and fundraising expenses. Operating expenses are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.
5. Documentation for Fixed In-Lieu Payment Claim
The owner must provide information to support its net earnings for the owner of a business, farm, or nonprofit organization to be entitled to the fixed payment. Actual State or Federal tax returns for the two years before the year of displacement are the best source for this information. Other documentation sources which may include financial statements certified by the displacee, the displacee’s accountant, or the displacee’s attorney, can be accepted as evidence of earnings. The owner’s statement alone will not be sufficient if the amount claimed exceeded the minimum payment of $1,000.

5.7 REPLACEMENT HOUSING PAYMENTS (RHP) RESIDENTIAL OWNERS

5.7.1 General
Displaced homeowners of more than six months tenure are assured under the relocation program that they will have the opportunity and the means to purchase a comparable replacement home. The relocation program provides an additional payment to enable the purchase of a replacement without incurring additional mortgage debt or use of personal funds if the funds received as compensation for the acquired home are not sufficient. The relocation program provides for payment of incidental expenses on a replacement home and compensates for the loss of favorable mortgage financing. This Section describes the process of determining the payments associated with purchase of replacement housing.

5.7.2 Owner-Occupants of 90 Days
Residential displacees who have owned the displacement dwelling that they occupy for at least 90 days before the initiation of negotiations are eligible for consideration for the following replacement housing financial benefits:

1. A payment to compensate for the additional cost, if any, after acquisition of purchasing a comparable replacement dwelling (purchase supplement (PS))
2. Compensation for the additional cost, if any, of a higher interest rate mortgage on a replacement dwelling, called the Mortgage Interest Differential Payment (MIDP).
3. Incidental or closing costs associated with the purchase of a replacement dwelling.

The combined payments above comprise the Replacement Housing Payment (RHP). The maximum amount of the RHP, represented by the sum of the above three items,
Relocation

may not exceed $31,000 unless the provisions of Last Resort Housing (see Section 5.10) apply to the relocation case.

Refer to Section 5.7.24 for detailed guidance if an eligible owner decides to rent.

5.7.3 Owner-Occupants of 1 to 89 Days

Residential displacees who own the displacement dwelling that they occupy for more than 1 day but fewer than 90 days before the initiation of negotiations are eligible for consideration for the following replacement housing financial benefits:

1. Down Payment (DP) assistance plus incidental expenses to enable the purchase of a comparable replacement dwelling.
2. Rent Supplement (RS) payment to compensate for the increased, if any, cost of renting replacement housing as compared to the economic or fair market rent of the dwelling acquired by UDOT.

The payment amount for either Rent Supplement or the Down Payment assistance may not exceed $7,200 unless the provisions of housing of last resort apply to the relocation case. The replacement housing benefits for owners of 1 to 89 days is the same as for displaced tenants. See Section 5.8 for detailed guidance.

5.7.4 Eligibility Criteria – 90-Day Owners

A 90-day owner as defined above is eligible for a computed RHP when the displacee purchases and occupies a Decent, Safe, and Sanitary (DSS) replacement housing. The displacee purchases the replacement dwelling when:

1. An existing DSS dwelling is acquired. The dwelling may be a conventional house, a condominium or co-op unit, a life estate in a dwelling, or a mobile home.
2. A life estate in a retirement home is purchased. The actual cost will be an entrance fee plus any other monetary commitments to the home. This does not include periodic service charges. The RHP is limited to the reasonable cost of purchasing a comparable replacement dwelling less the acquisition cost of the acquired dwelling.
3. A dwelling previously owned or acquired is relocated, rehabilitated, or both. The basis for determining the Purchase Supplement will be the current value of the dwelling at the time of relocation.
4. Construction is completed or contracts have been executed for the construction of a new dwelling on a site that is owned or acquired. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling that is comparable to the one acquired. The costs of adding new features that clearly exceed
comparable features in the displacement dwelling are not eligible for reimbursement. Eligible costs of the site will be limited to the current residential fair market value of the replacement site rather than what the displaced person actually paid for it.

A displacee who owns the replacement dwelling previous to UDOT’s acquisition of the displacement dwelling is eligible for an RHP if the replacement dwelling meets DSS standards. The current fair market value of land and dwelling will constitute the “actual cost” in the replacement housing determination. The displacee occupies the replacement dwelling as of the date the displacee takes title to the dwelling intending it to be a permanent place of residence. The displacee, as a condition of eligibility for RHP, must purchase and occupy a DSS dwelling within a one-year period from the later of:

1. The date on which the owner received final payment for all costs of the acquired dwelling.
2. The date on which the displacee moves from the displacement dwelling.

5.7.5 Decent, Safe, and Sanitary (DSS) Standards

The displacee, to qualify for a RHP, RS, or DP, must occupy a replacement dwelling meeting the DSS standard (see Section 5.1.6). The displacee is not required to purchase and occupy comparable housing.

The Relocation Agent will advise the displacee to promptly notify UDOT when a contract to purchase or rent is signed. The agent will also advise the displacee to write the following condition or words of the same effect in any contract:

This contract is conditioned on inspection of the property by UDOT representative by (date 10 days forward) and certification that it meets UDOT Decent, Safe, and Sanitary standards.

The Relocation Agent will inspect the replacement dwelling before the expiration date in the above contract clause or before date of purchase and certify as to whether it meets DSS criteria. The form titled “Dwelling Inspection Report” will be used for this purpose. A qualified UDOT employee, a local code inspector, or a private contractor may perform the inspection and certification. The displacee should be encouraged to obtain a home inspection of the property and include that as a contingency in the purchase contract. The cost of this inspection is reimbursable to the displacee as an incidental expense. UDOT may request the right of way unit in the transportation agency in that State to perform the inspection as a reciprocal courtesy if it is not practical to perform the inspection because the displacee has purchased a dwelling out of State. A self-
certification from the displacee that DSS housing is occupied may be accepted if an inspection by this means cannot be secured.

The DSS inspection is exclusively for the purpose of qualifying for payment of a relocation claim. It does not certify for any other purpose and UDOT does not guarantee the condition or performance of the dwelling or its systems. DSS deficiencies must be corrected before an RHP claim is paid. The cost to the displacee of correcting a deficiency may be added to the cost of the replacement dwelling for the purpose of determining the claim amount. The maximum amount of compensation for the RHP or RS may not exceed the amount established by the relocation housing study.

5.7.6 People Not Lawfully Present in the United States (49 C.F.R. 24.208)

The 1997 amendments to the Federal Uniform Act provide that people who are not legally in the United States are not eligible for relocation payments or assistance. UDOT, to implement this Federal provision, will require that each person or head of household applying for payment or assistance certify that the individual or in case of a family, each family member, is either a citizen, a national of the United States, or an alien who is legally in the United States. No payment will be made to a person or household that does not so certify.

Payment may be made to household members who are legally in the United States but who reside with non-legal residents. The payment amounts will be computed for the household based on the number of eligible household members.

UDOT may exempt people from denial of benefits if it determines that the denial will result in an exceptional or extreme and unusual hardship to the illegal alien’s spouse, child, or parent who is legally in the United States.

The agent will present all relevant facts and circumstances to the attention of the Right of Way Lead Agent, appropriate Deputy Director of Right of Way at the earliest time that a Relocation Agent becomes aware that a relocation case may involve people who are not legally in the United States. The appropriate Deputy Director of Right of Way, Right of Way Lead Agent or Relocation Manager will direct all further actions in the case.

The purpose of the eligibility restriction is the administration of the relocation program not enforcement of immigration law. UDOT representatives will not research alien status beyond the certification called for in this Section. Personal information secured by UDOT representatives during the relocation process should not be disclosed to any outside party unless as provided by law or ordered by a court and authorized by UDOT management.
5.7.7 Payments – “Spend to Get” Requirement

Replacement Housing Payments are reimbursement for actual costs incurred in the purchase of replacement housing. The displacee must “spend to get” the amount determined as the maximum Replacement Housing Payment. The purchase price of the DSS replacement dwelling must equal or exceed the amount UDOT determined as the estimated cost of a comparable dwelling or the claim will be reduced to the amount actually paid. In addition, the full amount of the payment must be applied to the cost of housing. This may be ensured by the RHP check being made available for disbursement at closing on the replacement dwelling or payment of the amount into an escrow account.

5.7.8 Determination of Price Differential

Price differential or Supplemental Housing Payment is the difference between the purchase price of the acquired dwelling and the lesser of:

1. The amount determined by UDOT that is necessary to purchase a comparable replacement dwelling.
2. The price actually paid to purchase a DSS replacement dwelling.

The probable selling price of a comparable dwelling is determined by analyzing at least one and preferably three properties that are available on the open market for sale and that meet the criteria of a comparable replacement dwelling. The Comparison Grid and the Supplemental Housing Study found in the merged forms set for residential owner occupants will be used for this purpose. One comparable from among those evaluated on the Comparison Grid will be selected as the basis for the Supplemental Housing Payment or Purchase Supplement determination. The selection will be made by careful consideration of all factors in the dwellings being considered that affect the needs of the displacee with reference to the elements in the definition of comparable replacement housing.

Fewer than three comparables may be used for this determination when three comparable dwellings are not available. The Relocation Agent will provide an explanation for use of less than three properties including discussion of efforts to locate three comparables.

The asking price of comparables will not be adjusted. An obviously overpriced listing should not be used in determining a purchase supplement amount.

Encourage the displaced person to consult with a real estate agent who will represent them in the search for a replacement home of their choice and to assist with the actual
negotiations for the purchase of the replacement home selected. The relocation agent should consult with the displaced person throughout the process as needed leaving the actual negotiations for the purchase to the displacee and the displacee’s real estate agent.

5.7.9 **Major Exterior Attributes – Method**

The dwelling selected in computing the Purchase Supplement may be comparable except it lacks major exterior attributes present at the displacement property such as a garage, outbuilding, or swimming pool. The appraised value of these items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the Purchase Supplement. It is not appropriate to add the value of the exterior attribute to the comparable.

The cost of actually building an exterior attribute at the replacement property occupied may be added to the acquisition cost provided that the attribute built has the same function as the one at the displacement property.

**Example of a Purchase Supplement with a Major Exterior Attribute (Garage)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparable dwelling (adjusted)</td>
<td>$110,000</td>
</tr>
<tr>
<td>LESS: Displacement property value</td>
<td>-$100,000</td>
</tr>
<tr>
<td>LESS: Value of the garage</td>
<td>-$5,000</td>
</tr>
<tr>
<td>Adjusted displacement property value</td>
<td>$95,000</td>
</tr>
<tr>
<td>Purchase Supplement Amount</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

5.7.10 **Highest and Best Use Other Than Residential**

The Purchase Supplement maximum amount will be determined by deducting the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land that represents a tract typical in size for the area from the listing price of the most comparable listing when the acquired dwelling is located on a site where the fair market value is established on a highest and best use generating a greater value than residential.
Example of Acquired Dwelling on a Commercial Zoned Site

The acquired house (whole take) is on a 5-acre site that is zoned commercial. The typical residential lot in the area is 1 acre. The land is appraised at $50,000/acre and the dwelling is valued at $10,000 (interim use value). A comparable house on a residentially zoned lot is available or listed for $70,000. The maximum Purchase Supplement amount is determined below:

<table>
<thead>
<tr>
<th>Comparable property</th>
<th>$70,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>LESS: Value of the house acquired on 1 acre</td>
<td>$60,000</td>
</tr>
<tr>
<td>Maximum Purchase Supplement Amount</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

5.7.11 Mixed-Use Property

The amount of the Purchase Supplement offer will be determined by using only that portion of the fair market value that is attributable to the residential use of the acquired property when the acquired dwelling is a unit in a structure that also includes space used for nonresidential purposes.

Mixed Use Displacement Property in Residential/Commercial Use

A grocery store owner lives in a one-bedroom, one-bath apartment above the store. The residential unit has 1,000 ft² of habitable living space. The property is appraised at $150,000. The Appraiser allocated 35% of total property value to the residence. There are several one-bedroom, one-bath units available for sale. They are:

(a) a duplex with two identical units for $125,000
(b) a single-family house for $75,000
(c) a condo unit in a five-plex for $50,000.

Most comparable property: (a) duplex unit value ($125,000 &divide; 2)................. $62,500
LESS: Displacement dwelling value (35% X $150,000).................................... $52,500
Maximum Purchase Supplement amount......................................................... $10,000

Only the part of the total cost that relates to the value of the owner’s living unit will be used to determine the Purchase Supplement when the replacement property is a structure that includes space used for nonresidential purposes.

The value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value when the replacement property contains buildings other than the residence that are used for nonresidential purposes. The residential use value will represent the amount paid for replacement housing when determining the Purchase Supplement payment amount.
Mixed Use Displacement Property in Residential/Commercial Use

A family displaced from a single-family house with an acquisition value of $90,000 and a Purchase Supplement of $15,000 contracts to purchase an operating chicken farm for $250,000. They will live in the farmhouse, which has an estimated value separate from the farm of $100,000. The displaced family submits a claim for the full $15,000 maximum Purchase Supplement amount. The family is eligible to receive $10,000, not $15,000, as a Purchase Supplement payment. Before processing the claim for payment, the Relocation Agent must determine the value of the farmhouse on a normal lot for residential use in the area. This will determine the payment ceiling. The part of the purchase price attributable to the farm operation ($150,000) will not be considered in the claim. This should be explained to the displaced family before they search for replacement property.

The amount of the Purchase Supplement will be the difference between the value of a single unit of a multi-family comparable and the value of the owner-occupied, residential-use portion of the acquired property when the acquired property consists of a multi-family structure of which one unit is owner-occupied. Only the value of the owner’s living unit can be used to determine the Purchase Supplement payment, not the entire purchase price when the replacement property is a multi-family structure. The Purchase Supplement amount will be the price of a single unit of a multi-family comparable or the price of one unit of a multi-family replacement, whichever is less, minus the residential use portion of the acquired property.

Mixed Use Property Owner Displaced From Condominium Unit

The acquired dwelling is a condominium unit in a building containing three stores and six residential units. The appraised value of the building is $1.1 million. The value of the displacee’s unit is $150,000.

The Purchase Supplement is the cost of a comparable condo unit in a similarly configured building having residential and commercial units, less the $150,000 attributed to the displacement unit. There may not be a condominium unit on the market in a mixed use, five-residential unit building. Look for units in buildings having five, four, three or two units. Use the “most comparable” unit considering the ownership form and configuration of units, as well as other factors.

5.7.12 Partial Take of a Typical Residential Site

The following rules apply to partial takes of typical residential sites:

1. Remaining Buildable Site

   UDOT may offer to purchase the entire property if the acquisition of a portion of a typical residential property causes the displacement of the
owner from the dwelling and the remainder is a buildable residential site. The fair market value of the remainder will be added to the acquisition cost of the acquired property for the purposes of computing the maximum Purchase Supplement payment if the owner refuses to sell the buildable site to UDOT. The adjusted amount will become the base value for relocation purposes.

2. **Remaining Uneconomic Remnant**

The value of the take and damages to the remainder will be used in computing the Purchase Supplement if the owner declines to sell the residue that is an uneconomic remnant to UDOT. An uneconomic remnant is a remaining part after UDOT acquisition that has little or no value to the owner. The determination of uneconomic remnant is an appraisal decision.

3. **Larger Tract Than Normal**

The maximum Purchase Supplement is the asking price of a comparable replacement dwelling on a tract that is typical in size for residential use, less the acquisition price of the acquired dwelling, and the portion of the site that represents a typical size residential lot in the area if the acquired property is a dwelling on a significantly larger site than is typical for residential use in the area.

### Example of Partial Take from Larger than Typical Residential Site

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparable property</td>
<td>$130,000</td>
</tr>
<tr>
<td>LESS: Displacement property*</td>
<td>-$113,000</td>
</tr>
<tr>
<td>Maximum Purchase Supplement</td>
<td>$17,000</td>
</tr>
</tbody>
</table>

* $12,000 value of 2 acres of acquisition area excess to typical lot has been deducted, thus the acquisition price of the displacement property is $113,000 (or $125,000 less $12,000 = $113,000).

### 5.7.13 Payment to Occupant with a Partial Ownership

The RHP will be the lesser of the following when a displacement dwelling is owned by several persons and occupied by only one of the co-owners:
1. The difference between the owner-occupants’ share of the acquisition cost of the acquired dwelling and the actual cost of the replacement.

2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by UDOT as necessary to purchase a comparable dwelling.

The circumstance of partial owner-occupants may arise when the ownership comes from a family inheritance where one or more but not all of the heirs occupy the property.

UDOT may apply an alternative method if unusual circumstances will create an unintended hardship on the occupants with a partial ownership. The Right of Way Lead Agent, Relocation Manager, or appropriate Deputy Director of Right of Way should be consulted when part owner occupants are encountered.

5.7.14 Displacee Retains Dwelling

A displacee who desires to retain and move the dwelling to a replacement site should be advised of the risks and costs involved. UDOT will not be responsible for any unfavorable outcome or increased cost. The Purchase Supplement will be determined as the lesser of the total of the items below or the amount determined using the three-comparable method if the displacee retains and moves the dwelling intending to reoccupy it on a new site or on the remainder property:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move.
2. The cost of curing any DSS deficiencies such as no payment may be made unless the replacement dwelling meets DSS standards.
3. The current fair market value for residential use of the replacement site, unless the displacee rented the displacement site and there is reasonable opportunity to rent a replacement site.
4. The salvage value of the dwelling, if the salvage was reflected in the UDOT acquisition cost.

UDOT will develop the Replacement Housing Payment based on the three comparable method and make the offer to the displacee. This serves as the maximum Purchase

Ms. Jones occupies the house. She shares ownership with her two sons who live elsewhere. UDOT acquires the property for $120,000. A comparable house is available for $130,000. Ms. Jones relocates to a condo unit costing $60,000.

Mrs. Jones’ share of the proceeds from the sale to UDOT is $40,000. Applying the process outlined in this Section, the applicable Purchase Supplement is $10,000.
Supplement amount. UDOT will determine the actual Purchase Supplement as above if an owner salvages and relocates the displacement dwelling.

The agent will advise the displacee of the substantial risks and uncertainties of moving a structure to a replacement site. UDOT will not accept responsibility for additional costs or outcome and generally advises against this method.

5.7.15 Revisions to Purchase Supplement Amount

Replacement housing must be available to the displacee at a price that is not higher than the selected comparable dwelling. UDOT may review the housing market and establish a revised Purchase Supplement amount where comparable housing is no longer available within the amount initially established. The Purchase Supplement amount previously offered will not be reduced as a result of this review.

5.7.16 Mortgage Interest Differential Payment (MIDP) – General

A mortgage interest differential payment compensates a displaced homeowner for loss of favorable financing (mortgage interest rate) on the displacement dwelling. The increased interest payment will be allowed only when the dwelling acquired by UDOT was encumbered by a bona fide mortgage that has a valid lien on the dwelling for not less than 180 days before UDOT’s initial offer to purchase. The rate must have been lower than the prevailing market interest rate on mortgages at the time of displacement and the displacee must have secured a mortgage at a higher rate on the replacement dwelling.

An owner occupant displacee (90-day owner) is eligible for consideration for a MIDP subject to rules below whether or not there is a price differential between the displacement and replacement housing. The MIDP is to reimburse for the loss of favorable existing (pre-displacement) mortgage financing. All valid mortgages on the dwelling that is acquired by UDOT will be used to compute the increased interest portion of the RHP. Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. They must be included in the computation. The unpaid balance in the case of a home equity loan will be that balance that existed 180 days before UDOT’s initial offer to purchase or the balance on the date of acquisition, whichever is less. The mortgage interest rate that is current on the property as of the date of acquisition will be used in the computation when the property is secured with an adjustable rate mortgage.

The displaced person will be advised of the approximate amount of the MIDP as soon as the facts relative to the person’s current mortgages are known. The payment will be
made at the time of closing on the replacement dwelling so that the new mortgage can be reduced.

5.7.17  MIDP Payment Computation

The computation of the payment for increased interest costs will be the amount that will reduce the mortgage balance on the replacement dwelling to an amount that can be amortized with the same monthly payment for principal and interest as that for the mortgages on the displacement dwelling. The amount of the increased interest payment will be computed using:

1. The unpaid mortgage balances on the displacement dwelling. The payment will be prorated and reduced accordingly in the event the person obtains a smaller mortgage than the mortgage balance computed in the buy down determination.

2. The remaining term of the mortgages on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3. The interest rate on the new mortgage, which cannot exceed the most favorable available loan rate. This is the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

4. Points and origination or service fee that may be added as reimbursable to the displacee if they are typically charged, actually paid, and are not reimbursed as incidental expenses. Reimbursement is limited to charges that will apply to the outstanding balance of the mortgage on the displacement dwelling.
Example of Increased Mortgage Interest Determination

GIVEN:
2. Outstanding balance – replacement .......................................................... $47,000
3. Remaining term, in months, acquired dwelling mortgage ...........212
4. Term, in months, replacement dwelling mortgage ..........................360
5. Interest rate – acquired dwelling mortgage ............................7.5%
6. Interest rate – replacement mortgage ........................................8.0%

DETERMINATION:
A. Monthly payment required to amortize a loan of $43,210 in 212 months at a annual rate of 7.5 percent .......................$ 368.38
B. Amount of reduced loan having a monthly payment of $368.38 for 212 months at interest rate of 8% .........................$41,749.00
C. Increased Mortgage Interest Payment: $43,210 – $41,749 ...............................................................$ 1,462.00

5.7.18 To Whom Payment is Made

The increased interest amount will be paid to the displaced person at the date of closing with the understanding that this payment must be used for the actual closing on the purchase of the replacement residence. UDOT may pay the MIDP amount directly to the title company which is handling the closing if the displacee requests it. UDOT can make an advance payment into escrow prior to the displacee moving upon specific request.

5.7.19 Partial Acquisition

A prorating calculation using a percentage ratio will be made when the displacement or the replacement dwelling is located on a tract that is larger than typical for residential use in the area. The MID calculation will be based on the maximum loan amount calculated using the following methods and which amounts to the lesser of:

1. The percentage ratio that the acquisition price of the displacement residence and typical lot bears to the total value of the property that is mortgaged, applied to the remaining existing mortgage balance at the time of acquisition.

2. The total new mortgage balance will be reduced to the percentage ratio that the value of the residential portion (dwelling and typical lot) bears to the total value for computational purposes where a replacement dwelling
Relocation

is located on a tract that is larger than normal for residential use in the area.

3. The mortgage amount necessary to purchase the #1 comparable considering the net compensation after payoff of the existing acquisition dwelling mortgage and the replacement housing differential payment eligibility.

A displacement property where the mortgagee requires the entire mortgage balance including the amount attributable to the remaining property to be paid because of the acquisition and as a result the owner must refinance the remaining property is normally not eligibility for MID. The appropriate Deputy Director of Right of Way or the Director of Right of Way should be consulted for further advice if this situation occurs.

5.7.20 Multi-Use Properties

The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

5.7.21 Highest and Best Use Other than Residential

The interest payment will be computed as provided in the appropriate Section above if the dwelling is located on a tract where the fair market value is established on a highest and best use other than residential and if the mortgage is based on residential value. If the mortgage is obviously based on the higher use, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

5.7.22 Incidental Expenses/Closing Costs

Incidental expenses, also called closing costs, are those reasonable expenses that are actually incurred by the displacee related to the purchase of a replacement dwelling. These are addressed on page two of the UDOT “Replacement Housing Claim”.

An owner occupant displacee is eligible for reimbursement of incidental expenses whether or not there is a price differential between the displacement and replacement housing. The following expenses are reimbursable to the displacee to the extent they are actually incurred and providing that the expenses are reasonable, typical, and necessary and pre-approved by UDOT for the closing:

1. Legal closing and related costs, including those for title search and mortgage insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees

2. Lender, FHA, or VA appraisal fees
Relocation

3. FHA or VA application fee
4. Professional home inspection, certification of structural soundness, and termite inspection
5. Credit report
6. Owner’s and mortgagee’s evidence of title through title insurance not to exceed the cost for the comparable replacement dwelling. Base the expense on the amount of funds the displacee is required to borrow and should not exceed the amount of the prior liens which were secured against the displacement home
   a. Escrow agent’s fee
   b. State and local revenue or documentary stamps, sales, or transfer taxes charged to record the deed, not to exceed the costs for a comparable replacement dwelling
   c. Loan origination or assumption fees that do not represent prepaid interest
   d. Purchaser’s points, but not seller’s points, normal to similar real estate transactions
   e. Other closing costs that UDOT determines to be necessary to the purchase and reasonable. The appropriate Deputy Director of Right of Way, Right of Way Lead Agent or Relocation Manager should be consulted as to the eligibility of specific items.

Incidental expenses may be claimed based on the lender’s Good Faith Estimate or UDOT’s estimate prepared before closing. The displacee will be required to submit a copy of the Final Settlement Statement (or HUD 1 Statement) to UDOT immediately upon closing. An adjustment may be necessary to reflect actual incidental expense items and amounts paid. Overpayments will be returned to UDOT or offset against unpaid claims.

5.7.23 Unreimbursable Incidental Expenses

There are important limitations on payment for incidental costs. The following are not reimbursable:

1. Any fee determined to be part of the debt service or finance charge under the Federal Truth in Lending Act.
2. Expenses of ownership that are typically prepaid at closing are not reimbursable. This includes fire and liability insurance, real estate taxes placed in escrow, and fuel oil or propane that is on-site at closing. Lenders require real estate taxes and insurance to be paid six months in advance. This is a prepaid expense of ownership and not an incidental cost.
3. Expenses that are on the list of eligible expenses but that are not typically paid by the purchaser in the county in which the transaction takes place are not reimbursable. See Section 5.7.22.

4. Owner’s title insurance is limited to the actual cost or the costs based on the UDOT selected comparable used to establish the replacement housing payment, and the lender’s title insurance is limited to the cost based on the outstanding balance of the original loans or liens against the displacement residence.

5. Documentary stamps and transfer taxes are limited to actual costs or the costs based on the UDOT selected comparable, whichever is less. Any payment in excess of this amount is not an eligible cost.

6. Purchaser points and loan origination fees cannot exceed normal rates and are only paid if the displacee had an outstanding mortgage. The maximum payment is based on the lesser of the outstanding balance of the original loan or the amount of the new loan. These charges may not be reimbursed as an incidental cost if they were paid as part of the MIDP.

5.7.24 Owner-Occupant of 90 Days or More Who Rents Replacement Housing

An owner-occupant who is eligible for a Purchase Supplement and who elects to rent a replacement dwelling is eligible for a Rent Supplement not to exceed the amount of the purchase RHP if the rental computation supports the supplement. Income is not considered when calculating a rental assistance payment for a 90-day owner electing to rent.

The amount of a Rent Supplement will also not exceed the amount the displaced family would have received had they purchased replacement housing. The method of determining the Rent Supplement is addressed in Section 5.8, except the $7,200 limit will not be applicable as outlined in the preceding paragraph.

An owner-displacee retains eligibility for a Purchase Supplement if a replacement unit is purchased within one year after the later of the date of final payment for the displacement dwelling or the date the owner was notified by UDOT of the availability of replacement housing. Eligibility to submit a claim for relocation benefits extends for eighteen months from the later of the date of displacement or the date of payment of the acquisition value of the acquired property. An owner who initially rents replacement housing may later purchase and qualify for a Purchase Supplement. The total amount of the Rent and the Purchase Supplements will not exceed the amount that would have been received if the displacee had initially moved to owner replacement housing.
The amount of a Rent Supplement payment previously paid to the owner-occupant will be deducted from the amount to which the owner-occupant is entitled under this Section.

5.7.25 Payment Following Death of Displacee

An RHP is personal to the displaced person. The undisbursed portion of any payment will not be paid to the heirs or assignees upon death of a displacee. The following provides the types of payments that will be made in the event of the death of a displacee:

1. The amount attributable to the displaced person’s period of actual occupancy of the replacement housing will be paid.
2. The full payment will be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy the replacement dwelling.
3. Any portion of an RHP necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person will be disbursed to the estate.

5.7.26 Advance Payments in Condemnation Cases

Displacees will receive the earliest possible payment of amounts rightfully due in order to purchase replacement housing. An advance Purchase Supplement can be computed and paid to the displacee if the determination of UDOT’s acquisition price will be delayed pending the outcome of an Ombudsman arbitration or District Court proceeding. A provisional RHP may be based on the approved appraisal or anticipated acquisition price if the amount of the RHP cannot be finally determined due to the pending proceedings.

A provisional payment may be made upon the owner-occupant’s written agreement that the Purchase Supplement will be recomputed using the acquisition price determined by arbitration or Court as compared to the actual price paid or the amount determined by UDOT as necessary to acquire a comparable dwelling. This provision is also included in the Notice of eligibility which is issued to the displaced person once the housing study has been completed.

The displacee will refund to the State from a judgment or award, the amount of the excess if the amount awarded as the fair market value of the property acquired plus the amount of the provisional RHP exceeds the lesser of the price paid or the State’s determined costs of a comparable dwelling. The displacee will not be required to refund more than the amount advanced.
The Right of Way Lead Agent, appropriate Deputy Director of Right of Way, or Relocation Manager will prepare agreements for provisional Purchase Supplements. The Court, Ombudsman, or other arbitrator will be advised of the provisional payment amount and that UDOT will pay the difference, if any, between the determined cost of replacement housing and the settlement or award. The final determination will be deferred until the case is finally adjudicated. The final claim amount will be computed using the award as the acquisition price.

Review Section 4.2.3 “Settlement After Filing Condemnation” in Chapter 4 regarding the handling of this situation where a provisional RHP payment has been made prior to the resolution of the condemnation action when the final acquisition amount will be determined.

5.8 RENT SUPPLEMENT PAYMENTS (RS) – RESIDENTIAL TENANTS

5.8.1 General

A residential tenant who occupied the displacement dwelling for 90 days or more before the initiation of negotiations is eligible for consideration to receive a Rent Supplement Payment. An owner displacee who occupied for 90 days or more before the initiation of negotiations is eligible for the same benefits as the tenant displacee of 90+ days.

A tenant or an owner as described above may elect to receive an amount that can be applied toward the down payment and incidental expenses on a Decent, Safe, and Sanitary (DSS) replacement dwelling.

The payment amount for either a Rent Supplement or a Down Payment Supplement is limited to a maximum of $7,200. This limitation does not apply if the relocation comes under the criteria for last resort housing as discussed in Section 5.10.

5.8.2 Rent Supplement – Payment Computation

The rental replacement housing determination is 42 times the amount obtained by subtracting the base monthly rental (see Section 5.8.3) for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities including electricity, gas, other heating and cooking fuels, water, and sewer for a comparable replacement dwelling.

2. The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.

5.8.3 Base Monthly Rental – Defined

The base monthly rental of the displacement dwelling is the lesser of:
1. The average monthly cost for rent and utilities including electricity, gas, other heating and cooking fuels, water, and sewer at the displacement dwelling as determined by UDOT.
2. Thirty percent of the average gross household income from all sources, if qualified as low income.
3. The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Housing must be available within a displacee’s financial means. This is defined for a tenant as rent and utilities within thirty percent of gross monthly income if the displacee’s household qualifies as low income. The source or link for finding “low income” classifications for areas in Utah can be found through the FHWA Real Estate website at: http://www.fhwa.dot.gov/realestate/ua/ualic.htm

See the following examples of low income limits and an example calculation.

<table>
<thead>
<tr>
<th>FY 2015 Income Limit Area</th>
<th>Median Income</th>
<th>FY 2015 Income Limit Category</th>
<th>Persons in Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salt Lake County</td>
<td>$72,200</td>
<td>Very Low (50%) Income Limits ($)</td>
<td>1 2 3 4 5 6 7 8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extremely Low Income Limits ($)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low (80%) Income Limits ($)</td>
<td></td>
</tr>
</tbody>
</table>

**Low income - rent exceeds 30% of income**

Relocatee has a gross income of $1,000 per month, and is considered low income based on the HUD Income Limits for county of residence as limit is $20,700 and income is $12,000 per year. Her monthly rent and utilities is $400. If displaced, her rental subsidy is calculated as:

Available Comparable: $625, includes rent and utilities

30% of monthly income is $300; since this is lower than her actual rent, it is the basis of the rental subsidy calculation. Thus, $625 - $300 = $325; $325 X 42 = $13,650.
The base monthly rental determination ensures that the financial means requirement is satisfied.

Household income information necessary for these housing determinations should be obtained during the first interview with the displacee. Household income means total gross income received for a 12-month period from all sources, earned and unearned including but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business.

Household income does not include income received or earned by dependent children and full-time students less than 18 years of age. Household income does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. Refer to Federal Highway Administration, Office of Real Estate Services Web site for a more detailed list of income exclusions [http://www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate). The agent must verify the income and make sure that all income has been reported and that it is credible information and it is supported by observation and common sense. A displace is currently paying $800 a month for their current housing as an example, but only provides the agent with $600 documented income per month, further investigation may be required to determine how the displace is making a payment which exceeds their income.

5.8.4 Determination of Base Monthly Rent

The following rules will apply to determine the base monthly rent for displacees in the circumstances indicated:

1. Utilities included in base monthly rent are electricity, gas, other heating and cooking fuels, water, and sewer only. Preferred documentation is copies of utility bills or billing history for the property provided by utility company. Other sources, including a statement from the displacee, may be accepted if the Relocation Agent agrees that the amounts are reasonable.

2. The Relocation Agent will secure income, rental, and utility information from the tenant. The base monthly rental will be based on the average rent and utilities at the displacement dwelling if the tenant declines to provide income information or reasonable verification of income.

3. The fair market rent will be substituted in the Rent Supplement calculation for a tenant who pays little or no rent for the displacement dwelling unless this would cause a hardship. Questions as to what constitutes “little or no rent” in specific cases will be referred to the appropriate Deputy Director of Right of Way or Relocation Manager.
4. The economic rent of the displacement dwelling will be used for a displaced owner who elects to rent replacement housing. Refer to Section 5.7.24.

5. The base monthly rent will be the amount designated for shelter and utilities for a displacee receiving welfare assistance that designates amounts for shelter and utilities.

5.8.5 Rent Supplement – Method

The Relocation Agent will determine the rental rates of comparable housing by use of the three comparables method. The Tenant Grid in the merged form set (tenant-occupant) will be used for this purpose. Note that there will not be adjustment of the asking rent of available rental dwellings.

The Relocation Agent will use three available rental properties to determine the Rent Supplement. The Relocation Agent may determine the payment from one or two comparables and will document the file as to efforts made to locate three comparables if fewer than three comparables are available. All rental properties must meet DSS standards and must be comparable to the displacement dwelling in essential characteristics.

Utility costs of electricity, gas, other heating and cooking fuels, water, and sewer must be included in both the displacement and the selected comparable rent. Reasonable efforts should be made to secure accurate information. The displacee’s utility bills or a statement from the utility company is best. A reasonable estimate should be made based on size and type of unit and other factors if actual costs are not available. The basis for the utility estimate should be documented in the “Comments and Conclusions” space on the grid form or on an attached addendum to the form.

The focus of the grid form evaluation will be to evaluate the elements of comparable replacement housing. The most comparable rental will be selected as the basis of the determination. The Relocation Agent will record an explanation of the selection. The displacee will be advised of the location of the comparable property on which the Rent Supplement amount is based by entry on the letter “Notice of Eligibility” (page 2). The Relocation Agent should confirm the continued availability before providing the Rent Supplement information to the displacee.

A redetermination is not required as long as there are comparable dwellings available on the market that are within the financial means of the displacee including the amount of the computed Rent Supplement if the comparable dwelling on which the Rent Supplement is based ceases to be available after an offer is made to a displacee. A
redetermination based on current available market data is required if market conditions change to remove availability within the range of the computed Rent Supplement.

5.8.6 Publicly Owned Housing

A person may not be required to occupy publicly owned or publicly assisted housing who does not occupy that form of housing before displacement. A publicly owned housing unit may be comparable housing only for a person who is displaced from a publicly owned housing unit. A privately owned but publicly rent-subsidized unit will qualify as a comparable dwelling only for a person who is displaced from a similarly subsidized dwelling. A displacee may voluntarily choose to occupy publicly owned or rent-subsidized housing and UDOT may refer such housing if the displacee requests that the agency do so.

A dwelling that may reflect similar government housing assistance may be comparable for a person receiving government housing assistance before displacement. Any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply in such cases.

5.8.7 Section 8 Housing Assistance Program

Housing Choice Voucher Program (formerly referred to as Section 8, this reference will continue in this Manual) is a Federal subsidy program funded by the US Department of Housing and Urban Development to enable low-income families to rent privately owned DSS housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between thirty percent of an eligible tenant’s adjusted gross household income and reasonable housing rent as determined under program rules. Section 8 benefits are normally portable, meaning the benefit moves with the recipient.

Section 8 assistance has a feature that is superior to the relocation Rent Supplement in that it is not limited to 42 months but continues as long as the recipient’s household is income eligible. The Relocation Agent should make every effort to relocate existing Section 8 recipients to units in which their Section 8 benefits will continue and usually has a duration exceeding the 42-month period of the relocation program subsidy. The local housing agency may consider as income and disqualify the displaced household from eligibility for Section 8 if a normal relocation Rent Supplement is paid. There is usually a long waiting list and it may be difficult to reenter the program.

The Section 8 recipient must relocate to a DSS unit in which the owner agrees to participate in this program in order to transfer benefits. Local housing agencies generally maintain current lists of participating owners and properties. A tenant cannot
be required to accept a Section 8 rent-subsidy in lieu of a Rent Supplement payment under the relocation program.

5.8.8 Eligibility and Disbursement of Rent Supplement

The displaced tenant must relocate to a DSS replacement dwelling to qualify for Rent Supplement payment. The replacement dwelling rent and utilities must at least equal the determined comparable rent to qualify for full Rent Supplement.

The amount of the rental payment will be paid in a lump sum unless UDOT determines that it is in the public interest to make periodic payments over the 42-month term of the benefit. UDOT may require the payments to be made in annual installments if the total rent supplement exceeds $7,200. The Rent Supplement amount may be assigned to direct payment to a landlord over the term of the benefit on request of a displacee.

5.8.9 $7,200 Benefit Limit

A Rent Supplement payment offer is limited to $7,200 under normal program authority. UDOT has an overriding responsibility to enable tenant displacees to rent replacement housing within their financial means. The special authority under last resort housing provisions is applicable if the payment computation exceeds $7,200. See Section 5.10 for information on last resort housing.

5.8.10 Change of Occupancy

Another claim may be presented for the amount in excess of the amount originally claimed but not to exceed the total Rent Supplement originally computed if a tenant, after moving to a DSS dwelling, relocates within the one-year period of continued eligibility to a higher cost rental unit.

5.8.11 Down Payment Benefit – 90-Day Tenants

A displaced tenant who is eligible for a Rent Supplement who elects to purchase a replacement dwelling in lieu of accepting rental assistance payment may elect to apply the entire computed payment to the purchase of a replacement dwelling.

UDOT may increase the payment toward the purchase and incidental costs of a DSS replacement dwelling not to exceed a total of $7,200. A maximum $7,200 down payment made in a case will be applied consistently on future relocations.

UDOT has a responsibility to enable a displacee to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made
through advisory assistance and the down payment benefit to assist a tenant to move to ownership but the achievement of ownership by tenants is not a program requirement.

The down payment will be limited to the cost of the dwelling should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling for the purpose of this section. This means that the calculation of the down payment is not limited to a minimum conventional loan down payment amount.

5.8.12 Occupants Who Do Not Meet Length of Occupancy Criteria

Displaced people who began occupancy at the displacement property fewer than 90 days before UDOT initiated negotiations for the property but before UDOT acquired legal possession of the property are eligible for the following relocation benefits:

1. Advisory services as described in Section 5.3 to assist in locating adequate replacement housing.
2. Moving expenses as described in Section 5.5.
3. Comparable replacement rental housing is considered to be within the person’s financial means if UDOT pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person’s base monthly rent for the displacement dwelling as described in Sections 5.8.3 and 5.8.4 for a displaced person who is not eligible to receive a replacement housing payment because of the person’s failure to meet length-of-occupancy requirements. Such rental assistance must be paid under Section 5.10, Last Resort Housing. The provisions of this paragraph are applicable only to people who occupy a dwelling at the time UDOT obtains legal possession of the property. It does not apply to people who occupy as property management tenants after UDOT acquisition.
5.9 RELOCATION – MOBILE HOMES

5.9.1 General

Mobile home occupants are entitled to the same relocation benefits as those that apply to displacees from conventional housing. Mobile homes have unique legal and physical characteristics that require separate consideration in methods of determining replacement housing benefits. These characteristics relate to the potential for the mobile home unit to be either realty or personal property and the potential for the occupant to have owned the dwelling unit and rented the site or vice versa. This Section provides guidance in determining replacement housing and moving cost benefits that are applicable to mobile home occupancy.

The term mobile home as defined by Federal regulations includes manufactured homes and recreational vehicles used as residences.

5.9.2 Mobile Homes – Personalty vs. Realty

A mobile home may have legal status as either real estate or personal property depending on the following factors:

1. The permanency of its fixture to the site
2. The physical condition particularly relating to practicality of relocating to another site
3. The intention of the owner in placing the mobile home on its present location
4. Custom and practice in the county where it is located

The mobile home will normally be considered real estate if it is permanently fixed to the site on a concrete foundation with basement. The distinction is not clear and an administrative decision is necessary in some cases. The Right of Way Lead Agent, Relocation Manager, or appropriate Deputy Director of Right of Way should be consulted in all questionable cases. The personal property/realty decision will be completed before the property appraisal is ordered. The Relocation Agent may provide input in this process for questions that involve the feasibility of relocating the mobile home unit, the availability of replacement sites, or the consistency with decisions made on similar situations encountered in the past or anticipated on the same project or in the local area.

The mobile home will be moved to a replacement site and all costs will be reimbursed as moving expense if the displacement mobile home unit is personal property and not acquired. The occupants will be eligible for replacement housing benefits pertaining to the purchase or rental of a replacement site only.
The occupants will be considered displaced from the mobile home unit and will be considered for a replacement housing benefits pertaining to displacement from the site and the mobile home unit if the mobile home cannot be relocated for any of the following reasons. The mobile home unit will be purchased by UDOT as constructively being real estate.

1. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost.
2. The mobile home itself is not and cannot economically be made a Decent, Safe, and Sanitary dwelling.
3. The mobile home cannot be relocated because there is no available comparable replacement site.
4. The mobile home cannot be relocated because it does not meet mobile home park entrance requirements.

The eligible price differential payment for the purchase of a comparable replacement mobile home if UDOT does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on the requirements of this section is the lesser of:

1. The displaced mobile homeowner’s net cost to purchase a replacement mobile home including purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home.
2. The cost of the UDOT’s selected comparable mobile home less the UDOT estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

5.9.3 Replacement Housing Payments (RHP) 
Owner/Tenancy Status of Mobile Home and Site

A characteristic that is unique to mobile home occupancy is that there may be divided ownership of the dwelling unit and its site. A mobile home occupant may own the dwelling but rent the site. Conversely, an occupant may own the site and rent the dwelling unit.

The status of the displacee with regard to the mobile home unit and the site must be separately considered when determining replacement housing benefits both in the displacement and in the replacement dwellings. There may be a replacement housing benefit for the mobile home unit and for the site as presented in the following rules:

1. **Maximum Payment Eligibility ($31,000 or $7,200)**
   The ownership or rental status of the displacee with regard to the mobile home dwelling unit, not the site, determines the maximum payment amount that is applicable. The maximum eligibility is $31,000 for the unit.
and site if the displacee owned the mobile home unit at the displacement site for 90 days before the initiation of negotiations. The maximum eligibility is $7,200 for the unit and site if the displacee rented the displacement dwelling unit for at least 90 days before the initiation of negotiations.

2. **Displacee Owns Mobile Home Unit – Rents Site**
   There is eligibility for a Purchase Supplement to acquire ownership of a replacement mobile home unit if the displacee owns the displacement mobile home unit but rents the site. There is also eligibility for a Rent Supplement (maximum $7,200) to enable the displacee to rent a replacement site. The maximum total for the two components is $31,000. The rental assistance payment related to the site may be used to lease a replacement site, may be applied to the purchase price of a replacement site, or may be applied with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe, and sanitary dwelling.

3. **Displacee Rents Mobile Home – Owns Site**
   There is eligibility for a Rent Supplement to enable renting a mobile home unit and a Purchase Supplement to enable purchase of a replacement site if the displacee rents the displacement mobile home but owns the site. The maximum total for the two components is $7,200 (see Item 1 above).

4. **Displacee Owns Both Mobile Home and Site**
   There is eligibility for a Purchase Supplement (maximum $31,000) to enable purchase of a unit and site if the displacee owns both the displacement mobile home unit and the site. This situation is the same as a Purchase Supplement on acquisition of a conventional dwelling.

5. **Displacee Rents Both Mobile Home and Site**
   There is eligibility for a Rent Supplement (maximum $7,200) to enable rental of a replacement unit and site if the displacee rents both the displacement unit and the site. This situation is the same as for a tenant-occupant of a conventional dwelling.

6. **All Regular Program Eligibility Rules Apply**
   The normal term of occupancy (90 days) applies in each of the ownership/rental situations above with the clarification that the term of occupancy pertains to occupancy of the mobile home on the site that is acquired by UDOT. The other eligibility criteria apply to mobile home displacees including replacement housing DSS standards and legal residence in the United States.
5.9.4 Comparable Housing Availability

The replacement housing benefit will be based on an available and comparable mobile home unit. The Purchase Supplement or Rent Supplement amount will be based on the cost of an available conventional dwelling if a comparable replacement mobile home is unavailable. The comparable conventional dwelling will be selected based on the property most similar in size and features to the mobile home.

The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for people displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met:

1. The recreational vehicle is purchased and occupied as the “primary” place of residence
2. It is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the UDOT’s inspection
3. The dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe, and sanitary dwelling.

The regulations of some local jurisdictions may not permit the consideration of these vehicles as decent, safe, and sanitary dwellings. The recreational vehicle will not qualify as a replacement dwelling in those cases.

5.9.5 Moving and Related Expenses

Displaced people who move the mobile home units are entitled to payment of the actual, necessary costs of moving the mobile home unit and its contents to a replacement site. This may include the following items:

1. Dismantling and disconnecting utilities, removing tie downs and skirting, reconnections at the replacement site, and reassembling any appurtenances such as porches, decks, skirting, and awnings.
2. Reasonable, customary, and nonrefundable mobile home park entrance fees.
3. Moving personal property contents separately from the mobile home on an actual cost or a schedule reimbursement basis. The contents may also be moved in the mobile home unit and the occupants reimbursed on the basis of the move cost schedule.
4. Transportation and temporary lodging for the occupants if UDOT determines that this is necessary for the mobile home unit to be relocated and set up for occupancy.
Transportation costs may be reimbursed up to 50 miles. This limit may be extended by UDOT for good reason such as unavailability of a suitable site within 50 miles. The Relocation Agent will note any extension and the reason in the Agent’s Log.

5.9.6 Additional Rules Applicable to Mobile Home Displacements

Repairs to Mobile Home Unit
Reasonable repairs necessary to move the mobile home, cure DSS deficiencies, or qualify the mobile home for mobile home park acceptance criteria may be reimbursed as move cost expenses.

Person Moves Mobile Home
A displacee who is reimbursed for moving the mobile home unit is not eligible to receive a Purchase Supplement or Rent Supplement for the purchase or rental of a replacement unit but may be eligible for a payment to assist in the purchase or rental of a comparable mobile home site.

Person Eligible to Move Mobile Home but elects not to do so
The owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home if the UDOT determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so.

The owner is eligible for moving costs described in Section 5.9.5 and any replacement housing payment for the purchase or rental of a comparable site as described in Section 5.9.3 as applicable.

Partial Acquisition of a Mobile Home Park
The acquisition of a portion of a mobile home park may leave a remaining part of the property that is not adequate to continue the operation of the park. UDOT may determine that a mobile home located on the remaining part of the property must be moved as a direct result of the project. The occupants of the mobile home will be considered displaced persons eligible for full relocation benefits.

Last Resort Housing (LRH)
Displaced people from mobile homes are eligible for consideration under provisions of last resort housing. See Section 5.10 on the same basis as displacees from conventional housing.
5.10 LAST RESORT HOUSING

5.10.1 General

UDOT has a responsibility under Federal and Utah relocation law to offer all residential displacees the opportunity to relocate to comparable replacement housing. This responsibility overrides the benchmark program limits ($31,000 and $7,200) on replacement housing benefits. The responsibility applies when there is not sufficient existing housing for sale or rent to meet the needs of project displacees. Last Resort Housing is the program element that provides the methods and the procedures for providing needed comparable housing when it is not otherwise available. A displaced person or household will not be required to move until a comparable replacement dwelling is made available that is within financial means. Comparable replacement housing may not be available because of any of the following circumstances:

1. Available housing is not Decent, Safe, and Sanitary (DSS).
2. A competing demand for housing causes temporary unavailability which will delay timely advancement of the highway construction schedule.
3. Displacees have special needs relating to the definition of comparable replacement housing that is not met by the available housing stock.
4. Housing is available but its cost exceeds the financial means of displacees after application of maximum replacement housing benefit amounts ($31,000 and $7,200).
5. A displacee has not met the length of occupancy requirements for normal relocation benefits such as occupant for 90 days prior to initiation of negotiations and does not have the financial means to occupy comparable replacement housing:
   a. Based on a "rent-to-rent" computation
   b. The replacement housing cost exceeds 30 percent of gross household income if the threshold of low income is met.

UDOT will act expeditiously to prevent personal hardships and avoid increased costs due to project delays if any of the above circumstances apply. The UDOT Right of Way Division will consider all feasible measures to make housing available and will select a method that meets the needs of the displacees in a cost effective and timely manner. Most Last Resort Housing situations involve one displacee with special housing needs. The Relocation Agent will advise the Project Manager, the Right of Way Lead Agent, and the appropriate Deputy Director of Right of Way as soon as a case is identified where housing will not reasonably be available through normal program means. Last Resort Housing is usually recommended as part of the replacement housing study if such needs were known at that time. The study is completed by the relocation agent and if last resort housing is recommended the study must be pre-approved by the Right
of Way Lead or Relocation Manager before it is presented to the displacee. The Last Resort Housing recommended solution should also be pre-approved in extraordinary cases by the Director of Right of Way, the Project Manager, and on Federally participating projects, by the designated Right of Way Officer with the Federal Highway Administration. In all cases it must be understood that relocation assistance recommendations are not binding unless they are approved by the Director of Right of Way.

The potential for project delay requires that cases with unusual circumstances or cases which may involve extraordinary expenses or unusual assistance need to be identified early. The Right of Way Lead Agent will direct further actions to identify a method to provide housing under authority of Housing of Last Resort.

5.10.2 Replacement Housing Standard

Comparable replacement housing is by definition functionally equivalent to the displacement dwelling as discussed in Section 5.1.5. It performs the same function and provides the same utility as the displacement dwelling. Consistent with this definition, housing may be provided that does not possess every feature of the displacement dwelling and differs in certain space and physical characteristics. For example, housing may be provided that is smaller but is upgraded in qualitative respects to adequately accommodate people who have been displaced from substandard or functionally obsolescent housing.

UDOT will offer to provide housing that is the same ownership or tenancy status as that which the person had before displacement. There is no requirement to enable a displacee to change status by use of Last Resort Housing. UDOT may cooperate in a displacee’s desire to change status so long as additional costs are not incurred.

5.10.3 Last Resort Housing Methods

Last resort housing authority allows a broad range of methods to be considered for providing housing of the type and on terms needed by project displacees. UDOT will select a method that provides comparable housing at the most reasonable cost within the time constraints of highway project scheduling and the urgency of the displacee’s need.

Methods include, but are not limited to, the following:

1. A Replacement Housing Payment (RHP) greater than $31,000 for a displaced owner or $7,200 for a displaced tenant.
2. Rehabilitation, modification, or addition to an existing replacement dwelling to accommodate the displacee’s needs.
4. Relocation and rehabilitation if necessary of an existing non-DSS dwelling.
5. Purchase of land or a replacement dwelling and subsequent sale, lease to, or exchange with a displaced person.
6. Acting as a mortgagee in financing a displacee’s purchase of housing.
7. A provision of features including entrance ramps, wide doors, etc., that will make a dwelling accessible to a disabled person.

5.10.4 Justification for Use

Any decision to provide Last Resort Housing must be adequately justified either:
1. On a case-by-case basis for good cause
2. By a determination that there is little if any comparable replacement housing available to displaced persons within the project area and therefore Last Resort Housing is needed for the area as a whole.

UDOT will consider the following in making the above determinations:
1. The availability of comparable housing in the project area
2. The resources available to provide comparable housing
3. The individual circumstances of the displaced person

Or by a determination that:
1. There is little, if any, comparable replacement housing available within the entire project area.
2. The project cannot be advanced to completion in a timely manner without last resort housing assistance.
3. The method selected is cost effective considering all elements that contribute to the total program or project cost. For example, will a project delay justify waiting for less expensive comparable replacement housing to come on the private market?

Detailed justification for use of Last Resort Housing will be placed in the Project and Parcel Files.

5.10.5 Approval Authority

The Director of Right of Way is the approval authority for determination of need, methods, and expenditures relating to Last Resort Housing.

5.10.6 Cooperative Agreements

UDOT may enter into agreements with any Federal, State, or local agency or contract with any individual, firm, corporation, or nonprofit association for services in connection with these activities. UDOT may use the services of Federal, State, or local housing
agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

5.10.7 Consequential Displacement

Any person who is displaced because of the acquisition of real property for a last resort housing project under UDOT’s power of eminent domain including amicable agreements under the threat of such power is entitled to all eligible benefits under the relocation assistance provision.

This provision is not applicable to an owner-occupant who voluntarily acts to sell the property to the State of Utah for Last Resort Housing and the owner certifies the same in a statement that will be retained in UDOT files. Tenants of such properties acquired voluntarily from its owner are eligible for relocation benefits.

5.10.8 Last Resort Housing Disbursements

Rental assistance payments made to displacees who rent replacement housing under this Section will, at UDOT’s discretion, be paid either in a lump sum or in annual installments directly to the displacee or to the provider of housing. Other payment options will be arranged if UDOT determines that a direct payment or annual payments to a displacee will not be prudent and in the public interest. Provide documentation in the file with the reasons whenever special payment options are invoked.

A displacee may not be required to accept Last Resort Housing in place of a Rent Supplement or a Purchase Supplement for which they may be eligible under normal program provisions. A displacee may choose to accept a conventional Purchase or Rent Supplement in lieu of a Last Resort Housing solution. This is on the condition that all eligibility criteria are met including rental or purchase and occupancy of a DSS dwelling.

A displacee who receives a housing or financial payment under Last Resort Housing will be required to certify that the displacee accepts the housing or benefit in lieu of the Rent Supplement or Purchase Supplement for which they would otherwise be eligible.

5.10.9 Compliance With Other Statutes

The development and implementation of last resort housing projects will comply with the applicable provisions of the following, including the amendments and regulations issued pursuant thereto:

2. Title VI of the *Civil Rights Act of 1964* (42 U.S.C. 2000d)
3. Title VIII of the *Civil Rights Act of 1968* (42 U.S.C. 3601)
5. Executive Order 11063 (Equal Opportunity in Housing) 3 C.F.R. Comp. 1959-1963, page 652
7. Executive Order 11625 (Minority Business Enterprise) 3 C.F.R. Comp. 1971, Page 213
Chapter Six
PROPERTY MANAGEMENT

6.1 GENERAL

6.1.1 Purpose and Goals of Property Management

The Property Management Section is responsible for maintenance, leasing, disposal of real property, and supports project development by exercising effective management over property acquired by UDOT. Property Management leases real property that is held on a long-term basis and sells property that is surplus to transportation needs. State owned real property is managed in a manner that minimizes holding costs, protects public safety, and generates revenue that is credited to funds available to improve Utah’s highway transportation system.

For property acquired for a project in which federal funds were used in any phase of the project, all maintenance, ROW use agreements, and disposal of real property interests acquired with title 23 (United State Code) funds must comply with 23 C.F.R. §§ 710.403 and 710.405. If UDOT is the grantee of title 23 funds, it shall ensure compliance by subgrantees including local agencies as provided in Section 710.201(c) and (d) of 23 C.F.R. 710 Subpart D.

6.1.2 Scope of Property Management Function

The function of the Property Management Section includes all activities necessary for management of real property acquired by UDOT. This includes the following elements:

1. Maintain property acquired for right of way in a safe and secure condition pending use for highway right of way.
2. Short-term rental of property pending its use for highway right of way.
3. Clearance of buildings and other improvements in preparation for highway construction or for property management.
4. Disposal of real property that is determined surplus to present or future highway needs.
5. Moderate or long-term leasing of property acquired for Corridor Preservation.
6. Maintain a statewide inventory of property owned by UDOT that is not dedicated highway right of way.
6.1.3 Organizational Relationships

Property Management operates under the Director of Right of Way in the UDOT Central Office. Staff assistants are assigned as necessary to maintain efficient workflow and provide any necessary specialized assistance to the Property Management Section.

Property Management has continuing communications with the Right of Way Lead Agent. The purpose is to efficiently take control of property when UDOT obtains legal possession, assure that proper security measures are taken and that continuing occupancies are underwritten lease agreement, including future rent payments. Local government officials may consult with Property Management concerning control practices on property acquired for State-funded local projects or for Federal projects administered by local governments.

Property Management may contract out the management of the rental properties. Any service provider contracted with UDOT will be under direction of the Property Management Section. The Property Management Section also responds to private citizens on inquiries involving property upkeep, condition of fences, and maintenance issues which Property Management may contract to a separate service provider.

6.1.4 Legal Authority

The property management function is performed in compliance with the following Federal and State laws and regulations:

Federal

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- 49 C.F.R. 24 Subpart B – Real Property Acquisition § 24.102(m)
- 23 C.F.R. 710 Subpart D – Property Management

State

- Utah Code § 72-5-111, Disposal of Real Property
- Utah Code § 72-5-113, Acquisition of Entire Lot, Block or Tract
- Utah Code § 72-5-114, Property Acquired in Advance of Construction
- Utah Code § 78B-6-521, Sale of Property Acquired by Eminent Domain
6.1.5 Quality Control/Quality Assurance (QCQA) in Property Management

The goal of QAQC in property management is to efficiently and consistently perform the activities identified in Section 6.1.2. Property Management’s responsibilities for quality assurance are to develop and implement policies that comply with applicable law and regulations that are effective and current and that utilize best practices in the field of property management. Quality in the Property Management Section extends to formal and informal review of the performance of activities by private contractors. The purpose of reviews is to assure compliance with laws, policies, standards, and identify opportunities where UDOT can improve performance.
6.2 PROPERTY MANAGEMENT AND MAINTENANCE

6.2.1 UDOT Responsibility

One of the responsibilities of Property Management is to assure the safe conditions for tenants who occupy State-owned property. A related responsibility is to maintain property in a manner that avoids blighting conditions that can negatively influence the value of nearby property. Some maintenance responsibilities can be transferred by contract with service providers since UDOT is responsible for property from the date it takes possession. It is challenging for UDOT to control and manage property as occupants vacate and more property in the area is acquired and cleared for highway construction. Property becomes vulnerable to pest infestation, vandalism, overgrown vegetation, trash dumping, and other undesirable conditions. UDOT, its contractors, or both will maintain a minimum standard of maintenance and develop strategies for preventing blight and misuse of acquired right of way until it is released to the contractor for highway construction.

6.2.2 Property Maintenance Standards

UDOT will rely on the decent, safe, and sanitary standard found in the Relocation Chapter of this manual. Housing units must be served by standard utilities with heat and electricity and be free of safety hazards.

The maintenance standard for unimproved property is to prevent or remove conditions that are a blighting influence on neighboring property or a hazard to the public. This includes keeping vegetation growth under control, removing trash or dumped material, or when necessary, fencing property to prevent dumping or trespass.

6.2.3 Inspection of Property – Pre-Acquisition

During the acquisition process, the Acquisition or Relocation Agent will perform a pre-acquisition inspection and will address the following property management concerns:

1. Clarify status of business fixtures as either personal or real property. Items of value that are realty will have to be accounted for when UDOT takes possession. The Personally-Realty Determinations and Report discussed in Section 2.4.5 may be helpful in this regard.

2. Determine needs and intentions of occupants as to occupancy after acquisition.

During the acquisition process the Acquisition or Relocation Agent will make recommendations to property management in regard to the following property management concerns:
1. Determine if buildings are suitable for continued occupancy after acquisition.
2. Determine if there are hazardous items in commercial or industrial property that will require special handling when the site is cleared.

An inspection may be needed before acquisition when there are special concerns about a property that will be acquired. The inspection may be performed by a private inspection company certified by the American Society of Home Inspectors (ASHI) or a similar professional organization.

6.2.4 Property Inspection – Post Acquisition

A Property Management agent will inspect all properties with improvements ideally with the owner or the owner’s representative, when the State takes possession. Property Management should obtain and review a copy of the personalty/realty report referenced in Section 2.4.5 of this manual, the Owner/Tenant Occupied form, and, if necessary, the terms of the acquisition contract as to acquired property improvements that remain on site and trade fixtures or other property that the owner intends to remove.

Note the following during the inspection of improved property:

1. Presence of all fixtures, landscaping, storage sheds, and other out-buildings.
2. The Owner is responsible for removing all debris, including vehicles, prior to possession by UDOT.
3. Site must be free of any potentially toxic items such as but not limited to: paint, paint cans, tires, and fluorescent light bulbs. UDOT may enter into an agreement with owner to retain a deposit to guarantee removal of potentially toxic items.
4. Any remedial work that needs to be done to protect the property or neighboring community. This includes the need for rodent control, removal of attractive nuisances (see Section 6.2.5), fencing site or boarding of building openings.

6.2.5 Attractive Nuisance

An attractive nuisance can become a detriment to the department. Examples of items that may create an attractive nuisance may include an abandoned swimming pool, accessible basements, or vacant houses. UDOT will assign a high priority to correct such conditions by removal, mitigation, demolition, boarding openings, or backfilling swimming pools. UDOT staff or others that inspect the property at the time of possession should report attractive nuisances to Property Management. Upon notification and verification of an attractive nuisance, Property Management will try to mitigate the situation by use of contract services immediately.
6.2.6 Protection Measures – Buildings and Sites

Window and door openings of vacant buildings may be boarded if necessary. Reasons for not boarding openings include imminent demolition, sale for removal, low risk of damage or trespassing, or adequate existing security.

Accumulations of trash will be removed from acquired sites. Mowing or vegetation removal will be performed as needed to prevent visual blight and conformity to community standards. This work may be deferred if highway construction will begin shortly and the Project Manager decides to include site clearance in the construction contract.

6.2.7 Hazardous Materials

Potentially hazardous materials may be identified on an acquired site after the previous owner or tenant vacates the premises in spite of a diligent inspection at the time of possession. This may include paints, cleaners, fertilizers, herbicides, manufacturing wastes, etc. The Project Manager, Property Management, and UDOT’s Environmental Section should be informed of discoveries of significant amounts of such material. Removal or remediation will be performed by contract with a qualified private company.

6.2.8 Rodent Control

It is important to identify and treat rodent or other pest infestations at the earliest possible date. The appraiser or negotiator may be the first to notice infestations. Rodents will migrate to adjacent property if their food source or habitat is disturbed. The Right of Way Lead Agent or Project Manager will advise Property Management if there is a need for rodent control.

Rodent control will normally be contracted to local licensed pest control specialists. Property Management will consult with local health, housing inspection, or public safety officials concerning methods, products, and precautions that are required. Property Management will consult with the Project Manager before beginning rodent control activity.

6.3 LEASING ACQUIRED PROPERTY

6.3.1 General Provisions

Real property acquisition generally occurs a short time before the property is needed for highway construction. Leasing the property may be restricted to continued occupancy
of owners and tenants pending their relocation. A long-term rental may be considered when a longer period of time between acquisition and construction is anticipated.

Requests by current occupants to lease the property following acquisition will be submitted to Property Management by the project Right of Way Lead Agent or designated project coordinator.

A former owner or tenant who occupies the property after acquisition by UDOT, subject to termination on short notice, will be charged rent that does not exceed the market rent for the subject property. The rental rate may be less than market rent in certain circumstances as negotiated prior to the commencement of the lease period.

6.3.2 Lease Agreement

All rentals will be under a written lease agreement. The terms of the agreement may be modified to address unique circumstances of each lease situation. The agreement will address at a minimum the initiation date, rent amount, term, deposit, utilities, insurance, maintenance, non-discrimination, and termination. Refer to conflict of interest in sections 1.6.1 and 2.4.2.

A lease file containing the original signed lease will be set up and maintained for each rental property by the designated property management consultant firm. Consultant firm will notify Property Management when a new lease has been executed. All files and lease agreements are subject to UDOT Property Management oversight, audit and review. Property Management will enter the lease information into the active lease inventory stored electronically in UDOT’s Projectwise Program.

6.3.3 Residential Owner and Tenants

Market rent or rent based on a short-term occupancy will be charged to a previous owner or tenant if they stay past the 90 day vacate date and are subject to termination of the lease on short notice. The rent amount is determined by UDOT or UDOT’S consultant property manager prior to the commencement of the lease or lease-back period by a former tenant or owner. UDOT will require a security deposit on the lease of a dwelling.

6.3.3.1 Residential Owner Occupants

UDOT will continue to hold the owner’s key deposit that was withheld from the proceeds of the sale of the property acquired from said owner in lieu of a security deposit if the tenant is the former owner of the property to be leased-back.
6.3.3.2 Residential Tenant Occupants

UDOT will continue to hold the security deposit the tenant paid to the previous owner, if applicable, if the tenant is a former tenant of the subject property. UDOT will establish an amount to be paid by the tenant and held by UDOT as the security deposit in the event that a security deposit was not previously paid to the former owner of the subject property. The determination of need for a deposit and the amount is based on the Property Management Section’s assessment of risk. The deposit may be for cleaning or security and should be identified in the lease agreement.

UDOT will normally continue the previous rent terms for a tenant who continues in occupancy after UDOT acquires the property. Property Management will require a new application and lease to be completed. The new UDOT lease will match the rent, deposits, and expiration dates as stated in the previous rental or lease agreements. The occupant will be subject, but not limited to, a criminal background and credit reference check prior to any subsequent renewals of the UDOT lease. Rent amount will not exceed the prevailing rent for a short-term occupancy in the area if the lease can be terminated on short notice by UDOT.

An existing tenant that had paid little or no rent because of a relationship with the previous owner will have rent increased to market rent as described previously. An exception may be approved if such an increase in rent will preclude the successful relocation of an eligible tenant displacee within their financial means.

6.3.4 Lease of Property Acquired for Corridor Preservation

Property may be acquired under Corridor Preservation to protect a future corridor. Property purchased under Corridor Preservation may not be used for highway right of way for five to twenty years after acquisition. Property will be leased during the interim. The lease agreement for these advance acquisitions will be the same as most other leases with the Department and will also adhere to the provisions of Section 6.3.1.

1. UDOT will preserve these properties in compliance with 23 C.F.R. sections 710.501 and 710.503.
2. Rent is subject to review if occupancy exceeds one year.

6.3.5 Rent Receipts – Payment and Accounting

UDOT may contract these services to an outside property management firm to manage rental properties, payment collection, and associated accounting activities.
6.3.6 Maintenance and Repairs

UDOT has an obligation to maintain safe, habitable conditions for all rental properties. UDOT will not make capital improvements to a dwelling or other structure that will be cleared for highway construction in most cases. UDOT will take prudent measures to manage associated maintenance and repair costs in all cases.

The tenant will be provided the name and phone number of a property management agent in case of emergency. The tenant will be asked to assume responsibility for normal maintenance such as snow removal and lawn care. An exception may be made for tenants who are unable to assume this responsibility. Maintenance and repairs on tenant occupied property may be contracted to qualified and insured service providers.

UDOT’s staff or its designee may inspect occupied dwellings before or after UDOT takes legal possession. The inspection will focus on health and safety factors. Deficiencies will be repaired as a condition of allowing continued occupancy. Occupants may be relocated to safe temporary housing as an emergency relocation if a condition exists that is a serious and urgent threat to safety.

6.3.7 Termination of Rental

Vacated properties will be inspected by a designated property management agent. Deposits may be retained or returned depending on the results of the inspection in accordance with the terms of the lease. A written explanation will be sent to the tenant if any portion is not returned explaining the reasons for retention of all or part of the deposit after the tenant has officially vacated the property.

Tenants will be notified to move by delivery of the 30-Day Notice.

6.3.8 Withholding Rent Due from Relocation Claims

UDOT will not withhold rent due at vacation of property from any relocation payment that the occupant may be eligible to receive. This does not preclude the use of other recourses available to UDOT to recover such rents due or other obligations the tenant/displacee may have accrued.

6.3.9 Use of Highway Airspace

Highway airspace is the space above, below, or at the established grade of the highway lying within the approved right of way limits. Highway airspace may be used for purposes other than right of way when it will not interfere with the safe operation and
maintenance of the highway facility and when the FHWA and UDOT determine that the use is in the best interest of the public.

Market rent for such airspace will be charged unless UDOT and FHWA approve an exception to this requirement as being in the public interest. All revenues generated by such activities will be retained by UDOT without a credit to the Federal share and will be accounted for and used for activities eligible for funding under Title 23 **U.S.C.** as set out in Section 6.5.12 if Federal funds participated in the acquisition cost.

ROW use agreements for airspace will address the specific rights and uses allowed and the measures needed to assure the safe operation and maintenance of the highway. Federal guidelines for airspace use are published electronically at [https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm](https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm)

The Federal regulations controlling airspace use are at 23 **C.F.R.** 710.405.

**Minimum Procedural Requirements (ROW use agreements to lease airspace):**
The United States Code of Federal Regulations (23 C.F.R. §710.405) requires the completion of certain steps in order in order to occupy a protected interstate facility. For additional guidance, please refer to FHWA’s Airspace Guidelines document available at [this link](https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm). Note: Where this FHWA guidance document implies additional documentation or actions are required, they shall also be required in addition to the list below.

1. **Public Interest Findings Document:** A public interest findings outcome must be determined. The applicant must prepare a written document that thoroughly addresses how allowing such an encroachment is in the best interest of the public. This document needs to fully detail and explain how other locations were not feasible. Presenting a case that narrowly focuses on lowering overall installation and operating costs is considered insufficient grounds for determining a public interest benefit exists.

2. **Liability Insurance & Indemnification:** The applicant must maintain adequate liability insurance as outlined in standard UDOT permit requirements. In addition, the applicant must also provide a signed indemnification statement with the following verbiage:

   “**INSERT APPLICANT NAME**” (the Permittee) shall indemnify, defend and hold the State of Utah, the Utah Department of Transportation, the Utah Transportation Commission, the Federal Highway Administration, the Utah Highway Patrol and their officers, agents and employees harmless from and against any claim or demand for loss, liability or damage, including claims for bodily injury, wrongful death or property damage, arising out of or resulting from: (a) any act or omission by the Permittee, its officers, agents, employees or any persons under Permittee's control insofar as permitted by law concerning Permittee's use or occupancy of the state road right-of-way;
and (b) from and against all actions, suits, damages and claims brought or made by reasons of Permittee's non-observance or non-performance of any of the terms of the Permit, the ROW use agreement to lease airspace, or the rules, regulations, ordinances and laws of the federal, state or local governments.

3. **24/7 Site Inspection Authorization:** In accordance with FHWA’s Airspace Guidelines document, the applicant shall provide written authorization to access the construction site for inspection purposes.

4. **Safety Mitigation Steps Analysis:** The applicant must provide a written safety mitigation analysis. This analysis must identify all actions that will be taken to reduce or eliminate any potential safety hazards. It needs to include a physical site safety analysis accounting for how the cranes are secured and protected against unauthorized access or use. This is an appropriate area to describe any other actions that will help to mitigate any crane-related encroachments risks. For example, no lifts or loads over the functional portions of the right-of-way, whether the weathervane process can be modified to not float over the ROW, how ice accumulation drops will be avoided in winter months, and any other similar measures aimed at increasing overall site safety.

5. **Emergency Action Plan:** The applicant must provide a written emergency action plan thoroughly describing precisely what will happen in the event of an emergency. This plan must account for everything from a minor problem to a complete collapse. It must identify whom the 24/7 emergency contact is, how first responder forces will be mobilized (including local government, public safety, and the Utah Highway Patrol), and what process would be followed if a catastrophic failure were to occur. This plan must include direct contract information for each of the aforementioned parties. It also requires positive contact with each part to ensure they are aware of their respective roles in the event of an emergency.

6. **Maps, Plans, Profiles, and Professional Land Survey:** The applicant must provide maps, plans, profiles, and professional land survey documents in conformity with FHWA’s Airspace Guidelines document. This component must include aerial overlays, complete building profiles, worksite illustrations, exact amount of crane jib overhang (swing radius depictions), and a confirmation that the entire building site is not encroaching into the right-of-way.

7. **Environmental Document Preparation:** A right of way agreement to lease airspace within an interstate facility constitutes a federal action. All such actions require an environmental study to be completed under the National Environmental Policy Act (NEPA). UDOT maintains a certified list of approved environmental consulting firms here. One of these companies must be selected and retained to produce the required environmental study. A categorical exclusion may be accepted as the minimum level of study for this circumstance.
8. **Fair Market Value Appraisal:** Use of the public right-of-way for private benefit requires fair market value reimbursement. The mechanism to determine this value is through the use of professional appraisal services. UDOT maintains a certified list of approved appraisal firms [here](https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:672). One of these companies must be selected and retained to produce the required appraisal document.

*These requirements may be waived for non-Interstate facilities on a case by case evaluation basis*

Should you have any questions or concerns regarding a possible airspace or other encroachment, please immediately contact the local permits officer for your region. Those officers can be found here: [https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:672](https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:672)

6.3.10 **Property Lease Outside of Right of Way Limits**

Property that is not included within final project right of way will be considered for disposal as surplus (excess) property. The property will be retained by UDOT and may be leased to alleviate future maintenance costs if not approved during the disposal process. The UDOT lease and the provisions therein may be adapted to the circumstances of each case. The term of occupancy, the allowed use, the required notification of termination, and the safety requirements will be based on protecting the adjacent highway facility and preserving UDOT’s potential future need for the property. Market rental rates will be charged for all lands including those acquired with Federal-aid highway funds, although certain exceptions are allowed as referenced in 23 C.F.R. §710.403.

All revenues generated by rental activities where federal funds participated in the acquisition cost will be retained by UDOT without a credit to the Federal share and will be accounted for and used for activities eligible for funding under Title 23 U.S.C., as set forth in Section 6.5.12.

6.3.11 **Wireless Telecommunications (Cell Tower) Leases**

State owned property may be leased for wireless telecommunications if it is in the best interest of UDOT and the lease does not compromise the safety or integrity of the highway facility, nor interfere with the safe operation and maintenance of the highway. All cell tower installations must conform to requirements of UDOT Policies and/or the Telecommunications Act of 1996.

Property Management will prepare and negotiate terms of a lease agreement for cell towers. Construction of the cell tower facility may begin only after the lease is executed. The standard lease form may be modified to reflect the circumstances of each case.
The standard term is five years with provisions for renewal on agreement of both parties. The lease amount will be fair market rent as established by a qualified staff member of the Right of Way Division. The rent amount may be increased annually based on current market trends.

6.3.12 Water Rights

UDOT through its negotiation of right of way may be required to purchase water rights, shares, wells, or other water assets identified as real property. The Right of Way Acquisition Agent will notify the UDOT Property Management Section upon acquiring these assets in order to track and protect these assets. Property Management will ensure that the water rights, shares, wells, or other water assets are changed into UDOT’s name and where applicable, new forms and applications are filed with the State Engineer’s Office to perfect said water rights. UDOT Property Management will maintain a database of all water assets.

6.3.13 Oil and Gas Leases

The leasing of mineral rights on state lands is typically the responsibility of the Department of Forestry, Fire and State Lands, Division of Natural Resources (DNR). Any requests that come from the DNR will go to the UDOT Right of Way Director or assigned representative. The UDOT Right of Way Director or assigned representative will forward the request to the Property Management Section to log the request. The request must be submitted in writing with a copy of the deeds for each parcel or tract of land to be leased.

Once the request to lease has been logged and reviewed the Property Management Section will prepare an approval letter identifying which UDOT Project and parcels will be leased for the UDOT Right of Way Director or assigned representative to review and sign. Once signed by the Director or assigned representative, the Property Management section will forward the approved lease information back to the DNR and they will be responsible for the final leasing of the property, collecting and distributing all the royalty payments.

Follow this procedure if a request comes from another agency or private nominee: Any requests will need to go to the UDOT Right of Way Director or assigned representative. The UDOT Right of Way Director or assigned representative will forward the request to the Property Management Section to log the request. The request must come in the form of a written request and a copy of the deeds for each parcel or tract of land to be leased must be provided to ensure that the property is owned by the Utah Department of Transportation.
The Property Management Section will prepare an approval letter identifying which UDOT Project and parcels will be leased for the UDOT Right of Way Director or assigned representative to sign once the request to lease has been logged and verified. The Property Management section will forward the approved lease information to the UDOT accounting department for the final leasing of the property, collecting and distributing of all the royalty payments once a UDOT signature is obtain.

6.4 STRUCTURES DISPOSAL

6.4.1 General Policy

Buildings and structures on property acquired for right of way may be cleared from the site by one or more of the following methods:

1. Demolition under the general construction contract
2. Demolition by separate contract before the highway construction project is awarded
3. Sale of buildings for removal from the site
4. Buyback of buildings by original owner for removal to an alternate site

The most frequent clearance method is for building demolition to be included as an item in the highway construction project. This enables projects to advance expeditiously with the least administrative complications. Other clearance methods may be used if project development time allows and if there are special circumstances that could result in a cost savings to the State.

6.4.2 Clearance Under Separate Demolition Contract

Demolition may be performed under a separate demolition contract if there is sufficient time before the advertisement for construction and the Project Manager concurs. A separate contract may be beneficial to UDOT if there is significant value in salvage of materials. UDOT may recover this value in a specialized contract rather than the general construction contract. A demolition contract in effect during right of way acquisition will enable buildings to be cleared as they are purchased and vacated, thus removing a potential source of blight.
6.4.3  Sale of Buildings for Removal

Buildings that have special value for reuse and can be removed to a replacement site may be sold for salvage value. Prospective purchasers of a building for removal may be required to demonstrate the following:

1. Availability or control of a replacement site
2. Possession of necessary permits
3. Insurance indemnifying UDOT against any claims of damage or personal injury

Buildings suitable for removal may be sold by auction to qualified bidders or sold for negotiated salvage value to a qualified person. UDOT will require a performance bond in the amount that Property Management determines is appropriate. Sale will be by written agreement that will specify obligations of the purchaser for insurance, permits, dates of removal, backfilling basements or other cavities, and cleanup of the premises after removal.

6.4.4  Building/Improvement Buyback – Owner Retention

A previous owner may be given the first opportunity to buy back buildings on the acquisition site as part of the acquisition process. UDOT may allow the removal if it determines that the process of removal of the structures will not cause a delay in the project construction schedule. A displaced owner who buys back the dwelling to move it for re-occupancy, may have a reduction in replacement housing relocation benefit. This is addressed in Section 5.7.14. A displaced owner will be fully advised of the impact of dwelling retention on relocation benefits.

6.4.5  Salvage

UDOT will generally not remove salvage from acquired buildings for resale. Exceptions may be in the recovery of items that have special artistic, historic or decorative value such as stained-glass windows or chandeliers or for use in other UDOT owned properties. Salvaged items for reuse on UDOT owned properties may include, but are not limited to; water heaters, furnaces, appliances, and HVAC components generally less than three years old. These types of items may be removed by Property Management to protect from theft or vandalism and may be disposed of in a manner that is in the best interest of the citizens of Utah.

Items of historic or artistic value may be transferred to a governmental or private nonprofit organization that has a conservation or educational purpose (e.g., museum, university). The Property Management Section will consult the Environmental Section concerning these items.
6.5 EXCESS LAND

6.5.1 General Policy

UDOT acquires and holds real property necessary for the operation and maintenance of Utah’s highway transportation system. Real property that is surplus to current or anticipated highway needs should be disposed of by methods and on terms that are beneficial to the citizens of Utah.

Excess land disposals will be based on fair market value unless the action qualifies for an exception under Federal regulations at 23 C.F.R. 710.403 if Federal funds participated in the acquisition cost. All revenues generated by Federally-funded excess land disposals will be retained by UDOT without a credit to the Federal share and will be accounted for and used for activities eligible for funding under Title 23 U.S.C. as set forth in Section 6.5.12.

6.5.2 Sources of Excess Property

Property identified as Excess or Surplus may arise from the following sources:

- Acquisition of Uneconomic Remnants – UDOT offers to purchase property remaining after right of way acquisition when the severed remainder will have little or no value or utility to the owner.
- Design Changes – Design changes that occur after property acquisition that create an area outside necessary right of way limits.
- Changes in Right of Way – Reconstruction of existing highways with alignment and design changes that result in portions of existing right of way outside of revised right of way limits.
- Early Acquired Property – Property purchased under advance acquisition or with Corridor Preservation funds that are not subsequently used as highway right of way.
- Excess Right of Way – Right of way on existing highway that is considered excess/surplus after consideration of traffic, safety and future expansion needs.

6.5.3 Disposal of Surplus Property

UDOT encourages conversion of excess land to private ownership and use. This will relieve the maintenance burden, generate revenue from the sale, contribute to local tax base, and encourage economic development. The following types of sales are considered when a property is confirmed as surplus to UDOT’s needs:

1. Sale to Original Owner, see Sections 6.5.8 and 6.5.9 for required process.
2. Sale to an Adjoining Owner and placing the property in unity of use with the existing ownership.
3. Conveyance to a local government or other State agency for a stated public use.
4. Sale on a negotiated or competitive basis subsequent to an inquiry or proposal.
5. Advertised sale of property known to have a marketable economic use.

6.5.4 Initiating a Surplus Property Disposal

A property will be placed under consideration as surplus or excess land by several actions. UDOT may receive an inquiry by an interested party such as an adjoining owner or developer. Another state agency or a local government may request that property be deemed surplus. Property Management may request a property be sold because of maintenance issues. All inquiries will be referred to the Region Right of Way Engineer for screening and determination regardless of the source.

6.5.5 Screening Process

The Region Office will circulate surplus or excess land requests as a proposal to the UDOT offices that evaluate present or future highway needs on the property. The proposal may also be circulated to other State agencies or local governments if there is a public need or use for the property.

The proposal is routinely circulated to the following UDOT offices for screening according to 23 C.F.R. 710.403(b):
- Maintenance
- Environmental
- Preconstruction
- Traffic and Safety
- Access Management
- Permits

The Director of Right of Way, the Engineer for Planning, and the appropriate Deputy Director of Transportation will review and authorize these excess land disposal requests from the Region. FHWA approval may also be needed if Federal funds were used to acquire the property. Property Management will advise prospective buyers of the disposal process to prevent unrealistic expectations of the time frame for land sales.

6.5.6 Administrative Process for Disposal

The following steps will be followed in processing a surplus property disposal:
1. The Region Right of Way Engineer will screen the excess land proposal by circulating the information to the internal offices for review (see Section 6.5.5).

2. The Region Right of Way Engineer will send the request to dispose to the Property Management Section. The request will include the Quit Claim Deeds, an annotated map to identify the property, and any background information concerning the parcel or the previous owner and any applicable vesting deeds.

3. The Property Management Section will receive and review the recommendation to dispose of excess land and initiate the Request for Authorization to Dispose packet for approval (see Section 6.5.5).

4. Property Management will review the packet and estimate a value for the property. The valuation method used may include an appraisal, a comparative market analysis, or an in-house estimate depending on the property and the highest and best use.

5. The final disposal package will include the following:
   - Letter from the Region declaring the property surplus to UDOT’s current needs and that it will not be needed in the future
   - Vesting deeds
   - Request for Authorization Form
   - Quit Claim Deed
   - Map showing the parcel and adjacent highway section

6.5.7 Sales of Excess/Surplus Land

Property management will send notification of intent to sell to the previous owner as described in Sections 6.5.8 and 6.5.9. Property Management will determine the method of sale which may include the following:

- Private sale will be used when the excess land is landlocked and cannot benefit anyone except the adjoining owner.
- Direct sale will be used if the sale to one party is to the advantage of the state and the surrounding community.
- Public or competitive sale will be used if the property can generate more revenue by exposure to the public.
- Priority for a sale will be given to other federal, state, and local agencies if properties have potential use for parks, conservation or recreation. Conveyance to a State or Local Agency for public use may be at no cost or at a cost that is less than current market value. The use will be restricted to the specific intended recreation, environmental, or other related use if the transfer to a public agency is for less than full market value. A clause will be placed in the deed that specifies that title will revert...
to UDOT if the property ceases to be used for the purpose stated in the deed.

The method selected will provide open and equitable opportunity to interested parties, comply with State law and best serve long-term interests of the citizens of Utah.

The Director of Right of Way will sign the deed representing UDOT when the transaction is complete. The closing will take place at a title company to ensure title transfer.

6.5.8 Right of First Refusal Acquired Under the Threat of Eminent Domain

UDOT will not sell the property on the open market when there is excess land after the project is complete and the original property was acquired under the threat of condemnation without offering the first refusal to the previous owner as per Utah Code Annotated 78B-6-521. The right of first refusal applies only to property acquired on or after July 1, 1983.

The Property Management Section will send notice by registered mail to the last known address of the grantor. The offer will be active for a period of 90 days from delivery date. A failure to respond to the offer within the 90-day period will be considered the same as rejection.

The ownership will be conveyed by quit claim deed if the offer to the previous owner is accepted. UDOT will set a reasonable time period, not more than 30 days following acceptance, for the owner to present payment and close the transaction. The previous owner must meet all the terms that would be applicable to a sale on the open market.

The property will be sold on the open market if the previous owner declines the offer and UDOT will accept the best offer presented based on price, terms, and conditions.

6.5.9 Offer to Previous Owner When Property is Not Used
Utah Code § 72-5-111

The original grantor or grantor’s heirs will be offered first consideration to purchase the property back at the original purchase price UDOT paid for the property if no portion of an acquired property is used for transportation purposes and is determined to be surplus/excess land. This does not apply if the grantor initially requested that the Department purchase the property as a voluntary sale.

For surplus properties purchased using Corridor Preservation funds, if no part of the property was put into a transportation use, then the original grantor will be contacted at their last known address and be provided with an opportunity to repurchase the property.
at current fair market value.

6.5.10 FHWA Concurrence

FHWA approval is required before disposal of any property that was acquired with Federal funds and current value exceeds $25,000 or more. See 23 C.F.R. 710.403(c), (d) and (e).

Federal approval is required for the disposal of surplus right of way under certain conditions (Note: the disposal of property outside of the project right of way does not require FHWA approval.) Specific circumstances where the disposal of right of way requires FHWA approval are as follows:

1. Interstate System: FHWA approval is required for disposal of property interests within the right of way where Federal funds were used for any phase of a project.
2. Non-Interstate System: FHWA approval is generally required for disposal of property interests acquired with Federal funds and disposed of at less than fair market value (FMV). Exceptions not requiring FHWA approval include:
   A. Property interests to be used by public utilities
   B. Property interests to be used by railroads
   C. Property interests to be used for bikeways and pedestrian walkways
   D. Property interests to be used for transportation projects eligible for assistance

6.5.11 Statewide Inventory of Excess Land

The Property Management Section will maintain a statewide inventory of property that is outside established right of way limits and not dedicated as a transportation-related use. This will include all property that is outside of the right of way, including shed and material sites.

The inventory will be developed and kept current by data that is gathered in the course of business. It will be updated whenever information comes to Property Management from other sources. An inquiry about a possible sale of a property not presently on the inventory will cause a review by the Region as per section 6.5.5.

The inventory will be updated to show the details of the disposition when a property is sold, exchanged, or conveyed to another public use.
6.5.12 Revenues for Sale of Excess Land/Surplus Property

The Property Management Section will receive proceeds from the sale of excess land. UDOT has established the 5FEDR07R account for proceeds from the sale or lease of property acquired with Federal funds. The Property Management Section will forward the proceeds to the Comptroller’s Office upon receipt of the funds.

6.5.13 Use Without Charge

Pursuant to 23 C.F.R. § 810.212, the use and occupancy of the lands made available by the State to a publicly owned transit authority may be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly owned mass transit authority.
Chapter Seven

RIGHTS OF WAY CONTRACTED SERVICES

7.1 GENERAL INFORMATION

7.1.1 Purpose

The purpose of this Chapter is to inform UDOT project management staff, right of way staff, and consultants about UDOT’s process for hiring consultants to perform project right of way work. The Chapter discusses consultant qualifications, contracting procedures, quality assurance, Right of Way Services Consultant Pools, and project-specific right of way contracts.

This Chapter is applicable to consultant selection by local governments administering projects under cooperative agreements with UDOT. Refer to Section 7.4 for specific provisions applicable to local governments.

7.1.2 Role of Consultants in Providing Right of Way Services

UDOT maintains an experienced, professional right of way organization that is staffed to manage and administer the Right of Way Program, and to perform right of way services to accommodate a base level right of way project workload. Under the following circumstances the Department may contract with approved consultant agents for services:

1. Workload – UDOT’s property acquisition workload exceeds the level that can be performed by professional UDOT right of way staff. Right of way delivery is often the critical element in advancing projects to construction. Private Consultants may be essential to meeting highway construction program goals.

2. Cost Efficiency – Circumstances where contract right of way personnel can provide service more economically than UDOT staff. This may occur on projects in areas remote from UDOT Central Office or regional offices or on projects where UDOT staff would have to be diverted from higher priority work.

3. Specialized Services – Consultants may provide specialized services for specific project needs when it is not practical for UDOT to develop resources in house.

4. Objectivity – Consultants may provide a perception of objectivity and independence from UDOT. Property owners may be more accepting of valuation by fee appraisers than by equally qualified staff appraisers, whose opinion of valuation may be regarded as being influenced by their employment.
7.1.3 The Cooperative Agreement

The respective responsibilities of UDOT and the local agencies are set forth fully in the Cooperative Agreement, “Right of Way Acquisition and Reimbursement (Co-op Agreement).” The UDOT Regional Director, the Director of Engineering Services, and the Contract Administrator execute the Co-op Agreement at the inception of a project.

An authorized official sign for the agency.

The standard agreement terms may be modified to reflect a different level of involvement by UDOT or the local agency depending on relative resources and the scope of the project. The principal standard agreement terms provide:

1. Local Authority Responsibilities
   a. Pay all project costs less the amount of Federal funds reimbursed to UDOT.
   b. Prepare a project staffing resource plan using UDOT approved consultant pools for Right of Way services including consultant appraisers, review appraisers, acquisition agents, and relocation agents.
   c. Request UDOT pre-approval of local agency employees to perform the activities of appraisal, appraisal review, acquisition, or relocation.
   d. Prepare preliminary cost estimate “shotgun estimate” of all anticipated right of way expenses including but not limited to the following estimated expenses:
      - Cost of all parcels to be acquired including land and improvements and damages.
      - Relocation costs.
      - Consultant fees for all agents including appraisers, negotiators, relocation agents, closing agents, and condemnation agency attorney fees.
      - Closing costs, including costs to obtain title insurance, costs for recording of documents, etc.
      - Other overhead expenses associated with the acquisition process.
   e. Submit the completed cost estimate, staffing resource plan, project plans, property descriptions, and project map that delineates the parcels to be acquired to the UDOT Right of Way Local Government Manager for review and approval.
   f. The Agency will notify the UDOT Project Manager once approved. The UDOT Project Manager will prepare the formal request for funding (R-709 Form) and submit it with the approved cost estimate and maps to the Program Development Office for funding approval upon notification.
g. Requests for approval of funding may not be submitted prior to NEPA Clearance unless the acquisition being processed is qualified and pre-approved under a “Hardship Acquisition” or “Protective Purchase” provision or a provision of the “Corridor Preservation Process.” These provisions normally do not apply when there are project funds being used for the acquisitions. See 23 C.F.R. Sections 710.501, 710.503 and 771.113 for more information about this issue. Funding will not be approved for acquisition prior to NEPA approval on federally funded projects or projects with federal funding participation.

h. The Program Development office will review the request and if it is completed correctly and there are sufficient funds available to cover the anticipated right of way expenses the request will be forwarded to the Federal Highway Administration (FHWA) for their agency approval. FHWA will return the approved form to the UDOT Comptroller’s office once approved.

i. The Comptroller’s office will notify the Project Manager and the Agency that the funding has been approved and right of way activities may commence.

j. Comply with applicable UDOT and Federal program procedures and standards.

k. Submit to the designated UDOT staff person all appraisal, negotiation, and agreement documents for payment of compensation to property owners.

l. Request technical assistance and services from UDOT in writing through the Project Manager if not available from private consultants.

m. Certify the completion of property acquisition on the project.

n. Pay local authority matching share of project cost to the UDOT Comptroller at the agreement signing.

2. UDOT Responsibilities

a. Provide approvals called for above to the extent they are supported.

b. Provide appraisal reviews if resources are available within UDOT and determine the amount of just compensation. UDOT will facilitate setting up a process to accomplish all aspect if the local agency is unable to do it.

c. Provide technical advice and services if qualified consultant providers are not available and UDOT has the staff resources.

d. Provide final Comptroller’s invoice showing disposition of all costs, after negotiation of the last parcel and acceptance of the project by FHWA.
3. **Other**
   a. The local agency normally develops right of way plans by consultant contract.
   b. Title reports are normally secured by local agency.
   c. Relocation is normally performed by consultant agents who are pre-approved by UDOT.

### 7.1.4 Services Provided by Consultants

UDOT and local public agencies (LPA’s) may make extensive use of consultants to provide project right of way services. Consultants are used as an extension of UDOT staff to provide the skills, experience, expertise, and work quality to deliver right of way efficiently and economically.

UDOT may contract the following right of way functions:
- Appraisal (residential and complex appraisals)
- Appraisal review
- Relocation (residential and non-residential)
- Acquisition
- Titles/closing activities
- Home inspections
- Property management; (including property maintenance, rodent control, property security, demolition, trash hauling, etc.)
- Right of Way Lead Agent (project coordination)

The frequency of the use of consultants varies with the function, the statewide right of way project workload, and the availability of UDOT staff to perform the work.

### 7.1.5 UDOT Strategic Goals

Consultant service providers will be guided by high performance standards as to work product quality and timely delivery or completion of work. UDOT expects Consultants to provide the same level of service to its customers (i.e., property owners, occupants) as UDOT employees are committed to provide. UDOT has identified the following strategic goals that guide the efforts of staff and Consultants in performing their responsibilities:

1. **Customer Focus** – Provide quality leadership to meet and balance Utah’s transportation and related challenges.
2. **Quality Service** – Quality and continuous improvement are built into everything we do.
3. **Great Performance** – Lead the field in providing constantly improving, cost-effective services.
7.1.6  **Right of Way Mission**

The Right of Way Division’s Vision and Mission statements embrace and advance UDOT’s Strategic Goals:

1. **Right of Way Vision** – We anticipate and fulfill the right of way needs of our customers. We accomplish this by fostering a dynamic environment in which employees and consultants exhibit personal leadership to achieve the goals and objectives of the Division.

2. **Right of Way Mission** – To clear the right of way for Utah’s transportation needs according to the highest professional standards. We strive to provide a positive experience for our customers, to minimize any stress caused by the acquisition process, and to respect our fiduciary duty to the taxpayers of Utah.

The Vision and Mission statements as written are directed to UDOT right of way staff. UDOT expects right of way consultants to be cognizant of, and conform to, the intent and purpose of the vision and mission.

7.1.7  **Responsibilities Reserved by UDOT**

The following actions are reserved by UDOT as being exclusive governmental responsibilities and will not be assigned to Consultants:

- Approval of acquisition offers (just compensation) to property owners
- Approval of administrative settlements
- Approval of relocation benefit amounts, including moving costs, replacement housing payments to tenants and owners, business reestablishment benefits, related nonresidential eligible expenses and payments in lieu of moving costs
- Hearing and determination of relocation appeals
- Approval of the recommendation regarding the need for last resort housing and approval of payments under last resort housing
- Decision to initiate condemnation of real property
- Decision as to whether to appeal court awards from condemnation cases
- Decision as to whether to accept out of court settlement of condemnation cases
- Adjudication of claims that have been appealed to the Utah Property Rights Ombudsman
7.1.8 Quality Assurance in Contracted Services

Quality is the measure of how well performance of an activity succeeds in meeting established standards, goals or missions. UDOT Right of Way Division is committed to advancing quality in its areas of responsibility. Section 1.4.2 of this Manual discusses core quality concepts applicable to right of way.

Consultants are expected to contribute to the UDOT quality program. The Consultant will submit a Quality Control/Quality Assurance Plan as part of the selection process. This plan for Right of Way projects should tie to the core quality concepts referred to above and to the advancement of the UDOT mission and Right of Way Division Vision. The Right of Way Consultant Selection Team considers the Consultant’s Quality Plan as one of the weighted factors in evaluating Statements of Qualifications (SOQ) and in selecting a finalist from the Consultant shortlist.

Consultants may be involved in quality tasks performed by UDOT right of way staff including review of consultant work products. Post-contract performance evaluations may become a routine part of UDOT’s quality assurance process. This will be done in cooperation with the Consultant when initiated. Ratings will be by assigned task on an ownership basis and will be cumulative for an entire project. The focus of reviews and evaluations is on achieving a balanced and continuous improvement in productivity, timeliness, and quality of work. Consultants are invited to provide feedback and propose improvements any time they recognize a need.

7.1.9 Procurement Methods and Contract Types

The procurement methods used by the Right of Way Division are these:

- Standard or Pool methods
- Request for Qualifications (RFQ)
- Design-Build

The type of contract and selection process used depends on the nature of the service and its cost. Following is a brief summary of the contract types and the associated selection process:

1. Right of Way Services and Local Government Pool – This is the staple contracting selection process for right of way services. Consultants are selected for inclusion in the Pool list of consultants under one or more of the right of way work disciplines (e.g., residential appraisal, complex appraisal, appraisal review, acquisition, residential relocation, non-residential relocation, lead agent complex projects, lead agent non-complex projects).
The selection for inclusion in the Pool is a qualification-based process that considers experience, training, certification, and performance. Consultants apply by providing a Statement of Qualifications (SOQ) in response to a Request for Qualifications (RFQ) announced by UDOT. A Right of Way Services Selection Team, composed of three to four right of way staff professionals and or local agency staff, is appointed by the Right of Way Director to evaluate consultant qualifications. The scores for each discipline determine placement on the approved consultant pool list.

The process for the Right of Way Services Consultant Pool is discussed in detail in Section 7.1.8.

2. Project-Specific Contracts – The contract types described in Items a. through e. below are project-specific, as distinguished from the Right of Way Services Consultant Pool, which is an Indefinite Delivery/Indefinite Quantity (IDIQ) form of contracting. The following project-specific contracts are described in detail in Section 7.3:
   a. **Large Purchase Contracts Services (over $400,000)**
      This contract type is used for special services of a one-time or infrequent nature (e.g., research study, development of a training program).
   b. **Standard Purchase Contracts ($40,000 – $400,000)**
      These are contracts for specific services.
   c. **Small Purchase Pool Contracts (under $40,000)**
      A simplified qualification and selection process is used.
   d. **Sole Source Contracts**
      A sole source selection may be made after complying with state procurement policies if only one service provider is available, or the job requires the services of a Consultant who is uniquely qualified.
   e. **Emergency Contracts**
      Situations that present a threat to public health, welfare, or safety create a need for immediate delivery of service. Emergency contracts provide for fast authorization and hiring without competitive negotiations.

3. **Design-Build Contracts** – In some cases design build contracts will include a right of way acquisition element and will necessarily comply with all governing procedures for land acquisition and relocation assistance. Additional procedures may also be applicable related to certification and clearance of right of way for construction and the regulation of hold off zones around properties that are still occupied (reference Section 1.3 for additional detailed information).
### 7.1.10 Controlling Federal Laws and Regulations

The following Federal laws and regulations govern procurement of services with Federal funds:

1. **40 U.S.C. §§ 1101-1104** - Commonly called the *Brooks Act*
2. **23 U.S.C. § 112** – Letting of Contracts
3. **49 C.F.R. Part 18** – Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments
4. **23 C.F.R. Part 172** – Procurement, Management, and Administration of Engineering and Design Related Services

The major right of way project functions (e.g., appraisal, relocation) are considered engineering-related services for application of Federal contracting law. The *Brooks Act* (40 U.S.C. §§ 1101-1104) defines Congressional intent to publicly announce service requirements for engineering-related services and to negotiate contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices.

### 7.1.11 Role of the Federal Highway Administration

FHWA may review contracts, contract modifications and cost estimates on all federally-assisted projects, stewardship and non-stewardship. FHWA may also assist or undertake process reviews to assure compliance with Federal requirements and improve the process. UDOT Right of Way Division staff will cooperate or assist in FHWA oversight to advance the UDOT commitment to quality. It is also expected that consultants will cooperate and assist fully with any FHWA or UDOT oversight activity.

FHWA’s “Project Development Guide” is an information guide on all aspects of right of way within the project development process. It is a useful reference that will expand knowledge and understanding of the applications of Federal right of way regulations in a typical project framework. The “Project Development Guide” is available for download from the FHWA Real Estate Services website: https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/pdg/pdg00.cfm


General information and advice on UDOT contracting is available on the UDOT Contracting Services website. Information for right of way should not be confused with information on contracting for other Divisions of UDOT as the policies for other Divisions may differ: https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:4982.
The FHWA Real Estate Services general website contains many reference documents and links that comprise a comprehensive library of right of way policy documents. The website address is https://www.fhwa.dot.gov/real_estate/index.cfm

7.2 RIGHT OF WAY SERVICES AND LOCAL GOVERNMENT POOL

7.2.1 Overview of the Process

The Right of Way Division has established a pre-qualified list or pool of consultants, which comprises needed right of way work disciplines. Consultants are selected from the list based on project need after negotiating reasonable compensation and other terms of the contract.

The Pool will be available for selection of Consultants by UDOT and local governments that administer highway projects that require right of way. Refer to Section 7.4 for specific provisions for local government projects.

Inclusion in the Consultant Pool does not guarantee work to a consultant. The Right of Way Division will make selections from the Pool as the need arises, based on who is best qualified to provide the service and their availability to perform the work considering the location and schedule. UDOT Right of Way may require the consultants to provide current and specific examples of work to determine the best qualified consultants, along with other specific submissions to be determined by UDOT to ensure that the consultant is qualified to perform the specific tasks of the project.

Details about the Right of Way Services Pool are discussed in the Sections that follow.

7.2.2 Request of Qualifications (RFQ) – Pool and Project Specific

The RFQ is a public announcement of need for services and invitation to submit qualifications. The RFQ packet for Right of Way Services may contain some or all of the following components:

1. Notice of RFQ Advertisement
   States the method of advertisement, the open period for submission of the Statement of Qualifications (SOQ), and the delivery address.

2. SOQ Requirements Summary
   Contents of RFQ and guidance on format of response.

3. Cover Page
   Consultant records contact information and states the title of the Pool discipline that qualifications address.

4. Right of Way Discipline Matrix and Criteria
   List of essential factual elements in the Pool qualification process.

5. Evaluation/Scoring Criteria
Sample of scoring form used by Selection Review Team. It indicates the qualification criteria and evaluation weighting factors.

6. **Work Discipline Qualification Descriptions**
   A list of elements that will be evaluated for each discipline with relative point scores.

The above content is a sample only. The content of each RFQ may change with the needs of UDOT and the refinement of the RFQ process. RFQ announcements will be posted to the UDOT Consultant Services website located at: https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:2014.

**7.2.3 The Statement of Qualifications (SOQ)**

UDOT supports equal opportunity for all people in contracting services. Participation of Disadvantaged Business Enterprises (DBE) and Women in Business Enterprise (WBE) in responding to RFQs is encouraged. Please refer to the UDOT website or contact UDOT for more information on the SOQ.

**7.2.4 Selection Review Team for Pool and Project RFQs**

The Director of Right of Way in consultation with the RFQ Administrator in Consultant Services will designate a minimum of three UDOT employees and or staff from local public agencies to participate in a Selection Review Team. People appointed will have expertise in at least one of the work disciplines advertised in the RFQ. A representative of the FHWA may be invited to participate on the Selection Team as a non-voting member.

Each team member will be required to sign a confidentiality form, which is provided by Consultant Services. This form acknowledges that all evaluations and scoring information in consultant applicants SOQs and discussions of Selection Team members is confidential and privileged information.

The RFQ Administrator will provide an overview summary of the SOQs received and will distribute the SOQ submittals to Team Members shortly after the SOQ deadline date. The Team Members will meet to discuss Team Member expectations and to discuss the ratings process. SOQs will be rated independently by each Team Member and scored based on how well the consultant met the requirements of the RFQ. The Right of Way Director or designee and the Selection Team evaluate the SOQs. Scoring criteria and cut off levels determine which Consultants will be accepted to the Consultant Pool for each work discipline. UDOT may offer consultant debriefings. This may be done via email and, if done, should be completed within 90 days of posting the Right of Way Services Pool.
7.2.5  Interviews for Project RFQs

UDOT may offer interviews to Consultant applicants as a part of the evaluation process.

7.2.6  Notification of Right of Way Services and Local Government Pool List


7.2.7  Pool Effective Period

The effective period of the current Right of Way Services Pool list is three years. Subsequent pool periods may be from one to three years. The list may be opened for new applicants during its effective period if UDOT deems it to be necessary. UDOT will issue a project-specific RFQ announcement if it needs consultant services that cannot be drawn from the Pool. This may occur if no Consultants who are available to accept the work assignment remain in the Pool for a discipline.

7.2.8  Project Caps and Consultant Limits

All project caps, consultant limits and contract awards are defined in the current UDOT Right of Way Services and Local Government Pool as found on the UDOT website. UDOT Consultant Services updates and maintains this pool for the Right of Way division and provides updates as warranted.

UDOT Right of Way coordinates consultant contracts with UDOT Consultant Services in the CMS Module of ePM. All invoices will be process by the Comptroller’s Office as outlined in the UDOT Right of Way Services Contracts.

7.2.9  Selection from the Pool

The UDOT Project Manager, appropriate Deputy Director of Right of Way, Right of Way Lead Agent or Local Public Agency project manager selects Right of Way Consultants from the Pool as needed to perform right of way services. The selection is based on qualifications as well as project location, availability, and the scope of work. The UDOT Project Manager, appropriate Deputy Director of Right of Way, Right of Way Lead Agent or Local Public Agency project manager will execute a contract or work task order agreement with the Consultant after consideration or completion of the following items which may be included in individual project contract consultant agreements or on-call contracts:
1. **Insurance** – UDOT will establish insurance requirements (amount and scope of coverage) as needed based on standards set for the function. The Consultant must provide proof of insurance before the award of a contract if insurance is required.

2. **Subordinate Staff Qualifications** – Every person that will work under the approved Consultant must be qualified through experience, training, and appropriate certification to perform tasks assigned to them relating to the UDOT project. UDOT may require information on subordinate assignments including names, tasks, and qualifications. All work products submitted to UDOT must be signed as reviewed and accepted by the approved Consultant, as well as by the person who performed the work.

3. **Certifications** – The Consultant must provide evidence of current certifications required by law to perform the function assigned in the contract upon request. This includes appraisal certification, notary, real estate license, etc.

4. **Debarment Certification** – The Consultant will certify as to current history as to debarment, eligibility, indictments, convictions or civil judgments, in accordance with contract standard terms and conditions.

5. **Ratings System** – The performance of Consultants will be rated based upon established ratings criteria per assignment. Ratings criteria vary depending on the work discipline. Unsatisfactory ratings may result in debarment. The period of debarment will depend on the actual rating. (Ratings criteria will be made available as an addendum to this Manual).

6. **Consultant “Prime” Requirement** – The selected Pool Consultant is considered a “prime consultant” and will perform at least 80 percent of the tasks in the contract scope of work.

7. **Compensation** – The Consultant and UDOT will negotiate fair and reasonable compensation for work performed. This may be based on the prevailing price for similar private work, independent cost estimate prepared by UDOT staff, audited financial data presented by the Consultant, or costs. Cost may be based on a lump sum basis for the work to be performed or on an hourly rate depending on what is typical in the industry. Penalties may be imposed by UDOT as described in the contract agreement for work that is not submitted on time. Bonus payments or other incentives may also be allowed, provided that the terms for the bonus are clearly stipulated in the contract. A 5 percent retainage may be required by UDOT on each contract or agreement.
7.2.10 Notice to Proceed

UDOT Consultant Services will issue a Notice to Proceed by letter, fax, or email. Work performed by the Consultant before a Notice to Proceed may not be eligible for reimbursement and may preclude UDOT from claiming State or Federal reimbursement.

7.2.11 Monitoring and Review

Project work performed by Consultants may be monitored on an ongoing basis by UDOT staff or FHWA. The Consultant may be asked to actively participate in UDOT quality tasks as well as perform quality advancement tasks proposed in the Consultant’s SOQ.

7.2.12 UDOT Sponsored Training

Fully trained Consultants are expected to perform the functions assigned. UDOT considers training to be a continuing process and provides or facilitates training opportunities for UDOT staff, Local Public Agencies, and Consultants on an as needed basis. Consultants may request to be included in UDOT sponsored right of way training or UDOT may invite Consultant participation. Training is often conducted by UDOT staff. Additional training is facilitated by UDOT and generally conducted by industry organizations such as FHWA’s National Highway Institute (NHI), the International Right of Way Association (IRWA) or the American Association of State Transportation Officials (AASHTO).

7.2.13 UDOT Informational Support to Consultant

The Consultant is informed at the time of assignment of their UDOT contact person. This person will serve as an information resource in interpretation of policies and procedures to be followed. Generally, this person will be the Right of Way Lead Agent.

7.2.14 Contract Consultant Evaluation

Evaluation of consultant performance under the agreement or contract will be completed on an ownership basis within the Right of Way ePM system. A cumulative rating will be completed for each service following the completion of the project, which is when the project right of way has been cleared. Progress evaluations may be performed at the conclusion of a phase if there are several work phases completed over an extensive time.

The Right of Way Division will provide the consultant with ratings criteria for each service the consultant has agreed to perform. The Consultant may be asked to participate in the evaluation or participate in a closeout meeting to discuss the evaluation. The tone
should be constructive and positive. The Right of Way Lead Agent and or the Right of Way Project Coordinator should solicit comments and suggestions aimed at improving UDOT’s project process and administration. Customer surveys or Project “Report Cards” have been developed for this purpose. Information and feedback on the services provided by the consultants and or by UDOT Right of Way will be requested from UDOT Project Managers and appropriate others as needed.

7.2.15 Project Close Out

The contract closure process requires a request for release of retainage, submission of final invoice, request for final payment, and post audit.

1. Release of Retainage (if applicable)
   a. The Project Manager, Right of Way Lead Agent and Right of Way Project Coordinator verifies that work is completed satisfactorily.
   b. The Project Manager and appropriate Deputy Director of Right of Way will complete a Consultant evaluation required for the closeout process.
   c. The Consultant Services or appropriate Deputy Director of Right of Way will send the Consultant evaluation form and request for release of retainage to the Project Manager for payment approval. Once approved the payment request is submitted to the UDOT Comptroller’s Office.

2. Closing Procedure
   a. The Consultant submits the invoice for final payment with required signatures to the designated Project Manager and Right of Way Lead Agent. The submission verifies that all work is completed and summarizes the amount of payment that is due.
   b. The Comptroller’s Office requests a post-audit from the Office of Internal Audit if the contract is $150,000 or greater, fraud is suspected, or any unusual circumstances exist.

7.3 PROJECT-SPECIFIC CONTRACTS

7.3.1 Types of Contracts – Overview

UDOT Right of Way Division uses several types of project-specific agreement or contract formats. The level of cost, type of service, and the urgency of need for the service determine the type used in specific situations. Following are the contract types:

1. Work Task Orders – These are the most typical “agreements” used by the Right of Way Division. On-Call contracts are created and Work Task Orders (WTO) are issued for projects under $40,000.
2. **Large Purchase Contracts (over $150,000)** – This contract type is used for special services of a one-time or infrequent nature (e.g., a research study, development of a training program). Consultant selection is based on negotiations following qualifications-based selection of a Request for Qualifications process. Pre-negotiation audits are also required to establish the Consultants cost structure including overhead rate. Compensation may be on a reimbursement rate that includes profit or on a lump sum amount.

3. **Standard Purchase Contracts ($150,000 – $600,000)** – These contracts are subject to the same qualifications-based selection criteria as large purchase contracts. The consultant may be selected from the Right of Way Pool. Pre-negotiations audits may be waived if knowledge of the Consultant’s accounting system is known, with previous experience being favorable.

4. **Small Purchase Contracts (under $40,000)** – Negotiations may be on a noncompetitive basis. Pre-negotiation audits are not required. Normally, proposals are secured from three providers. Fewer may be contacted if circumstances warrant.

5. **Sole Source Contracts** – A sole source selection may be made if only one service provider is available or if the job requires the services of a consultant who is uniquely qualified. An example of the need for sole source selection would be the need to appraise a special-purpose property where one appraiser has had recent experience in appraising a similar property. The Right of Way Division uses sole source contracting rarely and only when circumstances prevent negotiation with multiple sources.

6. **Emergency Contracts** – Situations that present a threat to public health, welfare or safety require immediate need for services. This may arise from unusual circumstances such as an open swimming pool on an acquired site that becomes vacant may need to be removed quickly if it presents a hazard to children living nearby. Emergency contracts provide for fast authorization and hiring without competitive negotiations.

### 7.3.2 Qualification Based Contracting

UDOT uses qualifications as the basis for selecting Consultants for all forms of contracts, rather than cost or low bid. This means that Consultant applicants are selected based on comparative evaluation of experience, professional certifications, previous performance, and any other relevant qualification factors. UDOT will negotiate with the selected Consultant for reasonable compensation and agree on other terms of service delivery. UDOT will select another qualified consultant if agreement cannot be reached.
7.3.3 Financial Screening and Pre-Qualification

Consultants must submit information for financial screening and be placed on the General Consultant List to be selected for contract work. Consultants may respond to RFQs to provide right of way services on specific projects or to provide services for other announced UDOT needs after placement on the General Consultant List.

Financial screening is prerequisite for Consultants to obtain contracts but does not qualify any consultant for award of a specific contract or work agreement. UDOT awards contracts based on the selection processes that follow the financial screening and pre-qualification.

The purpose of financial screening is to establish the presence, correctness, and consistency of the Consultant's accounting system including derivation of direct costs and overhead rates. UDOT will rely on these rates in negotiating compensation based on Consultant's costs.

7.3.4 Consultant Selection Overview Large and Standard Purchase Contracts

Consultants may qualify for Large Purchase Contracts and Standard Purchase Contracts based on the qualification-based RFQ process enumerated below and in the preceding sections. Projects that exceed $400,000 are subject to a more extensive process that is described in the UDOT Consultant Services Manual of Instruction. The more extensive process is not addressed in this Manual because Right of Way contracts rarely reach this cost level.

7.4 LOCAL GOVERNMENT PROJECTS

7.4.1 Local Government Projects

Local government projects are those projects listed on the Statewide Transportation Improvement Plan (STIP) that involve a local government funding source. The UDOT and local respective responsibilities are defined in the Cooperative Agreement.

7.4.2 Right of Way Services on Local Projects

The following provisions apply to planning and providing right of way services by local governments:

1. UDOT and local officials will discuss the local agency’s needs and intentions for providing services at the time the terms of the Cooperative Agreement are discussed.
2. UDOT will require the local agency to submit a right of way staffing or resource plan for approval that will detail services and functions that will be performed by staff and by Consultants.

3. The local government will designate a local official who will have oversight responsibility for delivery of right of way on the project including selection and performance of Consultants.

4. Consultants must be selected from the Right of Way Services and Local Government Pool.

5. The Right of Way Local Government Manager is required to get UDOT Consultant Services pre-approval to obtain the services of a Consultant on all direct select Purchase Contracts.

6. The selected Consultant is not required to be on the General Consultant List before selection if a Consultant is selected through the RFQ process. Financial screening must be done by UDOT before a contract is executed.

7. Post-audits are performed if requested by the Project Manager, the Local Government Project Engineer, the Local Authority, the Consultant Services Engineer, the Office of Internal Audit, or the Consultant.

8. The local government is required to get UDOT Consultant Services or local government project manager pre-approval to obtain the services of a Consultant on all direct select Purchase Contracts.

### 7.4.3 Use of Local Government Staff

Local governments may use experienced and trained staff to perform right of way services subject to prior review of their qualifications by UDOT. Local elected officials, or officials in appointed positions established in law, are not subject to prior UDOT review and approval.

Work performed by local staff at any level is subject to audit or review by UDOT, FHWA, or joint Quality Assurance Teams that include participation by local government. The audits or reviews may be conducted concurrent with performance of project right of way services or may be conducted after completion of the right of way phase.

### 7.4.4 Training

UDOT Right of Way Division may survey the right of way training needs of local governments as part of its Quality Assurance Program. Local governments should include needs for consultant training in their response to inquiry. UDOT will exercise best efforts to extend the availability of right of way training to meet the needs of local government staff and Consultants who perform right of way services on local projects.
Local Agencies must establish agency Acquisition and Relocation Rules or they are required to follow UDOT policies and procedures when acquiring property or property rights for public projects under the threat of condemnation.
8.1.1  Purpose and Objectives

All Incentive Programs are designed to aid in the acquisition of real property and the relocation of displaced persons based on a project’s need. Acquisition of property rights is a core function of the UDOT Right of Way Division and is further detailed in Chapter Three of this manual. The primary goal of property acquisition is the delivery of acquired property to meet project construction schedules while complying with all relevant State and Federal laws and regulations. This Chapter sets forth incentive policy and procedures to guide UDOT staff, local government staff, and consultant personnel involved in real property acquisition.

8.1.2  Laws and Regulations

All Incentive Programs must follow all Federal and State Laws, Regulations and comply with the Uniform Act as listed in Chapter Three (Acquisition) of this manual. Each Incentive Program will provide the specific regulations, memorandum and/or guidelines providing the authorization and approval from FHWA, Office of Real Estate Services or as determined.

8.1.3  Policies & Procedures

All Incentive Programs must be approved by the UDOT Right of Way Director or designee.

All Incentive Programs must be applied equally and uniformly to all property owners, tenants and parties of interest as outlined in Chapter Three of this manual and as applicable based on the particulars of each incentive program.

The use of incentive payments must not be allowed as a substitute for appropriate project planning and development (including the scheduling of adequate right-of-way lead time).

8.2  ACQUISITION INCENTIVE PROGRAM

8.2.1  Acquisition Incentive Payment

The Acquisition Incentive Payment program is based on the FHWA Realty Memorandum Dated April 26, 2006 and as part of 23 C.F.R. 710.203(b)(2)(ii) which allows Federal participation that may exceed the requirements of 49 C.F.R. 24.

Before the Acquisition Incentive Payment may be used on a project, the Right of Way Lead Agent and UDOT Project Manager must determine and provide the following:
1. An identification and discussion of factors to justify the use of incentive payments on a particular project.

2. Description of how payments amounts will be determined, including the formula for determining the payment maximum and incentive offer expiration limits:
   a. Accept the offer and provide a signed contract within 30 days the incentive is X, provide a signed ROO within 30 days instead of the signed contract the offer is X times ½.
   b. No offer timeline can be less than 30 days as established by Utah State Law.
   c. Any extension of the 30-day timeline must be approved by the UDOT Right of Way Director or his/her designee.

3. All other acquisition policies and procedures as outlined in Chapter Three – Acquisition of this manual must be adhered to at all times.

4. Each project will be monitored by the UDOT Right of Way Director or his/her designee to track the number of acquisitions or ROO’s successfully negotiated with an approved incentive payment. The Right of Way Lead agent will provide this information monthly to the Right of Way Director.

5. Each owner will be given an official “Incentive Payment” letter generated from within UDOT’s ePM ROW module outlining the dates, incentive amount and the deadlines for acceptance signed by the owner.

8.2.2 Incentive Payment Tracking

All Incentive Payments will be tracked by the Right of Way division in the division’s ePM system and additional documentation as needed.

8.3 ADDITIONAL INCENTIVE PROGRAMS

Any additional Incentive Programs initiated by FHWA may be reviewed and accepted by the department.

8.4 PILOT PROGRAMS

Pilot programs may be initiated by FHWA to develop or enhance current Acquisition or Relocation methods or procedures. Any Pilot Programs initiated by FHWA may be reviewed and accepted by the department but must be approved by the UDOT Right of Way Director or designee.

Each Pilot Program must follow all Federal and State Laws, Regulations and comply with the Uniform Act as listed in Chapter Three (Acquisition) of this manual. Each Pilot Program will provide the specific regulations, memorandum and/or guidelines providing the authorization and approval from FHWA, Office of Real Estate Services or as determined.