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CHAPTER 1 PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual (Handbook) is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.
The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

**SECTION 3-STRUCTURE OF HANDBOOK**

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2 AUTHORITY

SECTION 1-GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3 ORGANIZATION

SECTION 1-GENERAL

Preliminary Right of Way Studies are conducted by the Appraisal Unit which is located in the Right of Way Bureau under the Right of Way Bureau Chief, and is responsible for:

1. Analyzing impacts of proposed highway improvement projects on real property and all interests therein.

2. Preparing and reporting preliminary estimates of the total right of way costs of proposed highway improvement projects.

Preliminary Right of Way Studies are under the direction of the Appraisal Unit Supervisor who reports directly to the Right of Way Bureau Chief.

SECTION 2-DUTIES

All Right of Way preliminary project data from the Project Development Engineers;

1. Procurement of preliminary project data from the Project Development Engineers;

2. Attendance at appropriate project field inspections and office reviews on projects which may require right of way;

3. Collection and analysis of data necessary to prepare preliminary right of way cost estimates;

4. Preparation of preliminary right of way impact and cost estimate reports;

5. Assist project development with identification of such items as utility facilities and hazardous wastes in the project study area;
6. Coordination with project development personnel to ensure consideration to the Right of Way aspects of the alternate project alignments and designs (i.e., relocation, utility adjustments right of way cost and impact, hazardous waste, etc.);

7. Recommendations in location alternatives; and

8. Other duties as may be assigned by the Appraisal Unit Supervisor.

When it is necessary for the Right of Way Appraiser to travel, the Right of Way Appraisal Unit Supervisor shall be advised of the itinerary by written form or electronic format. The appraiser must complete the form before departure and provide sufficient information to enable contact from the headquarters on short notice. The appraiser shall brief the supervisor as to the purpose and the expected accomplishments of the trip. Email and/or telephone are to be used to report accomplishments to the supervisor on a regular basis.

Problems encountered in the work which cannot be solved by the appraiser shall be referred immediately to the Appraisal Unit Supervisor for review and direction.

SECTION 3-QUALIFICATIONS

Maintain a current, valid license issued by the New Mexico Real Estate Appraiser’s Board. All Right of Way Appraisers shall possess a valid driver’s license.

SECTION 4-CONFLICT OF INTEREST

If the appraiser has a personal or family relationship with, or involved in, the past ownership or sales history of the real property affected by the project, or a participating business association with the owner of any other party of interest in the property, the appraiser must inform the Appraisal Unit Supervisor for further direction.

The following principals shall govern business relationships between appraisers and persons whose property is being affected by the project.

1. An appraiser shall not engage in any real estate transaction or business associated with the party whose property is being affected by the project.

2. An appraiser shall not acquire interests involving lands abutting upon or in a zone of immediate influence of a contemplated highway improvement or which he/she has, or could be presumed to have, knowledge without first obtaining the written approval of the Secretary of the Department.

3. An appraiser shall make no disclosure to any person of privileged advance knowledge of highway plans, or other documents or activities, which may come as a result of employment or position within the Department and which is not generally available to the public at large, without first obtaining the written approval of the Secretary of the Department.
4. The Preliminary Right of Way Studies are a confidential communication between the Appraiser and the authorized employees of the Department. In no instance will confidential portions of the study be divulged to persons other than authorized employees of the Department.

5. Appraisers shall not accept favors, gratuities, or compensation of any nature from persons with whom they may conduct Department business.

6. No appraiser shall engage in any conflicting employment for work involving the appraising, selling, or purchasing of real property.

7. Any interpretation of the above shall be referred to the Right of Way Bureau Chief through the Appraisal Unit Supervisor.

**SECTION 5-PERSONAL CONDUCT**

Right of Way Appraisers, as representatives of both the Department and the appraisal profession, shall at all time conduct themselves in a manner that reflects favorably on both.

Appraisers performing preliminary right of way studies may occasionally require information from public in order to accurately describe real estate activities in the subject area. Any contact with the public must receive prior approval from the Appraisal Unit Supervisor. However, these appraisers must exercise extreme care so as not to divulge confidential information or information that might be misinterpreted or misused by the public. The appraiser shall assure any property owner contacted that the project is in the preliminary stages of location and design only, and is subject to substantial refinement and change.
CHAPTER 4 PROCEDURES

SECTION 1-GENERAL

The preliminary right of way studies function begins during the scoping process upon scheduling of the preliminary field review inspection and continues through the completion of the scoping report and the final determination of the highway location and design. The procedures are outlined as follows:

1. Procurement of preliminary project data from the Project Development Engineer and participation in preliminary field/office review meetings.

2. Collection and analysis of data such as the following to prepare preliminary right of way cost estimates and impact analysis:
   
   A. Real property values--vacant and improved
   B. Number of proposed acquisitions
   C. Possible Relocation

3. Preparation of preliminary right of way impact and cost reports.

The impacts and cost estimate shall be defined in sufficient detail and level of accuracy to be utilized in the project development process as one of the factors on which to base decisions as to highway location and alignment, lines and grades, right of way widths, access control features, etc.

Information shall be presented and an opportunity provided for discussion of the land acquisition process at public hearings, in order to assure that the public is adequately informed.

Right of way personnel shall make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right of way elements involved in the location and design of the project including possible social, economic, and environmental effects.
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CHAPTER 3  ORGANIZATION

SECTION 1-GENERAL

The Lands Abstracting Unit is located in the Right of Way Bureau under the Right of Way Bureau Chief. The Unit is responsible for the lands abstracting activities of the Right of Way Bureau.

The Unit is under the direction of a Unit Supervisor who reports directly to the Right of Way Bureau Chief.

All Lands Abstracting Title Examiners shall meet the New Mexico State Personnel Board Classification Plan requirements designated for each position.

SECTION 2-DUTIES

The duties of the Right of Way Lands Abstracting Unit include:

1. Production of all current ownership and 33-year title reports necessary for the preparation of right of way maps, appraisal, acquisition and condemnation of lands and/or interest in lands, as required by the Department. A subdivision with title insurance may not require a 33 year report. The Office of General Counsel may be requested to determine if a 33 year report is necessary.

2. Provide a compilation of all documentation and plats showing existing right of way acquired by deed, condemnation or dedication.

3. Provide Title Examiners review sheets of title reports indicating necessary documentation for the acquisition of subject lands.

4. Provide assistance and documentation relating to ownership and titles to all Right of Way Units and Office of General Counsel as requested.

5. Provide training for the staff of the Lands Abstracting Unit.
SECTION 3-CONFLICT OF INTEREST

If the Title Examiner has a personal or family relationship with, or involvement in, the past ownership or sales history of the real property, or a participating business association with the owner, or any other party of interest in the property sought, the Title Examiner must consult the Lands Abstracting Unit Supervisor for guidance.

The following rules shall govern business relationships between Title Examiners and persons from whom right of way is being purchased.

1. A Title Examiner shall not engage in any real estate transaction or participating business association with the first party from whom the Department is purchasing property.

2. A Title Examiner shall not acquire interests involving lands abutting upon or in a zone of immediate influence of a contemplated highway improvement of which he/she has, or could be presumed to have, knowledge without first obtaining the written approval of the Secretary.

3. A Title Examiner shall make no disclosure to any person of privileged advance knowledge of highway plans, or other documents or activities, which may come as a result of employment or position within the Department which is not generally available to the public at large without first obtaining written approval of the Secretary.

4. Title Examiners shall not accept favors, gratuities, or compensation of any nature from persons with whom they conduct Department business.

5. No Title Examiner shall engage in any conflicting employment for work involving the lands abstracting, appraising, selling, or purchasing of real property.

SECTION 4-FORMS

Please contact the Lands Abstracting Unit for any needed form or additional guidance. Refer to the New Mexico Department of Transportation website.
January 2016
Right of Way Handbook
Volume II

Chapter 4 Procedures
Section 1- Lands Abstracting Unit Flowchart

Key:
PDE: Project Development Engineer
LAU: Lands Abstracting Unit
LEVU= Lands Eng. Verification Unit
ROW= Right of Way

Start 1
NMDOT Project -
The PDE requests
Title Report

Preparation of title reports for NMDOT project by the Lands Abstracting Unit.

LAU- submits title reports to the Lands Engineering Verification Unit for ROW map preparation.

LEVU- finalizes ROW maps. Title reports are then submitted to ROW Records Management.

Acquisition agents retrieve the original reports from records and make copies of the title reports and initiate offers. Original title report will be updated to meet the required 60 day signing requirement at the agents request.

End 1
Budget and Audit issues final payment and title reports are then submitted to ROW Records Management.
Chapter 4 Procedures
Section 1- Lands Abstracting Unit Flowchart

Local/Consultant Lead

Start 2
LGAP/Consultant
Title Report production

Schedule a mandatory meeting with Lands Abstracting Unit, Project Manager and contracted title company.

Distribute the Lands Abstracting title report requirements, forms and address questions from contracted title company.

The contracted title company submits example title reports to LAU- to ensure Compliance of the LAU-title report requirements.

LAU- Provides feedback

Rejected

Approved

LAU- Reviews and approves the title reports as to required format.

End 2
Completed
The title company returns completed title reports back to Project manager to proceed with the project.

Key:
LGAP= Local Government Agency Project
LAU= Lands Abstracting Unit
Section 1.2-Project Assignment

A right of way project is considered assigned to the Lands Abstracting Unit upon receipt of a request from any of a number of sources as listed in subsection 1.1.

Section 1.3-Origins of Title Report Requests

A written request for title reports generally come from Lands Engineering, Department Managers, PDE’s, District Offices, other Units and/or from sections within the Department.

Section 1.4-Lands Abstracting Procedures

The Title Examiner will make the necessary search and examination of public records and will prepare the required reports.

If a Title Examiner learns that an owner of a specific parcel of land is a minor or is otherwise incompetent and does not have a court appointed guardian or there is an unidentified owner, condemnation will be immediately recommended in writing to the Acquisition Unit Supervisor.

At the discretion of the Unit Supervisor, title reports may be ordered from a title company under contract with the Department. Contracts will be prepared by the Budget and Audit Unit.

Section 1.5-Review

All completed reports are reviewed by the Title Examiner and proofread for transcription accuracy. Acceptance of the transcription is shown on the Title Review sheet and the cover of the title report.

Section 1.6-Report Assembly and Transmittal

Completed title reports are assembled for each project and transmitted by memo (hard copy). After submission, the title report will be logged in by The Lands Abstracting Unit. Title reports will be maintained and secured by The Right of Way Records Unit.
Section 1.7-Lands Abstracting Unit Supervisor Assigns Work

The Lands Abstracting Unit Supervisor will obtain information and documents from the Department files as deemed necessary to begin the project as requested. The projects are logged from date of beginning through completion, and the status is maintained.

Section 1.8-Assignment Work Procedures

Upon receipt of a title assignment, the Title Examiner will proceed to research the public records. Upon completion of the project, the Unit Supervisor will then review, for completeness and accuracy, a complete 33-year title report including all documentation, maps, and/or surveys for all parcels pertaining to each project. If work product is deemed unsatisfactory it will be returned to the Title Examiner for corrective action. The corrected work product is again returned to the Unit Supervisor to determine, if the assignment is proper and complete. If the appropriate documents are completed, they are transmitted to Records or the requesting party as applicable.

Section 1.9-Ownership Reports

Ownership reports are prepared by Title Examiners upon receipt of a request. Each of the reports consist of a map or drawing indicating ownership, names and addresses of owners, deeds and other ownership documents. Temporary construction permits require current ownership report only.

Section 1.10-Current Ownership Reports

Current ownership reports are prepared by Title Examiners upon request. These consist of ownership as shown by the public records, which will include a composite map reflecting the current owner, the current address, along with the document showing proof of ownership.

Section 1.11-Title Reports

33-year title reports contain a complete and accurate account of all recorded documentation affecting the title to each parcel of land on a right of way project. Title reports are prepared by Title Examiners.

Section 1.12-Federal, State, Tribal and Private Land Reports

When a title report covers federal land, the owner is shown as “THE UNITED STATES OF AMERICA”, followed by the name of the agency having control or jurisdiction.
When a title report covers state land, the owner is shown as the “STATE OF NEW MEXICO”, followed by “The Governing State Agency”.

When a title report covers privately owned land, the names of all owners shall be shown in full as reflected on the document creating their interest.

Title Reports are not required for tribal lands since they are held in trust by the federal government and the tribes do not hold title to their lands.

Section 1.13-Title Report Cover Sheet

The Right of Way Title Cover Sheet, Form No. A - 641, is to be the first document exhibited in each Title Report prepared by the Title Examiners.

Section 1.14-Parts of a Title Report

The Title Report Certificate consists of three pages; other attached documents are to be numbered consecutively thereafter. The Title Report Cover Sheet, Form No. A - 634 shall include, but not necessarily be limited to, the following, in the order shown:

1. Legal description of property being abstracted. Said description is generally found in the official public records, from the instrument conveying the interest to the current owner. Whenever a description is incomplete or inaccurate, an explanation which will enable the Lands Engineering Section to properly plot the property set out in the comment field under the legal description, or on item 7 under Title Examiners comments.

2. Name and address of current property owner and all interested parties.

3. Outstanding mortgages, liens, judgments, probates, district court causes, leases and easements of record.

4. Tax schedule reflecting five years of property taxes along with the amount of taxes paid or due, owner “ID” number and/or property “ID” number and account number where taxes are located on tax rolls, and legal description.

5. Chain sheet (index that is similar to Form A-635) to reflect all transactions conveying title, to be indexed and numbered in chronological order together with, but not limited to the matters mentioned above, covering a period of not less than 33 years.
**Section 1.15-Title Examiners Review Sheet**

“Title Examiner Review Sheet“ shall reflect all requirements necessary to vest good and sufficient title into the New Mexico Department of Transportation. The “Title Examiners Review Sheet” shall consist of the following:

1. Control number
2. Project number
3. Property owner
4. List of requirements
5. Signature and date line for signature of Title Examiner.

**Section 1.16-Updating Title Reports**

Periodically, it is necessary to update the title reports for a Right of Way project. Generally, the Lands Abstracting Unit will receive a request from various Right of Way Units for their particular needs, but may update title reports on its own initiative if title reports have not been updated within the required six month period. The work necessitated by each request is handled in the same manner as work generated by an original request for title reports.

Title reports shall be no older than six months for the right of way mapping, appraisal, and negotiation activities. Title reports must be current, within 60 calendar days of the execution of conveyance documents.

When the Title Examiner notes that a change is made in the title or legal description of any parcel, the Lands Abstracting Unit will advise such changes to the Lands Engineering Section and/or other Units affected.

**Section 1.17-Consultant Title Reports Requirements**

Title reports submitted by project consultants shall be prepared by a licensed and bonded title company and prepared in accordance with Lands Abstracting Unit Handbook Volume II 1/01/2016 and must comply with the Request for Proposal (RFP) for professional services.

1. Prior to commencing consultant title work, a mandatory meeting with the consultant project manager, Title Company research staff and NMDOT Lands Abstracting Unit Personnel is required.
2. Specific Lands Abstracting Unit requirement information and required forms will be distributed at mandatory meeting.

3. Title Report Examples submitted from the title company will be reviewed to ensure the Lands Abstracting Unit requirements are complied.

SECTION 2-TITLE RESEARCH

Section 2.1-Search for Title under the United States Government Records

The Title Examiner begins the lands abstracting by making a search of the U.S. Bureau of Land Management records. First, in this phase, the cadastral survey records (G.L.O. Plats) are checked for the proper legal descriptions of the sections of land traversed or to be traversed by the right of way project. Second the land maps and historical index in the B.L.M. office tract books as well as the Bureau of Land Management and Legacy Rehost 2000 Websites are searched and a list is prepared of all entries affecting the land being abstracted. The Title Examiner will proceed to obtain any information that will be set out in the title report.

If the land under search is owned by the United States of America, the search of the B.L.M. records is all that is necessary to prepare the title reports on said lands.

The basis for records of ownership of federal lands in New Mexico are the records of the Bureau of Land Management (B.L.M.), which is part of the Department of the Interior and is the Federal agency which has been charged with the management of United States land within New Mexico.

Section 2.2-Search for Title under State Ownership

When the Title Examiner finds that any part of the land abstracted has been transferred to the State of New Mexico, a search of the records of the State Land Office will be conducted to determine if it is state land or if it has been patented to a private entity. If it is state land, the Title Examiner abstracts such information as is necessary in the preparation of the title report for that particular parcel.
Section 2.3-Search for Titles of Private Lands

When the records of the B.L.M. or the state Land Office show land to be patented, the Title Examiner abstracts the pertinent information from the patent and is then ready to conduct the search of the public records for private lands.

The Title Examiner shall examine the records of the County Tax Assessor’s Office and secure copies of the assessor’s plats. The information gained from these records is not to be considered accurate or current enough to prepare the title reports; however, the information may be helpful, in as much as it contains descriptions and owners’ names, addresses and book and pages of deeds for privately owned land.

The most crucial part of the title search is conducted in the public indices in the Office of the County Clerk.

1. The Title Examiner must search for, and abstract, a chain of conveyances from the current owner back at least 33-years.

2. The Title Examiner must abstract all encumbrances which affect the property under search. These include, but are not limited to, taxes, mortgages, leases, easements, judgments and various types of liens.

3. The Title Examiner will secure copies of subdivision maps and property surveys which are filed of record.

SECTION 3-PUBLIC RECORD SOURCES

Section 3.1-Bureau of Land Management

The B.L.M. has established, and maintains, the official United States land record of all land within the state. The primary record is kept in a set of tract books which contain plats depicting the section, townships, and ranges in accordance with federal survey and a historical index of matters affecting the public domain.

These records indicate what lands were recognized as private grants at the time of acquisition by the federal Government, as well as disposition, if any, which has been made of public land, including any that has been reconveyed to the federal government as part of the public domain. The records contain information up to a transfer of title to the State of New Mexico or the issuance of a patent to a private party.
These records indicate which Tribal lands have been set aside or withdrawn for, National Forests, Military Reservations, or for use by the Bureau of Reclamation or other federal agencies.

These records contain entries of official actions affecting any public lands, such as, but not limited to, granting of right of way, oil and gas leases, and other special use permits.

The Survey Office of the Bureau of Land Management has established, and maintains, the records of the cadastral survey. These records are plats made from the official survey and are generally referred to as the G.L.O. Plats. They reflect the official, legal descriptions of the various land sections, homestead entries, mineral surveys, etc. This office also maintains files of the official survey field notes and projection diagrams for land that has not been surveyed.

**Section 3.2-State Land Office Records**

The State Land Office maintains the records of all lands which have been transferred from the United States to the State of New Mexico. The basic records are tract books which indicate the status of, and all matters affecting, the land after the state acquired title. This office has a division which keeps the records of all sales and leasing of state land.

**Section 3.3-County Tax Assessor’s Office**

Each county in the state has a Tax Assessor’s Office which has maps or plats of the various parcels of private land within the county together with the names and addresses of the assessed owners. Since the primary purpose of this office is to assess property for tax purposes, the records are not necessarily accurate or up-to-date as to descriptions and/or owners.

**Section 3.4-County Treasurer’s Office**

The tax rolls in County Treasurer’s Office are separated into school districts and listed alphabetically by property owner. They reflect the owner, description of the land, and the total amount due. Please note that all systems are different in locating a particular assessment, some use page and line number, and others use receipt number, identification number, or parcel number.
Section 3.5-District Court Clerk

The District Court Clerk maintains docket books which in most cases are now on computer. The docket books designate the plaintiff and defendant in alphabetical order. If a cause is found, a case number is assigned to the file. A case file contains pertinent documents involving divorces, foreclosures, quiet title suits, condemnations, etc., that may affect the ownership of a parcel of land.

The District Court Clerk maintains dockets on formal and informal probates.

The District Court Clerk maintains dockets on insanities, however, these are not readily available to the public without the permission of a District Court Judge, and at no time is the Title Examiner to exhibit any proceedings from said case file, but only to make reference to them.

Section 3.6-County Clerk’s Office

Each county has a County Clerk’s Office in which all instruments affecting title to real property should be recorded. The clerk makes a copy of the original instrument and places the copy in a docket which is made in book form.

Section 3.7-Indices Maintained by the County Clerk

Each County Clerk’s Office maintains an index, by name of the parties to all recorded instruments. The New Mexico Statutes provide that the County Clerk shall maintain the indices hereinafter listed. A complete search of these indices should enable the Title Examiner to determine the ownership and encumbrances of the subject property. There may be a variation from county to county as to the exact terminology given to a particular index but the list indicates the subjects to be indexed.

1. Deeds-Direct and Indirect
2. Mortgages-Direct and Indirect
3. Release of Mortgages-Direct and Indirect
4. Powers of Attorney
5. Leases-Direct and Indirect
6. Judgments-Direct and Indirect
7. Federal Tax Liens-Indirect  
8. Lis Pendens-Indirect  
9. Mining Locations  
10. Contracts-Direct and Indirect  
11. Patents-Direct and Indirect  
12. Mining Deeds-Direct and Indirect  
13. Water Rights  
14. Corporations  
15. Releases, Assignments, and Renewal of Judgment  
16. Plat Index  
17. Informal Probates  

(A direct index is one which is ordered by the name of the grantor and indirect index is one which is ordered by the name of the grantee.)
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## SECTION 1 - GENERAL

- Appraisal Requirement and Waiver of Appraisal report
- Project Assignments
- Preliminary Assignments
- Right of Way
- Property Descriptions
- Types of Acquisitions
- Construction Maintenance Easements
- Temporary Construction Permits
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- Larger Parcel
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- Non Right of Way (NRW) Parcels
- Utilities and Railroad Property
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- Wells and Irrigation Ditches
- Fencing and Gates
- Crops
- Mobile Homes
- Salvage Value
- Trade Fixtures and Equipment
- Special Relocation Considerations
- Non-Compensable Items
CHAPTER 1 PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.
The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

**SECTION 3-STRUCTURE OF HANDBOOKS**

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

<table>
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<tr>
<th>Number</th>
<th>Title</th>
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<tr>
<td>I</td>
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<td>IX</td>
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<td>X</td>
<td>Water Acquisition</td>
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<td>XI</td>
<td>Utilities</td>
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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 1         AUTHORITY

SECTION 1-GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3 ORGANIZATION

SECTION 1-GENERAL

The Right of Way Appraisal Unit and Appraisal Review Unit are located in the Right of Way Bureau under the Right of Way Bureau Chief.

This handbook outlines the procedures for the evaluation and valuation of real property subject to acquisition or disposition by the Department, the preparation of written appraisal reports, and the review of appraisals submitted by both staff and independent fee appraisers. The Appraisal Unit is responsible for:

1. Preparing fair market value estimates of real property including all improvements thereto.
2. Preparing estimates of acquisition related damages and/or benefits.
3. Preparing estimates of total compensation for proposed acquisitions.
4. Researching market data and maintaining database related to functions, and conducting other studies and/or performing other valuation tasks that will ultimately support the department’s missions.

The Appraisal Unit is under the direction of the Appraisal Unit Supervisor who reports directly to the Right of Way Bureau Chief. The Unit Supervisor is responsible for the supervision of the Appraisal Unit staff and all contract appraisal work by independent fee appraisers. The Appraisal Unit staff is composed of Right of Way Appraisers.

All Right of Way Staff Appraisers are stationed in and work from the Headquarters Office in Santa Fe. Their responsibilities consist of the research and analysis of data necessary to provide supportable estimates of value, the preparation of appraisal reports in accordance with state and federal law, and governing professional appraisal standards, and the performance of other tasks as required executing the Sections objectives.

The Appraisal Review Unit is under the direction of the Appraisal Review Unit Supervisor who reports directly to the Right of Way Bureau Chief. The Appraisal Review Unit Supervisor is responsible for the supervision of the Staff Appraisal Review Unit and all contract appraisal review work by independent fee appraisers.

The Staff Review Appraisers receive direction from the Appraisal Review Unit Supervisor as to priority of work assignments and any necessary assistance.
All Staff Review Appraisers are stationed in, and work from, the Headquarters Office in Santa Fe. They are responsible for:

1. Reviewing and preparing evaluations of appraisals submitted by the Appraisal Unit staff and independent fee appraisers.

2. Preparing “Reviewer’s Conclusions” of value, if applicable.

3. Determining “Just Compensation”.

4. Preparing appraisal review reports on any appraisals submitted by property owners. This will ensure compliance with 49 CFR part 24. The Review Appraiser has the responsibility to reject any property owners’ appraisals, which do not comply with existing appraisal standards or state or federal law.

**SECTION 2-DUTIES**

Section 2.1-Appraiser’s Authority

The Right of Way Appraisal Unit Supervisor is responsible for:

1. Establishing and monitoring general office and field procedures for the Appraisal unit;

2. Assigning general duties and responsibilities to Staff Appraisers and monitoring their workload;

3. Providing project scheduling information, making all assignments of specific appraisal projects, and distributing all project related documents, maps, and plans received to Right of Way Appraisers;

4. Providing technical assistance to Appraisers and reviewing completed appraisals for consistency with the scope of work

5. Arranging for project and/or individual parcel staking/flagging from Lands Engineering when requested in writing by the appraiser;

6. Acting as liaison along with the Right of Way Bureau Chief between the Office of General Counsel (Legal) and the Appraiser;

7. Making recommendations as to the necessity, selection and contracting of independent fee appraisers;
8. All contract appraisal work by independent fee appraisers; and

9. Maintaining a current, valid General Appraisal Certificate issued by the New Mexico Real Estate Appraisers Board and assuring that other Appraisers are licensed and/or properly certified.

10. The Appraisal Unit Supervisor shall periodically review each appraiser’s work for quality and compliance with the appraisal procedures and regulatory requirements.

All Right of Way Appraisers are responsible for:

1. Reviewing project scheduling reports, preliminary Right of Way maps and construction plans, preliminary and final title reports, engineer’s property owner interviews, project development and right of way files, and all other relevant information, to gain a broad, basic understanding of the project;

2. Meeting with Project Development Engineers (PDE) and appropriate Right of Way personnel to review the project; all meetings shall be documented in detail and made part of the project file.

3. Attending field review inspections for assigned projects, as approved by the Appraisal Unit Supervisor; all inspections shall be documented in detail and made part of the project file.

4. Preparing written recommendations, requests, status reports, and other correspondence for assigned projects, including, requests for NRWs and project staking, as necessary;

5. Reviewing final Right of Way maps and construction plans, title reports, and legal descriptions for completeness, accuracy, and consistency;

6. Organizing and maintaining assigned appraisal project files;

7. Contacting affected property owners for personal field inspections and interviews on projects requiring appraisals; all appraisal waivers shall be discussed with the Appraisal Unit Supervisor and the Right of Way Bureau Chief to establish a course of action prior to initiating any property contacts.

8. Conducting office and field investigations of all relative economic and comparable sales data, confirming comparable sales data, photographing all subject properties and comparable sales used and analyzing collected data to form opinions of fair market value, damages and/or benefits.
9. Preparing appropriately formatted written appraisal reports for all properties assigned on the project and submitting the required number of copies of the completed reports to the Appraisal Unit Supervisor. Appraisers shall perform appraisals in compliance with USPAP and State/Federal regulatory requirements.

10. Meeting with Acquisition, Relocation, and other affected Right of Way personnel in order to explain, clarify, and/or answer questions regarding completed appraisals;

11. Preparing written changes, additions, updates and other post submission reports and correspondence, as directed by the Appraisal Unit Supervisor;

12. Conferring with the Office of General Counsel in order to explain, clarify, and/or justify appraisals subject to litigation; preparing for trial; giving depositions; and testifying in court with respect to the appraisal;

13. Maintaining a current, valid General Certification issued by the New Mexico Real Estate Appraisers Board.

14. Maintaining a detailed log of contacts with property owners, PDE’s and other project related persons.

15. Performing other valuation functions assigned by Right of Way Bureau Chief.

Problems encountered during the appraisal process or performance of other valuation functions, which cannot be solved by the Appraiser, shall be referred immediately to the Appraisal Unit Supervisor for review and direction.

Section 2.2-Appraiser’s Professional Judgment

Appraisers are required to exercise their independent and professional judgment in arriving at and rendering their appraisal opinions and conclusions. The appraisal report represents their best professional judgment as to the value and the compensation concluded based on current and relevant market data. This Volume of the Handbook and its provisions are not intended in any way to influence or control the Appraiser’s valuation. In the event the Appraiser perceives any conflict between the Handbook, and the Appraiser’s best professional judgment, the Appraiser shall immediately refer to the Appraisal Unit Supervisor for guidance.
SECTION 3-QUALIFICATIONS

Section 3.1-Appraiser Qualifications

All Right of Way fee Appraisers and fee Review Appraisers shall, at a minimum, meet the qualifications of, and hold a current, State Certification/License issued pursuant to the provisions of the New Mexico Appraisal Board or its equivalent, as determined by the Right of Way Bureau Chief.

All Right of Way Appraisers and Review Appraisers shall also possess a valid New Mexico driver’s license.

Section 3.2-Licensing and Certification

Independent fee appraisers are required to hold a current valid General Certification issued in accordance with the provisions of the New Mexico Appraisal Board. The fee Appraiser must be certified in accordance with Title XI of the Financial Institutions reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 USC 3331 et seq) (49 CFR 24.103(d)(2)).

The Appraiser must comply with generally accepted standards of professional appraisal practice as currently evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Appraisers and Review Appraisers must conform to Federal requirements on Federal-aid projects.

All Department appraisers and review appraisers are exempt by the State of the requirement to be State Certified or licensed; however, they must have sufficient knowledge and expertise to meet the qualification and competencies of the assignment.

SECTION 4-CONFLICT OF INTEREST

The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Department.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or
appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal-funding agency may waive this requirement if it determines it would create a hardship for the Department.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Department to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is $10,000 or less.

An appraisal is not required if the owner is donating the property and releases the Department from this obligation, or the Department determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated not to exceed $10,000 based on a review of available data.

The following principles shall govern business relationships between Appraisers and persons whose property is being valued.

1. An Appraiser shall not engage in any real estate transaction or participating business association with the party whose property is being appraised.

2. An Appraiser shall not acquire interests involving lands abutting upon or in a zone of immediate influence of a contemplated highway improvement of which the Appraiser has, or could be presumed to have, knowledge without first obtaining the written approval of the Secretary of the Department.

3. An Appraiser shall make no disclosures of privileged advance knowledge of highway plans, or other documents or activities, which may come as a result of employment or position within the Department and which is not generally available to the public at large, without first obtaining the written approval of the Secretary of the Department.

4. The appraisals are considered to be a confidential communication between the Appraiser and the authorized employees of the Department. In no instance will confidential portions of the appraisal be divulged to persons other than authorized employees of the Department.

5. Appraisers shall not accept favors, gratuities, or compensation of any nature from persons with whom they may conduct Department business.

6. No Appraiser shall engage in any conflicting employment for work involving the appraising, selling, or purchasing of real property.

7. Any interpretation of the above shall be referred to the Valuation Section and/or Right of Way Bureau Chief through the Appraisal Unit Supervisor.
SECTION 5-PERSONAL CONDUCT

The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Department.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal-funding agency may waive this requirement if it determines it would create a hardship for the Department.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the department to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is $10,000 or less.

An appraisal is not required if the owner is donating the property and releases the Department from this obligation, or the Department determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated not to exceed $10,000 based on a review of available data.

The following principles shall govern business relationships between Appraisers and persons whose property is being valued.

Right of Way Appraisers, as representatives of both the Department and the appraisal profession, shall at all times conduct themselves in a manner that reflects favorably on both. Since property owner contact and confidentiality are two of the more critical areas of concern for the Appraiser, this section deals primarily with recommended practices and required procedures in this regard.

In most circumstances, the Appraiser is the first Right of Way Bureau representative to make contact with owners of property subject to acquisition. The following basic guidelines are provided to assist the Appraiser in making successful property owner contacts.

1. The Appraiser must make a diligent effort to contact the property owner(s) of all properties to be appraised. Simply sending a certified letter is not sufficient. In
many cases, the owner possesses knowledge of the subject property and neighborhood that can be valuable and sometimes necessary in properly completing the appraisal assignment.

2. The Appraiser must have a general knowledge of the purpose and scope of the overall project.

3. Questions relating to the technical aspects of the design, relocation procedures, etc., shall be noted by the appraiser, but referred to the appropriate Department personnel.

4. The Appraiser shall not, at any time, express an estimate or opinion of value of the subject property, or of any other property being appraised for the Department, to the property owner.

5. The Appraiser is expected to remain professional and objective at all times, assuring the property owner that the Appraiser has no personal interest in the outcome of the acquisition of the property and that the objective of the appraisal is to estimate the fair market value of the subject property.

6. While empathizing with property owners, the Appraiser shall make every effort to encourage their confidence in the integrity of the Department and the abilities of other Department employees.

As a confidentiality agent of the Department, the Appraiser must keep in mind that the Department is a client and shall not violate the confidential nature of this relationship.

1. An Appraiser must protect the confidential nature of the appraiser-client relationship.

A. An Appraiser must not disclose confidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than:

1) the client and persons specifically authorized by the client;

2) such third parties as may be authorized by due process of law; and

3) a duly authorized professional peer review committee.

2. The Appraiser must be able to discern between the confidential and non-confidential portions of the appraisal which, for the purpose of this section, are defined as follows:
A. Confidential portions consist of any of the Appraiser’s analyses, opinions, 
and conclusions of value or compensation, and any factual data provided 
to the Appraiser in confidence.

B. Non-confidential portions include, but are not limited to, all factual and 
statistical data secured by the Appraiser from his or her own sources; 
general conclusions concerning the community in which the appraised 
real estate is located; and general charts, maps, and graphs that relate to 
more than the subject matter of the appraisal.

SECTION 6-FEE APPRAISERS AND FEE REVIEW APPRAISERS

Section 6.1-Use of Fee Appraisers and/or Fee Review Appraisers

Federal funds may participate in the cost of employing fee appraisers and fee review 
appraisers to provide cost studies, valuation estimates, appraisal or review appraisals 
when:

1. The staffing of the Department is insufficient to perform the work within a 
   reasonable time.

2. A fee appraisal or specialty report is needed for use in condemnation case.

3. The unusual character of the work requires the services of a person or 
   persons with highly specialized knowledge and experience not readily 
   available on the staff of the Department.

When services of a highly specialized nature are required to assist in the preparation of 
the appraisal, the Appraisal Unit Supervisor must be contacted. The employment of 
specialists shall be accomplished by the Department in appropriate instances as 
determined by the Appraisal Unit Supervisor. The Appraisal Unit Supervisor and Right 
of Way Bureau Chief shall reserve to itself the approval of the selection of the specialist 
to be hired by the fee appraiser.
Section 6.2-Selection Procedures

The Department has established through Administrative Memorandum procedures for the solicitation, selection, negotiation, and approval of contracts for fee appraisers.

As needed, the Appraisal Unit Supervisor will solicit responses for request for proposals (RFP) from fee Appraisal firms. Appropriate procurement code procedures and Federal Procurement requirements will be followed regarding advertising negotiations and selection.

The Right of Way Bureau Chief will request approval from the Department Secretary to begin to process contracts. Upon approval by the Secretary, Contracts Administration will solicit project specific requests for proposals from all appraisal firms on the Department’s list.

Established guidelines for the selection of fee appraisers by means of a Selection Committee are outlined in the RFP and usually contain the following provisions:

1. A fee appraiser Selection Committee consisting of representatives of the Right of Way Bureau appointed by the Right of Way Bureau Chief.

2. The appraisal Selection Committee must have at least one member with the knowledge of the appraisal and valuation process.

3. When responses for fee appraiser services are received, the Committee will review submittals, rank the firms according to specified criteria, and provide written recommendations to the Right of Way Bureau Chief.

Section 6.3-Establishment of Fees

The basis of payment shall be set forth in the contract. The scope of work letter shall itemize the actual amount to be paid per parcel or ownership.

The contract shall state the per diem rate method, if necessary, which may state an overall limit which should not be exceeded except by supplemental agreement.

Provisions are made in the contract for a per diem rate to be paid to the fee appraiser or specialist in the event court appearances or conferences preparatory thereto, become necessary. This contingent cost is separate and apart from the fee, or the overall limit specified in the agreement for a completion of the services covered by the agreement.
There shall be no reimbursement for compensation paid by the Department for revision or correction of a report required by the appraiser’s or review appraiser’s failure to comply with contract specifications and standards in the agreement.

The amount of the fee represents a fair payment for the services performed whether it be for the initial valuation, a new valuation occasioned by a change in the taking, or a subsequent updating requested by the Department. In the instance of a new valuation or updating, a flat percentage of the original fee is not acceptable as representative of fair payment. Experience of the Department and any other available guides may be considered in arriving at an equitable fee. A qualified individual from the Appraisal Unit should visit the project site to identify the valuation problem, determine the number and type of reports needed, and estimate a fee per parcel/ownership. The estimate shall be made prior to requesting a proposal from fee appraisers and fee review appraisers and shall be retained in the Department’s file. A predetermined schedule of fees for different types of properties may be utilized, provided documentation to support such schedule(s) is available in the Department’s files. In determining the basis of payment and the actual fees to be paid, consideration should be given to:

1. The complexity of the appraisal or other work to be undertaken, and the skills necessary to provide such services;

2. The number of parcels/ownerships included in the assignment;

3. The amount of information and data provided by the Department and the extent of information that must be developed independently;

4. The location and conditions pertinent to the project for which the fee service is to be provided;

5. The time allowed for performance of the assignment.

The Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor may negotiate with the selected fee appraiser to determine the amount to be paid for services, which must then be approved by the Right of Way Bureau Chief.

Section 6.4-Fee Appraiser/Fee Review Appraiser Contracts

Contracts, agreement, or scope of work letters for fee appraisal and fee review appraisal services shall contain, as a minimum, the following provisions and clauses:

1. Date of contract.
2. The complete name and address of each contract party whether individual, partnership, firm or corporation. If a corporation is one of the parties, identify the state in which it is incorporated. Where a contract is with a partnership, firm, or corporation, the contract, or supplement thereto, shall identify the person who will perform the valuation service and, if necessary, testify in a condemnation action.

3. Project number, control number, termini, parcel number and location.

4. Description of the work to be done in sufficient detail to show the nature and extent of the services contemplated.

5. Provision for the appraiser or specialist to testify in court if the need arises.

6. Specifications as to the content and format of reports.

7. Data to be furnished by the Department.

8. Date completed reports are due.

9. The basis of payment for the services to be furnished.

10. The following clause:

The appraiser/review appraiser warrants that he/she has not employed or retained any company, firm, or person, other than a bona fide employee working solely, “to solicit or secure this agreement, and that has not paid or agreed to pay any company, firm, or person, other than a bona fide employee working solely, any fee commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Department shall have the right to annul this agreement without liability.”

11. Provisions that would permit the negotiation for mutual acceptance of major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary as the work progresses.

12. Provision that would permit termination of the contract by the Department in case the appraiser/review appraiser is not complying with the terms of the contract, the progress or quality of work is unsatisfactory, or for other stated reasons. Provisions covering the ownership of work completed, or partially completed, and basis of payment therefore in the event of termination of the contract by the Department.
13. Provision for a procedure for resolving any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties, conforming to the practice followed by the Department in resolving disputes in other contractual matters.

14. An expressed prohibition against the subcontracting or transfer of any of the work except as is otherwise provided for in the contract.

15. Instructions that the appraiser/review appraiser is to follow accepted principles and techniques in the valuation of real property in accordance with existing state law and federal requirements.

16. Provision for itemizing the fee per parcel/ownership within the contract or by a separate statement.

17. Provision for updating reports at request of the Department.


19. The clauses set forth in Appendix A of the Civil Rights Assurances.

20. Properly executed signature and dates.

21. Provision requiring that parcels involving relocations be appraised and submitted first.

In addition to the requirements stated in the first paragraph of this section, all contracts must be in compliance with Department policies and the New Mexico State Procurement Code.

The Right of Way Bureau Chief recommends approval of the contract to the Secretary of the Department. Upon receipt of the Secretary’s approval, the Fee Appraiser/Review Appraiser will be authorized, in the form of a scope of work letter by the Right of Way Bureau Chief, to start work.

Copies of the executed contract and subsequent scope of work letter shall be distributed as follows:

1. The original to the Administration Unit

2. Copies to each of the following:
   A. Fee Appraiser
   B. Appraisal Review Unit Supervisor
C. Appraisal Unit Supervisor

D. Budget and Audit Unit

All payments to the Fee Appraiser/Review Appraiser shall be made per the terms of the contract and scope of work letter must be approved by the Appraisal Unit Supervisor/Appraisal Review Unit Supervisor as well as the Right of Way Bureau Chief. Final Payment shall require the joint approval of the Appraisal Unit/Appraisal Review Unit Supervisors and Right of Way Bureau Chief. Approval of final payment shall not be given until all appraisals/appraisal reviews in their entirety are received and accepted as fully meeting the terms of the contract and scope of work letter. Work associated with the contract requiring submittal of information is also to be in hand prior to final payment.

Section 6.5-Performance Evaluation

Upon completion of the review of all of the appraisals for each project by a fee appraiser, the staff Review Appraiser shall initiate the process of completing the Fee Appraiser Evaluation Form. This form is divided into two sections; the first of which shall be completed by the Review Appraiser, and the second, by the Appraisal Review Unit Supervisor.

The purpose of the Fee Appraiser Evaluation Form is primarily to provide the Department with a method for equitably rating fee appraisers.

The Fee Appraisers Evaluation Forms shall be retained in the Appraisal Unit Supervisor’s and or the Appraisal Review Unit Supervisor’s files for each fee appraiser performing appraisal work for the Department.
CHAPTER 4 PROCEDURES

SECTION 1-GENERAL

Section 1.1-Appraisal Requirement of Appraisal Report

Rules and regulations governing the requirement for the appraisal of real property subject to acquisition by the Department are as follows:

1. Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in 49 CFR 24.102(c)(2) and the owner, or the owner’s designated representative, shall be given the opportunity to accompany the appraiser during the appraiser’s inspection of the property.

2. An appraisal is not required if the owner is donating the property and releases the Department from this obligation, or the Department determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated not to exceed $10,000 (or $2,500 on Tribal/Local Government Agency projects) based on a review of available data.

A certified appraisal report shall be required for those acquisitions, in which the valuation or acquisition problem is considered to be complex in nature, or the estimated total compensation is to exceed $10,000.

The requirement for an appraisal report may be waived in certain cases where the total expected compensation for the entire ownership does not exceed $10,000 (or $2,500 on Tribal/Local Government Agency projects) or the appraisal problem is considered to be complex. In the event that the total compensation for one or more of the parcels in a multiple parcel ownership is found to exceed the minimum compensation (discussed in detail in Section 4.9) and/or it is determined that an appraisal report is required therefore, all of the parcel appraisals in that ownership/Larger parcel, regardless of their estimated total compensation, shall be included in one appraisal report.

The waiver of appraisal report may be prepared by a qualified staff member of the Right of Way Bureau as determined by the Right of Way Bureau Chief.

Any acquisition in which the appraisal report requirement has been waived shall be negotiated by the Acquisition Unit on the basis of the estimate of just compensation as established by the Fee Appraiser and/or Staff. This determination is typically based on a recommendation from the Appraisal Unit Supervisor provided in the form of a confidential Intra-Departmental Correspondence showing the control number, project number, the parcel number, the property owner, and the compensation applicable thereto.
Although usually based on the Appraiser’s recommendation, the final determination as to the necessity and extent of an appraisal report shall be made by the Appraisal Unit Supervisor as authorized by the Right of Way Bureau Chief.

Appraisals will be provided upon request of the property owner; in condemnation cases; and in other appropriate situations.

It should be clearly understood that a written waiver of appraisal is not intended and shall not be construed to represent an appraisal report. Therefore, unless otherwise stated, all references to “appraisals” in this Volume of the Handbook do not apply to Waiver of Appraisal communications.

Section 1.2-Project Assignments

Upon receipt of copies of the property title reports and adequate Right of Way maps and construction plans, along with any other pertinent right of way documentation, the Appraiser shall provide the Supervisor with an approximate time frame for completion of the appraisal project. Upon receipt of approved final Right of Way maps and construction plans, legal descriptions, title reports, construction plans, and the appropriate authorization to proceed, the Staff Appraiser shall establish with the Supervisor a firm completion date (subject to the accuracy and completeness of the information provided) and proceed with the appraisal function.

Section 1.3-Preliminary Involvement

Appraiser involvement in a highway construction project requiring acquisition of right of way begins at the Pre-Final Inspection stage. At this point, Right of Way maps and construction plans have not yet been finalized, and the Appraiser has the opportunity to recommend additions, deletions, or changes for any observed errors or omissions in regard to the proposed right of way. Subject to approval by the Appraisal Unit Supervisor, the Appraiser shall attend these inspections for each of his or her assigned appraisal projects in which significant right of way impact is anticipated.

All recommendations for additions, deletions, and/or changes shall be made in writing to the Appraisal Unit Supervisor who will, in turn, submit a copy to the assigned PE.
Section 1.4-Right of Way Plans/Maps

As soon as possible, and preferably before the preliminary design inspection, a copy of the preliminary right of way maps will be provided from the Lands Engineering Section. These maps will be utilized to start the appraisal process. These preliminary maps will be subject to change but they will contain agreed on information in order that the appraisal process is feasible. The plans will be based on initial title reports.

Upon approval by the Lands Engineering Section, copies of final right of way maps will be transmitted to the Right of Way Bureau Chief. A complete copy shall include the following pertinent items:

1. Title Sheet
   A. Vicinity Maps
   B. Index of Sheets
   C. Approval Signature and Date

2. Parcel Block Sheet
   A. Parcel Numbers
   B. Owners’ Names (Per Title Reports)
   C. Area of the Takes in Square Feet, Acres, Square Meters and Hectares
   D. Area of Larger Parcels for All Acquisitions (except for Large Tracts of Government & Indian Lands)
   E. Area of the Remainder Parcels for Fee Acquisitions

3. Right of Way Map Sheets
   A. Existing Right of Way (Dimensioned)
   B. Proposed Right of Way (Dimensioned)
   C. Survey and Property Lines
   D. Existing Real Property Improvements, including privately owned utilities, within 100 Feet of the Right of Way
E. Construction Limits and Relevant Highway Features

F. Parcel Numbers, Owners, and Area of Take

The Appraiser shall review these maps, compare them with the title reports and legal descriptions, and recommend corrections, if required. All such recommendations shall be made in writing to the Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor who will, in turn, submit them to the Lands Engineering Section with a copy to the Project Development Engineer. An estimated date for completion of the corrections should be procured by the Supervisor and, if necessary, a written correspondence prepared by the Appraiser indicating any adjustment to the completion date of the appraisals. Upon receipt of the final maps, the appraisal process will continue until completed and sent forward for review.

With reference to Right of Way maps and construction plans prepared by consulting engineers, all related correspondence by the Appraiser and/or Supervisor shall be directed to the Project Development Engineer.

Temporary Construction Permits (TCP) may be transmitted by Land Engineering Section on construction plans and will follow same process. If a project requires no right of way other than TCPs, a right of way Map may not be prepared and the TCPs are to be shown in the construction plans and a TCP exhibit referenced to centerline of construction stationing, with offset distances.

Section 1.5-Property Descriptions

Legal descriptions for all fee acquisitions and Construction Maintenance Easement (CME) are written in a metes and bounds format, except for total acquisitions of subdivided property, which are generally described by lot and block. Metes and bounds legal descriptions are required for acquisition by condemnation. TCP’s may be described by a length in terms of highway stationing, a location left or right of the highway construction centerline, a width, and an area in square feet, acres, square meters and/or hectares.

The Appraiser must carefully review these descriptions for accuracy and compare them with the subject title reports and right of way maps for consistency.

All other legal descriptions (larger parcels, remainder parcels, etc.) utilized in the appraisal, but not provided to the Appraiser in the manner described above, shall coincide with and refer to those included in verifiable legal property documents.

The Appraiser must use the legal descriptions provided by the Department. In the event that an apparent error or omission is found in either the legal description or the right of way maps, the Appraiser shall promptly advise the Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor who will in turn advise the Lands Engineering Section.
Section 1.6-Types of Acquisitions

The types of acquisitions of right of way property, for which real property appraisals are prepared, fall into four basic categories.

1. Total or complete acquisition of a fee interest in the subject property including all improvements thereon.
2. Partial acquisition of a fee interest in the subject property, or larger parcel.
3. Acquisition of a permanent easement interest in the subject property; CME.
4. Acquisition of a temporary easement interest in the subject property; TCP.

In regard to partial acquisitions, including CME’s and TCP’s, the before and after acquisition values of the subject property must be analyzed in order to determine if there are any damages and/or benefits to the remainder property as a result of the acquisition. The effect of the acquisition on the remaining property must be considered and stated in the report.

Section 1.7-Construction Maintenance Easements

CME’s are acquired when the Department finds it necessary to provide for construction and maintenance activities outside of the highway right of way. CME’s are considered to be permanent in nature and shall be employed when the maintenance activities by the Department, and primarily for the benefit of the Department, are anticipated to continue for an indefinite period of time.

The property owner shall retain the underlying ownership of the subject property and shall be offered just compensation for each CME on the basis of a perpetual easement. The minimum compensation for a CME is administratively determined at 90% of fair market value of the fee interest.

If at any time, the Appraiser reasonably suspects a 100% compensation for any CME taking is appropriate, the Appraiser shall immediately notify, and request the approval of, the Appraisal Unit Supervisor or the Appraisal Review Unit Supervisor, who will in turn, notify the Right of Way Bureau Chief prior to the completion of the report.
Section 1.8—Temporary Construction Permits

TCP’s are acquired when the Department finds it necessary to provide for temporary construction and/or maintenance activities outside of the highway right of way for a defined length of time. TCP’s are temporary in nature and shall be employed when there are no continuing maintenance activities anticipated by the Department after the construction of the project. Upon termination of the TCP, the subject property must be restored to a condition at least equivalent to that prior to the construction, and therefore, a TCP may be acquired for a determinate period of time after completion of the construction (not more than five years) in order to meet this requirement.

The property owner shall retain the underlying ownership of the subject property and shall be offered just compensation on the basis of a temporary easement, similar to that of a lease or permit.

Current land lease and overall rates for small commercial sites range from 5% to 8%, with the highest rate in the 10% range. The NMDOT has an administrative rate of 10% for TCPs. The minimum compensation for a TCP is administratively determined at ten percent (10%)/year of fair market value of the fee interest with the payment to cover the duration of the determinate period. However, the appraiser should consider any damages or benefits, which may occur to the owner’s remaining property as a result of the acquisition of the TCP. Any deviation from this must be supported, justified and approved by the Appraisal Review Unit Supervisor.

Section 1.9—Work Permits

Where temporary authorization is needed from the property owner for the contractor to do incidental work that is not essential to the project and is of mutual benefit to the Department and the property owner, a work permit may be obtained from the property owner. A work permit may be used for such work as connecting driveways to turnouts at the right of way boundary, dressing slope rounding, and so forth.

No compensation would be provided to the property owner or occupant for the work permit. It is to be utilized in those instances where the work is not mandatory; therefore, if the property owner does not wish to sign the work permit, no work would be done outside the highway right of way at the subject location.
Since no compensation is to be provided to the property owner or occupant, there is no necessity for an appraisal or the involvement of the Appraisal Unit; however, the Right of Way Bureau should be consulted to confirm the nature of the acquisition and the property rights.

Section 1.10-Larger Parcel

In the appraisal of all partial acquisitions, including, but not limited to, TCP and CME, a larger parcel, from which the subject parcel is to be acquired, must be determined. The larger parcel is defined as:

1. That portion of a property that has unity of ownership, contiguity, and unity of use; the three conditions that establish the larger parcel for the consideration of severance damage. However, contiguity is sometimes subordinated to unitary use.

2. In New Mexico, the three factors of contiguity, unity of use, and unity of ownership must be considered in order to consider two tracts of land as one larger tract. All three must generally be present. The unity rule is subject to exceptions and under certain circumstances; the measure of each of the three utilities is not required. [State v. Gray, 81 N.M. 399, 467 p. 2d 725 (1970); 106 N.M. 608, 747 p. 2d 254 (1987)]

The purpose of the larger parcel concept, or unity rule, is to provide the Appraiser with a method in which to estimate the compensation due to the property owner by law as a result of the acquisition of a portion of his or her property that is integral to the value of the highest and best use of the remainder property. In this context, compensation consists of both the fair market value of the property to be acquired and any damages to the remainder property as a result of the acquisition. Benefits to the remainder property as a result of the acquisition may be offset against damages but not against the compensation for the taking itself.

Using this concept within the confines of the New Mexico state law, the fair market value per unit of the larger parcel is applied proportionately to estimate the fair market value of the property to be acquired, and the residual damages are estimated utilizing an analysis of the before and after acquisition values of the remainder property.

In regard to very large ownerships, such as Government and Indian lands, special consideration should be given in determining the larger parcel. In cases where delineation of the larger parcel is unclear, additional meetings may be necessary with the owner or their representative prior to making a determination of such. Configuration, topographical features, railroad and utility facilities, typical size of neighboring land, economic unit, probable use, and potential effects by the proposed projects, are all factors that should be considered in determining a reasonable larger parcel. In any event, the larger parcel for purposes of before and after valuation should
be that property, the value of which is demonstrated by substantial evidence, to be affected by the partial acquisition.

Section 1.11-Remainder Parcel

The remainder parcel is simply defined as the property remaining in the possession of the owner after a partial acquisition. In the appraisal of all partial acquisitions, including, but not limited to, TCP and CME’s, the fair market value of the remainder parcel, both before as part of the whole, and after the acquisition, must be determined.

The fair market value of the remainder parcel before acquisition, as part of the whole property, is estimated inherently in the valuation of the larger parcel and the parcel to be acquired. In order to adequately estimate the value of the remainder parcel after the acquisition, a separate valuation study must be performed. The difference in value between the before and after values of the remainder parcel is the measure of the damages and/or benefits attributable to the acquisition.

Section 1.12-Damages and Benefits

In the appraisal of all partial acquisitions of real property, the Appraiser shall consider any damages and/or benefits to the remainder property resulting from such acquisition.

New Mexico State Law governs the measure of damages and benefits as follows:

“In any condemnation proceeding in which there is a partial taking of property, the measure of compensation and damages resulting from the taking shall be the difference between the fair market value of the entire property immediately before the taking and the fair market value of the property remaining immediately after the taking. In determining such differences, all elements which would enhance or diminish the fair market value before and after the taking shall be considered, even though some of the damages sustained by the remaining property, in themselves, might otherwise be deemed non-compensable. Further, in determining such values or differences therein, elements which would enhance or benefit any property not taken shall only be considered for the purpose of offsetting any damages or diminution of value to the property not taken.” ((NMSA 1978, Section 42A-1-26 (1981))

Damages are defined as that portion of the difference between the fair market value of the remainder property, as a part of the whole property, prior to the acquisition, and the fair market value of the remainder property after the acquisition, found to be in excess of any benefits.
Damages to the remainder property resulting from a partial acquisition such as a loss in utility, a change in highest and best use, a change in proximity to the highway, a loss of access, etc., are often found to be incurable. In this event, the amount of damages can only be estimated utilizing a before and after analysis and must be reported by the Appraiser.

In cases where the nature of the damages are such that the loss could be feasibly offset by the replacement or substitution of an equivalent item or condition, the damages may be measured and reported utilizing a “cost-to-cure” method. This estimate must be adequately documented by the Appraiser and must not exceed the dollar amount of damages which would accrue without such cure, as determined by a before and after analysis.

There are basically two types of benefits that the subject property may experience as a result of a highway project:

1. General Benefits. Those that accrue to the community at large, to the area adjacent to the project, or to other property similarly situated as the property to be acquired, but not subject to acquisition.

2. Special Benefits. Those which accrue directly and solely to the remainder property as a result of the acquisition of a portion of the property.

49 CFR 24.103(b) states:
“To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.”

In accordance with state law, both General and Special Benefits may be set off against damages to the remainder property, but not against the fair market value of the property to be acquired.

Since the Appraiser must analyze the before and after acquisition values of the remainder property in the development of appraisals for all partial acquisitions, the Appraiser must, at least, report the fact that they were considered, even when no damages or benefits to the remainder property are found to result from the acquisition. The Appraiser shall include in the report, a before and after analysis in the event that the acquisition results in benefits and/or damages other than those that can be measured by a cost-to-cure method.
Section 1.13-Access Rights

Payment for full or partial control of access on an existing highway (i.e., one not on a new location), based on elements compensable under applicable state law may be eligible for Federal reimbursement. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

A legal opinion by the Department’s OGC revealed the following:

1. In State ex rel., State Hwy. Com’n v. Hesselden, 84 N.M. 424, 504 P.2d 634 (1973), the New Mexico Supreme Court concluded that the following items of damages, “loss of view, impaired ingress and egress and circuitous indirect access” are “compensable consequential elements of damage in a partial taking and to deny compensation for these damages would violate the statute and the New Mexico Constitution.”

2. The Uniform Jury Instruction, 13-705, reads in pertinent part:

   In addition to the money damages to be paid to the owner for the property actually taken, you shall determine whether the owner should also recover special items of money damages in connection with the remaining property. In so doing, you shall first determine whether the following special items of claimed damages have been proved to the owner:

   A. Change of grade;
   B. Loss of view;
   C. Impaired ingress, egress and circuitous indirect access, etc.;
   D. Cost of fencing;
   E. Re-establishment of parking areas and signs;
   F. Loss of fertilizing;
   G. Re-establishment of irrigation works;
   H. Relocation expense.

3. Jury Instruction 13-719 “Access; loss of.” states:

   The (condemning authority) may control, regulate and designate reasonable access to and from the owner’s property, but, if such control, regulation or designation is unreasonable, the owner is entitled to compensation for said limitation of this access.

Whenever there is a question as to whether or not damages resulting from circuitry of access are compensable, the Appraiser shall obtain a legal opinion, through the Appraisal Unit Supervisor.
Section 1.14-Non-Right of Way (NRW) Parcels

A Non-Right of Way (NRW) parcel is a property acquired by the Department, outside of the required highway right of way. The NRW usually contains one or more of the following elements:

1. It may have suffered a loss in value as a result of a partial acquisition, to the extent that it has negligible economic utility or value (an uneconomic remnant);

2. It is purchased in lieu of substantial damages thereto;

When significant severance damages are anticipated to the remainder property from a partial acquisition, a Before and After Appraisal will be prepared. An NRW parcel is created to differentiate the property from right of way property. The Department determines when and if an NRW parcel shall be acquired in the public interest, in accordance with state law.

Most NRW parcels are identified prior to approval of the final right of way maps. However, in the event that the Appraiser concludes that an additional NRW parcel is warranted, the Appraiser shall prepare and submit a written recommendation of such to the Appraisal Unit Supervisor. Subject to the approval of the Right of Way Bureau Chief the Supervisor shall submit the recommendation to the Lands Engineering Section requesting that the NRW parcel be legally described and added to the Right of Way maps and construction plans.

The partial acquisition and NRW parcel shall be appraised as one complete acquisition, but separately allocated within the report.

Occasionally, an appraisal of an NRW parcel may be required in situations such as those where a property owner desires to acquire an adjacent NRW parcel in exchange for the acquisition of his or her property. In cases such as these, the NRW parcel shall be appraised as a separate and complete property in accordance with the procedures set forth in this Volume of the Handbook. In addition to comparable sales in the open market, the Appraiser may consider previous sales of excess land by the Department.

Section 1.15-Utilities and Railroad Property

The required adjustment or relocation of privately-owned utility facilities, such as service connections and meters for electric, gas, water, sewer, etc., situated on private property that is subject to a partial acquisition by the Department, is considered to be a
compensable damage, and is typically handled by the Right of Way Bureau. The Appraiser shall be responsible for estimating the amount of damages associated with such adjustment or relocation, which usually can be measured using a cost-to-cure method.

The required adjustment or relocation of all other utility facilities is handled by the Utilities Unit, of the Right of Way Bureau. Any question as to the responsibility for utility facilities shall be directed to the Utilities Unit Manager.

Railroad property falls into two basic categories; operating (active railroad) and non-operating. All operating property is handled by the Utilities Unit. Although non-operating property is generally a responsibility of the Right of Way Bureau, determinations of such shall be referred to the Railroad Unit Manager on a case by case basis.

Section 1.16-Water Rights

Surface and underground waters in New Mexico belong to the public, and therefore, are subject to appropriation in accordance with state law as administered by the Office of the State Engineer. Any appropriation in which public waters are diverted by man-made means must be made with the intent to apply the water to a beneficial use such as crop irrigation, commercial/industrial use, recreational use, or municipal and domestic water supplies (highway construction is considered a beneficial use of public waters). Water rights are legally documented via permit issued by the Office of the State Engineer and may be purchased, sold, leased, and/or transferred.

The Appraisal Unit is concerned with water rights only to the extent that they affect the value of real property. When using comparable sales that include water rights, the Appraiser may find it necessary to conduct a separate valuation study of water rights alone, in order to estimate the value of the property exclusive of such rights. In some basins in New Mexico, water rights designated for irrigation purposes are considered inseparable from the irrigated land, and in this regard, the Appraiser may have to employ special valuation methods that measure the contributory value of the water rights to the value of the property as a whole in order to derive the fair market value for the property to be acquired. The appraiser shall alert the Appraisal Unit Supervisor in all cases where there is a chance that water rights will be acquired as a result of the proposed project.

The Right of Way Bureau employs a water rights agent, and questions in regard to the general acquisition and disposition of water rights shall be directed to this person. Any questions relating to the valuation of property involving water rights shall be directed to the Appraisal Unit Supervisor.
Section 1.17-Wells and Irrigation Ditches

Acquisition related damages resulting from the required relocation or loss of a water well or irrigation ditch are considered to be compensable to the extent of the cost to replace the physical well or ditch as a cost-to-cure item, as well as the cost to maintain or replace the water right and supply.

The Department’s practice is to not relocate water wells, but rather to compensate property owners for their costs of the relocation of such. Damages associated with displaced wells are usually measured using a cost-to-cure method, and where a new water source is required, may exceed the physical cost of the well. The cost of well drilling, pumps, windmills, stock tanks, etc. are best documented by obtaining written estimates from local well drillers and contractors. When the location of the well is not reasonably certain, the Appraiser should request, through the Appraisal Unit Supervisor, a hydrologist’s study and report upon which to base his or her estimate. Additional cost associated with transporting the water from a new location, if required, is also considered to be a compensable damage item.

For the purposes of the Department, irrigation ditches, acequias, and canals are classified as either private or public (serving several users). Damages resulting from the acquisition of property requiring relocation of a private ditch are normally measured using a cost-to-cure method, and in some instances, may exceed the value of the existing ditch. The right of way necessary for the relocation and reconstruction of public ditches is usually acquired by the Department and conveyed to the governmental or quasi-governmental agency administering the ditch, acequia or canal. If the construction and/or Right of Way maps and construction plans do not indicate the manner in which relocation of a ditch is to be handled, the Appraiser shall seek direction through the Appraisal Unit Supervisor.

Section 1.18-Fencing and Gates

Fences and gates that require removal as a result of a highway project are normally replaced in kind by the Department. Exceptions to this practice occur when right of way fencing is not included as a construction item in the project, or when the existing fence is significantly superior to the fence proposed by the Department. In these cases, the full value of the displaced fence, or the difference in value between the higher quality existing fence and the Department’s proposed fence, shall be considered as a cost-to-cure damage by the Appraiser.

The fair market value of all displaced cross fencing located within the taking, if not included in compensation in the fair market value estimate, must be included according to its value in place. This value may be measured by the replacement cost new less any accrued depreciation if applicable. This is not a cost to cure damage item.
If the property owner desires to keep the existing fencing, the salvage value of same shall be deducted from compensation.

**Section 1.19-Crops**

In regard to crop-producing property, the U.S. Department of Agriculture offers a variety of subsidy programs which may affect the value of the property. If the property to be appraised is found to be enrolled in one of these programs, the Appraiser should contact the local office of the agency administering the program, for any details needed to analyze its effect on the value and compensation for the property.

Loss of crops as a result of a partial acquisition, is considered to be a compensable damage for which compensation shall be based on documented and verified estimates of the expected yield and current selling price of the crops, less the direct expense of planting and growing the crops.

**Section 1.20-Mobile Homes**

When appraising a property for the Department, in which the proposed acquisition will include or affect a mobile home, the Appraiser must decide whether the mobile home is considered to be real property or personal property by appraisal industry standards.

1. This decision shall be based, along with other relevant data, on the following criteria:

   A. The type of property for which the mobile home is assessed and/or licensed by the County.

   B. The manner in which the mobile home is affixed to the real estate, including the source of utilities.

   C. Intent of the property owner as to the permanent or temporary status of the mobile home.

   D. Is the mobile home titled or has the title been surrendered and the mobile home is considered affixed to the real estate.

2. The Appraiser shall consult with the Appraisal Unit Supervisor whenever the real or personal property nature of a mobile home is unclear.

The procedure for appraising a property which includes a mobile home as part of the realty is the same as for all other improved property. In appraising property which
includes a mobile home that is considered to be personal property, the Appraiser shall only include those items that are considered to be part of the real estate, such as driveways, patios, porches, wells, septic systems, and other permanent site improvements.

When the acquisition of the property includes relocation of the occupants of a mobile home that is considered to be personal property, the Appraiser shall follow the procedure described in the Special Relocation Considerations Chapter 4, Section 1.23 of this Volume of the Handbook.

Section 1.21-Salvage Value

If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be the difference between the amount determined to be just compensation for the owner’s entire interest in the real property and the salvage value of the retained improvement.

The term Salvage Value means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer’s expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale expected on that basis.

*Salvage value* may be simply defined as the value of real property improvements that must be removed at the buyer’s expense from the property. Salvage Value is further defined in Title 49 CFR Part 24.2(a)(23).

All appraisals of parcels containing real property improvements scheduled to be removed after acquisition by the Department shall include an estimate of salvage value. While often found to be a minimal value, this estimate shall be adequately supported by market evidence (when available), a contractor’s estimate, and/or Department guidelines, and prominently stated within the appraisal report (or Waiver of Appraisal Communication).

Section 1.22-Trade Fixtures and Equipment

The Appraiser shall refer to the following definitions and guidelines in appraising property that includes trade fixtures and/or equipment.
1. Personal property is identifiable as portable and tangible objects which are considered by the general public as being “personal,” e.g., furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment.

2. A fixture is an article that was once personal property, but has been installed in or attached to the land or building in some more or less permanent manner, so that it is regarded in law as part of the real estate.

3. A trade fixture, also called a chattel fixture, is an article that is owned and attached to a rented space or building by a tenant and used in conducting a business. Trade fixtures are considered to be personal property regardless of how they are affixed. Care must be considered when valuing the manner in which the trade fixture is attached to the real estate.

4. To decide whether an item is a trade fixture, and therefore personal property, or part of the real estate, courts use the following criteria:

   A. The manner in which the item is affixed. Generally, an item is considered personal property if it can be removed without serious injury to the real estate or itself. There are exceptions to this rule.

   B. The character of the item and its adaptation to the real estate. Items that are specifically constructed for use in a particular building or installed to carry out the purpose for which the building was erected are generally considered permanent parts of the building.

   C. The intention of the party who attached the item. Frequently, the terms of the lease reveal whether the item is to be permanent or to be removed at some future time. (The Appraisal of Real Estate, Current Edition)

If the Appraiser is unable to decide whether trade fixtures or equipment are classified as real property or personal property, the Appraiser should seek the assistance of the Appraisal Unit Supervisor and/or the Appraisal Review Unit Supervisor.

When relocation of the occupants of the property is involved, the Appraiser shall follow the procedure described in the Special Relocation Considerations Chapter 4, Section 1.23 of this Volume of the Handbook.

Section 1.23-Special Relocation Considerations

Considering the relatively lengthy processing requirements associated with relocation, all appraisals of acquisitions involving relocation assistance shall be given first priority by the Appraiser.
For each appraisal of property in which the acquisition may require relocation of any real and/or personal property, the appraiser should advise the Relocation Assistance Unit, and must communicate in writing such conditions to the Review Appraiser assigned to the project.

In the appraisal of property which requires relocation assistance for the occupants of a mobile home that has been considered to be personal property, the Appraiser shall contact the Relocation Unit Supervisor for the purpose of discussing the Department’s intent in regard to the purchase or relocation of the mobile home.

When the intent of the Department is to acquire the mobile home, the Appraiser shall include a valuation of such in the appraisal of the subject property. The valuation of a mobile home as personal property is typically based on estimates from professional mobile home dealers, and shall be clearly separated from the realty in the subject appraisal report.

In situations involving a homesite with excess land or where the land may have a higher use than homesite and/or the improvements have little or no contributory value based on the Highest & Best use as reflected in the value conclusion, the Appraiser will provide allocations based on the valuation of a “typical homesite” for the area. The values (land and improvements) are derived from a Market Analysis if possible. If data is limited the valuation of the improvements may be based on “replacement cost new”, less observed depreciation; however, care must be considered when utilizing this method and justification must be provided.

Parcels on a project, which involves relocations, shall be appraised and submitted for review first.

Section 1.24-Non-Compensable Items

The following are types of damages, which have generally been found by the New Mexico Courts to be non-compensable and shall not be included in appraisals of total acquisitions:

1. Damage to business.
2. Expense for moving personal property.
3. Loss of good will.
4. Damages arising from non-residential owner’s inability to locate an acceptable substitute.
5. Loss of profits, due to the necessity for moving businesses to some other location, or due to interruption of business by reason of and during the course of construction of public improvements, or for any reason at all.

6. Living expenses incurred while a relocation or resettlement is being accomplished.

7. Temporary interference with access or business during construction.

8. Damages arising from reasonable diversion of traffic.


In general, all types of damage, which may be considered to be potential, speculative, and remote, shall not be included in appraisals of partial or total acquisitions. If an Appraiser is in doubt whether an item is compensable or non-compensable, he shall request a legal opinion through the Appraisal Unit Supervisor.

**Section 1.25-Special Environmental Considerations**

If at any time, the Appraiser reasonably suspects the presence of hazardous material within, or near, a property subject to acquisition by the Department, the Appraiser shall immediately notify, and request the guidance of, the Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor, who will in turn, notify the Right of Way Bureau Chief, the PDE, and the Environmentalist to take the appropriate action.

Due to the unique nature of each contamination problem, the real estate appraisal industry has yet to provide any practical method for appraising property affected by hazardous material, other than to simply deduct a documented professional consultant’s estimate for the “clean-up” from the estimated fair market value of the property as though “clean”. The Appraiser must use extreme care to clearly limit and condition these types of appraisal reports to the extent of his or her own non-professional knowledge of hazardous material and the accuracy of information provided by others. If contamination issues are observed or made known to the Appraiser, he will immediately notify the Appraisal Unit Supervisor and or Appraisal Review Unit Supervisor for direction. Typically the contamination remediation costs will be subtracted from the appraised value “as though clean” to determine the compensation.
SECTION 2-OWNERSHIP

Section 2.1-Title

Prior to initiating property owner contacts for properties to be appraised, the Appraiser shall review the current title reports for the following:

1. Conflicts in ownership for which the Appraiser will require direction in regard to the property owner contact.

2. Consistency with the Right of Way maps and construction plans and identification of the parties to real estate contracts. Typically the Right of Way maps and construction plans do not indicate the equitable owner, or purchaser, in a real estate contract.

3. Identification of any existing easements, restrictions, reservations, mineral rights, and/or water rights that might affect the fair market value of the subject property.

4. Sales of the subject property during the last five years.

5. Legal descriptions for larger parcels.

6. Recorded leases.

In the event that the Appraiser discovers an ownership that is different than that shown in the title report or the Right of Way maps and construction plans, the Appraiser shall make an effort to obtain a deed and then request in writing, a revision of the title report from the Lands Abstracting Supervisor who will request a revision of the Right of Way maps and construction plans.

Title reports, as used by the Appraiser, should be no more than six months old. Updates shall be requested through the Appraisal Unit Supervisor to the Lands Abstracting Supervisor.

Section 2.2-Property Owner Contacts

A property owner contact by the Appraiser is required for each proposed acquisition of real property except for those, which the appraisal requirement has been waived. The property owner and or his/her representative shall be given an opportunity to accompany the appraiser during the appraiser’s inspection of the property.
Interviews with owners who are in occupancy of affected properties shall be conducted on the site, if possible. Contacts of non-resident and out-of-state owners shall be made via mail.

In the event that the Appraiser is unable to contact the owner or his or her agent at the site or by telephone, the Appraiser should immediately prepare a property owner contact letter and send it by certified mail (return receipt requested) to the last known address of the owner. The return receipt shall be retained in the file as evidence of the attempted contact.

The certified letter to the owner must include an invitation to meet at the property owner’s convenience at the site. If no reply has been received from the owner within ten (10) calendar days of his or her receipt of the certified letter, the Appraiser may then assume that the owner does not wish to be present during the inspection.

In regard to Real Estate Contracts (REC’s), property owner contact should be made with both the legal interest holder, or seller, and the equitable interest holder, or purchaser. Both buyer or seller may be entitled to compensation for the acquisition, but the Appraiser is not in a position to make a determination of such and is not expected to do so.

All information relating to contact with the property owner, including pertinent items discussed during the interview, shall be reported on the Sales History and Property Owner Contact form and included in the subject appraisal report.

Section 2.3-Donations

In the event that a property owner voluntarily elects to make a gift or donation of real property to the Department, the property owner is to be informed and writing of his/her right for compensation and/or an appraisal. The property owner must acknowledge this fact in writing.

Under no circumstances may a Staff Appraiser, employed by the Department or other T/LGA, be used to appraise real property to be donated to the Department. The Internal Revenue Service has ruled that a Staff Appraiser is classified as a “qualified appraiser exclusion” and may not be used to appraise certain donations of real property claimed as charitable contributions for federal income tax purposes.

In those cases where a property owner elects to exercise his or her right to an appraisal, the Department shall select a fee appraiser, acceptable to the property owner, who meets current Internal Revenue Service standards, as reasonably confirmed by both the Department and the property owner.
In accordance with 23 CFR 710.505 (b), the Department may review the appraisal in order to determine the amount of the credit to be received by the state for the donations.

**Section 2.4-Leasehold Interests**

In regards to the appraisal of real property subject to leases and/or tenancies, the extent of the tenant’s interest, as well as the owner’s interest in the total ownership of the property must be evaluated by the Appraiser.

When estimating the value of a leased fee estate or a leasehold estate, the Appraiser must consider and analyze the effect on value, if any, of the terms and conditions of the lease(s).

If the tenancy consists of a long term contract lease at a below market rental rate, the tenant most likely has an equitable interest in the property and is entitled to a proportionate share of the total compensation for the property. Using the appropriate appraisal methodology for determining leasehold interests, the Appraiser shall provide a breakdown in the appraisal that clearly states both the value of the owner’s interest and the value of the tenant’s interest in the real property.

In almost every leasehold situation, the fair market value of the owner’s interest plus the fair market value(s) of the tenant’s interest(s) should not exceed the total fair market value of the fee interest in the property. However, there are cases where a property subject to a long term lease at a rate above of the current market rate, will have a value in excess of fair market value. In cases such as these, the Appraiser shall obtain, through the Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor, an opinion as to whether or not said excess is compensable by law.

**Section 2.5-Government Lands**

Land administered by most government agencies is acquired via license agreement, use permit, lease, etc., for which appraisals are not required. The following are types of government land acquisitions that do require appraisals:

1. New Mexico State Park and Recreation Division of the Energy, Minerals, and Natural Resources Department. Certain federally subsidized property subject to land exchange.

2. Any governmental or quasi-governmental entity (such as conservancy districts, Land Grants, etc.) in which there will be a conveyance of the fee and/or easement ownership of the property.

Government land acquisitions should be given priority by the Appraiser only from the
standpoint that the appraisals are subject to a relatively lengthy processing procedure by the affected agency. The Appraiser in completing assignments of this nature, as outlined herein, shall follow all other standard appraisal procedures.

When appraising government property in which delineation of the larger parcel is unclear, the Appraiser shall arrange to meet with a representative of the appropriate office for the purpose of discussing the issue of the larger parcel, prior to making a determination of such. The property owner contact and inspection of the property should be made with the related government’s field agent assigned to the subject property.

Section 2.6-Indian Lands

Indian Lands in New Mexico fall into five categories, which are defined as follows:

1. TRIBAL TRUST LANDS. Lands owned by the United States Government in trust for the tribe. This land may be located either within or outside the boundaries of the recognized reservation or pueblo.

2. RESERVATION. Tribal trust lands located within a recognized reservation. Reservations may include private claims of the Tribe, an individual Indian, or a non-Indian entity.

3. PUEBLO. Lands located within a recognized Pueblo. The Pueblo generally holds legal title, but the federal government has restraints upon alienation of the lands. Pueblos may include private claims of the Tribe, an individual Indian, or a non-Indian entity.

4. ALLOTMENT. Land owned by the United States Government in trust for individual Indians or their heirs for a certain period of time. Fee patents (to private ownership) have been issued for some allotments.

5. TRIBAL FEE LAND. Private land owned by the Tribe.

The Bureau of Indian Affairs (BIA) must be contacted when appraising Native American Lands. It has been determined by the Department of the Interior’s Solicitor the provisions of the “Uniform Appraisal Standards For Federal Land Acquisitions” shall be followed.

Indian land acquisitions should be given priority by the Appraiser only from the standpoint that the appraisals are subject to a relatively lengthy processing procedure by the affected tribe and the BIA. Upon receipt of the appraisal assignment, the Appraiser shall first contact the Right of Way Bureau’s Indian Acquisition Agent who shall in turn contact the BIA and provide them with two complete sets of the Right of Way maps and two sets of the construction plans. The Appraiser in completing assignments of this nature, as outlined herein, shall follow appraisal procedures requirements as set forth in
the Section. The ROW Tribal Indian Acquisition Agent and the BIA designated acquisition agent must always be included in any negotiations.

SECTION 3-APPRaisal FORMATS

Section 3.1-Standards of Appraisal

Appraisals are a requirement in the acquisition process. Reports should be clear and concise, and written in a manner such that they may be understood by acquisition agents and property owners, as well as reviewers. It is strongly recommended that any analyses be kept simple and that confusing methods and techniques, such as discounted cash flow analyses, be avoided whenever possible.

All appraisals prepared for the Department, shall be developed, reported, and reviewed in accordance with the Uniform Act, Code of Federal Regulations and the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation (USPAP). Departure from the Uniform Act, in any form, shall not be permitted, and any departure from the USPAP shall be made only as directed by the Department and in conformity with the Departure Provision and/or Jurisdictional Exception of said the USPAP.

The level of documentation for an appraisal depends on the complexity of the appraisal problem. A Certified appraisal shall be prepared for all acquisitions. A Certified appraisal shall reflect nationally recognized appraisal standards; USPAP; and including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser’s analysis of that data, to support the opinion of value.

A separate appraisal report shall be prepared for each “Ownership per Larger Parcel”.

At a minimum, all real property appraisals shall contain the following items:

1. The purpose and/or the function of the appraisal, a discussion of the scope of work, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

2. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the effect of the acquisition, an adequate description of the remaining property, any improvements on the property, including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property.
3. All relevant and reliable approaches to value consistent with established Federal and Federally-assisted program appraisal practices. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser’s opinion of value.

4. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction, a description of comparable sales versus the Subject Property and a location map showing all comparable sales and the Subject Property.

5. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

6. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

In developing a real property appraisal, an appraiser must:

1. Be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

2. Not commit an error of omission or commission that affects the appraisal;

3. Not render appraisal services in a careless or negligent manner.

4. Consider and analyze any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business;

5. Consider and analyze any prior sales of the property being appraised that occurred within the past five years; and

6. Consider and analyze the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

7. Disregarding any decrees or increase in the market value caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.
In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

**Section 3.2 Appraisal Report**

A Certified Appraisal in Standard Narrative format is required for all acquisitions in which the valuation or acquisition problem is considered to be complex in nature; or the estimated total compensation exceeds $10,000; or the compensation includes benefits and/or damages other than those that can be measured by a cost-to-cure method.

A before and after analysis shall be prepared and included in the standard narrative appraisal report for all partial acquisitions in which the estimated total compensation includes benefits and/or damages other than those that can be measured by a cost-to-cure method.

A “Restricted Appraisal Report” will not be accepted.

1. Each Appraisal Report must:

   A. clearly and accurately set forth the appraisal in a manner that will not be misleading.

   B. contains sufficient information to enable the person(s) who receive or rely on the report to understand it properly.

   C. clearly and accurately disclose any extraordinary assumptions or limiting conditions, opinions and conclusions that directly affect the appraisal and indicate its impact on value.

   D. Identify and describe the real estate being appraised with title information, including a five-year sales history of the subject property.

   E. State the real property interest being appraised.

   F. State the intended user/s by name.

   G. Include name, address and phone number/s of the owner/s as well as leasehold and tenant information.

   H. State the purpose and intended use of the appraisal.

   I. Define the value to be estimated.

   J. State the effective date of the appraisal and date of the report.
K. State the extent of the process of collecting, confirming, and reporting data.

L. Describe the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

M. Explain and support the exclusion of any of the usual valuation approaches.

N. Describe any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from, the requirements of USPAP Standards Rule 1.

O. Describe the appraiser’s analysis and opinion of the conclusion of market value.

P. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of Highest and Best Use, and at least a 5-year sales history of the property.

2. An appraiser who signs a real property appraisal report prepared by another accepts full responsibility for the appraisal and the contents of the appraisal report.

3. Each written real property appraisal report must contain a signed certification that is similar in content to Standards Rule 2-3, USPAP.

The Department has developed a basic format in accordance with the above Regulations and Standards, which shall apply to all appraisals prepared for the Department.

A before and after analysis shall be prepared and included in the Appraisal Report for all partial acquisitions in which the estimated total compensation includes benefits and/or damages other than those that can be measured by a cost-to-cure method.

A separate Appraisal report shall be prepared for each ownership per larger parcel. If more than one parcel is to be acquired from that ownership/larger parcel, the estimated value and compensation for each individual parcel shall be separately allocated therein.

A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real
property where appropriate.

The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owners.

1. A Letter of Transmittal addressed to the Right of Way Bureau Chief and including an identification of the subject parcel(s) and project; a reference to the Basic Data, if applicable; the number of pages in the narrative and the number of exhibits; the effective date of the appraisal; the estimated value and compensation for the property; and the signature of the Appraiser.

2. A Title Page and a Table of Contents identifying all included items: the preface; Department forms; the narrative with consecutively number pages; and the addenda with consecutively lettered exhibits.

3. The Required Department Forms completed and signed by the Appraiser including: (1) “Appraisal Summary”; (2) “Sales History and Property Owner Contact”; and (3) “Certificate of Appraiser”. The Department Forms contain a total of four pages and all pages must be completed.


5. Identification of the subject property including the specific location of the subject property and general descriptions of the larger parcel, the proposed project, the property to be acquired, and the remainder property.

6. A statement of the purpose of the appraisal; to estimate the fair market value of the subject property and the total compensation relative to the acquisition.

7. Summary of Appraisal Problem.

8. Identification of the property rights appraised including a description of all known and/or observed encumbrances affecting the value of the subject property and the disposition of mineral and water rights, if any.

9. The function and scope of the appraisals including an identification and explanation of any permitted departures from appraisal guidelines.

10. Statement of all assumptions and limiting conditions affecting the appraisal.

11. Qualifications of the Appraiser including professional education; degrees, designations, licenses, and memberships; professional experience, and expert
witness qualifications.

12. Description of the general area and the subject neighborhood, limited to data, which is shown to specifically affect the value of the subject property, and only that information that may be linked in some meaningful manner to the problem at hand.

13. Description of the project and its influence on the subject neighborhood and property.

14. Physical description of the subject site (the larger parcel, the property to be acquired, and the remainder property, both before and after the acquisition, if applicable); the legal description(s) of the parcel(s) being acquired as provided by the Department; and a copy of applicable portions of the Right of Way Design Plans or a reference to said Plans as part of the Basic Data Book (Section 3.6), if applicable.

16. Legal Description of the Larger Parcel.

17. Description of the subject Larger Parcel, including location, size, topography, shape, access, landscaping, utilities, zoning and buildings, structures or improvements in the taking that may be damaged or impacted.

18. Photographs of the subject property including both the larger parcel and the parcel to be acquired, and a reference to the Photographic Log.

19. Identification and a description of the zoning and use of the subject property.

20. The Appraiser’s opinion of the highest and best use of the subject property, including the reasoning in support of the opinion.

21. Identification and a description of the data considered, including all comparable sales and rentals used in the valuation. (Discussion of comparable sales versus the subject, rental charts and location maps to demonstrate all comparable sales versus the subject are required by the Department.)

22. All relevant and reliable approaches to value consistent with recognized professional appraisal standards, or an explanation for the exclusion of any of these approaches; and a reconciliation of all approaches used in the appraisal.

23. Before and after analysis shall be prepared and included in the Appraisal.
Report for all partial acquisitions in which the estimated total compensation includes benefits and/or damages other than those that can be measured by a cost-to-cure method. Or a statement indicating that the before and after acquisition values of the property were considered where it was concluded the remainder property was not subject to benefits and/or damages, other than those measurable by a cost to cure method.

24. Statement of the estimated fair market value of the subject real property; the estimated value of the net damages and/or benefits, if applicable; and the estimated total compensation relative to the acquisition.

25. Location Maps including State, City and Neighborhood.

All sales data used in the analysis must be personally confirmed by a significant contributor (signatory) to the appraisal. A full disclosure shall be prominently stated within the report when the confirmation is obtained from a third party (i.e., a non-contributing appraiser). In any event, the data must be presented in a manner so as not to mislead the reader as to its origin, and must include, (1) the name of the source, (2) the name of the recipient(s), (3) the date of the confirmation, (4) Current Use, (5) Photographs, (6) Comments to each comparable sale and (7) Grantor(s) & Grantee(s).

Specific dollar and/or percentage adjustments without sufficient support are not acceptable and a qualitative analysis should be used, if available data is limited and is not able to reflect sufficient support for the adjustments.

Research and analysis of assessments and taxes for each property are required. If the valuation is based on a use lower than that for which the property is assessed, a reasonable explanation must be prominently included in the report.

The Appraiser shall personally confirm all sales data used when obtained from the buyer, seller, broker, title examiner, or non-contributing appraiser.

**Section 3.4-Before and After Analysis**

The before and after acquisition values of the subject property must be analyzed for every partial acquisition in order to determine the necessity of including a before and after analysis in the report. Therefore, all appraisal reports of partial acquisitions shall contain, at the very least, a statement that the before and after values were considered even when no damages or benefits to the remainder property are found to result from the acquisition.

A Before and After analysis shall be included in the report of any appraisal of a partial acquisition in which the estimated total compensation includes, or the Department determines that there may be a possibility of, benefits and/or damages other than those that can be measured by a cost-to-cure method.
The basic procedure for developing and reporting a before and after analysis is outlined as follows:

1. Estimate the fair market value of the larger parcel, as though acquisition were not proposed, using all of the recognized approaches to value, as applicable, and reconciling the value indications from each approach used.

2. Determine the fair market value of property to be acquired and the fair market value of the remainder property as part of the larger parcel, before the acquisition, by allocating applicable portions of the estimated fair market value of the larger parcel to each.

3. Estimate the fair market value of the remainder property as a separate and complete property, assuming that the proposed acquisition has been consummated and the highway improvements are in place. Ideally, though not always possible, this is accomplished by applying the applicable approaches to value to separate sets of open market data, directly comparable to the remainder property after acquisition, and reconciling the value indications from each approach used. (A separate reconciliation for this estimate is required.)

4. Estimate the total net damages and/or net benefits by computing the difference between the fair market value of the remainder property, as part of the larger parcel, before the acquisition, and the fair market value of the remainder property after the acquisition. The nature, source, and amount of any and all damages should be clearly identified and described. Non-compensable damages and benefits resulting from project enhancement shall not be included in the net damage and/or benefit estimate. Both General and Special benefits may be set off against damages, but not against the fair market value of the property to be acquired.

5. Estimate the total compensation attributable to the acquisition, by adding the total net (compensable) damages, if any, to the fair market value of the property to be acquired.

Both valuations, before and after, must separately identify and describe the data considered and all relevant and reliable approaches to value consistent with recognized appraisal standards (or an explanation for the exclusion of any of these approaches), and include a reconciliation of all approaches used. The entire before and after analysis shall be incorporated into the Standard Narrative appraisal report for the subject property.

Any questions regarding before and after analyses shall be directed to the Appraisal Unit or the Appraisal Review Unit Supervisor.
Section 3.5-Specialty Reports

When the subject real property improvements include equipment, machinery, or specialty items that are found to substantially contribute to the value of the subject property, a separate valuation, or “specialty report”, may be required by the Appraisal Unit Supervisor. If the values of such items are estimated to exceed $500,000, an additional specialty report may be required by the Appraisal Unit Supervisor or the Review Appraiser, as approved by the Appraisal Unit Supervisor and or Right of Way Bureau Chief.

The specialty report must be separately prepared by either a qualified staff or independent fee specialist and, at a minimum, must contain the following:

1. Identification of the property and its ownership, including a reference to the subject real property, project number and parcel number.
2. A statement of the purpose of the report and a definition of value.
3. The function and scope of the report.
4. The effective date of the value estimate and the date of the report.
5. A detailed description of the property including plans, renderings, drawings, and photographs, as necessary.
6. Identification and a description of the information relied on and the analyses used to arrive at the value estimate.
7. A statement of the value estimate.
8. The assumptions and limiting conditions affecting the analyses and conclusions.
9. A signed and dated certification by the specialist.

All specialty reports shall be reviewed by a Right of Way Review Appraiser and if and when approved, transmitted to the Appraiser(s), through the Appraisal Unit Supervisor, for incorporation into the subject appraisal report(s).

Section 3.6-Basic Data Book
For projects involving multiple acquisitions, the Basic Data Book serves as an aid for the Appraiser, as well as the Department, in alleviating the unnecessary repetition in reporting required appraisal elements common to the majority of the individual appraisals.

As a general rule, a Basic Data Book shall be prepared for projects requiring ten (10) or more appraisals (excluding Waiver of Appraisal recommendations), and shall not be used for projects requiring fewer than this amount.

Since the Basic Data Book addresses topics in a manner so as to be applicable to all, or most, of the subject properties in general, the individual reports must include additional detail, as necessary, to fully describe and explain each required appraisal item.

The Basic Data Book may include information common to the individual appraisals such as, but not limited to, the following:

1. Additional sales data;
2. Detailed information of different analysis that was used in the individual appraisals to determine the adjustments to comparable sales such as:
   i) Location;
   ii) Market Condition/Time;
   iii) Physical characteristics, etc…

While some analysis may be appropriate, care should be taken to not over generalize adjustments to the comparable sales for items not applicable to all of the subject parcels.

The contents of the Basic Data Book will differ from project to project as the similarities of the properties differ. However, the Department requires that a format similar to the following, be used to organize those items which the Appraiser finds appropriate to include in the Basic Data Book.

1. A Letter of Transmittal addressed to the Right of Way Bureau Chief and including an identification of the subject parcel(s) and project; a reference to the individual appraisal reports; the number of pages in the narrative and the number of exhibits; the effective date of the basic data; and the signature of the Appraiser.

2. A Title Page and a Table of Contents identifying all included items: the preface; appraisal forms; the narrative with consecutively number pages; and the addenda with consecutively lettered exhibits.

3. A narrative section with numbered pages including the following items, as applicable:
A. Identification of the Properties
B. Purpose of the Basic Data Book
C. Property Rights that were considered
D. Function and Scope of the Basic Data Book
E. Date of Analysis
F. Assumptions and Limiting Conditions
G. Qualifications of the Appraiser
H. Area Data
I. Project Data
J. Zoning
K. Highest and Best Use
L. Overall Adjustments to Comparable Sales (Time, Terms of Sale, Etc.)
M. Comparable Sales Charts
N. Other Valuation Studies

4. An addenda section with lettered exhibits including the following items, as applicable:
   A. State and County Maps
   B. Vicinity Map
   C. Aerial Photographs
   D. Other Maps and Data (Zoning, Traffic, Etc.)
   E. Comparable Land Sales Map
   F. Comparable Land Sales Data and Photographs
   G. Comparable Improved Sales Map
H. Comparable Improved Sales Data and Photographs

I. Right of Way Maps

J. Photographic Log

The Basic Data Book can only serve as additional/ or supplementary data for the individual appraisal report. The Basic Data Book is not intended and shall not be construed to represent an appraisal report or any form of an opinion of value. It shall never be considered as a replacement of any required items stated in Section 3.3 and shall never be considered as part of the appraisal report.

Section 3.7- Waiver of Appraisal Report

Waiver of Appraisal Report is permitted when the valuation and acquisition problem is non-complex and the estimated total compensation does not exceed $10,000; and all damages, if any, can be measured by a cost-to-cure method.

Waiver of Appraisal Report is not permitted on Tribal/Local Government Agency projects.

For projects involving multiple acquisitions all of which fall into the “waiver” category. In general should be used on projects on a case to case basis as determined by the Appraisal Unit Supervisor and/or Appraisal Review Unit Supervisor. Waiver of Appraisals may be prepared in lieu of a Certified Appraisal for all acquisitions when the above criteria are met. It is not necessary to afford the property owner the opportunity to accompany the Department employee on a property inspection. Since waivers are not appraisals it is suggested that the following items be included in this document or the Waiver Valuator’s work file.

1. Area Data
2. Project Data
3. Zoning
4. Comparable Sales Charts
5. Comparable Sales Map(s)
6. Right of Way Maps
7. Parcel Summary
If the parcel cannot be negotiated, the Appraisal Unit Supervisor and/or Appraisal Review Unit Supervisor shall be notified that an appraisal report and review are required in order to proceed to an Order of Taking hearing.

A Waiver of Appraisal is not intended and shall not be construed to represent an appraisal report or any form of an opinion of value. It shall never be considered as an appraisal report or as part of an appraisal report.

Section 3.8-Copies of Appraisal Reports/Basic Data Books

A minimum number of one Electronic(PDF) copy and three printed copies (four printed copies for Appraisal of Tribal Land) with original signatures, including the data necessary to support the conclusion of value, are required for all Department appraisals. The printed appraisal reports/Basic Data Books shall be bound together and shall contain adequate dividers. Although the type of binding for the reports is optional all copies shall be bound by using the same type of binding.

All copies of appraisal reports, including the Basic Data Book (if applicable), shall be transmitted to the Right of Way Bureau Chief through the Appraisal Unit Supervisor.

After an appraisal has been reviewed by Appraisal Reviewer, a copy of the appraisal report/Basic Data Book shall be retained by the Department in the Right of Way Bureau project file. Where revision is necessary, the Appraiser shall furnish revised or supplemental portions of the report to be separately included in the same project file. Under no circumstances, shall the original, reviewed appraisal report be altered in any manner. Revisions agreed to by the appraiser will be furnished as a revised attachment to the original appraisal report.

Section 3.9-Improvement Descriptions

Improvement descriptions reported in appraisals for the Department are used throughout the acquisition process and must also meet the special needs of the Relocation and Property Management Units. These descriptions shall be made in accordance with recognized appraisal industry standards, clearly identifying and describing each and every real property item included in the value and/or compensation estimate. See Special Relocation Considerations.

All significant improvements should be shown on the Right of Way maps and construction plans, and if not, a written request to include such items shall be made to the Lands Engineering Section, through the Appraisal Unit Supervisor. For major improvements, a supplemental improvement location certificate (survey) or plot plan should be obtained by the Appraiser and copies of such transmitted to the Relocation and Property Management Units.
The appraisal should include all plans, rendering, and drawings necessary to visually describe the improvements. At a minimum, the Appraiser shall include a floor plan including, but not limited to, dimensioned exterior walls, the interior layout, the location of entrances and exits, the location of major fixtures, and the size of the improvements. When functional utility or obsolescence of the improvements is found to be a relevant factor in the valuation, the interior layout must be shown in sufficient detail (interior walls, doorways, etc.) so as to visually describe the adequacies or deficiencies in the design of the improvements.

Section 3.10-Photographs

Identified photographs of the subject properties and comparable sales shall be included in all appraisal reports prepared for the Department. Photographs of the subject property shall include both the larger parcel and the parcel to be acquired, and shall depict all principal, above-ground improvements and/or unusual features affecting the value of the property. Interior photographs are required if the subject improvements are to be acquired or expected to be substantially damaged by a partial acquisition.

SECTION 4-VALUATION

Section 4.1-Fair Market Value

Except as otherwise authorized by the Department, fair market value is considered to be:

“the highest amount of cash a willing seller would take, and a willing buyer would offer, for the property if it were offered for sale in the open market for a reasonable time to find a purchaser, buying with knowledge of all the uses to which the property is suitable or adaptable; the seller not being required to sell nor the purchaser being required to purchase. (Source: Uniform Jury Instruction 13-711).”

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, assuming the buyer and seller are each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the 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, each acting in what he or she considers his or her own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
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. (49 CFR 24.2(a)(3))

Section 4.2-Compensation

Before the initiation of negotiations, the Department shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. See also 49 CFR 24.104. Promptly thereafter, the Department shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Department shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Department shall promptly re-establish just compensation and offer that amount to the owner in writing.

New Mexico State Law governs the measure of compensation and damages as follows:

“In any condemnation proceeding in which there is a partial taking of property, the measure of compensation and damages resulting from the taking shall be the difference between the fair market value of the entire property immediately before the taking and the fair market value of the property remaining immediately after the taking. In determining such differences, all elements which would enhance or diminish the fair market value before and after the taking shall be considered, even though some of the damages sustained otherwise be deemed non-compensable. Further, in determining such values or differences therein, elements which would enhance or benefit any property not taken shall only be considered for the purpose of offsetting any damages or diminution of value to the property not taken.” (NMSA 1978, Section 42A-1-26 (1981))

For the purpose of appraising real property subject to acquisition by the Department, the Appraiser shall be responsible for estimating the “total compensation” attributable to the acquisition. Total compensation, as used in this Volume of the Handbook, is defined as the total of the Appraiser’s estimate of the net damages (as offset by all benefits), if any, and the Appraiser’s estimate of the fair market value of the property to be acquired and or the authorized agent of the department as determined by the Right of Way Bureau Chief.

The Review Appraiser provides the estimate of “just compensation” to be used for the purpose of acquisition, either by approving the Appraiser’s estimate of total compensation, or by preparing a Reviewer’s Conclusion of Value. If the Reviewer
cannot accept the appraisal, the Appraiser must be given the opportunity to correct and or clarify information according to the requirements of this handbook.

Section 4.3-Function and Scope of the Appraisals

The function of most real property appraisals prepared for the Department is to provide a documented estimate of the fair market value and the estimated total compensation relative to the acquisition of the subject property for use by the Department in acquiring right of way for highway and other related purposes.

All appraisals shall be performed in accordance with the regulations, policies, and procedures of the Department and the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. Any departure from the Uniform Standards of the Foundation shall be made only as directed, in writing, by the Appraisal Unit Supervisor and as permitted by the Departure Provision and/or the Jurisdictional Exception of said Uniform Standards.

An appraiser may enter into an agreement to perform an assignment that calls for something less than, or different from, the work that would otherwise be required by the specific guidelines (rather than binding requirements), provided that prior to entering into such an agreement:

1. the appraiser has determined that the appraisal or consulting process to be performed is not so limited that the resulting appraisal, review, or consulting service would tend to mislead or confuse the client or the intended users of the report;

2. the appraiser has advised the Appraisal Unit Supervisor, in writing, that the assignment calls for something less than, or different from, the work required by the specific guidelines and that the report clearly identify and explain limited or differing scope of the appraisal, departures; and

3. Appraisal Unit Supervisor has agreed that the performance of a limited appraisal or consulting service would be appropriate.

If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.

The Appraiser shall clearly disclose and fully explain in each appraisal report prepared for the Department, any departure from the Uniform Standards of Professional Appraisal Practice.
Section 4.4-Assumptions and Limiting Conditions

The following are samples of general assumptions recommended to be included in appraisals for the Department.

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The property is appraised free and clear on any and all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. All information and conclusions in this report are based upon data secured from sources considered reliable and have been verified insofar as possible, however, the appraiser can neither guarantee nor be responsible for the accuracy of information furnished by others.
5. Sketches included with this report, being intended as visual aids, may not be drawn to scale and should not be construed as engineering reports or surveys.
6. A current survey of the subject property was not provided. The appraiser assumes no responsibility for information that a complete and accurate survey might reveal.
7. It is assumed that utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
8. In regard to temporary construction permits, if any, the appraiser assumes that the subject property, upon termination of the permit, shall be restored within a reasonable period of time, to a condition physically, functionally, and economically equal to its condition prior to the commencement of the permit.
9. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
10. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
11. It is assumed that all applicable zoning and use regulations and restrictions have been complied with unless a nonconformity has been stated, defined and considered in the appraisal report.

12. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

13. Unless otherwise stated in this report, the appraiser has neither observed nor has knowledge of the existence of hazardous material on or in the subject property. However, the appraiser is not qualified to make such determinations and therefore, assumes no responsibility for such. In the absence of professional documentation to the contrary, this appraisal is based on the assumption that there is no hazardous material within, nor affecting the value of, the subject property.

The following are samples of general limiting conditions recommended to be included in appraisals for the Department.

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

2. All value estimates provided in this report apply to the property interests as herein set forth, and any further partition or division of these interests into fractional interests invalidates the value estimates therefore.

3. Loss or removal of any part of this report invalidates the entire appraisal.

4. Except as hereinafter provided, copies of this appraisal report, in its entirety, may be distributed to such third parties as may be selected by the party for whom this report was prepared; however, selected portions of this report shall not be given to third parties without the prior written consent of the signatory thereto.

5. Possession of this report, or a copy thereof, does not carry with it the right of publication.

6. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior
written consent and approval of the appraiser.

7. The appraiser, by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

Each written real property appraisal report must clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.

Section 4.5-Zoning

In determining the highest and best use of a parcel, the Appraiser must consider only uses which are permitted by existing zoning unless it can be shown that there is a clear and reasonable probability of rezoning. The probability of rezoning must not be remote or speculative.

The rezoning, or the probability of rezoning, of a property as a result of the proposed project, should not be considered in arriving at the before value of the property. However, in determining the after value, the Appraiser must consider the rezoning that has occurred or may occur because of the impending project.

Section 4.6-Highest and Best Use

Highest and best use plays a vital role in determining the larger parcel, and in some cases, is the most important factor in making such determinations. Each appraisal prepared for the Department shall include a statement of the Appraiser’s opinion of the highest and best use of the property appraised and the reasoning in support of the opinion.

For partial acquisitions in which a change in the highest and best use of the remainder property, before and after acquisition, is anticipated, the Appraiser shall fully discuss the nature and source of the change, and its effect on the value of the remainder property in each condition. If a difference in these values is found to exist, the Appraiser shall prepare a before and after analysis.

For guidance in developing and reporting highest and best use analyses in appraisals prepared for the Department, the following should be noted.

1. Highest and best use may be defined as:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.
2. The purpose of the highest and best use analysis is different for highest and best use as though vacant and highest and best use as improved. An Appraiser should distinguish between the two types of highest and best use in the appraisal analysis, and the appraisal report should clearly identify, explain and justify the purpose and conclusions for each type.

3. The value of land is generally estimated as though vacant. (The exception to this rule is land with legally non-conforming improvements.) The highest and best use of land as though vacant must be considered in relation to its existing use and all potential uses.

4. The highest and best use of a property as improved pertains to the use that should be made of an improved property in light of its improvements. The use that maximizes a property’s return on a long-term basis is its highest and best use as improved.

5. The highest and best use of both land as though vacant and property as improved must meet four criteria. The highest and best use must be:

   A. Physically possible
   B. Legally permissible
   C. Financially feasible
   D. Maximally productive

   These criteria are usually considered sequentially. A use may be financially feasible, but this is irrelevant if it is physically impossible or legally prohibited.

6. In summary, if it appears that the land is not developed to its highest and best use because of improvements thereon, the Appraiser’s decision of highest and best use for the total property is based on whether the value of the property is greater than the value of the land if vacant. It may, therefore, be necessary to prove highest and best use through appraisal techniques which reflect comparisons of value from alternate premises.

7. Two separate Highest and Best Use analysis are required for Before and After valuations.
Section 4.7-Approaches to Value and Reconciliation

In the appraisal of real estate, three basic approaches to value are considered; these being the sales comparison (or market data) approach, the cost approach, and the income capitalization approach.

1. In the sales comparison approach, the appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison and making adjustments, based on the elements of comparison, to the sale prices of the comparables.

2. In the cost approach, the appraiser derives a value indication of the fee simple interest in a property by estimating the current cost to construct a reproduction of or replacement for the existing structure, deducting for all evidence of accrued depreciation from the cost new of the reproduction or replacement structure, and adding the estimated land value. Adjustments may be made to the indicated fee simple value of the subject property to reflect the value indication of the property interest being appraised.

3. In the income capitalization approach, the appraiser derives a value indication for income-producing property by converting anticipated benefits, i.e., cash flows and reversions, into property value. This conversion can be accomplished in two ways: One year’s income expectancy or an annual average of several years’ income expectancies may be capitalized at a market-derived capitalization rate or a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment; secondly, the annual cash flows may be discounted for the holding period and the reversion at a specified yield rate.

The Department requires that all three of these approaches to value, or a combination thereof, be considered and fully developed and reported whenever applicable. If any one of these approaches is found to be inapplicable, the Appraiser shall provide an explanation and the supportive reasoning for the exclusion of such in the report. A lack of local data is not necessarily a good reason to not consider a certain method.

Based on the appropriateness, accuracy and quantity of evidence, the Appraiser shall reconcile the indications of value from the approaches used into a final value estimate, stated as a single figure, or point estimate, as opposed to a range of values. Two separate reconciliation’s are required for Before and After valuations.
Section 4.8-Rounding

All estimates of value and compensation shall be rounded in accordance with the following:

1. The conclusion for each approach to value may be rounded separately, but in no event, should market-based conclusions or the components thereof, be rounded in excess of the upper limit of the market comparables used.

2. In before and after analyses, before values and damages shall be rounded upward, and after values and benefits shall be; rounded downward. Damages and/or benefits shall be the difference between the rounded before and after value, less the rounded value of the parcel to be acquired.

3. The value for each parcel to be acquired shall be rounded consistently throughout the report, to no less than the nearest even increment of $50.00, and no more than the nearest even increment of 1% of value.

4. The value of the land, improvements and net damages for each parcel to be acquired shall be rounded separately with the Total Compensation for each ownership being the total of the values.

5. CME’s and TCP’s are to be allocated as Takings, and rounded consistent with the above guidelines.

6. Any doubts in structuring the Rounding process should be resolved in favor of the property owner.

Any questions regarding rounding shall be directed to the Appraisal Unit Supervisor.

Section 4.9-Minimum Compensation

The Department has determined that the minimum compensation for each ownership/larger parcel should be $500.00. This applies to fee takes and CME’s. Where there are multiple parcels under the same ownership/larger parcel the predominant parcel should have a minimum compensation of $500.00. For ownerships/larger parcels that consist of TCP’s only, the minimum compensation should be $250.00. Where there are multiple TCP’s under the same ownership/larger parcel the predominant parcel should have a minimum compensation of $250.00.

In determining the predominant parcel, fee takes should have precedence over CME’s and CME’s over TCP’s. In cases of multiple fee takes, CME’s and or TCP’s, the parcel with the highest land value should be the predominant parcel.
The appraiser may encounter circumstances where the application of the forgoing guidance would be inappropriate. If it is unclear as to which parcel is the predominant, the appraiser shall consult with both the Appraisal and Appraisal Review Supervisors.

Section 4.10-Appraisal Revisions and Updates on Reviewed and Approved Appraisals.

The need for a revision to a reviewed and approved appraisal may be found at any time by anyone, but is typically discovered by the acquisition agent. Requests for revisions should be based on either a provable error, or a documentable omission from the appraisal report, and not a difference of opinion as to the analysis or conclusions presented therein.

All requests for appraisal revisions shall be made in writing and transmitted along with all information supporting the request, to the Appraisal Unit Supervisor who will consider the request under the provisions of Appraisal Review. If the Appraisal Unit Supervisor decides that a revision is necessary and elects to afford the Appraiser the opportunity to amend the report, the Supervisor transmits it to the Appraiser. After careful review, the Appraiser must decide whether or not to revise the original appraisal. If the Appraiser agrees that a revision is warranted, an Appraisal Revision form, explaining the change, shall be prepared by the Appraiser and transmitted back to the Appraisal Unit Supervisor for assignment to Appraisal Review (one original and a copy for each copy of the appraisal submitted). In the event the Appraiser elects not to change the appraisal, the Appraiser shall prepare and submit a written explanation to the Appraisal Unit Supervisor.

The Department may not acquire property based on an appraisal with a valuation date that is more than six months old and consequently, updates of previously reviewed and approved appraisal reports may be required. Procedurally, updates are handled in the same manner as are new appraisals; the request being made in writing and transmitted to the Appraisal Unit Supervisor. The Appraiser shall re-inspect the subject property, conduct an investigation of recent comparable sales, and review and revise all dated information, analyses, and conclusions, as deemed necessary. All updates shall be prepared using the Appraisal Revision form and transmitted to the Appraisal Unit Supervisor for assignment to Appraisal Review.

Section 4.11-Additional Appraisals

One or more appraisals, in addition to those initially required, may be ordered by the Appraisal Unit Supervisor, when:

1. the valuation or acquisition problem is considered to be complex in nature;
2. the estimated total compensation exceeds, or is expected to exceed, $500,000;

3. the current appraisal(s) is found to be unacceptable or insufficient in meeting the appraisal standards of the Department; or

4. public interest is considered to be best served by having an additional appraisal.

Ideally, the determination for an additional appraisal will be made at the appraisal assignment stage by the Appraisal Unit Supervisor. However, since it is sometimes difficult to forecast the complexity and outcome of an appraisal, the need may not be discovered until after the initial appraisal(s) has been submitted and reviewed by the Review Appraiser. Although, in this situation, the Review Appraiser may request an additional appraisal, the Appraisal Unit Supervisor is responsible for ordering the additional appraisal.

One or more additional appraisals may be required by the OGC for those acquisitions in which condemnation proceedings have been filed. The request for such shall be made in writing, approved by the Right of Way Bureau Chief, and based on either a legal consideration, including the Appraiser’s competency and effectiveness as a witness, or an appraisal deficiency as concurred by the Review Appraiser.

**SECTION 5-APPRAISAL REVIEW**

**Section 5.1-Review Appraiser’s Authority**

The Department shall have an appraisal review process:

1. A qualified Review Appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements as set forth in 49CFR parts 24.2(a)(3) and 24.103 and shall, prior to acceptance, seek necessary corrections or revisions.

2. If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop an appraisal to support an approved or recommended value.

3. The review appraiser’s certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to the remaining property shall also
Staff Review Appraisers for the Department have the authority to:

1. Approve the appraisal and the total compensation estimated therein as recommended as a bases for the estimate of “just compensation” to be used for the purpose of acquisition;

2. Request revisions of submitted appraisals when they do not substantially meet the appraisal requirements of this Volume of the Handbook. When correction, addition, or clarification is deemed necessary, the Reviewer should afford the Appraiser the opportunity to revise the appraisal report, however, the Review Appraiser has no authority to demand or require the Appraiser to change or amend his or her professional opinion as to value; any revisions by the review appraiser shall be formally presented.

3. Request an additional appraisal(s) for those properties where the appraisal problem is complex in nature, the appraisal is unacceptable or insufficient in meeting the appraisal standards of the Department, or public interest is considered to be best served by having an additional appraisal(s).

4. Prepare a “Reviewer’s Conclusion of Value” when the Reviewer is unable to approve the submitted appraisal(s), after step 2, and concludes that an additional appraisal is not warranted.

   A. The conclusion of value shall be prepared in a narrative format and must identify and set forth any additional data relied upon, the reasoning and basis for the different estimate of value and/or compensation, and all assumptions and limitations connected with such estimate.

   B. In this case, the Reviewer becomes the Appraiser of record, thus providing the estimate of “just compensation” to be used for the purpose of acquisition. This Reviewer’s Conclusion of Value shall be placed in the parcel file along with the “Reviewed Only” appraisal(s) of the subject property.

   C. When a Reviewer’s Conclusion of Value is prepared, the Review Appraiser may be called as an expert witness, and the Reviewer’s conclusion is subject to discovery by the property owner involved under such conditions as the OGC or a Court may deem appropriate.
Section 5.2-Standard Appraisal Review Procedures

All appraisals prepared for the Department, shall be developed, reported, and reviewed in accordance with the Code of Federal Regulations and the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation. Departure from the Code of Federal Regulations, in any form, shall not be permitted, and any departure from the Uniform Standards shall be made only as directed by the Department and in conformity with the Departure Provision and/or Jurisdictional Exception of said Uniform Standards.

In reviewing an appraisal and reporting the results of that review, a Review Appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.

In reviewing an appraisal, a Review Appraiser must:

1. identify the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;
2. identify the extent of the review process to be conducted;
3. form an opinion as the completeness of the report under review in light of the requirements in these standards;
4. form an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data;
5. form an opinion as to the appropriateness of the appraisal methods and techniques used and develop the reasons for disagreement;
6. form an opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and develop the reason for any disagreement.

A. An opinion of a different estimate of value from that in the report under review may be expressed, provided the Review Appraiser:

1) satisfies the requirements of USPAP;
2) identifies and sets forth any additional data relied upon and the reasoning and basis for the different estimate of value; and
3) clearly identifies and discloses all assumptions and limitations

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connected with the different estimate of value to avoid confusion in the marketplace.

A field inspection will be made by the reviewer of each project, the individual parcels under appraisal, and the comparable data considered in arriving at value. Exceptions may be allowed, at the discretion of the Reviewer, where:

1. the valuation and acquisition problem is non-complex in nature, the estimated total compensation for the acquisition is not to exceed $10,000 and the compensation does not include benefits and/or damages other than those that can be measured by a cost-to-cure method; and

2. the Review Appraiser is familiar with the subject and comparable sales data from prior inspections.

In any event, the Review Appraiser shall include a statement in each appraisal review, indicating that the field inspection was either made, or was not made with an explanation as to why said inspection was deemed unnecessary.

Each appraisal must be carefully checked for:

1. The completeness and conformance of the Basic Data with this Volume of the Handbook.

2. A Letter of Transmittal signed by the Appraiser. All contracted fee appraisers are responsible for the contents of their appraisal reports. If the appraisal report is prepared by a staff appraiser of a contracted firm, or an appraiser subcontracted by the contracted firm, the contracted firm is required by the Department to sign the appraisal report along with the Appraiser who actually prepared the appraisal report. All appraisal reports shall be signed only by Appraisers pre-approved by the Department.

3. The inclusion of all required Department forms. Every appraisal report must include (1) “Appraisal Summary”; (2) “Sales History and Property Owner Contract”; and (3) Certificate of Appraiser”. The Department Forms contain a total of four pages and must be used with all pages.

4. Verification of the ownership as shown in the appraisal report as compared with the ownership shown in the title report and on the final Right of Way maps and construction plans.

5. Mathematical accuracy.

6. Completeness of the narrative and data necessary to clearly explain, support, and document the estimates of value and compensation stated in the
7. The inclusion of all applicable approaches to value. If an approach has been omitted, the Appraiser must provide reasoning sufficient to convince the Reviewer that the approach should be omitted.

8. A reconciliation of the value indications from the applicable approaches, including both before and after value conclusions, if applicable, and an adequate and logical explanation for the final value estimate.

9. Verification that the appraisal does not include compensation for items which are non-compensable under New Mexico state law.

Section 5.3-Review Appraiser’s Findings

In reporting the results of an appraisal review, a Review Appraiser must:

1. disclose the nature, extent, and detail of the review process undertaken;

2. disclose the information that must be considered in Standards Rule 3-1(a) and (b) (USPAP);

3. set forth the opinions, reasons, and conclusions required in Standards Rule 3-1(c), (d), (e), and (f);

4. include all known pertinent information; and

5. include a signed certification similar in content to the following: I certify that, to the best of my knowledge and belief:

   A. the facts and data reported by the review appraiser and used in the review process are true and correct.

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

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

   D. my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.
E. my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

F. I did (did not) personally inspect the subject property of the report under review.

G. no one provided significant professional assistance to the person signing this review report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

In addition to the above, the Department requires the following:

1. Date of the Review Appraiser’s inspection of the subject property, or an explanation if not made;

2. A statement as to compliance of the appraisal with the provisions of this Handbook;

3. Qualifications of the Review Appraiser (or a reference to those on file with the Right of Way Bureau).

The Review Appraiser shall prepare a narrative report for each parcel reviewed; exceptions being where the valuation and acquisition problem is non-complex in nature, the estimated total compensation does not exceed $10,000 and the compensation does not include benefits and/or damages other than those that can be measured by a cost-to-cure method. The review may be a collective report covering several parcels or even the whole project appraised by a single Appraisal Firm. However, if two or more Appraisal Firms have prepared appraisals for the same project, the review shall be limited to each property.

Staff reviews shall be written on an Intra-Departmental Correspondence clearly marked “Confidential-Attorney-Client Privilege”, and transmitted to the General Counsel, Office of General Counsel, and the Right of Way Bureau Chief. The Review Appraiser is not expected to be called as a witness at trial. These communications are confidential.

The review narrative should identify whether the review is based on the initial appraisal, an additional appraisal, a property owner appraisal, or a revision or update of an appraisal previously approved.

The review shall be reported in one of the following formats:

1. REVIEWED AND APPROVED. The appraisal meets the requirements of this Handbook and has been approved as an estimate of “just compensation” to be used for the purpose of acquisition.
2. **REVIEWED ONLY.** The appraisal has been reviewed, but not approved. The appraisal may be deficient in one or more areas of the requirements of this Handbook, or in some cases, it may meet all the requirements, but is simply not the best of those appraisals submitted for the property.

3. **APPROVED FOR COURT TESTIMONY.** The appraisal may either be Reviewed and Approved or Reviewed only, but is acceptable in content such that it be may be used for court testimony.

The “Reviewer’s Comments” are the opinion of an expert specially employed by the Department in anticipation of litigation and for preparation for possible trial. The Review Appraiser is not expected to be called as a witness at trial. These comments are work product and confidential.

The completed package is then delivered in original to the Right of Way Records, and in copy to the Acquisition Unit.

**Section 5.4-Deficiencies**

(A) Minor corrections, such as typographical and mathematical errors not affecting the value conclusion, may be corrected by the appraiser or the reviewer may request corrections, and then the Appraisal Review Unit Supervisor shall be notified of the corrections and that the report is acceptable for payment of the appraisal fee upon receipt of printed copies.

(B) With major deficiencies, such as when the reviewer finds that the appraisal report needs clarification or contains substantive errors, the reviewer must initially attempt to resolve the issues informally. The reviewer shall meet with the appraiser, as necessary, and if efforts to resolve issues informally are not successful, the reviewer shall summarize the deficiencies in writing to the Appraisal Review Unit Supervisor, who shall then report the deficiencies to the Right of Way Bureau Chief.

**Section 5.5-Rejecting the Appraisal Report**

If an acceptable report is still not obtained after having taken the actions specified in Section 5.4, the reviewer shall prepare a memorandum to the Appraisal Review Unit Supervisor stating the reasons for rejection and the efforts made to obtain an acceptable report. The Appraisal Review Unit Supervisor shall examine the appraisal report and the memo rejecting the appraisal and shall in turn report it to the Right of Way Bureau Chief. No payment will be authorized for the rejected product.

Upon concurrence with the rejection, the Right of Way Bureau Chief shall:
(1) Sign and date the appraisal rejection memorandum.

(2) Attach the original of the appraisal rejection memorandum to a reproduced copy of the appraisal report and place them in the official parcel file.

(3) Return all copies of the appraisal reports and appraisal invoices to the appraiser with a written notice stating the reason(s) for the rejection. Advise the appraiser that payment is not authorized and that while all copies of the reports and invoices are being returned, a photocopy is being retained by the Department for documentation purposes. Attach copies of the rejection notice and appraiser’s invoice to the reproduced copy of the appraisal report in the official file.

**NOTE:** When rejecting and refusing to pay for a work product, all copies of the product should be returned to the appraiser and reproduced copies retained, unless the contract provides otherwise. The retained copies should be clearly marked as “Reproductions - Original Copies Returned to Appraiser.”

(4) Initiate action to secure an acceptable appraisal report from a different appraiser, if appropriate.

**SECTION 6-RECORDS AND REPORTS**

**Section 6.1-Records**

The Department shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance. These records shall be retained for at least three years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled.

**Section 6.2-Confidentiality of Records**

Records maintained by the Department in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

**Section 6.3-Record Keeping**

Appraiser.

An appraiser must prepare written records of appraisal, review, and consulting assignments—including oral testimony and reports—and [retain at least the following records for a period of as least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given,
whichever period expires last):

1. property owner contacts;
2. PDE discussions;
3. any other oral testimony; and
4. any major event.

Review Appraiser.
Review communications and notes.

Section 7-Legal Proceedings

Section 7.1-Property Owner Initiative (House Bill 89)

If the parties are unable to negotiate a settlement, the condemnee may, within 25 days after written notice by the condemnor of its intent to file a condemnation action in district court, give written notice to the condemnor requesting an appraisal to determine the amount that would constitute just compensation for the taking of the condemnee’s property and obtained from:

1. one appraiser appointed by the condemnor;
2. one appraiser appointed by the condemnee; and
3. one appraiser jointly appointed by the appraisers for the condemnor and the condemnee.

The condemnee and condemnor shall appoint their respective appraisers within 15 days after notice has been given by the condemnee to the condemnor pursuant to the provisions of NMSA 1978, Section 42A-1-5(A), noted at the end of this section; and the third appraiser shall be jointly appointed within 15 days thereafter.

The appraisals shall be in writing and signed by the appraisers. The appraisers shall deliver copies to each party personally or by registered mail or certified mail, return receipt requested.

The fees and expenses of the appraisers shall be paid by the appointing parties; provided however, the condemnee and condemnor shall share equally in paying the fees and expenses of the jointly appointed appraiser.

After receiving a copy of the appraisals provided for pursuant to this section, the
condemnor may establish an amount which it believes to be just compensation and may submit to the condemnee an offer to acquire the property for the full amount so established. If the condemnor tenders an offer pursuant to this section, the amount offered for the property shall not be less than the amount of compensation shown by the final common appraisal of the three appraisers or if all three appraisers do not agree, the offer shall not be less than the appraisal prepared by the condemnor’s appraiser. The condemnee must reject or accept the offer made by the condemnor pursuant to this section within 15 days after the offer is tendered. (NMSA 1978, Section 42A-1-5)

Section 7.2-Trial Notice

The Appraisal Unit Supervisor shall serve as the liaison between the Appraiser and the Office of General Counsel and is responsible for assuring that the Appraiser and the appraisals are prepared for deposition and/or trial. These responsibilities may be limited in regard to fee appraisers depending on the terms of the contract or supplemental agreement.

Upon being informed by the OGC of scheduled condemnation trials, the Supervisor shall notify the Appraiser(s) whose testimony is required. This notification shall be in writing and include the date, time and place of the trial and the name of the presiding judge. Upon notification the Appraiser shall immediately contact the OGC and the attorney assigned to the case(s).

Section 7.3-Legal Settlements

A Legal Settlement is one that is reached by the Office of General Counsel (OGC) after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action has been filed.

Section 7.4-Administrative Settlements

An Administrative Settlement is one which is reached by either the Office of General Counsel or the Right of Way Bureau prior to the filing of a condemnation proceeding and is based on value related evidence, administrative consideration, or other factors approved by the Right of Way Bureau.

In cases that arise where there is not an acquisition of property rights, a Damages Only parcel may be established. A Before and After Appraisal shall be performed to establish the value of the damages for that parcel. Subsequently, a written offer will be made to the property owner. If the property owner refuses the offer, an Administrative Settlement may be considered. The Right of Way Bureau and OGC may determine that a condemnation action may be filed to resolve the issue of compensation.
In cases where property rights are to be acquired, the damages are determined by a reviewed and approved updated or new appraisal, and the owner is provided with a revised letter of offer. If the property owner refuses the offer, an Administrative Settlement may be considered. In all cases, the Administrative Settlement must be reasonable, prudent, and in the public interest. Administrative Settlements are submitted for approval to the Right of Way Bureau Chief.

**Section 7.5-Potential Inverse Condemnation**

Settlements involving a potential inverse condemnation are negotiated by the Right of Way Bureau and the OGC prior to the filing of any legal action by either party.

Normally, situations involving these types of settlements occur after the project has been certified and construction has begun or has been completed. Often, the need arises out of an unforeseen or unanticipated result arising out of construction.

In cases that arise where there is not an acquisition of property rights, a Damages Only parcel may be established. A Before and After Appraisal shall be performed to establish the value of the damages. Subsequently, a written offer will be made to the property owner. If the property owner refuses the offer, an Administrative Settlement may be considered.

In cases where property rights are to be acquired, the damages are determined by a reviewed and approved updated or new appraisal and the owner is provided with a revised letter of offer. If the property owner refuses the offer, an Administrative Settlement may be considered.

Settlements involving the potential for inverse condemnation shall be coordinated with and include approval by the Right of Way Bureau Chief.

**Section 7.6-Tort**

Tort claims generally arise out of actions resulting from issues not related to right of way acquisition. The potential for inverse condemnation may exist with Tort claims.

The Risk Management Division of the General Services Department and the OGC negotiate tort claims settlements. The Right of Way Bureau may be asked to provide assistance.

Once a settlement is reached, the basis for the settlement will be documented and sent to the Engineering Design Division Director for approval. Upon approval, the Director will provide written instruction to the Right of Way Bureau Chief to process the payment, if necessary.
Section 7.7-Payments

Claims resulting from the above-described circumstances will be paid in the following manner:

1. Legal Settlements will be paid from the Legal Settlement Fund; however, once all ROW acquisition obligations have been met, funding from construction can be used.

2. Administrative Settlements will be paid from project construction funds.

3. Inverse condemnation claims and condemnation cases resulting in settlement or judgment will be paid from project construction funds if the action is related to a right of way taking. Otherwise, the Settlement will be paid from the Legal Settlement Fund.

4. Tort claims will, in all cases, be paid from the Legal Settlement Fund and Risk Management Funds as appropriate.
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CHAPTER 1 PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual (Handbook) is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with laws and regulations pertaining to the right of way program with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations, directives and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.

The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new
FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

**SECTION 3-STRUCTURE OF HANDBOOKS**

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2 AUTHORITY

SECTION 1-GENERAL
The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico state law and regulations promulgated by the New Mexico Department of Transportation and State Transportation Commission.

2. Executive Order No. 89-15 signed by Governor Garrey Carruthers, 3/30/89.

3. New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, which imposes civil and criminal penalties for its violation.

4. New Mexico state law and regulations promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


8. New Mexico Relocation Assistance Act, NMSA 1978, Sections 42-3-1 through 42-3-15.


10. Administrative Directives issued by the New Mexico Department of Transportation’s Office of Inspector General.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA prior to implementation.

The Department will follow uniform applicable procedures, as contained in the Handbook, for all projects regardless of the source of funding, that is, State funded projects will be administered in the same manner as Federally funded projects. This will ensure compliance with federal funding requirements when state funded projects become federalized.
CHAPTER 3 ORGANIZATION

SECTION 1-GENERAL

The Right of Way Acquisition Unit is located within the Right of Way Bureau under the Right of Way Operations Section. The Unit is responsible for negotiating with property owners, both private and public, and acquiring:

1. rights of way for highway program purposes;
2. water rights for highway program purposes;
3. Other property rights as necessary.

The Acquisition Unit is under the direction of the Acquisition Unit Supervisor who reports directly to the Right of Way Bureau Chief. The Acquisitions Unit staff is composed of Right of Way Agents.

Compensation for making an appraisal or waiver or valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser or waiver valuation preparer regarding any valuation or other aspects of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal-funding Agency may waive the requirement if it determines it would create a hardship for the Agency.

A Right of Way Agent from the Acquisition Unit may be assigned to a Highway District to coordinate all right of way activities of the Department in that District. Coordination involves close liaison with right of way and engineering consultants, in addition to Department staff involved in the survey, design, and right of way aspects of projects. The Agent has the responsibility to contact and coordinate with other disciplines involved in the project, both inside and outside the Right of Way Bureau. All Right of Way Acquisition Agents are stationed in Santa Fe and they work from the Headquarters Office. The assigned Agent is responsible for the coordination of the right of way activities on all projects in his assigned District, from program stage through final acquisition, payment, and closing of the right of way aspects of the project.

The Department has overall responsibility for the acquisition of right of way on all highway systems.

The Department shall have a right of way organization adequately staffed, equipped, and organized to conduct its right of way responsibilities.
The Department may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities. Such organizations, firms, or individuals must comply with the policies and practices of the Department. The Department shall monitor any such real property acquisition activities to assure compliance with state and federal law and regulations and is responsible for informing such organizations of all such requirements.

The interest acquired in all rights of way for federal-aid highways shall be adequate for the construction, operation, and maintenance of the highway and for the protection of both the transportation facilities and the traveling public.

SECTION 2-DUTIES

The Right of Way Acquisition Unit Supervisor is responsible for the work of the Right of Way Acquisition Agents and monitoring the workload of the Agents.

The following activities are the responsibility of the Right of Way Acquisition Agents:

1. Review scoping reports, preliminary right of way study reports, property owner interviews, production schedule printouts, manpower and project scheduling system, deeds, maps, plans, cross-sections, project development files, etc., to gain a broad basic understanding of the project.

2. Attend meetings with the Project Development Engineer (PDE) and the Appraiser to review the project. If time allows, the acquisition agent should attend property owner interviews.

3. Discuss the Title Examiner's Review Sheet and/or title report with the property owner to confirm all of the interests in the property, obtain addresses, phone numbers, and other information needed by the Agent, and provide the information to the Appraisal and Relocation Units.

4. Study the reviewed and approved appraisals and meet with the appraiser to confirm understanding of analyses and conclusions therein.

5. Review final maps, title reports, appraisals, and conveyance documents for accuracy and consistency.

6. Contact out-of-state property owners promptly via certified mail.

7. Contact all in-state property owners personally when feasible.

8. Notify the Acquisition Unit Supervisor when the displacement of a residence, business, advertising sign, farm, or personal property will be involved and establish a joint
meeting with a Relocation Agent and the property owner, when appropriate, as determined by the Acquisition Unit Supervisor.

9. Provide the Acquisition Unit Supervisor and assigned Relocation Agent with a copy of the signed "Letter of Offer" for each parcel that involves a displacement.

10. Make an entry in the negotiation report for each contact and document all important events and discussions.

11. Return all completed documents to the Right of Way Acquisition Unit Supervisor as part of the complete payment package.

12. The Department shall make all reasonable efforts to contact the owner’s representative and discuss its offer to purchase the property. The property owner shall be given a reasonable opportunity to consider the offer. The Department must allow the owners time for analysis, research and development, and completion of a response including perhaps getting an appraisal. 30 days may be the minimum time, unless the owner clearly states that he or she is not interested in negotiating. The Letter of Intent (to condemn), advises the owner of his/her right to have the fair market value of his/her property established by the courts through condemnation proceedings. The letter will be sent when the Right of Way Acquisition Unit Supervisor has determined that negotiations are at an impasse.

13. Submit to the Office of General Counsel a complete condemnation package on or about the 25th day after the date of the Letter of Intent.

14. Meet and coordinate with the Office of General Counsel when required and provide updated information for preparation of condemnation lawsuits.

15. Provide for the service of condemnation lawsuits by a second agent after preparation by the Office of the General Counsel. All Right of Way Agents shall cease direct negotiations with property owner unless permitted in writing by the Acquisition Unit Supervisor.

16. Update on a weekly basis, and have available for review by the Right of Way Acquisition Unit Supervisor, a Right of Way acquisition status report.

17. Other duties as assigned.

It shall be the responsibility of each Agent before beginning negotiations to become familiar with, and understand, the reviewed and approved appraisal and any other data that may contribute to an effective and efficient completion of negotiations, such as:

1. Comparable sales and other appraisal data that support the effort.
2. Nature, location, and degree of access control.

3. Character and effect of the proposed construction.

4. Proposed schedule and desired possession date.

5. Rights of both the property owner and the Department.

6. The condition of the owner's title as revealed by the reviewed title search.

7. The final approved right of way map.

8. The current construction plans.

9. The project development file.

10. Ensure the written offer required by Chapter 4 of this Volume of the Handbook conforms to the conclusions and statements contained in the reviewed appraisal approved for value.

11. The type of property interest to be acquired and whether it is appropriate.

Compensation for making an appraisal or waiver or valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser or waiver valuation preparer regarding any valuation or other aspects of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal-funding agency may waive the requirement if it determines it would create a hardship for the Agency.

The Acquisition Agent shall submit an itinerary to the Acquisition Unit Supervisor at the beginning of each workweek. The itinerary should provide sufficient information to enable contact on short notice. E-mail, cellular phones, and telephones are used to report progress and problems to the Supervisor as needed—The itinerary shall include an estimate of the number of offers to be made.

The public has every right to expect its business to be carried out with diligence and efficiency. Time is to be carefully budgeted, with every contact scheduled in advance and planned so as to resolve the problem at hand.

Problems encountered during the negotiation that cannot be solved by the Agent shall be referred immediately to the Acquisition Unit Supervisor for review and direction.
Any request made by a property owner during appraisals or negotiations which would require modification of the construction, or design plans must be coordinated with, and approved by, the PDE. It is the duty of the Agent to ensure that appropriate coordination, documentation and approvals are obtained.

SECTION 3-CONFLICT OF INTEREST

The Agent must inform the Acquisition Unit Supervisor and be reassigned if the Agent has a personal or family relationship with, or involvement in, the past ownership or sales history of the real property to be negotiated, or a participating business association with the owner or any other party of interest in the property sought.

The following rules shall govern business relationships between Agents and other parties regarding right of way related issues:

1. An Agent shall not engage in any real estate transaction or participating business association with the person or entity from whom the Department is purchasing property.

2. An Agent shall not acquire interests involving lands abutting upon or in a zone of immediate influence of a contemplated highway improvement of which he has personal interests, or could be presumed to have knowledge without first obtaining the written approval of the Secretary.

3. An Agent shall make no disclosure to any person of privileged advance knowledge of highway plans, or other documents or activities, which may come as a result of employment or position within the Department which is not generally available to the public at large without first obtaining the written approval of the Secretary.

4. No Agent shall engage in any conflicting employment involving the appraising, selling or purchasing of real property.

5. No Appraiser shall act as a negotiator for real property which that person has appraised, except that the Acquisition Unit Supervisor may permit the same person to both recommend just compensation and negotiate an acquisition where the value of the acquisition does not exceed $10,000 (or $2,500 on Tribal/Local Government Agency projects)

Although federal regulations would permit an Appraiser or an Agent to both appraise and acquire a parcel where the value does not exceed $10,000 (or $2,500 on Tribal/Local Government Agency projects), it is not accepted Department practice unless approved by the Right of Way Bureau Chief.
SECTION 4-PERSONAL CONDUCT

The Agent shall at all times keep in mind that he/she is a public employee and shall conduct themselves in a manner that reflects favorably on the Department. This section of the Right of Way Handbook seeks to define current Right of Way Acquisition practices and procedures and make recommendations that will aid the Agent in making successful property owner contacts.

When dealing with the public, the Agent's work should be characterized by a sincere desire to be of service. Every Agent of the Department is obliged to render friendly, well informed, sincere, and attentive consideration to the person(s) contacted. The Agent is expected to be aware of, and practice, the following public relations principles:

1. A majority of the time, the Agent is the only direct contact the individual property owner has with the Department. To the property owner, the Agent is the Department.

2. The Agent represents the Department when negotiating for the property owner's real property, but may not be confined to this activity and may assist in resolving any other "highway problem" the property owner may have.

3. First impressions mean a great deal in public relations. It shall be the responsibility of each Agent to be acquainted not only with appraisal, construction, and title information on which a negotiation is to be based, but with all factors that will contribute to effective and efficient acquisition, including the ability to understand and explain maps and plans.

4. The Agent shall be appropriately groomed at all times.

5. Proper, warranted, and careful use of equipment, supplies and time is expected at all times.

6. While empathizing with property owners, the Agent shall make every effort to encourage their confidence in the integrity of the Department and the abilities of other Department employees.

7. It is important that the Agent treat each property owner on the project with consideration and courtesy. Dollar value of the property should not influence the Agent's attitude in dealing with the property owner.

During negotiations the Agent shall answer all questions as truthfully and simply as possible, using all available maps, photographs, charts and appraisals for this purpose. If the answer to a question is not known, the Agent shall inform the property owner that the required information will be obtained and furnished as soon as possible.
SECTION 5-FEE RIGHT OF WAY AGENTS

Section 5.1-Use of Fee Negotiators

Federal funds may participate in the cost of employing Fee Right of Way Agents to perform real estate service when it is determined by the Right of Way Bureau Chief that it is in the best interest of the Department to precede with such professional services.

Fee personnel shall be retained directly by the Department and required, by written contract, to perform the services contracted for.

The criteria contained in the preceding paragraphs will be followed on state funded as well as on federally funded projects.

The procurement procedures followed by the Department are to be the same policies and procedures used for procurement with non-federal funds as well as federal funds.

Section 5.2-Qualifications

The Department’s established minimum qualifications for firms and individuals actually doing work shall not be less than the Job Related Qualifications Standard (JRQS) set for Staff Agents. These qualifications shall be noted on each Request for Proposal (RFP) as an attachment/appendix to the RFP.

Section 5.3-Selection Procedures

The Department establishes the Selection Procedures for firms and individuals who submit proposals and notes these Procedures in the body of each Request for Proposal (RFP). Federal guidelines must also be adhered to.

Section 5.4-Establishment of Fees

Each offer or response to the RFP shall indicate the basis of payment for the requested services as set forth in the RFP. The contract providing for the performance of the requested services shall also specify the rates of payment the Contractor will receive for each of the contract services.

The RFP, together with the corresponding contract, shall establish the methods, terms and basis of payment of the service fees.

The Right of Way Bureau procedures provide that:
A. The amount of the fee should be established on a parcel/ownership or costs plus fixed fee basis, and shall not be determined as a percentage of fair market value. The fee shall represent a fair payment for the work performed.

B. The fee negotiator shall maintain timely adequate records of negotiation on a parcel basis. The record shall be written in permanent form and completed within a reasonable time. The report shall be signed and dated by the assigned negotiator.

Additional requirements governing federally assisted real property acquisition, based upon the Uniform Act.

Section 5.5-Fee Negotiator Contracts

The Department shall include an example of its standard contract agreement for Acquisition Services in the RFP. The Department shall use the latest approved standard contract agreement when entering into a contract for professional services.

Section 5.6-Scope of Work

The scope of work and the Contractor/Department services and responsibilities shall be defined and detailed in the RFP, the Scope of Work Letter and in the Contract Agreement providing for such services. The Scope of Work shall be included as an attachment to the RFP.
CHAPTER 4 PROCEDURES

SECTION 1-GENERAL

Section 1.1-General Provisions

The real property interest to be acquired is as follows:

1. The Department shall acquire rights of way of such nature and extent as are adequate for the construction, operation, and maintenance of a project.

2. Where state law permits, rights of way for federal-aid highways shall be acquired in unlimited vertical dimension unless savings in the overall cost of the project, or other considerations in the public interest, such as plans for community development or multiple use, support the acquisition of rights of way of limited vertical dimension. Where the acquisition is in limited vertical dimension, the rights acquired shall be sufficient to encumber the un-acquired realty with provisions, which will ensure full use and safety of the highway facility to be constructed.

3. Subsurface mineral rights may be reserved to the owner thereof where the acquisition of such rights is not necessary for the construction, protection, support, and preservation of the highway facility to be constructed. (Applicable to water rights also.)

The use and occupancy of the right of way is to be as follows:

1. All real property, including airspace, within the right of way boundaries of a project shall be exclusively devoted to public highway purposes and preserved free of all public and private installations, facilities, and encroachments except as authorized by state law and FHWA.

2. Use of airspace for non-highway purposes shall be administered in accordance with the provisions of New Mexico’s Right of Way Property Management Procedural Manual.

3. Joint development and multiple uses of highway rights of way shall be administered in accordance with the provisions of New Mexico’s Right of Way Property Management Procedural Manual.

4. Railroads and utilities may be accommodated in accordance with the provisions of 23 CFR Part 645.

5. Bikeways and pedestrian walkways may be accommodated in accordance with the provisions of 23 CFR Part 652.
The Department has prepared a brochure adequately describing the land acquisition process under state law, including the owner’s rights, privileges and obligations there under. The information contained therein is clearly presented in non-technical terms to the extent practicable. Such brochure is written in Spanish in addition to English.

**Right of Way Acquisition Costs**

**Direct Eligible Costs**

Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise.

Participation is provided for:

1. **Real Property Acquisition.** Usual costs and disbursements associated with real property acquisition required under the laws of the state, including the following:
   
   a. The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.
   
   b. The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning, right of way plan preparation and similar necessary right of way related work.
   
   c. The cost to acquire real property, including incidental expenses.
   
   d. The cost of administrative settlements legal settlements, court awards, and costs incidental to the condemnation process.
   
   e. The cost of minimum payments and appraisal waiver amounts included in the state approved Handbook.

**Federal Participation in Acquisition Costs**

Federal participation in the cost of access rights is as follows:

1. Where full or partial control of access is obtained on an existing highway, federal funds may participate in the cost of access rights, whether or not other real property interests are acquired, providing the payments for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain. Participation in these costs is not contingent upon further construction of the highway facility.

2. Federal funds may not participate in payments for access rights where the controlled access highway is in a new location.
Federal funds may participate as either a right of way or construction item in the costs of acquiring land or interests therein outside the normal right of way for the purpose of obtaining road building material to be made available to the contractor.

The cost of acquiring interests in lands outside the normal right of way is eligible for federal participation as a right of way or construction item:

1. For permanent use; such as for drainage or slope easements.

2. For temporary use, such as for construction purposes or for right of way clearance.

Federal funds may participate in severance or consequential damages resulting from a highway project upon an affirmative showing that the acquiring agency is obligated to pay such damages under applicable State or Federal law.

Federal participation in the cost of utility and railroad real property is as follows:

1. The cost to replace operating real property owned by a displaced utility or railroad and conveyed to the Department for a highway project, according to Title 23 CFR 645 & 646, Utility Relocations, Adjustments and Reimbursement, Railroad-Highway Projects.

2. Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

**Delivery of Payment to Property Owner**

A. It is Department policy that payment for the property will not be delivered in person by those who have negotiated, appraised, or acted as a reviewing appraiser or by the attorney who negotiated a settlement with the owner.

Federal participation in appraisal costs and minimum payments is as follows:

1. If otherwise eligible, federal funds may participate in the cost of appraisal and specialty reports obtained by the state in accordance with its accepted plan of operation.

2. Federal participation may be allowed, if such payment is otherwise eligible, where the state prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration.
The assigned Right of Way Agent shall make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right of way elements involved in the location and design of the project including possible social, economic, and environmental effects.

Information shall be presented and an opportunity provided for discussion of the land acquisition process at public hearings in order to ensure the public is adequately informed.

**Section 1.2-Notice to Owner**

Each notice the Department provides to a property owner, except the notice described in the next paragraph, shall be personally served or sent by certified mail or registered first class mail, return receipt requested, and documented in Department files and the Agent’s log. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

As soon as feasible, the owner shall be notified of the Department's interest in acquiring the real property and the basic protections provided to the owner by law and regulation, including the Department's obligation to secure an appraisal.

Department practice is to notify the owner by certified mail, return receipt requested rather than to use registered mail. A copy of the "Right of Way Acquisition" brochure shall be included.

**Section 1.3-Expeditious Acquisition**

The Department shall make every reasonable effort to acquire the real property expeditiously by negotiation.

The Department shall make all reasonable efforts to contact the owner’s representative and discuss its offer to purchase the property. The property owner shall be given a reasonable opportunity to consider the offer. The Department must allow the owner time for analysis, research and development, and completion of a response, including perhaps getting an appraisal. Thirty (30) days may be the minimum time, unless the owner clearly states that he or she is not interested in negotiating. The Letter of Intent advises the owner of his/her right to have the fair market value of his/her property established by the courts through condemnation proceedings. The letter will be sent when the Right of Way Acquisition Unit Supervisor has determined that negotiations are at an impasse.
Parcels not already secured will be submitted for condemnation twenty-five (25) days after the Letter of Intent to condemn is sent to the property owner. It is expected that the normal processing time for condemnation packages in the Office of General Counsel will be 15 days, at a minimum. An exception to the 25 day waiting period will be made in extreme cases, such as (1) faulty title, (2) property owner requests condemnation, (3) property owner definitely rejects offer and refuses further negotiations, and (4) necessary acquisition of right of way for an emergency project where repair or reconstruction of a highway facility must proceed quickly in order to correct a hazardous and unsafe driving condition.

Condemnation packages submitted to the Office of General Counsel will include, but not be limited to:

1. A list of information for the "Condemnation Sheet" (Form No. A-339);
2. Title report;
3. Legal descriptions;
4. Right of Way maps;
5. Copy of the reviewed and approved appraisal;
6. Parcel summary sheets;
7. Review Appraiser's comments;
8. Letter of intent to condemn;
9. Letter of offer;
10. Agent's log;
11. Copies of all pertinent negotiation correspondence;
12. Physical Address and telephone number; if available; and
13. Property tax identification number, parcel identification code and project identification number.

From the time the condemnation package is submitted to the Office of General Counsel to the time the condemnation is filed, the Right of Way Agent may continue to negotiate with the property owner only to the extent authorized by the Right of Way Acquisition Unit Supervisor.
Protective Buying and Hardship Acquisition.

1. GENERAL CONDITIONS. Prior to the Department obtaining final environmental approval, the Department may request FHWA’s agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner(s) on the preferred location (Hardship Acquisition), provided the following conditions are met:

   a. The project is included in the currently approved STIP;

   b. The Department has complied with applicable public involvement requirements.

   c. A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

   d. Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties)

2. PROTECTIVE BUYING. The Department must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

3. HARDSHIP ACQUISITIONS. The Department must accept and concur in a request for a hardship acquisition based on a property owner’s written submission that:

   a. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

   b. Documents an inability, because of the impending project, to sell the property at fair market value and within a time period that is typical for properties not impacted by an impending project.

4. ENVIRONMENTAL DECISIONS. Acquisition of property under this section shall not influence the environmental assessment of the project, including the decision relative to the need to construct the project or the selection of a specific location.
Section 1.4-Coercive Action

The Department shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

The Agent shall meet with the Acquisition Unit Supervisor to establish a Productivity Schedule such that negotiations are begun as soon as possible after the reviewed and approved appraisals are available and the project has been authorized for acquisition. All offers shall be made promptly and follow ups completed in a timely manner. Adjustments to the Productivity Schedule will be made by the supervisor as appropriate. In no event shall the Agent, in order to compel an agreement on the price to be paid for the property:

1. Advance the time of negotiation;
2. Defer negotiation;
3. Defer condemnation and the deposit of funds in court for the use of the owner;
4. Take any other action coercive in nature; or
5. Fail to inform all of the interested parties of their rights under NMSA 1978, Section 42A-1-5.

Section 1.5-Project Deadlines

An estimated completion date for negotiations that is in agreement with the Production Schedule shall be established with the Agent and the Acquisition Unit Supervisor. The acquisition effort must be coordinated to meet this deadline if possible, recognizing the necessity to comply with the provisions of this Volume of this Handbook and all applicable state and federal regulations.

It is the responsibility of the Agent to have a right of way status report available for the Acquisition Unit Supervisor. This report will enable the supervisor to keep sufficient records of progress and will allow the supervisor to forecast intelligently the need for any additional information or help.

The Agent must make every effort to complete Production Schedule activities on or before the scheduled certification date. Agents will be provided with a copy of the current target dates by the Acquisition Unit Supervisor. Full responsibility for the completion of project negotiations in accordance with the Production Schedule shall rest with the Agent assigned to the project. Adjustments to the Productivity Schedule may be made by the Acquisition Unit Supervisor after re-allocation of other resources has been considered.
Parcels should be prioritized before beginning negotiations. Complex, difficult, and time-consuming acquisition problems shall be given priority. Normally the following priorities shall apply:

1. Public lands (State, Federal, Indian)
2. Railroads/Utilities
3. Improved parcels involving relocations
4. Improved not relocated
5. Parcels requiring before and after appraisals 
6. Vacant land (no improvements)

The Acquisition Unit Supervisor and Agent shall establish the priority list before negotiations begin.

Section 1.6-Title Reports

The Agent shall obtain a title brief concerning the property to be acquired from Records prior to the initiation of negotiations. The title report will show all conveyances of, and encumbrances to, the property and will certify current property ownership as per a specified date.

Title reports may be no older than six months for the right of way mapping, appraisal, and negotiation activities. Title reports must be current, within 60 calendar days, of the date of the conveyance documents.

The Title Examiner's Review Sheet, chain of title, and certification are the documents in the title brief that the Agent will rely on when making offers for each parcel.

When requesting title updates, the Agent will indicate which parcels are waiver values not to exceed $10,000 (or $2,500 on Tribal/Local Government Agency projects) in order to inform the Title Unit of potential for waivers of Partial Mortgage Releases.

Section 1.7-Clearance of Title

All parcels of land acquired for rights of way, other than easements or permits, are to be acquired in fee simple title, free and clear of any liens or encumbrances, unless otherwise approved by the Acquisition Unit Supervisor.

The Agent shall assist the property owner in providing the Department with such releases, partial releases, quitclaim deeds and assignments as may be needed to facilitate clearing of the title. On parcels with a land value of $5,000 or less, the partial release, liens, and current taxes may be waived upon concurrence of the Lands Abstracting Unit Supervisor and the Acquisition Unit Supervisor.
- Waiver requirements are determined by Land Value, which involve a permanent interest or permanent property right.
- Value of TCP’s are excluded from the waiver requirements.
- Value of the Improvement may be included or excluded, as determined by the Acquisition Unit Supervisor, with the concurrence of the Right of Way Bureau Chief.
- Only in the event the improvement(s) cause it to go above the $5,000.00 amount, a separate e-mail from the Acquisition Unit Supervisor recommending approval, along with the concurrence from the Right of Way Bureau Chief is required, and must be included in the Acquisition payment package.

The Agent should bear in mind that the Department's appraisal, and thus the offer, is based upon the value of the property free and clear of liens and encumbrances.

Some of the more infrequent obstacles to the Department's process in acquiring clear title require special handling and procedures have been set forth. Where the Agent encounters situations requiring releases in the areas of federal taxes, improvement assessments and leasehold interests, the following will serve as a procedural guideline to acquire these releases:

1. **FEDERAL TAX LIENS**- The procedure herein requires filing of a formal application for release through a certificate of discharge as provided under the Internal Revenue Code. The Internal Revenue Service has produced a publication to assist in facilitating the process. The publication is very explicit on all requirements and outlines the details to be included on the application. The process is initiated by the Agent assigned through an application letter with the Acquisition Unit Supervisor's signature to the IRS Manager, Special Procedures Staff. This application letter, incorporating the right of way taking data per the above publication, is the sole documentation by which the IRS discharges the taking and records it for the general lien. The discharge process usually requires that the property owner is willing to assign the proceeds from the taking to the IRS, at which time the Department will simultaneously receive the discharge and the federal tax payment credited to the property owner.

2. **IMPROVEMENT ASSESSMENT LIENS**- Most federal, state and local agencies have established internal policies whereby assessment liens may be cleared on partial right of way taking subject to attachment of the remainder. Generally, the procedure is simply to contact the agency to negotiate the release. Some agencies have produced their own format and forms to accomplish this process, but a good practice and courtesy is for the Department to generate the release document required. It is very likely that every release will vary, which places the burden on Right of Way, in cooperation with the external agency and the Department legal staff, to generate the appropriate release form.

3. **LEASEHOLD INTERESTS**- When leasehold interests are involved, a joint offer will be made (when feasible) to the owner and the lessee. Separate contracts will be prepared, one for the property owner and one for the lessee.
A minor leasehold interest, not involving payment by the Department to the lessee, may be waived by the lessee with an inclusion in the conditions of contract signed by the Department and the owner. In such instances, the lessee must also sign the contract.

4. **PARTIAL RELEASE OF MORTGAGE**—The purpose of this release is to enable the Department to acquire the described real property free from the lien of said mortgage.

### Section 1.8-Property Taxes

In the event the property owner is required by the county to pay a full year's taxes, the Department will reimburse the property owner the pro rata portion for the period of time the property has been owned by the Department. The property owner must present a receipt which delineates the property description and sign a claim form for reimbursement of taxes as well as a payment voucher.

If the Agent finds that during the negotiation the property owner owes back taxes, the Agent may make arrangements with the property owner for payment of the taxes by inserting the following standard clause in the contract: "From the offer amount ($ ), the New Mexico Department of Transportation is authorized to pay any unpaid taxes (delinquent and non-delinquent assessments) together with penalties and interest thereon".

The preferred arrangement is for the property owner to pay the back taxes.

To verify whether the property taxes have been paid and to document the record, the Agent will adhere to the following procedures:

1. Obtain from the Lands Abstracting Unit the tax statement attached to the Certificate of Title Search.

2. Review the tax statement showing the taxes are paid.

3. If taxes are due on the property, the Agent will then be required to:
   A. Obtain a copy of a receipt showing that the taxes have been paid; or
   B. Obtain a copy of the canceled check showing the taxes have been paid; or
   C. Contact the County Treasurer's Office to determine if the taxes have been paid and obtain the receipt number and the date paid and record this information, along with the name of the person contacted in the Treasurer's Office, in the Agent's report.
Section 1.9-Real Estate Contracts

A Real Estate Contract (R.E.C.) is a conveyance document used in certain situations where real property is sold and purchased on an installment payment basis. The buyer is granted an equitable interest only, while the seller (owner) retains the legal interest in the property until the terms of the contract are satisfied. In the acquisition of property subject to a Real Estate Contract, whether recorded or unrecorded, all parties to the contract must sign the conveyance documents. However, in most circumstances, negotiations are conducted solely with the buyer. Payment for the acquisition is made in accordance with the provisions of the R.E.C. and/or state and federal law.

Section 1.10-Revised Property Descriptions

If the Agent discovers during negotiation that a property has changed ownership or some type of interest has been conveyed to another party, it is the Agent's responsibility to obtain copies of all documents which indicate such change. Any documents affecting the title of the property should be turned over to the Lands Abstracting Unit for review and inclusion in an updated title report, if applicable. If there is a change in ownership, a written offer will be given to the new owner.

A revised description, appraisal, and updated title report will be made when a split in the ownership of the property has occurred. Upon receipt of the revised property description and the revised, reviewed, and approved appraisal report, the Agent shall prepare a revised/new Letter of Offer and continue negotiations. In cases of split ownership, revised/new offers will be made to all concerned parties and the Agent shall continue negotiations.

Section 1.11-Revised Appraisal Reports

When an appraisal report is revised and new parcel summary sheets are received by the Agent, it shall be the responsibility of the Agent to return a copy of the superseded parcel summary sheets to the Reviewing Appraiser so that they may be marked void.

Section 1.12-New Evidence of Value

In the event some element of compensation not considered in the reviewed and approved appraisal report is discovered during the negotiations, the Agent shall submit to the Acquisition Unit Supervisor such value evidence for review. If it is determined the value evidence has merit, it shall be directed to the attention of the Supervising Appraiser and Review Appraiser for review and possible revision of the reviewed and approved appraisal report. (See also agent settlements in the field).
It is always proper to consider evidence of value submitted by a property owner. Any information that may affect value is useful. The Department will consider appraisal reports submitted by property owners if prepared by a state certified appraiser (effective December 1, 1990) and if they meet recognized professional appraisal standards and conform to Department regulations and state statutes. In those cases where a property owner submits an appraisal report for review, the Agent will forward it to the Review Appraiser for analysis and opinion.

Should the Review Appraiser determine that the appraisal report is acceptable, and more adequately addresses property value than the original report, the Review Appraiser must recommend that the appraiser, through the Appraisal Unit Supervisor, update the appraisal or obtain a new appraisal. The Agent will be informed and a revised Letter of Offer will be presented to the property owner.

The Acquisition Supervisor will then make one of the following decisions:

1. To determine the evidence of value is not reasonable and can then be disregarded; or

2. Recommend an Administrative Settlement; or

3. To forward the evidence of value to the Review Appraiser. If warranted, the Review Appraiser will send the evidence of value to the Appraisal Unit Supervisor, who will forward information to the Appraiser of record. The Appraiser will write an appraisal update or provide a letter stating that no change can be made. At that time, the Review Appraiser may write a reviewer’s conclusion if another appraisal is not practical.

Revision to a Reviewed and Approved Appraisal

The need for a revision to a reviewed and approved appraisal may be found at any time by anyone, but is typically discovered by the acquisition agent. Requests for revisions should be based on either a provable error, or a documental omission from the appraisal report, and not a difference of opinion as to the analysis or conclusions presented therein.

All requests for appraisal revisions shall be made in writing and transmitted along with all information supporting the request to the Review Appraiser assigned to the project. If the Review Appraiser decides that a revision is necessary and elects to afford the Appraiser the opportunity to amend the report, a request for such shall be transmitted to the Appraisal Unit Supervisor who, in turn, will transmit it to the Appraiser. If the Appraiser agrees that a revision is warranted, an Appraisal Revision form explaining the change shall be prepared by the Appraiser and transmitted back to the Appraisal Unit Supervisor for assignment to Appraisal Review (one original and a copy for each copy of the revised appraisal). In the event the Appraiser elects not to change the appraisal, the Appraiser shall prepare and submit a written explanation to the Appraisal Unit Supervisor.
Section 1.13-Just Compensation

Before the initiation of negotiations, an agency official shall establish the amount believed to be just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, the Department shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

The Agent will advise the property owner of the name of the Appraiser whose valuation report was used as the basis for the Reviewer's opinion of just compensation and will provide the owner with a copy of the reviewed and approved appraisal report if the property owner requests one. If a Reviewer's conclusion is the basis for just compensation, only the Reviewer's conclusion is to be provided to the owner. The Department is not required to provide the property owner with copies of any other appraisal report which it may have secured if that valuation report was not reviewed and approved as the basis for the offer of just compensation to the property owner.

The property owner shall be advised that the Department will make no additional offers to purchase the property, in an amount greater than the approved amount of just compensation, unless additional information indicates that the original appraisal report does not reasonably reflect true market value or an item of severance damage was not considered.

Section 1.14-Updating Offer of Just Compensation

If the information presented by the owner, or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agent shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Department shall promptly re-establish just compensation and offer that amount to the owner in writing. See Section 1.12-New Evidence of Value.

Section 1.15-Written Offer

Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

1. A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
2. A description and location identification of the real property and the interest in the real property to be acquired.

3. An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures), which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

The Agent shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property face to face if feasible, including the basis for the offer of just compensation, and explain its acquisition policies and procedures, including its payment of incidental expenses. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Department shall consider the owner's presentation.

The Agent shall obtain the following information prior to making a formal offer:

1. Written confirmation from the Budget and Audit Unit that Federal Authorization to Proceed has been obtained for acquisition.

2. Approved Parcel Summary Sheets.

3. Conveyance documents for all parcels on the project.

4. Title brief.

5. Right of Way maps.

The Letter of Offer is prepared by the Agent in accordance with the reviewed and approved appraisal. The Letter of Offer is reviewed to assure that it is in accordance with the reviewed and approved appraisal and approved by the Acquisition Unit Supervisor before the Agent is authorized to present the offer to the owner.

Offers to acquire shall be tendered on "Waivers of Appraisals", "Reviewed and Approved" appraisals or "Reviewer's Conclusions". "Reviewed only" appraisals (including those approved only for court testimony) shall not be disseminated to the public.

The Property Management Unit shall furnish salvage estimates of all applicable improvements within the right of way, including advertising signs, to the Review Appraiser for approval. Salvage lists are to be ready for Acquisition Agents before they start negotiation on each project. Property Management Unit personnel will inspect improvements when necessary and determine their estimated salvage value.
Section 1.16-Locating Owner

If the Agent is unable to locate a property owner and must, therefore, recommend condemnation, the Agent shall submit a written report of the efforts made to locate the property owner to the Right of Way Acquisition Unit Supervisor.

The Agent shall check the assessment rolls, post office, sheriff's office, public utilities, individuals in the community (obtain names and length of residency), and any other source that might logically provide a clue to the owner's location and address. These measures are essential to the Department's legal requirement that a "diligent search" be conducted. All efforts made by the Agent shall be documented in the Agent's log.

Addresses for all parties identified on the Agent's review sheet as having an interest in the property shall be obtained by the Agent. The Title Examiner's review sheets along with the title certification are essential to the Agent in determining to whom the offer should be made.

If at any time the Title Examiner's review sheet is not in the acquisition package, it may be requested by the Agent from the Lands Abstracting Supervisor for clarification and direction to obtain clear title.

Section 1.17-Offer by Personal Contact

The Agent shall make all reasonable efforts to personally contact each in-state property owner or designated representative. All aspects of the acquisition, along with a written offer based on a reviewed and approved appraisal, are to be presented to the owner. All relevant right of way maps and construction plans are to be explained to the property owner, and the property owner shall be advised to telephone the Agent (collect) to coordinate further.

All documents requiring the signature of the property owner should be completely filled out before the property owner is requested to sign them; upon request the property owner shall be given copies of each signed document.

Section 1.18-Offer by Correspondence

When all reasonable efforts to make personal contact with a property owner have failed, the property owner may then be contacted by certified mail, return receipt requested. A stamped, self-addressed envelope will be included to encourage replies.

Out of state property owners may be personally contacted when authorized by the Right of Way Acquisition Supervisor; otherwise the contact will be made by correspondence. The correspondence shall consist of a letter explaining the project and the reasons for the acquisition.
All necessary right of way documents, including Letter of Offer, Right of Way Acquisition brochure, deeds, easements, temporary construction permits, contracts and right of way maps should be completely filled out and included in this correspondence.

Out-of-state property owners shall also be encouraged to contact the department by telephone, collect, whenever necessary to facilitate the coordination of the acquisition of the property. When it is determined to be expedient by the Acquisition Unit Supervisor all offers for improved property may also be made by certified mail, return receipt requested.

**Section 1.19-Telephone Contact**

Initial contact by telephone is recommended to set up appointments to make the offer. It is also mandatory that a telephone call precede an offer that will be mailed. The property owner is to be informed of the situation in order to provide verbal direction on further communications.

**Section 1.20-Relocation Assistance**

Where relocation of persons or personal property may be involved the Agent will advise the property owner that a Relocation Agent will be in contact with them to explain the program and benefits, if any. The Agent must not attempt to explain the Relocation Assistance Program or entitlements.

The Relocation Assistance Unit will be advised of the Acquisition Agent’s schedule, and when feasible, a Relocation Agent will accompany the Acquisition Agent and participate in the initial negotiations with the property owner.

A copy of the signed Letter of Offer and other pertinent information shall be forwarded to the Relocation Assistance Unit prior to the offer being made.

The Agent is obligated to coordinate with the Relocation Assistance Unit on any parcel involving any relocation activities.

**Section 1.21-Expenses of Title Transfer**

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

1. Recording fees, transfer taxes, or documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Department. However, the Department is not obligated to pay costs solely required to perfect the owner’s title to the real property.
2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

3. The pro rata portion of any prepaid real property taxes which are allocable to the period after the Department obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Department shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then need to request reimbursement from the Department.

In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Department's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

The Department is not obligated to pay costs solely required to perfect the property owner’s title to the real property acquired. However, the Department may, in its sole discretion, obtain a title insurance policy on any real property it acquires. Costs of securing a title insurance policy will be borne solely by the Department, unless an agreement exists stating that the expense will be borne by another entity.

Section 1.22-Donations

Donations of Property Being Acquired. A non-governmental owner whose real property is required for a federal-aid project may donate the property to the Department. Prior to accepting the property, the owner must be informed by the Department of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser unless the Department determines that an appraisal is unnecessary because the valuation is uncomplicated and the fair market value is uncomplicated and estimated at under $10,000 (or $2,500 on Tribal/Local Government Agency projects) or the state appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. Section 323(d).

Donations and Conveyances in Exchange for Construction Features or Services. A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the state’s share of project costs.

It is necessary to have the appraisals made by a fee appraiser to satisfy the tax code requirements when a charitable contribution is involved.
Property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on Form No. A-953, Donation of Real Property.

**Section 1.23-Acquisition by Exchange**

Department practice is to purchase required right of way by means of monetary compensation to the property owner. However, at times, it may acquire right of way by other forms of compensation, such as land exchanges or additional construction features (turnouts, drainage, and access).

In cases where forms of just compensation in lieu of cash payment are proposed, the proposed settlement shall be reviewed and approved by the Right of Way Bureau Chief, or his designee, and shall be properly, and clearly, noted on Form No. A-307, Contract.

Engineering considerations require the prior approval of the PDE, by means of IDC or e-mail, concurring with conditions on the contract.

The value of the property being exchanged shall be determined with a reviewed and approved appraisal in reaching a settlement the value of each of the parcels in the exchange being considered.

**Section 1.24-Property Owner Contractual Obligations**

The Department's contract with the property owner will clearly state those elements of the settlement that are going to be performed by the property owner. Clear and concise language is essential to avoid misunderstandings of intent.

A time limit for completion is an essential consideration in those obligations incurred by the property owner which involve clearance of the right of way. A definite date for completion and the amount of salvage value retained by the Department must be stated in the contract. A copy of any contract involving relocation of persons or personal property must be provided to the Relocation Assistance Unit.

The PDE, Office of the General Counsel and/or others with the expertise to evaluate the impact of those clauses shall review non-standard clauses placed on the contract by the property owner for approval.

**Section 1.25-Obligations of the Department**

The Agent shall make the property owner aware that all items of compensation and all things to be accomplished by the Department are documented on Form No. A-307, Contract.
Section 1.26-Minimum Right of Way Payments

The Department has determined that the minimum compensation for each ownership should be $500.00. This applies to Fee Takes and CME’s. Where there are multiple parcels under one ownership the predominant parcel should have a minimum compensation of $500.00. For ownerships that consist of TCP’s ONLY, the minimum compensation should be $250.00. Where there are multiple TCP’s under one ownership the predominant parcel should have a minimum of $250.00.

In determining the predominant parcel, Fee Takes should have precedence over CME’s and CME’s over TCP’s. In cases of multiple Fee Takes, CME’s and or TCP’s, the parcel with the highest land value should be the predominant parcel.

The appraisers may encounter circumstances where the application of the forgoing guidance would be inappropriate. The appraiser shall consult with both the Appraisal and Appraisal Review Unit Supervisors if it is unclear which parcel is the predominant.

The Appraisal Unit Supervisor may waive the requirement for an appraisal report for those acquisitions in which the total compensation for each and every parcel in an ownership, as estimated by the Appraiser, falls below the Department's minimum compensation, but the total compensation for the entire ownership will not exceed $10,000 (or $2,500 on Tribal/Local Government Agency projects).

Any acquisition for which the appraisal report requirement has been waived shall be negotiated by the Acquisition Unit on the basis of the recommended compensation as determined by Appraisal Review.

Section 1.27-Uneconomic Remnant

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Department shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

The property owner may retain ownership of an uneconomic remnant. If the property owner does not elect to retain ownership, the Department shall acquire the uneconomic remnant in accordance with the reviewed and approved appraisal.

Section 1.28-Settlement Procedures

At the initial property owner contact, the Agent shall advise the property owner that the Department desires to purchase the real property in an equitable manner and will purchase the real property for the full amount the Department believes to be just compensation. Whenever possible, the property owner will be contacted personally and presented with a written Letter of
Offer containing a summary statement clearly showing the location and description of the property, identification of improvements and fixtures being acquired, and the amount of just compensation offered, including severance damages, if any.

The property owners will be advised of their legal rights under New Mexico eminent domain statutes and shall be presented with a copy of the Department’s "Right of Way Acquisition" brochure, which explains the Department's acquisition practices.

The Right of Way Acquisition brochure describes the Department's acquisition practices, including the property owner's right to an administrative appeal concerning reimbursement for expenses incidental to the transfer of title and the property owner’s right to appeal certain litigation expenses, including reasonable attorney, appraisal and engineering fees actually incurred by the property owner because of condemnation proceeding where:

1. The final judgment of the court is that the Department cannot acquire the real property by condemnation; or

2. The condemnation proceeding is abandoned by the Department other than under an agreed upon settlement; or
The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Department effects a settlement of such proceedings. The Agent shall attempt to secure the property owner's agreement to purchase the required right of way for the full amount believed to be just compensation and offered to the property owner. All counter offers proposed by a property owner to the Department shall be in writing and evaluated in accordance with the requirements of Administrative Settlements.

When the Acquisition Unit Supervisor determines that reasonable efforts to reach a settlement based on the offer of just compensation have failed, a written Notice of Intent to condemn will be sent to the property owner. (See section on advising the owner of rights under the law).

Section 1.29-Administrative Settlements

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement for that amount have failed and an authorized Department official approves such administrative settlement as being reasonable, prudent and in the public interest. A written justification shall be prepared which indicates that available information supports such a settlement and is deemed reasonable, prudent and in the public’s best interest.

Under this option, when making a determination as to whether a proposed administrative settlement is in the public interest, the acquisition agent should consider costs that could be saved or avoided. These include: salaries, travel, per diem, witness fees, preparation for trial and recent court awards.

The agent shall prepare a written justification stating all of the information, including trial risks, that support such a settlement.

When negotiations between the Agent and the owner result in a proposed administrative settlement, the proposal must be submitted by the Agent to the Acquisition Unit Supervisor.

1. The assigned acquisition agent is authorized the option to individually approve administrative settlements that exceed the approved fair market value by not more than $2,500.00 The Settlement must be supported by a written justification setting forth the basis for the increased payment amount. Such information shall support the settlement as being reasonable, prudent and in the public interest. Following execution of the purchase contract, the justification in support of the administrative settlement will be submitted for review (only) by the Acquisition Supervisor. An attempt will be made to expedite the acquisition of real property by agreements with owners and to avoid litigation whenever possible. Experience shows that it is both costly and time consuming to rely on the court system to settle disagreements.
2. If, in the agent's opinion, an owner's written counter offer is reasonable, prudent and justified; the agent may allow the property owner(s) to sign conveyance documents, contracts, and payment vouchers "as revised" prior to obtaining approval of an administrative settlement. This practice should be limited to those circumstances where the agent in his/her judgment, fully believes that the counter offer and resulting administrative settlement have a good chance for approval. When this practice is applied, the agent will advise the property owner(s) of the need to obtain Department approval prior to the finalization of the contract; and will document in detail the discussions and agreements reached between the agent and the property owner in the negotiator's report. A counter offer by the Department may also occur based on review by others within the Right of Way Bureau: such counter offer would be made by the agent for consideration by the owner. The intent of this practice is to increase productivity by minimizing the need for multiple agent visits.

Administrative Settlements that Exceed $2,500.00

The Acquisition Unit Supervisor will evaluate the proposed administrative settlement. If it is found to be reasonable, prudent and in the public interest, the Agent will describe the settlement and the justification on an administrative settlement form and forward it to the Right of Way Bureau Chief with a recommendation for approval.

The Right of Way Bureau Chief will evaluate the proposed administrative settlement, along with the Acquisition Unit Supervisor's recommendation, and will approve it if it is found to be reasonable, prudent and in the public interest.

If the Right of Way Bureau Chief and the Acquisition Unit Supervisor do not concur with the proposed administrative settlement, the Agent may continue negotiations with the property owner or submit the parcel for condemnation, as he deems appropriate, subject to the concurrence of the Acquisition Unit Supervisor.

The Agent must ensure that all counter offers proposed by a property owner are made in writing and addressed to the Acquisition Unit Supervisor.

Section 1.30-Legal Settlements/Court Awards

The Office of General Counsel is responsible for negotiating settlements after litigation has been filed either by the Department or a landowner. The following procedure is followed for legal settlements:

1. A staff attorney negotiates with opposing counsel representing the property owner, or with the property owner if the property owner is not represented by counsel. The staff attorney is responsible for coordinating with the Agent, Review Appraiser, Appraiser and PDE for the project.
2. If a tentative settlement is reached, the staff attorney will prepare a proposed legal settlement for review and approval.

3. The proposed legal settlement will be reviewed by the Right of Way Bureau Chief. If it is found to be reasonable, prudent and in the public interest, it will be forwarded to the Chief Engineer for approval.

4. If approved, the fully executed legal settlement will be returned through the Right of Way Bureau Chief to the OGC, which will proceed with settlement and prepare the necessary pleadings to consummate the case. If disapproved with reasonable cause, the OGC will continue to negotiate settlement or proceed to trial as appropriate.

All documentation developed during the case relative to the legal settlement, including the written rationale for the settlement, is to be a part of the official records of the Right of Way Bureau.

When a case is taken to trial and the court award exceeds the Department's reviewed and approved appraisal amount, the OGC must furnish the Right of Way Bureau Chief a Confidential Trial Report to be used as the basis for issuing a warrant for payment or appealing the court decision. This report will be included in the parcel file for permanent record.

The report by the OGC shall give a brief factual account of the trial, including the range of testimony by each party and the major issues developed. It shall include an explanation of any difference between the Department's highest reviewed and approved appraisal amount and the amount of the Department's high testimony at trial, or the amount stipulated to by the parties and submitted to the Court for its judicial determination of compensation. Also included are comments as to availability of material, legal errors, or other basis of appeal; an explanation of action regarding motions for remittal or new trial or the taking of appeal; and where applicable, a statement by the Department's Review Appraiser as to determination of value of ineligible items.

**Legal Settlements**

A Legal Settlement is one that is reached by the OGC after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action has been filed.

**Administrative Settlements**

An administrative settlement is one that is reached by either the OGC or the Right of Way Bureau prior to the filing of a condemnation proceeding and is based on value related evidence, administrative consideration, or other factors approved by the Right of Way Bureau Chief.
In cases that arise where there is not an acquisition of property rights, a damages-only parcel shall be established. A before and after appraisal shall be performed to establish the value of the damages for that parcel. Subsequently, a written offer will be made to the property owner. If the property owner refuses the offer, an administrative settlement may be considered. The Right of Way Bureau and OGC may determine that a condemnation action may be filed to resolve the issue of compensation.

In cases where property rights are to be acquired, the damages are determined by a reviewed and approved updated or new appraisal, and the owner is provided with a revised letter of offer. If the property owner refuses the offer, an administrative settlement may be considered.

In all cases, the administrative settlement must be reasonable, prudent and in the public interest. Administrative settlements are submitted for approval to the Right of Way Bureau Chief.

**Potential Inverse Condemnation**

Settlements involving a potential inverse condemnation are negotiated by the Right of Way Bureau and the OGC prior to the filing of any legal action by either party.

Normally, situations involving these types of settlements occur after the project has been certified and construction has begun or has been completed. Often, the need arises out of an unforeseen or unanticipated result arising out of construction.

In cases that arise where there is not an acquisition of property rights, a damages-only parcel shall be established. A before and after appraisal shall be performed to establish the value of the damages. Subsequently, a written offer will be made to the property owner. If the property owner refuses the offer, an administrative settlement may be considered.

In cases where property rights are to be acquired, the damages are determined by a reviewed and approved updated or new appraisal and the owner is provided with a revised letter of offer. If the property owner refuses the offer, an administrative settlement may be considered.

Settlements involving the potential for inverse condemnation shall be coordinated with and include approval by the Right of Way Bureau Chief.

**Tort**

Tort claims generally arise out of actions resulting from non right of way related issues. The potential for inverse condemnation may exist.

The Risk Management Division of the General Services Department and the OGC negotiate tort claims settlements. The Right of Way Bureau may be asked to provide assistance.
Once a settlement is reached, the basis for the settlement will be documented and sent to the Engineering Design Division Director for approval. Upon approval, the Director will provide written instruction to the Right of Way Bureau Chief to process the payment.

**Payments**

Claims resulting from the above-described circumstances will be paid in the following manner:

1. Legal Settlements will be paid from the Legal Settlement Fund; however, once all ROW acquisition obligations have been met, funding from construction can be used.
2. Administrative Settlements will be paid from project construction funds.
3. Inverse condemnation claims and condemnation cases resulting in settlement or judgment will be paid from construction funds if the action is related to a right of way taking. Otherwise, the settlement will be paid from the Legal Settlement Fund.
4. Tort claims will, in all cases, be paid from the Legal Settlement Fund and Risk Management Funds as appropriate.

**Section 1.31-Signatures**

Department Form No. A-307, Contract, and all other conveyance documents should be signed by the parties identified in the title report.

If the first party's signature appears in a form different from that under which the title was acquired, this variation may be accounted for in the caption of the instrument by showing both the name under which the first party is presently conveying, as well as that under which the title was acquired.

Spouse's signature will also be obtained on all documents, in addition to the owner of record.

Where a wife signs the conveyance documents, the Agent shall see that she uses her given name (Mary Jones rather than her married name (Mrs. Bob Jones).

In the event the property owner is unable to write his or her name, the property owner's mark is acceptable. The signatures of two witnesses are required in this case and the contract will be altered to allow for space. It is necessary to have individuals other than the Agent witness the mark.

It is best to sign the conveyance documents with black or blue ink. A ballpoint pen may be used, but under no circumstances is a pencil signature acceptable. Only the original of all documents requiring signature of an owner will be signed. Only the original will be submitted for payment. Should copies be necessary, they will clearly be marked "copy".

Form No. A-307, Contract, should be prepared by the Agent, in typewritten form, before an offer is made. Any and all changes made to the original Contract document, as typewritten, shall be initialed by the owner or the owner’s designee, the Agent and the Project Development Engineer and/or others with the expertise to evaluate the impact of those changes, as applicable and noted in the Negotiator's Log.
Conditions as noted will be phrased as Standard Clauses.

**Section 1.32-Closing a Purchase Transaction**

Upon acceptance by a property owner, the Agent shall assemble all the necessary documents to be submitted for payment. The following documents should be submitted with the payment package:

1. Letter of Offer
2. Administrative Settlement, if applicable
3. Parcel Summary Sheet
4. Form No. A-307, Contract
5. Deed, Easement or TCP
6. Negotiator's Report
7. Title Report

Other documents that may be required:

1. Mortgage Release
2. Release of Lien
3. Construction Agreement
4. Drainage Agreement
5. Change in Title Opinion
6. Tax Receipts

Following negotiations (whether successful or not), the Agent will review the ownership file to ensure that it explains and supports:

1. Each property owner contact.
2. All negotiation activities conducted.
3. The dollar amounts for which payment vouchers are to be requested.
4. In the case of unsuccessful negotiations, the acquisition efforts to obtain a negotiated settlement, the objections set forth by the property owner, and any other information which may be of use or interest to the Office of General Counsel in pursuing a legal settlement or legal possession through condemnation.

This review will be conducted by the Agent and concurred in by the Acquisition Unit Supervisor.

All properly executed and completed documents in the payment package will be turned in to the Acquisition Unit Supervisor or the Supervisor’s designee for processing and payment.
Section 1.33-Possession

Before requiring a property owner to surrender possession of real property, the Department shall:

1. Pay the agreed purchase price to the property owner.

2. In the case of condemnation, deposit with the court, for the benefit of the property owner, an amount of money not less than the Department's estimate of just compensation for the real property condemned, or the amount of the award of compensation in the condemnation proceeding for the real property condemned. The Department must receive a permanent order of entry, as granted by the court, prior to requiring the property owner to surrender possession of the real property.

3. Meet the requirements of the Uniform Act.

4. The Department may obtain a Right of Entry before making payment for the real property acquired.

5. In those instances where the Department's obligations relative to the establishment and written offer of just compensation have not been met, the approval of the FHWA will be obtained prior to seeking a right of entry.

When real property is donated or exchanged the Department shall take possession when the Form No. A-307, Contract, is signed by both parties.

Section 1.34-Negotiation Reports

Form No. A-262, Negotiator's Report, serves the purpose of providing a detailed written report from the Agent of the contacts made by telephone or in person and all discussions that take place during the negotiations. An entry must be made in the report every time a contact is made, whether it be with the property owner or any other interested party.

It is essential that the Agent realize the importance of establishing a written record of negotiations that may be utilized by all personnel of the Department. An accurate record of past negotiations is even more significant when negotiation becomes complicated and lengthy.
Section 1.35-Leasehold Interests

If the real property to be acquired is leased, the Agent may assist the lessor and the lessee in the determination of their property interests, if any, by providing pertinent information from the appraisal report.

When required, the Appraiser of record may recommend and/or provide valuations of the respective interests as they appear based on the available information.

When the Title Examiner, Appraiser or Agent has determined that there are interests in the property in addition to the fee owner's interest, a formal offer shall be made to all parties of interest, and jointly, when feasible. (Lessors, Lessees, Tenants etc.)

Section 1.36-Fencing

The following state statutes and Commission Policy relate to fencing of highways:

1. NMSA 1978 [citation] "Unlawfully Permitting Livestock upon Public Highways".

2. New Mexico State Transportation Commission Policy 89-111, dated [new date], "Public Safety and Environment".

3. New Mexico State Transportation Commission Policy 157-89, dated [new date], "Fencing".

Fencing to be provided on the project will be shown on the construction plans. The Agent must thoroughly review the proposed fencing with the PDE before beginning negotiations with the property owner. Any changes proposed by the property owner must be approved by the PDE before being included in the contract.

If the property owner wishes to retain an existing fence, the Agent shall include a statement to this effect on the conditions portion of the contract and have it approved in writing by the PDE or the Project Manager.

Section 1.37-Request for Design Changes

Design change requests made by a property owner during the course of negotiations and before the project is let to contract must be reviewed and approved by the PDE and should be included on the final right of way maps and construction plans. Such changes may include driveway turnouts, adjustment of irrigation facilities or modification of fences, and may require construction maintenance easements or temporary construction permits.
Written requests made by the property owner and reviews and approvals by the Agent and the PDE must be properly documented in writing.

If the property owner wishes to retain the fencing materials, the salvage value determined for the material shall be deducted from the total compensation. A salvage value is to be established, in this case, as part of the appraisal, otherwise the owner may not retain the material.

Section 1.38-Request for Construction Changes

Requests for construction changes (changes may include turnouts, construction maintenance easements, temporary construction permits, additional right of way) received after the project has been let to contract must be processed by the Project Manager through the District Construction Engineer and the PDE. These changes are to be incorporated in the right of way maps and construction plans and forwarded to the Right of Way Bureau Chief for appropriate action.

Section 1.39-Highway Access Rights

Access control lines shall be shown and indicated on the conveyance document. It is the responsibility of the Agent to explain, in detail, both the current and proposed access to the property owner's remaining tract. If access control is implemented or extended, the Agent will advise the property owner of the Department's proposed changes in the access control. Further, it shall be explained how property access will be maintained after project construction (frontage roads, direct access, etc.) is complete.

If the Department's proposed highway construction project required the implementation of access control, which will effectively leave the property owner without legal and/or reasonable access to his property remainder, and the situation cannot practically be remedied by the cost-to-cure method, the Department shall offer to purchase the landlocked property remainder as an uneconomic remnant.

The Agent shall not agree to any property owner request for slip ramps, curb cuts, additional entrances, median breaks, or other access changes without obtaining the prior written approval of the PDE. If an access change is approved by the PDE and the access change may affect the amount of the offer or just compensation for the affected right of way, the matter shall be referred to the Appraisal Unit Supervisor for appropriate action.

On projects requiring the acquisition of access rights from adjacent property owners where no additional right of way is being acquired, a form entitled "Grant and Release of Access Rights" is utilized to acquire the access rights.
Section 1.40-Work Permits

A work permit may be obtained from the property owner where temporary authorization is needed from the property owner for the contractor to do incidental work that is not essential to the project and is of mutual benefit to the state and the property owner. A work permit may be used for such work as connecting driveways to turnouts at the right of way boundary and dressing slope rounding.

No compensation shall be provided to the property owner or occupant for the work permit. It is to be utilized in those instances where the work is not mandatory; therefore, if the property owner does not wish to sign the work permit, no work would be done outside the highway right of way. In such instances it is not expected that the work permit will be used in lieu of a TCP and or CME.

The work permit should be regarded as a useful tool that may be utilized by the PDE during property owner interviews, by an Acquisition Agent during the right of way negotiation stage, or by a Project Manager during the construction stage. (Refer to Temporary Work Permit)

Section 1.41-Tribal/Local Government Agency

The Department may delegate responsibility for right of way acquisition, including relocation assistance and services. See the Right of Way Handbook, Volume VII, Tribal/Local Government Agencies.

1. Such delegation of responsibility shall be in writing, stating the specific requirements that the authority is responsible for accomplishing.

2. The authority shall keep adequate records of all right of way acquisition activities, property owner contacts and payments.

Any right of way acquisition responsibility delegated by the Department to an authority shall be conducted to comply with New Mexico state statutes, and state and federal regulations, such as:

1. 23 CFR

2. 49 CFR, Part 24

3. NEW MEXICO DEPARTMENT OF TRANSPORTATION Right of Way Handbooks (particularly T/LGA), Volume VII
Section 1.42-Federal Land Transfers

The following provisions apply to all projects on a federal-aid system, direct federal projects or federally assisted highway projects.

1. Title 23 U.S.C. Sections 107(d) and 317 provide for the transfer of lands, or interests in lands, owned by the United States to a state Department of Transportation or its nominee for highway purposes.

2. If lands or interests in lands owned by the United States are needed for highway purposes, the Department shall, pursuant to 23 U.S.C. Sections 107(d) and 317, file an application with the FHWA, except that if such lands or interests therein are managed or controlled by the Army, Air Force, Navy, Veterans Administration or Bureau of Indian Affairs, the Department may make applications directly to said agencies or their land acquisition agent.

Indian Lands

BUREAU OF INDIAN AFFAIRS – Application should be submitted directly to the Bureau of Indian Affairs, Washington, D.C., for rights of way across tribal lands or individually owned lands held in trust by the United States or encumbered by federal restrictions.

1. **INDIAN LANDS** - All right of way related phases are to be handled in accordance with policies and regulations under part 169, Right of Way over Indian Lands (Chapter 1, Title 25 of the Code of Federal Regulations).

   a) Permission to survey (Part 169.4).

   b) After preliminary construction plans and right of way maps are completed and available, as many meetings as necessary are held with Indian Officials and Bureau of Indian Affairs personnel for the purpose of reviewing and explaining the project. Questions on construction and design are handled by the Department's PDE assigned to the project.

   c) After all differences are resolved and with all concerned in agreement, an official application for right of way is submitted to the Bureau of Indian Affairs agency having jurisdiction over the lands involved. In cases where lands involved have been allotted to a tribal member or members, consent of the allottee must accompany the application. The following are documents that must be submitted with the application to the B.I.A. area realty agency:

      i. Two (2) copies of the appraisal, one (1) for the B.I.A. Area Office and one (1) to the Area Realty Agency. (The only exception will be when the right of way has been donated; The Department will request in the Application that all right of way consideration, damages and appraisals be waived).
ii. One (1) set of reproducible right of way maps (milars) and four sets (4) of right of way of maps (white prints).

iii. Original and one (1) copy of metes & bounds descriptions.

iv. Environmental Statements.

v. Archaeological Survey.

vi. One (1) copy of the FORMAL OFFER.

d) The following documents are to be submitted with the application to the Tribal Entity at the time of the OFFER.

i. One (1) copy of the Appraisal

ii. (Unless the Right of Way was donated, Appraisals will not be needed; instead the Department will request in the ROW Application that all right of way consideration, damages and appraisals be waived).

iii. One (1) copy of the FORMAL OFFER.


v. One (1) copy of the Map.

vi. Original and one (1) copy of metes & bounds descriptions.

vii. Environmental Statements.

viii. Archaeological Statements.

e) Follow through until easements and agreements are received. Upon satisfactory compliance with all requirements, the Superintendent from the Area Realty Agency will issue the Grant of Easement and distribute signed copies to the Department and the Tribe. The Tribal Entity will issue a Tribal Resolution approving the Right of Way request.

f) Both the Grant of Easement from the BIA and the Tribal Resolution from the Tribal Entity will be the official documentation needed for the file that will show the approval of the easement.
g) Once the Department receives the Grant of Easement and the Tribal Resolution, a payment package will be prepared for payment for the Easement. In some instances, the BIA will request payment before issuing the Grant of Easement and, therefore, these documents will not be in the payment package. The following documents are to be submitted with the payment package to the Budget & Audit Unit for payment approval:

i. Letter of Offer

ii. Parcel Summary Sheet (Unless Right of Way was donated)

iii. Administrative Settlement (If Needed)

iv. Negotiators Report

v. Grant of Easement or Letter of Consent

vi. Tribal Resolution

vii. Title Reports Are Not Required Because Indian Lands Are Held In Trust By The Federal Government And The Tribes Do Not Hold Title To Their Land.

Army or Air Force

State should submit its application directly to the installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.

Navy

State should submit its application directly to the District Public Works Officer of the Naval District involved.

Veterans Administration

ROW should submit its application directly to the Director, Veterans Administration, and Washington, D.C.

1. When the applications above are received by the FHWA, they will be reviewed and, when found to be in order, a letter of concurrence will be prepared. The application will then be transmitted to the federal agency having jurisdiction over the lands required by the state. (An immediate right of entry may be requested at this time.)

2. Upon receipt of notification from the federal agency that it is in agreement with the proposed transfer, the Department will be notified and the approval, with specified
stipulations, will be forwarded to the Department together with notifications that a right of entry has been granted.

3. Upon completion and acceptance of the highway construction project, the Department will prepare and forward an application to FHWA for a transfer of title containing:
   A. Letter of application;
   B. Finalized right of way plans;
   C. Environmental document with mitigation measures
   D. Sample Highway Easement Deed.

4. Deeds for conveyance of lands or interest in lands owned by the United States shall be prepared by the Department unless the FHWA at its discretion chooses to prepare them. Such deeds shall contain the clauses required by the FHWA. When the Department prepares the deed, it will submit the proposed deed to the FHWA for review and execution. Following execution, the Acquisition Agent shall prepare a confer memo detailing specific instructions for the deed with all attachments to the Records unit within the Right of Way Bureau. Records shall record the deed in the appropriate land record office and submit a copy of the recorded deed to the Acquisition Agent. The Agent will then advise the FHWA of the recording data.

5. When the need for the lands or the materials acquired under this subpart no longer exists, notice of that fact must be given by the Department to the FHWA and to the managing federal agency, and such lands or materials will revert to the control of the federal agency from which they were appropriated or to its assignee. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which acquired.

Section 1.43-Acquisition of Railroad Property

The Railroad and Utilities Section shares some of the responsibilities with the Acquisition Unit when acquiring real property, agreements, permits and easements from railroad companies.

When it is anticipated that it will be necessary to transfer title of real property interests from a railroad company to the Department, the Acquisition Unit will take the lead responsibility.

License agreements, cost and maintenance agreements, right of entry permits for survey and exploration, etc., will be the responsibility of the Railroad and Utilities Section to obtain.

In either case, it is the responsibility of each to coordinate with the other and seek such assistance and advice as might be appropriate.
Section 1.44-Functional Replacement of Real Property in Public Ownership

This procedure prescribes Federal Highway Administration (FHWA) policies on functional replacement of real property in public ownership. (23 CFR 710.509)

General. When publicly owned real property, including land and/or facilities, is to be acquired for a Federal aid highway project, in lieu of paying the fair market value for the real property, the Department may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

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

Functional replacement is permitted under State law and the Department elects to provide it.

The property in question is in public ownership and use.

The replacement facility will be in public ownership and will continue the public use function of the acquired facility.

The Department has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.

The FHWA concurs in the Department’s determination that functional replacement is in the public interest.

The real property is not owned by a utility or railroad.

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

Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet current zoning standards; and

Costs for land to provide a site for the replacement facility.

Procedures for functional replacement of real property in public ownership are as follows:

1. During the early stages of project development, Department officials should meet with the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement procedures. The results of discussions and decisions concerning functional replacement should be included in negative declarations and environmental impact and section 4(f) statements if required on a project.
2. At the earliest practicable time, the Department shall have the property appraised and establish an amount it believes to be just compensation, and shall advise the owning agency of the amount established. Subject to the requirements of this regulation, the owning agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

3. If the owning agency desires functional replacement, it should initiate a formal request to the Department and fully explain why it would be in the public interest.

4. If the Department agrees that functional replacement is necessary and in the public interest, it must submit a specific request for FHWA concurrence. The request should include:
   A. Cost estimate data relative to contemplated solutions,
   B. Agreements reached at meetings between the Department and the owning agency, and
   C. An explanation of the basis for its request.

The request shall include a statement that replacement property will be acquired in accordance with the provisions of the Uniform Act and applicable FHWA regulations.
5. After concurrence by FHWA that functional replacement is in the public interest, FHWA may, at Department request, authorize the Department to proceed with the acquisition of the substitute site and to proceed with physical construction of minor structures, or, in the case of major improvements, to proceed with development of detailed plans, specifications and estimates.

6. The plans, specifications, estimates, and modifications thereof, shall be submitted to FHWA for review and approval in accordance with established procedures. Where major improvements are involved, advertising for bids and letting of the contract to construct the replacement facility may follow the general procedures utilized by the owning agency, if acceptable to the Department and FHWA. The submission, where applicable, shall include provisions for Department inspection during construction of the replacement facility.

7. Prior to FHWA concurrence in the award for actual construction, an agreement shall be entered into setting forth the rights, obligations and duties of each party with regard to the faculty being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall also set forth how the costs of the new facility are to be shared between the parties. FHWA will concur in the agreement prior to execution.

8. The Department's request for final payment shall include:

   A. A statement signed by an appropriate official of the owning agency and the Department certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement.

   B. The statement shall also certify that a final inspection of the facility was made by the Department and owning agency and that the Department is released from any further responsibility.

Section 1.45-Underpasses for Livestock and/or Vehicles

The cost of all underpasses for livestock and/or vehicles must be economically justified by comparing the estimated cost of the underpass to the estimated cost of damage to the affected property by the construction of the highway project. The underpass may be economically justified if the construction of the underpass will reduce the estimated cost of the damage by an amount equal to or greater than the estimated cost of the construction of the underpass.

Proposed underpasses will be evaluated as follows:

1. Reviewed and approved appraisals must identify the estimated costs of damages that might be mitigated by the construction of a livestock and/or vehicle underpass.
2. The PDE will obtain an estimate of the cost of the proposed underpass structure.

3. The PDE will review and compare the estimates of cost and submit his/her recommendation to the Regional Project Development Section Head for approval.

4. If the structure is economically justified and approved by the Project Development Section Head, the Agent may proceed to negotiate with the property owner on the basis of estimated just compensation assuming that the structure would be constructed to mitigate severance damages.

The purpose of this regulation is to establish policy guidelines within the right of way acquisition process for land service facilities designed to provide or restore access to properties affected by a highway facility.

Section 1.46-Standard Clauses for Conditions on Form A-307

Standard clauses have been developed to assist the Agent in closing negotiations with the property owner. When they are used correctly, they clearly indicate to the property owner and the Department the details agreed upon during the negotiation.

The Agent shall obtain the approval of the Acquisition Unit Supervisor and the PDE when it is necessary to provide a special condition related to a design or construction feature requested by the property owner. For a special condition, which is not design or construction related, or to modify one of the following standard clauses, the Agent shall obtain the approval of the Office of General Counsel. Samples of the Standard Clauses are as follows:

1. Donation

   A. It is mutually agreed that for other valuable consideration herein acknowledged, the above-designated parcel shall be granted to the New Mexico Department of Transportation. This transaction is recognized to be of mutual benefit to both the first party and the Department.

   B. State and federal statutes and regulations provide for and allow property owners to make a gift of, or donate, real property to the Department after the property owner has been advised of his right to payment of just compensation and his right to receive and review an appraisal report; however, either or both of these rights may be waived.

2. Encroachments

   It is understood and agreed that the ________________________ located feet (right/left) of Station ________________ ____________ may remain, subject to a revocable permit that will be obtained by the first party from the New Mexico Department of Transportation.
3. Entry for Removal or Relocation of Improvements

First party agrees to permit the New Mexico Department of Transportation, its agents, servants or contractors to enter upon first party's remaining property insofar as may reasonably be necessary to remove those improvements purchased under this Agreement and listed herein.

4. Escrow Clause

It is understood and agreed that _______________________ ________ will act as escrow agent for this transaction.

5. Lessee's Release

First party agrees to secure a release of any and all interest arising for the lease, agreement or contract, written or verbal, by and between _______________________ dated _______________________ and first party as it may be affected by this contract.

6. Livestock Passes

It is understood and agreed that the _______________________ located at Station is being constructed for the passage of livestock and any vehicular traffic that may be possible by the first party.

7. Payment of Taxes

First party agrees to pay all taxes to the date of closing this transaction.

8. Removal of Improvements

It is understood and agreed that the first party will remove those improvements described herein within _______ days after the closing of this transaction. If improvements are not removed by said date, they will become the property of the New Mexico Department of Transportation and will be disposed of as the Department sees fit.

9. Remove and Rebuild Fence

It is understood and agreed that the party of the first part will remove and rebuild on the new right of way line that portion of fence located on the ______ side of the road between Station ________ and Station ________.

10. Turnouts
It is understood and agreed that the New Mexico Department of Transportation will construct a turnout at Station ______ (right/left).

11. Possession

The New Mexico Department of Transportation agrees to give first party 90 days written notice to vacate the premises within the time stated in said written notice.

12. Withholding Funds

It is understood and agreed that of the total amount of compensation provided, the sum of $________________________ shall be withheld until all improvements have been removed in a satisfactory manner.

13. Mineral Rights

Reserving unto grantor all oil, gas, and other minerals but without the right to enter upon and disturb the surface of the aforesaid lands for the purpose of conducting explorations or operations in respect to the oil, gas and other mineral rights herein reserved.

14. Access Rights as described on the deed, access rights are granted by the first party.

15. Hold Harmless requested by Property Owner

Subject to the provisions of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, et seq, the Department shall be responsible for all liability and damages arising from or relating to the granting of the TCP by (name of property owner) to the Department and all uses of the TCP which the Department may make or permit. (May submit for Contract Condition #10)

16. The consideration as set forth in the contract shall constitute full payment for the temporary construction permit and all damages, of whatever nature, arising out of or by reason of the use of said temporary construction permit for highway purposes. (May substitute for Contract Condition #8)

Section 1.47-Authorization to Enter

An Authorization to Enter is intended to allow the property owner time to consult with experts and evaluate the Department’s just compensation offer. This activity may take a considerable amount of time; therefore, the Authorization to Enter will accommodate the property owner while not delaying project delivery. This action is not to elevate the continued negotiation of the property and should never be considered as the final legal right to occupy the property. An
authorization to enter may be solicited by the Department only after a formal written offer has been presented to the property owner.

Permission from a property owner allowing the Department, its agents or contractors to enter upon their lands to perform a particular function (i.e., construction, fencing, drainage maintenance, etc.,) is often needed and is obtained by the property owner’s execution of the authorization form.

After this formal permission is granted, the timely physical work on the property may commence. The Department may then complete the necessary activities to conclude negotiations on the property interest required.

The property owner will be paid two hundred and fifty dollars ($250.00) as consideration for the authorization to enter and this amount is separate from the compensation due for the interest acquired in the land. Exceptions may be made on a project-by-project basis as approved by the Right of Way Bureau Chief.

If the property owner has executed an authorization to enter for a project, every effort must be made by the Agent to obtain the owner’s signature on the conveyance document(s) or submit the package to legal for condemnation as soon as possible, but no later than 90 days after execution of the authorization to enter. To comply with expeditious acquisitions, legal possession (Preliminary Order of Entry) will be obtained prior to Advertisement of Bid or alternate procedures approved by FHWA. The Acquisition Unit Supervisor and Bureau Chief will assist in the efforts for a timely conclusion of these Authorizations by setting priorities for the various disciplines required. The Agent must maintain a formal, updated list of all pending Authorizations to Enter and the list must be available for review by management. The Acquisition Unit Supervisor is advised on a weekly basis on the progress of all outstanding Authorizations.

An owner of record title report, the Authorization to Enter, and negotiators report shall be submitted to the Acquisition Unit Supervisor in the payment package for processing through the Budget and Audit Unit. All variations from this requirement shall be submitted and reviewed for approval by the Acquisition Unit Supervisor.

**SECTION 2-PAYMENT**

**Section 2.1-Payment**

Any contract submitted for payment that requires an expenditure of funds must be payable to all parties having an interest in the subject property, unless conditions on the contract expressly give other directions for payment and are initialed or signed by the parties to the contract. All parties of interest to be paid must sign their names on the contract exactly as they have been typed on the conveyance document, and as title to the property was conveyed to them as shown on the title report.
Where split or partial payments are negotiated, a signed condition on the contract is required for each payment. The negotiator's report will explain in detail the conditions on the contract.

**Section 2.2-Delivery of Payments to Property Owner**

All payments for rights of way and related costs incidental to the acquisition shall be routinely mailed to the property owner by the Budget and Audit Unit.

In those cases where the property owner requests prompt delivery of the payment check due to emergency, or other compelling reasons, a designated person other than the Agent may personally deliver the payment check to the property owner and obtain a receipt.

**Section 2.3-No Duplication of Payments**

No person shall receive any payment if that person receives a payment under federal, state, or local law which is determined by the Department to have the same purpose and effect as such payment. The Department is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Department's knowledge at the time of a payment.

**Section 2.4-Payment before Taking Possession**

Before requiring the owner to surrender possession of the real property, the Department shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court for the benefit of the owner, an amount not less than the Department's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Department may obtain a right of entry for construction purposes before making payment available to an owner.

When real property is donated or exchanged the Department shall take possession when the Form No. A-307 Contract is signed by both parties.
Section 2.5-Escrow Closings

When appropriate, escrow companies may be used to assist the Agent for the acquisition of right of way. The Agent will send a written request through the Acquisition Unit Supervisor to the Budget and Audit Unit, supported by a copy of the Negotiation Report to order a payment voucher.

Warranty deeds, payment vouchers, easements, releases and/or other conveyance documents will be provided to the escrow company for execution and return to the Department.

Section 2.6-Requests for Payment

Prior to submittal of a request for an Acquisition related payment, the Agent will review the parcel file to ensure that the payment to be requested is properly supported. This review will be approved by the Acquisition Unit Supervisor and the Budget and Audit Unit. The Right of Way Bureau Chief shall make final approval of payment.

SECTION 3-IMPROVEMENTS

Section 3.1-Owner Retention of Improvements

If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value of the retained improvement.

The term “Salvage Value” refers to the probable sale price of structures or other items, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a buyer with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis. The property owner does not have the statutory right to retain improvement salvage.

The Salvage Value will be taken from the Parcel Summary Sheet and Salvage Estimate Sheet, A-350. The Property Management Unit prepares an accounting of the disposition of improvements. After review, appraisal reports with improvements are to be submitted to the Acquisition Unit to identify which items may be treated as salvage versus those items normally treated as personal property.

Personal Property is defined as any object(s) not securely connected to the permanent structure by wire, plumbing connections or other apparatus. Personal property shall not be considered for salvage. Real Property is defined as any object(s) intended to be permanently connected to the structure by wire, plumbing or other apparatus. Only Real Property can be considered for salvage.
There shall be no moving allowance for the cost of moving the salvageable items, including buildings or mobile homes, without the written approval of the Right of Way Bureau Chief.

Prior to the Acquisition Agent going out to make an offer, salvage lists are to be ready.

When applicable, the Acquisition Agent shall explain at the initial meeting with the property owner the salvage value concept, along with other applicable facts pertaining to acquisition and relocation.

The property owner shall be advised if the Department has determined to make salvage rights available to the property owner. The Agent shall explain to the property owner how the salvage value was determined.

In all cases where salvage rights are to be considered, the Contract shall indicate that the offer to acquire salvage rights was declined or shall have attached a Salvage Purchase Agreement Form No. A-328. Salvage value issues will be dealt with at the initial interview with the property owner. When the property owner is granted the right to retain the salvage rights, the Agent shall assure that the rights of each party are delineated.

Once the Acquisition Agent is given the Salvage Estimate Form, this will put the Agent on notice to leave the appropriate number of lines blank on the Letter of Offer to include salvage issues on the Letter of Offer. These issues will be written in ink and initialed by the property owner and the Agent.

All conditions relating to the purchase of salvage value items shall be listed in the Salvage Value Purchase Agreement. The owner shall be advised in writing as to the date when the owner may exercise the right to the salvageable items.

The Salvage Purchase Agreement shall contain an inventory of the items to be sold (by attachment if necessary), the prices and the date by which items must be removed (after the acquisition by the Department).

When the property owner elects not to exercise the right to purchase the salvage items, the Agent shall explain that the improvement may be sold at a public auction by the Department. In this case, the property owner shall be advised not to claim any of the salvage items under this instance and that no Real Property fixtures may be removed from the premises by the property owners.

The Property Management Supervisor must ensure that all of the salvage items are removed by the specified date.

Depending on the method for disposal of the salvage item(s), an amount adequate to ensure performance shall either be retained from the acquisition payment (property owner) or shall be posted in the form of a cashier’s check by the purchaser (public auction). The bond amount shall relate to the type of improvement or cost to remove.
In the case of the owner’s retention of salvage, the Contract must indicate (in the tabulation section) the amount(s) to be deducted from the offer.

Upon the satisfactory removal of the salvaged items, the Property Management Supervisor shall check the box on the Property Management Inspection Sheet, Form No. A-388, stating upon completion of the Form it will be forwarded to the Acquisition Agent and the Budget and Audit Unit. This will give the Budget and Audit Unit notice to return the bond.

Section 3.2-Special Conditions for Tenant-Owned Improvements

When acquiring any interest in real property, the Department shall offer to acquire at least an equal interest in all buildings, structures or other improvements located upon the real property to be acquired, which it required to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

Any building, structure, or other improvement which would be considered to be Real Property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subsection.

Just compensation for a tenant-owned improvement is the amount the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.

No payment shall be made to a tenant-owner for any real property improvement unless:

1. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Department all of the tenant-owner's right, title and interest in the improvement.

2. The owner of the real property on which the improvement is located disclaims all interest in the improvement.

3. The payment does not result in the duplication of any compensation otherwise authorized by law.

Nothing in this subsection shall be construed to deprive the tenant-owner of any right to reject payment under this subsection and to obtain payment for such property interests in accordance with other applicable law. (49 CFR 24.105)

The tenant-owner shall be presented with a separate Letter of Offer describing the real property improvements to be acquired and the just compensation offered to him. The tenant-owner has the right to accept or reject the offer of just compensation for his real property interests in accordance with other applicable state laws.
SECTION 4-RECORDS AND REPORTS

Section 4.1-Records

The Department shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with 49 CFR Part 24. These records shall be retained:

i. Basic Data;
ii. Finding of No Significant Impact (FONSI);
iii. Environmental Assessments;
iv. Parcel Summaries;
v. Appraisal Report;
vi. Legal descriptions;
vii. Entitlements and 90-day Assurances (90-day Tenant Occupant Letters, Commercial Letters [relocation]); and
viii. Notice to Vacate Letters [relocation].

The above documents are routed to Records from a variety of sources and will be available for review by the Acquisition Agent. If the Agent inadvertently receives any of the above documents, the Agent shall forward the document to Records.

It is the responsibility of the Agent to submit the following documents to Records directly or indirectly within the payment package through the Budget and Audit Unit.

i. Contracts, Negotiator Logs, Conveyances (Warranty Deeds, Construction Maintenance, Easements, Quitclaim Deeds, Release of Mortgage, Partial Release of Mortgage);
ii. Formal Offer Letters; and
iii. Notices of Intent to Condemn.

Right of Way Bureau files will be securely maintained in its Records Section for approximately 18 months following final certification letter. The records will thereafter be transferred to the Department’s Records Control Section for retention of at least 3 years. Copies of documents will be made available to authorized personnel as necessary. When original documents are required to be removed (as when needed for trial), copies will be made for retention in the parcel file and the originals will be charged to the custody of authorized personnel.
Section 4.2-Confidentiality of Records

Records maintained by the Department are confidential regarding their use as public information, unless applicable law provides otherwise.

In those cases where a property owner requests specific documents from their parcel file after obtaining written permission from the OGC, copies of those documents shall be forwarded by the Records Manager unless applicable law provides otherwise.

Section 4.3-Reports

The Department shall submit a report of its real property acquisition and displacement activities if required by the federal agency funding the project. The report shall be prepared and submitted in the format contained in 49 CFR Part 24, Appendix B.

SECTION 5-RIGHT OF WAY CERTIFICATION

Section 5.1-Federal Requirements

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not before, all of the following conditions have been met:

1. The plans, specifications, and estimates (PS&E) therefore have been approved.

2. A statement is received from the state, either separately or combined with the information required by 23 CFR 635.309(c), that either all right of way clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right of way clearance, utility and railroad work which is to be underway concurrently with highway construction.

3. A statement is received from the state certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the state has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:
Full Certification

A. All necessary rights of way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining on the right of way but all occupants have vacated the lands and improvements and the state has physical possession and the rights to remove, salvage or demolish these improvements and enter on all land.

Conditional Certification

1. Although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained, the occupants of all lands and improvements have vacated and the state has physical possession and right to remove, salvage or demolish these improvements.

2. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them. The state may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the state shall ensure that occupants of residences, businesses, farms or non-profit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the state requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore including identification of each such parcel will be set forth in the state's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

4. A statement has been received that right of way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right of way is not required.

5. A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.
6. The FHWA Division Administrator has verified that adequate replacement housing is in place and has been made available to all affected persons.

**Section 5.2-Department Procedures**

Certification Letters are required from the Right of Way Acquisition Unit Supervisor to advise all of those concerned that all right of way for the project has been, or will be, secured in compliance with Department and FHWA directives. After the project has been certified and approved by FHWA, it is ready for advertising with respect to Right of Way issues.

The assigned Right of Way Acquisition Agent is responsible for preparing the certification letters. The information contained in these certifications must be reviewed by the Acquisition Unit Supervisor. The letter is then submitted through the Bureau Chief for review, signature and distribution.

**SECTION 6-CONDEMNATION**

**Section 6.1-General Provisions**

A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.

If the condemnor has a reviewed and approved appraisal for the property, the Department shall make such appraisals available to the other party during the negotiation period. (NMSA 1978, Section 42A-1-4)

**Section 6.2-Agreement**

At any time before or after commencement of a condemnation action, the parties may agree to carry out a compromise or settlement as to any matter, including all or any part of the compensation or other relief. (NMSA 1978, Section 42A-1-3)

**Section 6.3-Declaration of Intent Special Alternative Condemnation Procedure**

The legislature hereby determines and declares that the construction of urgently needed public roads and state highways is being delayed by the inability to enter into timely possession of the condemned property; that the landowner must wait the termination of prolonged litigation before he receives compensation for his property; that the delay in possession and therefore construction of the facility results in increased construction costs and thereby injuriously affects the public. The legislature, recognizing its responsibility, intends to solve these problems by establishing a special procedure whereby the state can enter into possession at the inception of the proceeding, and the interests of the property owner are protected by providing for an adequate bond prior to vesting of title and the taking of possession and also safeguarding the property owners' right to a
speedy judicial determination of the total just compensation due. This legislation is necessary for the immediate preservation of the public peace, health, safety, the promotion of the general welfare, and to minimize the economic and financial dislocation caused by highway construction.

The special procedure set forth herein shall be in addition to any other condemnation procedure now in effect and shall not be construed as repealing or amending such procedure by implication. (NMSA 1978, Section 42-2-1)

**Section 6.4-Authority to Acquire Non-Right of Way Parcels**

In connection with the acquisition of property or property rights, the state may by order of the court, acquire an entire lot, block or tract of land if by so doing, the interests of the public will be best served. (NMSA 1978, Section 42-2-4)

Likewise, on parcels not in condemnation the Department may, if the property owner concurs, acquire an entire lot, block or tract of land, if by so doing the interests of the public will be served.

**Section 6.5-Petition**

In any case where the state is the moving party to a condemnation action, a petition may be filed in the district court of the county in which such property is situated. Where the property of any defendant sought to be condemned lies partly in one county and partly in an adjoining county, the condemnation proceeding may be brought in either county. The petition shall include, but not be limited to, the following:

1. A statement by the petitioner of its authority to bring the action;
2. A general description of the public purpose for which the property is being condemned;
3. A statement that the action is brought pursuant to this statute;
4. An accurate surveyed description of the property to be condemned describing the same by metes and bounds and said description shall be incorporated in the petition with or without references to maps or plats attached to said petition; the property of each defendant to be condemned shall be described separately, and each tract under separate ownership shall be consecutively numbered for ease in identification;
5. The names and addresses of all defendants shall be given if known;
6. The estate to be taken shall be described;
7. In the event that title to the property to be taken is vested in the state, a statement that the Board of Finance has proclaimed that the needs and purposes of the condemnee to be of a greater public need than that of the defendant in whom that title is vested;

8. The petition shall be signed by any attorney employed by the state duly authorized to sign such pleadings;

9. The name of such attorney and his address or the post office box number of the state shall appear below the signature, or both addresses may be given;

10. An allegation that the petitioner has been unable to agree with one or more of the defendants having an interest in a particular tract as to just compensation;

11. A statement of the amount offered as just compensation for each tract affected;

12. The petitioner shall include or have attached thereto a map, plat or plan of the improvement to be constructed and showing the property to be condemned.

Parties’ defendant. The petition shall name as defendants all the parties who own or occupy the property or have any interest therein as may be ascertained by a search of the county records, and if any such parties are known to the petitioner to be infants, or persons of unsound mind or suffering under any other legal disability, when no legal representative or guardian appears in their behalf, the court shall on motion appoint a guardian ad item to protect the interest of those under any legal disability.

1. If any property sought to be condemned belongs to the state, the head of the commission, department, institution, bureau, agency or political subdivision holding either title, or possession, shall be named as well as the commission, department, institution, bureau, agency or political subdivision itself.

2. If the record owner of the property sought to be condemned is deceased and there has been no recorded legal disposition of the property, the deceased and his known heirs shall be named as defendants, and if the heirs are unknown to the petitioner, they shall be named and designated as defendants under the style of "the unknown heirs of ______________ deceased."

3. If the estate of any such deceased person is in the process of being administered in any court of the state, the personal representative of such deceased person shall also be named as a defendant.

4. If the property sought to be condemned is held in trust and the petitioner has knowledge of said trust, the trustee shall be named.
5. Where the name of the party holding title or any interest therein cannot be determined, such parties shall be designated as "unknown owners or claimants of the property involved."

Notice of condemnation. Upon filing of a petition in condemnation in the District Court, the clerk shall issue a notice of condemnation, which shall contain:

1. The title of the action;

2. The name or designation of the court and county in which the action is brought as well as the cause number;

3. A direction that the defendant appear and answer to the petition within thirty days after service of the notice, and a statement that unless the defendant so appears and answers, the petitioner will apply to the court for the relief demanded in the petition;

4. The name and address of petitioner's attorney shall appear on every notice;

5. A general statement of the nature of the action and a general description of the proposed location of such road, street or highway, and that the land involved is more fully described in the petition on file in said cause;

6. In the event that an ex parte preliminary order of entry is obtained by the petitioner after the petition is filed (NMSA 1978 Section 42-2-6), the notice required by Section 5 may be incorporated in the notice of condemnation, both for the purpose of personal service and for constructive service by publication. (NMSA 1978, Section 42-2-5)

Section 6.6-Preliminary Order of Entry

A preliminary order permitting the state or any political subdivision thereof to immediately enter and occupy the premises sought to be condemned pending the action and to do such work thereon as may be required, may be obtained by the petitioner, without notice, upon the filing of the surety bond and deposit of money with the court as hereinafter provided, and a copy of such order shall be filed with the clerk of the court and notice thereof shall be served upon any defendant against whom such order is obtained, or upon his attorney of record. Such notice shall advise such defendant of the nature of the order and inform that, unless objection thereto is filed within ten days after service thereof, the court shall deem such owner in default and shall proceed to make such preliminary order permanent and shall, without further notice, restrain said defendant from hindering or interfering with the occupation of the premises and the doing thereon of the work required, and that subsequent proceedings shall only affect the amount of compensation allowable.
With application for such preliminary order, the petitioner shall submit proof by affidavit, or otherwise, of the reasons for requiring a speedy occupation and the court shall issue or refuse to issue the preliminary order according to the equity of the case and the relative damages which may accrue to the parties. If the order is granted, the court may require the petitioner to execute and file in the court a surety bond to the benefit of the defendants, executed by any surety company authorized to do business in the state, in a sum to be fixed by the court, but not less than the value of the premises for which possession is sought after taking into consideration the amount of the deposit, if any, and the damages which will result from such occupation and condemnation, as the same may appear to the court on the hearing, and conditioned to pay the adjudged value of the premises and all damages in case the property is condemned, and to pay all damages arising from the occupation before judgment in case the premises are not condemned. No order of entry to any property being taken from a private property owner for rights of way may be granted until there is deposited with the clerk of the district court the amount offered as just compensation. Money from this deposit shall be disbursed under such conditions as the court may deem appropriate, upon the demand of any person having an estate or interest in such property, and the final judgment shall not include interest from the date of said deposit on the amount of such advance deposit. Disbursements may be made only by order of court entered after expiration of the time for the filing of an answer. Any disbursement of money from an advance deposit shall be without prejudice to the right of a defendant landowner to litigate for additional compensation. The court or jury shall not award a lesser sum than that shown by the petitioner's appraised value testified to in court.

Upon the filing of a certificate of the clerk of the court that ten days have elapsed since service of the notice of preliminary order on all defendants, the court, upon notice to all defendants who have appeared or their attorneys of record, may proceed to hear all legal objections to the petition and order, and all objections as to the amount of the bond, if any, and all argument as to why said order should not be made permanent, and shall thereupon make such order as it deems necessary. After said order is made permanent, all subsequent proceedings shall only affect the amount of compensation allowable. (NMSA 1978, Section 42-2-6)

Section 6.7-Service; Personal or by Publication

Personal service, either within or without the state, of the petition, notice of condemnation and the notice of the preliminary order of entry, if any, shall be made and had in the manner as provided in the Rules of Civil Procedure, Rule 4(e), Subsections 1 to 6 inclusive, or as they may be amended.

If the name or residence of any owner is unknown, or if the owners do not reside within the state, or cannot be located, and are not served as herein before provided, the required service and notice shall be given by publication of notice for two consecutive weeks, the last publication to
be at least three days prior to any default date, in a newspaper published in the county in which
the proceedings are pending, if one is published in that county; if no newspaper is published in
such county, then a newspaper published in another county, having a general circulation in the
county wherein such proceedings are pending. When the address of any defendant who resides
out of state is known to the petitioner, the publication shall be made as aforesaid and in addition,
a copy of the petition and required notice and the notice of the preliminary order entered, if any,
shall be mailed to said defendant at such address, at least ten days prior to any default date on the
preliminary order.

Personal service outside the state of any pleading or notice shall be equivalent to publication and
mailing, and such personal service of the notice of entry of a preliminary order shall commence
the running of the ten-day period within which objections may be made to the granting of a
permanent order. Return of such service shall be by affidavit of the person making the same.
(NMSA 1978, Section 42-2-7)

Section 6.8-Contents of Answer

The Defendant shall set forth answering the following:

1. The estate or interest in each tract or parcel of property taken or described in the
petition in which the defendant has any interest;

2. The name and address of anyone claiming any interest in such tract or parcel of
property known to the defendant and the amount of such interest;

3. The amount which the defendant claims as just compensation for the property
taken or described in the petition and the amount, if any, of the various elements
of damage, including damage to any remaining portion of a contiguous tract
owned or controlled by the defendant;

4. The highest and best use to which the property is adapted;

5. A description of the total tract owned by the defendant or in which he claims an
interest, which has been damaged by the taking or the proposed improvement;
and

6. Any other material or pertinent matter with regard to damages known to the
defendant. (NMSA 1978, Section 42-2-8)

Section 6.9-Time for Answering

The defendant or designated attorney shall file an answer to the petition within thirty days after
service of the petition and notice. (NMSA 1978, Section 42-2-9)
Section 6.10- Intervention

All persons in occupation of, or having or claiming an interest in, any of the property described in the petition or in the damages, if any, for the taking thereof, though not named, may appear, plead and defend, each in respect to his/her own property or interest, or that claimed, in like manner as if named in the petition, at any time prior to trial. (NMSA 1978, Section 42-2-10)

Section 6.11- Election of Trial by Court or Jury

Any party desiring to try the cause before a jury, shall make demand and deposit jury fees pursuant to Rule 38, Rules of Civil Procedure, and any other applicable rules of civil procedure.

The court with or without a jury may separately try the case involving each tract of land affected which is under different ownership, or separate tracts under the same ownership. (NMSA 1978, Section 42-2-11)

Section 6.12- Time of Trial

The court, upon notice by petitioner that the time for an answer has expired as to all defendants served either personally or by publication, shall forthwith set the cause for trial giving the cause preference over all other civil causes in which the public interest is not involved.

The court upon such notice shall immediately impanel a special jury, if necessary, in the county in which the cause is to be tried for the sole purpose of trying said cause, unless the court in its discretion desires in the furtherance of justice to allow other matters to be tried before it at that time. (NMSA 1978, Section 42-2-12)

Section 6.13- Argument

In any condemnation action brought under the provisions of this act (NMSA 1978, Sections 42-2-1 through 42-2-16), the defendant shall have the burden of proceeding and the right to commence and conclude the argument. (NMSA 1978, Section 42-2-13)

Section 6.14- Default

If any defendant who has appeared in the cause shall fail to appear at the time set for trial, whether such trial be set before the court with or without a jury, the court shall direct that his default be entered and shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due to the defendant.
If any defendant has failed to appear or answer within the time allowed, and the clerk has entered his default, then the court shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due to the defendant.

For the purpose of the hearing required in subsections A and B of NMSA 1978, Section 42-2-14, the court may consider by affidavit or other proof of the value of the property taken, the damage, if any, which may result from the occupation and condemnation, and the amount offered as set forth in the petition and shall enter such judgment as it deems proper. (NMSA 1978, Section 42-2-14)

Section 6.15-Verdict and Judgment

Notwithstanding the provisions of the Relocation Assistance Act (NMSA 1978, Sections 42-3-1 through 42-3-15):

1. For the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and its actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer;

2. Whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded, interest at the rate of six percent a year from the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned;

3. The court shall have the power to direct the payment of delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation, and to make such orders with respect to encumbrances, liens, rents, insurance and other just and equitable charges; and

4. When two or more estates or divided interests in any tract are the subject of a trial by a jury, and the court has determined that there shall be no division of the causes, the verdict shall be in one sum and shall be the amount of just compensation for the tract affected as of the date of the filing of the petition, and the court shall thereafter proceed to hear and determine the value of the respective interests or ownerships in said tract, and shall apportion the amount of the verdict between the defendants according to their various interests therein.(NMSA 1978, Section 42-2-15)
Section 6.16-Proof of Payment; Recording Judgment

After the petitioner has made payment in full to the clerk of the district court in accordance with the judgment in the condemnation action, the clerk shall certify upon the judgment that payment has been made thereon.

A copy of this judgment showing payment shall be recorded in the office of the county clerk of the county in which the property is located, and thereupon the title or interest in the property affected shall vest in the petitioner. (NMSA 1978, Section 42-2-16)

Section 6.17-Purpose of Act

The purpose of this act (NMSA 1978, Sections 42-2-17 through 42-2-21) is to clarify certain matters of practice and procedure in the special alternative procedure in eminent domain. (NMSA 1978, Section 42-2-17)

Section 6.18-Application of Rules of Civil Procedure

The Rules of Civil Procedure shall apply to the special alternative procedure in eminent domain except where special provisions are found in the special alternative procedure which conflict with the Rules of Civil Procedure and then the Rules of Civil Procedure shall not apply. (NMSA 1978, Section 42-2-18)

Section 6.19-Disqualification of Judge; Effect

Whenever a party or parties to any special alternative proceeding in eminent domain shall make and file an affidavit that the judge before whom the proceeding is pending, whether he be the resident judge or a judge designated by the resident judge, cannot, according to the belief of the party to said proceeding making such affidavit, preside over the same with impartiality, such affidavit shall operate as an automatic severance of the proceedings as to all tracts in which the disqualifying party or parties has an interest. Nothing herein shall be construed to authorize separate trials of different interests in the same tract.

Another judge shall be designated for the trial of the proceeding as to the severed portion thereof by agreement of counsel representing the respective parties. Upon the failure of such counsel to agree, then such facts shall be certified to the chief justice of the Supreme Court of New Mexico, and the chief justice shall thereupon designate the judge to try the severed portion of such proceeding.

Such affidavit shall be filed within the time allowed for filing objections to the preliminary order of entry and not thereafter. (NMSA 1978, Section 42-2-19)
Section 6.20-Waiver of Bond

The surety bond required to be executed and filed by petitioner to the benefit of the defendants under Section 42-2-6(B) NMSA 1978 of the special alternative procedure in eminent domain may be waived by the court in its discretion. (NMSA 1978, Section 42-2-20)

Section 6.21-Costs

If the total amount of the final judgment exceeds the total amount offered by petitioner, excluding interest, for the tract or tracts for which the judgment is rendered, the petitioner shall bear all taxable costs or fees as in any other action or proceeding. (NMSA 1978, Section 42-2-21)

Section 6.22-Flood Control; Appropriation of Land; Compensation for Immediate Use

The state or any political subdivision thereof, may also use the special alternative procedure in eminent domain set forth in Sections 42-2-1 through 42-2-1 NMSA 1978 (being Laws 1959, Chapter 324, Sections 1 through 16 and Laws 1963, Chapter 248, Sections 1 through 5) to the extent it is otherwise authorized by law to exercise the power of eminent domain to acquire, either temporarily or permanently, public or privately owned lands, real property or any interests therein for the acquisition, construction, operation or maintenance of facilities for the carrying, channeling, impounding or disposition of storm, flood or surface drainage waters.

Provided, however, that no order of entry to any property being taken under the special alternative procedure for the acquisition, construction, operation and maintenance of facilities for the carrying, channeling, impounding or disposition of storm, flood or surface drainage waters may be granted until there is deposited with the clerk of the district court a warrant for seventy-five percent (75%) of the amount offered as just compensation for the immediate use, under such conditions as the court may deem appropriate, of all persons having an estate or interest in such property, and the final judgment shall not include interest from the date of such deposit on the amount of such advance payment. (NMSA 1978, Section 42-2-22)

Section 6.23-Condemnation of Property in Excess of Need; Sale to Prior Owner; Price

In the event the state, a state agency or other entity condemns property in excess of the dimensions or amount necessary for public use, as determined by the condemnor, if such determination occurs within five years of the date of condemnation and if such excess property exceeds one acre in size, the prior owner from whom the property was taken, or his personal representative or heirs shall have an option to purchase the property determined to be in excess. Such persons may purchase such property at a price equal to the price paid for such excess property by the condemnor to the prior owner at the time of taking, plus interest at the rate of six percent per year, for the period beginning with the date the prior owner received final payment.
for the land taken, and ending when the notice of intent to dispose is mailed, less the amount of any liens which attached against the property while it was held by the condemner.

The notice of intent to dispose shall be mailed to the last known address of the prior owner by certified mail with a return receipt requested. The notice shall notify the prior owner of his right to purchase, specify which portion of the property of the prior owner is available for purchase by him, the number of acres available, the amount of money, both the principal and interest it will require to repurchase it, and the amount of any liens which may be deducted from the purchase price. If within thirty days after mailing the notice of intent to dispose, the prior owner or his personal representative or heirs elect to exercise the option to purchase, the condemner shall enter into an agreement prepared and approved by the attorney general, if the condemnor is a state agency, and by appropriate legal officer of the entity if the condemnor is an entity other than a state agency for the sale of the surplus land to the prior owner, his personal representative or heirs. If the prior owner, his personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the condemnor shall sell the property at public sale. (NMSA 1978, Section 42-2-23)


Section 6.24-Exclusion of Certain Property

This act (NMSA 1978, Sections 42-2-23 and 42-2-24) shall not apply to any land which at the time of condemnation was wholly within the boundary of an incorporated municipality. (NMSA 1978, Section 42-2-24)

Section 6.25-Appraisal; Offer (House Bill 89)

If the parties are unable to negotiate a settlement, the condemnee may, within 25 days after written notice by the condemnor of its intent to file a condemnation action in district court, give written notice to the condemnor requesting an appraisal to determine the amount that would constitute just compensation for the taking of the condemnee's property and obtained from:

1. One appraiser appointed by the condemnor;
2. One appraiser appointed by the condemnee; and
3. One appraiser jointly appointed by the appraisers for the condemnor and the condemnor.

The condemnee and condemnor shall appoint their respective appraisers within 15 days after notice has been given by the condemnee to the condemnor pursuant to the provisions of subsection A of 42A-1-5 NMSA 1978 (Chapter 4, Section 2.25, Paragraph 1) and the third appraiser shall be jointly appointed within 15 days thereafter.
The appraisals shall be in writing and signed by the appraisers. The appraisers shall deliver copies to each party personally or by registered mail or certified mail, return receipt requested.

The fees and expenses of the appraisers shall be paid by the appointing parties; provided however, the condemnee and condemnor shall share equally in paying the fees and expenses of the jointly appointed appraiser.

After receiving a copy of the appraisals provided for pursuant to this section, the condemnor may establish an amount which it believes to be just compensation and may submit to the condemnee an offer to acquire the property for the full amount so established. If the condemnor tenders an offer pursuant to this section, the amount offered for the property shall not be less than the amount of compensation shown by the final common appraisal of the three appraisers or if all three appraisers do not agree, the offer shall not be less than the appraisal prepared by the condemnor's appraiser. The condemnee must reject or accept the offer made by the condemnor pursuant to this subsection within 15 days after the offer tendered. (NMSA 1978, Section 42A-1-5)

When appraisals are hand delivered, a receipt shall be obtained. It is Department practice to use certified mail rather than registered mail. A return receipt is always requested.

Section 6.26-Preliminary Efforts to Purchase

Except as provided in Sections 42A-1-7 and 42A-1-27 NMSA 1978, an action to condemn property may not be maintained over timely objection by the condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action.

An offer to purchase made in substantial compliance with Sections 42A-1-3 through 42A-1-4 NMSA 1978 is prima facie evidence of good faith under subsection A of 42A-1-6 NMSA 1978. (NMSA 1978, Section 42A-1-6)

Section 6.27-Purchase Efforts Waived or Excused

A condemnor’s failure or inability to make reasonable and diligent efforts to acquire property by negotiation, make appraisals available pursuant to Subsection B of Section 42A-1-4 NMSA 1978 or appoint appraisers upon the request of the condemnee pursuant to Subsection A of Section 42A-1-5 NMSA 1978 does not bar the maintenance of a condemnation action in the manner authorized by law, notwithstanding timely objection, if:

1. Compliance is waived by written agreement between the condemnee and the condemnor; (Refer to House Bill 89 Waiver, Chap. 6, Section 8)

2. One or more of the condemnees of the property are unknown, cannot with reasonable diligence be contacted, are incapable of contracting and have no
legal representative or own an interest which cannot be conveyed under the circumstances;

3. Due to conditions not caused by or under the control of the condemnor, there is a compelling need on the part of the condemnor to avoid the delay in commencing the action which compliance would require;

4. The condemnee fails to provide any appraisals required pursuant to Subsection B of Section 42A-1-4 NMSA 1978; or

5. The appraisers provided for pursuant to Section 42A-1-5 NMSA 1978 fail to submit the appraisals to the parties within thirty days from the date that the jointly appointed appraiser was appointed. (NMSA 1978, Section 42A-1-7)

Section 6.28-Entry for Suitability Studies

A condemnor and its agent and employees may enter upon real property and make surveys, examinations, photographs, tests, soundings, borings and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, if the condemnor secures:

1. The written consent of the owner and, if applicable, any other person known to be in actual physical occupancy of the property to enter upon the property and undertake such activities; or

2. An order for entry from the court. (NMSA 1978, Section 42A-1-8)

It should be remembered that this subsection applies only to right of entry for study purposes.

Section 6.29-Court Order Permitting Entry for Suitability Studies

If the condemnor is unable to secure the written consent of the condemnee pursuant to Section 42A-1-8 NMSA 1978 and, if applicable, any other person known to be in actual physical occupancy of the property, he may apply to the court in the county where the property to be entered is located for an order permitting entry.

After notice by the condemnor to the condemnee and, if applicable, any other person known to be in actual physical occupancy of the property and unless good cause to the contrary is shown, the court shall make its order permitting and describing the purpose of the entry and setting forth a description of the property and the nature and scope of activities the court determines are reasonably necessary to accomplish the purposes of the proposed taking and authorized to be made upon the property. The order may include terms and conditions with respect to the time, place and manner of entry and authorized activities upon the property which will facilitate the
purpose of the entry and minimize damage hardship and burden, and may require a deposit pursuant to Section 42A-1-10 NMSA 1978.

The condemnor shall have delivered any order issued by the court to the condemnee, if known and, if applicable, any other person known to be in actual occupancy of the property personally or by registered mail or certified mail, return receipt requested. (NMSA 1978, Section 42A-1-9)

Section 6.30-Deposit of Probable Compensation

An order permitting entry under Section 42A-1-9 NMSA 1978 shall include a determination by the court of the probable amount that will fairly compensate the condemnee and any other person in actual physical occupancy of the property for damages, if any, for physical injury to the property and for substantial interference with possession or use of the property found likely to be caused by the entry and activities authorized by the order, and may require the condemnor to deposit with the court before entry that amount or a surety bond in that amount from a surety acceptable to the court.

If a deposit is required, such funds shall be deposited in an interest bearing account at an institution acceptable to the court. Interest on such deposit shall accrue for the benefit of the condemnor.

Any amount deposited shall be retained on deposit until released by the court.

Surety bonds shall remain in effect until the surety is released by the court. (NMSA 1978, Section 42A-1-10)

Section 6.31-Modification of Court Order Permitting Suitability Studies

After notice and hearing, the court may modify an order made under Section 42A-1-9 NMSA 1978.

If a deposit or surety bond is required or the amount required to be deposited or the amount of the surety bond is increased by an order of modification, the court shall specify the time within which the required amount must be deposited or the surety bond increased, and shall direct that any further entry or specified activities or studies under the order as modified be stayed until the required deposit or increase in the surety bond has been made. (NMSA 1978, Section 42A-1-11)

Section 6.32-Recovery of Damages, Costs, and Expenses

A condemnor is liable to the condemnee and, if applicable, to the person in actual physical occupancy of the property for physical injury to and for substantial interference with possession or use of property caused by its entry and activities upon the property made pursuant to Section
42A-1-8 NMSA 1978. This liability may be enforced in a civil action against the condemnor or by application to the court in the circumstances provided by paragraph C of this subsection.

In an action or other proceeding for recovery of damages under this subsection, the prevailing claimant shall be allowed his reasonable costs. In addition, the court shall award the claimant his litigation expenses incurred in any proceeding under Section 42A-1-9 or 42A-1-11 NMSA 1978 if it finds liability pursuant to paragraph A of this subsection and that the condemnor:

1. Entered the property unlawfully, or
2. Failed without just cause to substantially comply with or wrongfully exceeded or abused the authority of an order made under Section 42A-1-9 or 42A-1-11 NMSA 1978.

If funds are on deposit or a surety bond has been required under Section 42A-10-10 or 42A-2-11 NMSA 1978, the condemnee or other person claiming damages under paragraph A of this subsection may apply to the court for an award of the amount he is entitled to recover. The court shall determine the amount and award it to the person entitled thereto and direct that the payment be made out of the money on deposit or pursuant to the provisions of the bond. If the amount on deposit or the amount of the surety bond is insufficient to pay the full amount, the court shall enter judgment against the condemnor for the unpaid portion. (NMSA 1978, Section 42A-1-12)

Section 6.33-Entries Exempt

The provisions of Sections 42A-1-8 through 42A-1-12 NMSA 1978 apply only to entries for suitability studies made outside of the exterior boundaries of any municipality. (NMSA 1978, Section 42A-1-13)

Section 6.34-Notice

If notice of a hearing or any other matter pursuant to Sections 42A-1-3 through 42A-1-12 NMSA 1978 is required, except for specific notice requirements as otherwise provided, notice shall be given:

1. By mailing a copy thereof at least ten days before the time set for the hearing or determination of other matters by certified, registered or ordinary first class mail addressed to the person being notified;
2. By service of a copy thereof at least ten days before the time set for the hearing or determination of other matters upon the person being notified in the manner provided by the Rules of Civil Procedure for the District Courts for service of summons and complaint; or
3. If the address or name of any person is not known and cannot be ascertained by reasonable diligence, by publishing a copy thereof at least once a week for two consecutive weeks, in a newspaper of general circulation in the county in which the hearing is to be held, the last publication of which is to be at least five days before the time set for the hearing. (NMSA 1978, Section 42A-1-14)

Section 6.35-Rules of Civil Procedure

Unless specifically provided to the contrary in the Eminent Domain Code (42A-1-1 to 42A-1-33 NMSA 1978), or unless inconsistent with its provisions, the Rules of Civil Procedure for the District Courts govern matters pursuant to that act. (NMSA 1978, Section 42A-1-15)

Section 6.36-Application

The provisions of Sections 42A-1-3 through 42A-1-16 NMSA 1978 apply to all condemnation actions brought pursuant to the laws of New Mexico including those actions brought pursuant to Sections 42-2-1 through 42-2-24 NMSA 1978.

The provisions of Sections 42A-1-3 through 42A-1-12 NMSA 1978 shall not affect the right of possession and occupancy provided for in Sections 42A-1-22 and 42-2-6 NMSA 1978. (NMSA 1978, Section 42A-1-16)

Section 6.37-Litigation Expenses

The court shall award the condemnee his litigation expenses whenever:

1. The condemnor has abandoned the condemnation proceeding;
2. The condemnation proceeding has been dismissed for any reason except when a bona fide settlement has been reached; or
3. There is a final determination that the condemnor does not have a right to take the property sought to be acquired in the condemnation proceeding.

Before awarding litigation expenses pursuant to this subsection, the court shall review the reasonableness of such expenses and fees. (NMSA 1978, Section 42A-1-25 and 49 CFR 24.107)

Section 6.38-Measure of Damage to Remainder in Partial Condemnation
In any condemnation proceeding in which there is a partial taking of property, the measure of 
compensation and damages resulting from the taking shall be the difference between the fair 
market value of the entire property immediately before the taking and the fair market value of the 
property remaining immediately after the taking. In determining such difference, all elements 
which would enhance or diminish the fair market value before and after the taking shall be 
considered even though some of the damages sustained by the remaining property, in them, 
might otherwise be deemed no compensable. Further, in determining such values or differences 
therein, elements which would enhance or benefit any property not taken shall only be 
considered for the purpose of offsetting any damages or diminution of value to the property not 
taken. (NMSA 1978, Section 42A-1-26)

Section 6.39-Proof of Payment; Recording Judgment

After the condemnor has made payment in full to the clerk of the district court in accordance 
with the judgment in the condemnation action, the clerk shall certify upon the judgment that 
payment has been made.

A copy of the judgment showing payment shall be recorded in the office of the county clerk of 
the county in which the property is located, and thereupon the title or interest in the property 
affected shall vest in the condemnor.

If the condemnor is a governmental entity, a copy of the judgment shall be filed with the county 
assessor who shall remove such property from the tax rolls. (NMSA 1978, Section 42A-1-27)

Section 6.40-Imperfect Titles

If the title attempted to be acquired is found to be defective from any cause, the condemnor may 
institute proceedings to acquire the property as provided in the Eminent Domain Code (NMSA 
1978, Section 42A-1-28)

Section 6.41-Property Taken or Damaged Without Compensation or Condemnation 
Proceedings; Right of Action by Condemnee

A person authorized to exercise the right of eminent domain who has taken or damaged or who 
may take or damage any property for public use without making just compensation or without 
instituting and prosecuting to final judgment in a court of competent jurisdiction any proceeding 
for condemnation is liable to the condemnee, or any subsequent grantee thereof, for the value 
thereof or the damage thereto at the time the property is or was taken or damaged, with ten 
percent per year interest, to the date such just compensation is made, in an action to be brought 
under and governed by the Rules of Civil Procedure for the District Courts of this state. Actions 
under this subsection shall be brought in the county where the land or any portion thereof is 
located.

Notwithstanding the provisions of paragraph A of this subsection or any other provision of law 
regarding compensation for damage in the situation described in that paragraph:
1. If the person authorized had taken or been granted for public use, pursuant to a final judgment, an order of immediate possession or private agreement, any property;

2. The property subsequently taken or damaged was contiguous to the property taken or granted; and

3. The person takes or damages property contiguous to property previously taken or granted from the condemnee or grantor without making just compensation or without instituting and prosecuting to final judgment in a court of competent jurisdiction any proceeding for condemnation; the condemnee or grantor shall receive compensation for the land taken or damaged at the greater of fair market value or a unit rate of five times that of the compensation or consideration he received for the land taken; provided that if the width of the property taken or damaged is not equal to the width originally taken or damaged, compensation required pursuant to this subsection shall be increased or reduced ratably in accordance with the relationship of the respective widths.

Any amounts paid under paragraph B of this subsection shall be deemed just compensation. (NMSA 1978, Section 42A-1-29)

If the Department intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property. [49 CFR 24.102(l)]

Section 6.42-Adverse Possession; Statute of Limitation

The defendant to an action brought pursuant to Section 42A-1-29 NMSA 1978 may plead adverse possession as defined by Section 37-1-22 NMSA 1978 or acquisition by prescription as a defense to the action, but no other statute of limitation shall be applicable or pleaded as a defense thereto except as provided in Section 42A-1-31 NMSA 1978. (NMSA 1978, Section 42A-1-30)

Section 6.43-Property Taken or Damaged by State Agencies or Political Subdivisions; Statutes of Limitations

No action or proceeding shall be commenced against any state agency or political subdivision by any person claiming an interest in property acquired or held by a state agency or political subdivision unless such action is brought within three years from the date such person was first entitled to reclaim his interest in the property, or if the right to reclaim such property has occurred prior to the effective date of this subsection, within three years from the date such person was first entitled to reclaim his interest in the property or within six months after the effective date of this subsection, whichever date occurs later. For the purpose of this paragraph,
the date a person is entitled to reclaim his interest in the property is the date of abandonment of the use for which the property was taken.

No action or proceeding shall be commenced pursuant to Section 42-1-23 NMSA 1978 against any state agency or political subdivision by any person unless such action or proceeding is brought within three years from the date of the taking or damaging.

Nothing in this subsection shall be construed as reviving any cause of action, extending any time limit or statute of limitations or creating any right of action. (NMSA 1978, Section 42A-1-31).

**Section 6.44-Reimbursement for Expenses Where Condemnation Does Not Result in Acquisition or is Abandoned**

A court having jurisdiction over a proceeding instituted by the agency to acquire real property by condemnation shall, when required by federal law or by a federal grant contract governing the project or program, award the owner of any right, title or interest in the real property, a sum which will reimburse the owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings if:

1. The final judgment in the proceeding is that the agency cannot acquire the real property by condemnation; or
2. The proceeding is abandoned by the agency. (NMSA 1978, Section 42-3-9)

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

1. The final judgment of the court is that the Department cannot acquire the real property by condemnation; or
2. The condemnation proceeding is abandoned by the Department other than under an agreed upon settlement; or
3. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Department effects a settlement of such proceeding. (49 CFR 24.105)

**Section 6.45-Compensation for Expenses of Inverse Condemnation**

A court, rendering a judgment for the plaintiff in a proceeding brought under Section 42-1-23 NMSA 1978 awarding compensation for the actual physical taking of the property by the agency, or the agency effecting a settlement of any such proceeding, shall, when required by federal law or by a federal grant contract governing the project or program, determine and award or allow to the plaintiff as a part of the judgment or settlement a sum which will reimburse the
plaintiff for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the proceeding. (NMSA 1978, Section 42-3-10)

Section 6.46-Agent Responsibilities throughout the Condemnation Process

It is important that the Agent recognize the continuing responsibility as Agent throughout the condemnation process. For example, after the condemnation package has been delivered to the Office of General Counsel for filing, the Agent must, at periodic intervals, check on the status of each parcel to assure that it is proceeding according to schedule.

The negotiator's report is a vital document in the condemnation process so it is extremely important that the report always be maintained in a comprehensive, complete, and up-to-date status.

The Agent shall notify the Relocation Unit Supervisor when a permanent order of entry is obtained on those parcels involving relocation.

The Agent may be required to attend court proceedings to testify on behalf of the Department and to assist the Department's legal counsel. The Agent must always be factual, courteous, and truthful when testifying.

The following is a list of the most common justifications used for the agent administrative settlements of $2,500.00 or less:

- Court costs saved (avoiding condemnation)
- Per diem for the agent to continue traveling back and forth
- Valuation (justification exists in the Basic Data to increase offer per square foot or acre)
- Valuation (owner supplies information to increase offer per square foot or acre)
- Trees (non-native to the landscape)
- Landscaping (flower gardens, rock gardens, railroad ties, etc.)
- Propane tanks
- Fencing
- Gates
- Blacktop or gravel driveway
- Signs (non-billboard)
- Time (delays to the letting of the project)
- Cost and time associated with the hiring of an appraiser
- Wells
- Septic tank
RIGHT OF WAY HANDBOOK

VOLUME V

RELOCATION ASSISTANCE

JANUARY 2016

New Mexico Department of Transportation
Right of Way Bureau
1120 Cerrillos Road
P.O. Box 1149
Santa Fe, NM  87504-1149
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CHAPTER 1 PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section,
previously accepted policy and procedure statements currently applicable will remain in effect.

The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

SECTION 3-STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2 AUTHORITY

SECTION 1-GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3 ORGANIZATION

SECTION 1 - GENERAL

The Right of Way Bureau Chief has statewide responsibility for implementation of the relocation assistance program. The Relocation Assistance Unit of the Right of Way Bureau has direct supervision of relocation assistance activities. The Department has been appointed Lead Agency by the Governor and is the state agency responsible for administration of the relocation assistance program. (By Executive Order 89-15 dated March 30, 1989.)

SECTION 2-DUTIES

Unit Supervisor

The Relocation Assistance Unit Supervisor is responsible for assigning, directing, and supervising the work of right of way personnel engaged in any relocation activity. The Relocation Assistance Unit Supervisor will review the work of the Agents in both the office and in the field, and will advise them on difficult problems. The Relocation Assistance Unit Supervisor will review all documentation accompanying requests submitted by Agents for relocation payments.

The Relocation Assistance Unit Supervisor will utilize the Relocation Payment Checklist to document reviews, (Form No. A-046).

Relocation Assistance Agent

The following activities are the responsibility of the Relocation Assistance Agent (hereinafter “Agent”):

1. Prepare Relocation Plans, as necessary.
2. Interpret and apply state and federal policies and regulations to determine eligibilities and compute benefits.
3. Gather real estate and construction data.
4. Gather estimates.
5. Arrange for payment relating to relocation assistance.
6. Inspect comparable properties to determine conformance with DS&S standards.
7. Assist displacees with Advisory services.
8. The Reviewing Agent is a separate Right of Way agent who will review the payment packages.

9. The Agent will utilize the relocation payment checklist to document reviews.

SECTION 3-PERSONAL CONDUCT

The Agent shall at all times keep in mind that he/she is a public employee.

When dealing with the public, the Agent's work should be characterized by a sincere desire to be of service. Every Agent of the Department is obliged to render friendly, well informed, sincere, and attentive consideration to the person(s) contacted. The Agent is expected to be aware of, and practice, the following public relations principles:

1. In relocation cases, the Agent is generally the first and last personal contact the individual has with the Department. To displacees, the Agent is the Department.

2. The Agent represents the displacee’s interests as well as the Department’s in relocation matters, but is not confined to this activity and may assist in resolving any other relocation or highway problem the displacee may have.

3. First impressions mean a great deal in public relations. It shall be the responsibility of each Agent to be acquainted with not only the appraisal, acquisition, title, and construction information on which a relocation is to be based, but with all factors that will contribute to the effective and efficient relocation, including the knowledge of socio-economic factors involved in the various phases of relocation.

4. In personal appearance, the Agent shall be appropriately groomed at all times.

5. Proper and careful use of equipment, supplies, and time is expected at all times.

6. It is important that the Agent treat each displacee on the project with consideration and courtesy. Dollar value of the property should not influence the Agent's attitude in dealing with the displacee.

7. While empathizing with the displacees, the Agent shall make every effort to encourage their confidence in the integrity of the Department and the abilities of other Department employees.

During relocation activities, the Agent shall answer all questions truthfully and as clearly as possible, using all information and visual aids available for this purpose. When an Agent does not know the answer to the question, the Agent shall inform the displacee that the required information will be obtained and furnished as soon as possible.
Section 4-Conflict of Interest

No Relocation Assistance Unit personnel shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity, or incur any obligation of any nature, which is in conflict with the proper discharge of their duties. Nor shall they use or attempt to use official position to secure unwarranted privileges for themselves or others. No Right of Way Agent shall engage in any transaction with any person or business entity in which the Right of Way Agent has a direct or indirect interest that might reasonably tend to conflict with the proper discharge of duties. A Right of Way Agent shall not place himself/herself in a position which will impair independent judgment in the exercise of duties, or give rise to suspicion of conflict with the interest of the Department.

In the event of a possible conflict of interest, the Agent must immediately inform the Relocation Assistance Unit Supervisor for guidance.

Section 5-Fee Relocation Agents

Section 5.1-Use of Fee Relocation Agents

The Right of Way Bureau Chief may determine that it is in the best interest of the Department to utilize the professional services of contractors. In that case, fee personnel shall be retained directly by written contract. Federal procurement guidelines will be followed.

Section 5.2-Qualifications

The Department’s established minimum qualifications for firms and individuals actually doing work shall not be less than the Job Related Qualifications Standard (JRQS) set for Staff Agents. These Qualifications shall be noted on each Request for Proposal (RFP) as an attachment to the RFP.

Section 5.3-Selection Procedures

The Department shall establish the selection procedures for firms and individuals who submit proposals and shall note these procedures in each Request for Proposal (RFP).

Section 5.4-Establishment of Fees

Each Offeror responding to the RFP shall indicate the basis of payment for the requested services as set forth in the RFP for said services. The Contract providing for the performance of the requested services shall also specify the rates of payment that the Contractor will receive for each of the Contract services.
The RFP, together with the corresponding Contract, shall establish the methods, terms and basis of payment of the service fees.

Section 5.5-Fee Relocation Agent Contracts

The Department shall include an example of the Department’s standard contract agreement for relocation services in the RFP. The Department shall use the latest approved standard contract agreement when entering into a contract for professional services.

Section 5.6-Scope of Work

The scope of the work and the Contractor/Department services and responsibilities shall be defined and detailed in the RFP and in the Contract providing for such services. The Scope of Work shall be included as an attachment to the RFP.
CHAPTER 4 PROCEDURES

Section 1-General

Section 1.1-Purpose

The purpose is to promulgate rules in accordance with the following objectives:

1. To ensure that owners of real property to be acquired for projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with property owners, and to promote public confidence in land acquisition programs;

2. To ensure that persons displaced as a direct result of the project are treated fairly, consistently and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

3. To ensure that the Department implements these regulations in a manner that is efficient and cost effective.

Section 1.2-No Duplication of Payments

The Department shall not make payment to a person under these regulations that would duplicate another payment the person receives. The Department is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Department's knowledge at the time a payment under these regulations is computed.

Section 1.3-Manner of Notices

Each notice the Department is required to provide to a property owner or occupant shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Right of Way Records Unit’s files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. Personal contact shall be made.
Section 1.4-Compliance with Other Laws and Regulations

Implementation must be in compliance with applicable federal and state laws and regulations, including the following:

1. Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).
2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
8. Executive Order 11063-Equal Opportunity and Housing, as amended by Executive Order 12259.
13. Executive Order 12630-Governmental Actions and Interference with Constitutionally Protected Property Rights.
15. Executive Order 12892- Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).
16. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)
17. Title 23 Code of Federal Regulations (CFR), Highways
18. Title 49 Code of Federal Regulations (CFR), Transportation

Section 1.5-Recordkeeping and Reports

Records

The Department shall maintain adequate records of its acquisition and displacement activities in sufficient detail. These records shall be retained for at least three (3) years after the State receives Federal reimbursement for the final payment made to each owner of a property and to each person displaced from a property, or in accordance with the applicable regulations of the federal funding agency, whichever is later. The Agent shall record the pertinent details of all significant contacts with or regarding the displacee in the Agent's Report. All such Reports shall become a permanent part of the parcel file.

Confidentiality of Records

Records maintained by the Right of Way Records Unit are confidential regarding their use as public information, unless applicable law provides otherwise.

Reports

The Department shall submit a report of its real property acquisition and displacement activities if required by the Federal Agency funding the project. A report will be submitted annually. The report shall be prepared and submitted using the format contained in Appendix B of 49 CFR Part 24.9.

The report, if required, will cover activities during the federal fiscal year immediately prior to the submission date. A basic report format has been developed which would be used in all federal and federally-assisted programs or projects. This will include the information from the Local Government Agency.

Section 1.6-Appeals

The Department shall promptly review appeals in accordance with the requirements of applicable law, including 49 CFR Part 24.10.

An appeal shall be in writing and must present sufficient facts to support the items appealed to warrant a full appellate review. The written appeal should be submitted on Request for Appeal Form No. A-024. However, the appeal will be reviewed regardless of its written form.

The following steps will be taken to ensure a prompt review of all appeals.
1. When a displacee expresses dissatisfaction and desires to file an appeal, the Agent will give the displacee an appeal form and will verbally explain the process of filing an appeal.

2. The deadline for filing an appeal is 60 days from the date the displacee receives written notice of the rejection of the item or items claimed.

3. All appeals must be submitted in writing to the Right of Way Bureau Chief. When an appeal is received, it will be date-stamped. Copies of the appeal will be forwarded to the Right of Way Bureau Chief and the Relocation Assistance Unit Supervisor.

4. The appellant shall be notified by certified mail, return receipt requested, that the appeal has been received and is being reviewed. This letter will be prepared by the Relocation Assistance Unit Supervisor and sent within ten (10) working days after receipt of the appeal by the Right of Way Bureau Chief.

5. Upon receipt of the appeal, the Right of Way Bureau Chief shall obtain the file from Records for review. If the appeal is justified, and can be resolved at this step, he will direct the Agent to notify and take corrective action involving all parties.

6. If the appeal cannot be resolved, the full appeal process will be initiated as follows:

   a. The Right of Way Bureau Chief may, depending on the complexity of the issue, assign a responsible party as the appeal “hearing officer” to investigate the appeal. In that case, the hearing officer shall be assigned within fifteen (15) days of receipt of the appeal. The hearing officer will notify the appellant in writing that he or she has been appointed to review the appeal. The hearing officer will obtain the facts relative to the appeal. The Department shall consider all pertinent material submitted by the appellant as well as all available information that is needed to ensure a fair and full review of the appeal. The hearing officer shall, in writing, set a meeting with the appellant, who may be represented by legal counsel or other representative authorized in writing by the appellant. This meeting shall take place within thirty (30) days of the date the hearing officer is assigned to investigate the appeal.

   b. The substance of the appeal will be discussed during the hearing. Any factual information or material presented by the appellant in support of the complaint will be given full consideration in the final analysis of the appeal. The appellant will have seven (7) working days from the date of the hearing to submit any other information, revisions, or addenda relevant to the appeal. No further information, revisions, or addenda will be accepted after the seven day period.

   c. The appellant has the right to review the Department’s files and inspect and copy all material pertinent to his or her appeal, except for confidential material
protected from review by the attorney/client privilege. The Department retains the right to determine which materials are classified as confidential. The file will remain in the Department’s custody and reasonable restrictions as to inspection and copying will apply. The Department may elect to process the requested copies and then provide them to the appellant at a later date. The Department may collect from the appellant the fees associated with the processing of the copies.

d. Should the appellant fail to appear at a scheduled hearing on two established meeting dates without justifiable reason (as determined by the Department) the appeal will be considered abandoned and the appellant so advised.

e. Following the hearing with the appellant, additional interviews may be conducted, as necessary, with moving companies, lending institutions or any other person(s) directly involved with the case. The Agent and the Relocation Assistance Unit Supervisor will be interviewed by the Right of Way Bureau Chief or his designee to present their justification for any action taken in the case. All interviews shall be completed within fifteen (15) days of appellant’s hearing date.

f. Upon completion of the hearing officer’s investigation, a written report will be made to the Right of Way Bureau Chief. The report shall be completed within thirty (30) days of all interviews and will include the items being appealed, facts relevant to the case, a synopsis of the applicable law(s) and regulations, and a recommended solution to the appeal. The Right of Way Bureau Chief will make a final administrative decision regarding the case.

g. Once a decision has been made, the appellant will be notified in writing of the determination, including an explanation of the basis on which the decision was made. The Right of Way Bureau Chief will take the appropriate action to implement his decision no later than fifteen (15) days from the date he receives the written report from the hearing officer. In complicated cases, the Right of Way Bureau Chief may elect to meet personally with the appellant to discuss the appeal review and final determination.

h. The appellant shall be informed that if full relief is not granted through the administrative process, the appellant has the right to seek judicial review through the appropriate court system.

General Procedures:

The hearing officer shall conduct all activities regarding the review of the appeal by letter sent via certified mail, return receipt requested.
All contacts made in the review of the appeal shall be documented. The hearing officer shall keep a log/report of all activities conducted, including the date, time, location, persons present, duration, method, description of what occurred, and any other pertinent information.

The person appointed to review the appeal shall have a witness present during any formal meeting/hearings or other formal contacts with the appellant or any other entity relevant to the appeal. The person appointed to review the appeal also may elect to tape/video record such formal meeting/hearings or other formal contacts.

The NMDOT Office of General Counsel shall be available for advice or guidance to the hearing officer.

Note: the appellant may withdraw the appeal at any time. Also, the appeal may be granted at any time and the appeals process will be stopped. In a condemnation case, the appeal may be held in abeyance until resolution of the condemnation case.

Section 2-General Relocation Requirements

Section 2.1-Purpose

General requirements governing the provision of relocation payments and other relocation assistance are described as follows.

Section 2.2-Applicability

These requirements apply to the relocation of any displaced person as defined in 49 CFR Part 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation.

Applicability and Services to be provided

In extraordinary circumstances, when a displaced person is not readily accessible, the Department must make a good faith effort to comply with these sections and document its efforts in writing.

Section 2.3-Relocation Planning, Advisory Services, and Coordination

(a) Relocation Planning - During the early stages of project development, the Relocation Unit shall refer to 49 CFR Part 24.205 (a) and plan for those problems associated with the displacement of individuals, families, businesses, farms and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning,
where appropriate, shall precede any action by the Department which will cause
displacement and should be scoped to the complexity and nature of the anticipated
displacing activity, including an evaluation of program resources available to carry out
timely and orderly relocations. Planning may involve a relocation survey or study,
which may include the following:

1. An estimate of the number of households to be displaced, including information
   such as owner/tenant status, estimated value and rental rates of properties to be
   acquired, family characteristics, and special consideration of the impacts on
   minorities, the elderly, large families, and the handicapped when applicable.
   Consideration should also be given to low income displacees (Section 4.2 (b) 2 (ii)
   of this Chapter).

2. An estimate of the number of comparable replacement dwellings in the area
   (including price ranges and rental rates) that are expected to be available to fulfill
   the needs of those households displaced. The Department should consider housing
   of last resort actions when an adequate supply of comparable housing is not
   expected to be available.

3. An estimate of the number, type and size of the businesses, farms and nonprofit
   organizations to be displaced and the approximate number of employees that may
   be affected.

4. An estimate of the availability of replacement business sites. When an adequate
   supply of replacement business sites is not expected to be available, the impacts of
   displacing the businesses should be considered and addressed. Planning for
   displaced businesses, which are reasonably expected to involve complex or lengthy
   moving processes or small businesses with limited financial resources and/or few
   alternative relocation sites should include an analysis of business moving problems.

5. Consideration of any special relocation advisory services that may be necessary
   from the Department and other cooperating agencies.

(b) Loans for Planning and Preliminary Expenses to Develop Housing - In the event the
Department elects to consider using the duplicative provision in Section 215 of the
Uniform Act, which permits the use of project funds for loans to cover planning and
other preliminary expenses for the development of additional housing, the Department
will establish criteria and procedures for such use upon the request of the federal agency
funding the program or project.

Relocation Plan

This plan is to be prepared in letter form and submitted to the Right of Way Bureau Chief
assuring that:
1. Replacement housing (comparable) will be available or provided to displacees at
the time the 90-day notice assurance letter is provided to the displacee;

2. The Department's Relocation Program is realistic and adequate to provide orderly,
timely, and efficient relocation of displacees; and

3. An analysis of the relocation problems involved and the specific procedures that
will be used in resolving such problems.

A Relocation Plan may not be required in non-complex situations or where individual parcels
are acquired in advance and displacees are relocated to alleviate hardship as determined by the
Agent and concurred by the Relocation Unit Supervisor and FHWA.

The Relocation Plan begins when the Relocation Unit is notified of possible relocation impacts
by the PDE. The Relocation Assistance Unit Supervisor assigns an Agent to be available to
discuss relocation issues at the public meetings. The Agent must obtain copies of the appropriate
maps and/or plans detailing the proposed alternate alignments to be considered for the specific
project.

Public Hearings

Public meetings are held during the project development process.

1. Where the Relocation Plan indicates displacement of persons by the preferred
alignment, the Relocation Assistance Unit Supervisor shall be notified by the PDE
at least two weeks prior to the meeting as to the date, time, and location of the
meeting for the proposed project. Mention of the Relocation Assistance Program
for the project will be included in the legal advertisement of the Public Meeting
Notice. No specific relocation notice is required to be sent to individuals.

2. Only Department Agents are authorized to explain the Relocation Program at
public meetings.

3. In order to assure that the public is informed of the eligibility requirements,
services, and benefits available through the Relocation Assistance Program, an
Agent shall make a formal presentation at the public meeting.

4. The Relocation Assistance Program Brochure shall be made available to potential
displaces in attendance at the public meeting.
The Relocation Plan is prepared after completion of the environmental document as follows:

1. Approved Right of Way maps are utilized to identify potential displacees.

2. The Agent then interviews displacees (Form No. A-010, Form No. A-011, and/or Form No. A-018A).

3. The Agent obtains market data on available comparable replacement properties.

4. The Agent utilizes the above information to write a Relocation Plan according to the approved format.

5. Upon completion, the Relocation Plan is reviewed by the Relocation Assistance Unit Supervisor prior to submission to the Right of Way Bureau Chief for approval.

6. The Right of Way Bureau Chief approves the Relocation Plan.

The project will remain in this stage until such time as appraisals are reviewed and approved.

(c) Relocation Assistance Advisory Services – (General) The Department maintains a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in 49 CFR Part 24.205(c)(2) (See Services to Be Provided, below). If the Department determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

Services To Be Provided

The advisory program includes such measures, facilities, and services as may be necessary or appropriate in order to:

1. Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

   (A) The business’s 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 49 CFR Part 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 and/or other personal property.

(C) For businesses, an identification and resolution of personality/realty issues. Every effort must be made to identify and resolve reality/personality issues prior to, or at the time of, the appraisal of the property.

(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 Department's legal capacity to provide them.

2. Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in 49 CFR Part 24.204(a).

(B) As soon as feasible, the Department shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see 49 CFR Part 24.403(a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. [See 49 CFR Part 24.2(a)(8).] If such an inspection is not made, the Department shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be DS&S.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to DS&S replacement dwellings not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the Department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling (see also the following paragraph).
The previous paragraph emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

(E) The Department shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person who may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (49 CFR Part 24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

3. For nonresidential moves, provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

4. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available and such other help as may be appropriate.

5. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to displaced persons and technical help to persons applying for such assistance.

(d) Coordination of Relocation Activities - Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and that the duplication of functions is minimized. (See 49 CFR Part 24.6)

The Agent shall maintain personal contact with the displacees for the purpose of providing relocation assistance and clarifying any previous discussions or questions concerning relocation.

If relocation assistance is requested, the Agent shall provide the displacee with replacement housing referrals as they become available and keep a record of same in the parcel file. The referrals shall meet the needs of the displacee, shall be within the displacee's financial means, and shall be compatible with the displacee's desires to the greatest extent possible.

Promptly following notification from the Review Appraisal Unit Supervisor that the appraisal has been reviewed and approved, the Agent shall update the initial interview data, perform a thorough market search, if applicable, and compute entitlements.
The acquisition offer and the relocation assistance offer to owners should be presented simultaneously, if possible. However, there may be situations where comparable replacement housing is not readily available. In those situations, the Relocation Assistance Unit may require up to thirty (30) working days after the initiation of negotiations to compute and offer relocation entitlements. This situation will be the exception and never become the rule.

(e) Subsequent Occupants and Less Than 90 Day Occupants - Any person who occupies property acquired by the Department, when such occupancy began subsequent to the acquisition of the property and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Department.

**Notifying the Relocation Unit**

Where an acquisition offer is made and there is personal property including billboards, scrap metal, vehicles, etc. on the real property to be acquired, including TCPs and CMEs, the Acquisition Unit shall immediately notify the Relocation Unit via a copy of the acquisition offer.

**Interview Process**

The Agent shall set an appointment convenient to both displacee and Agent to:

a. personally interview the person(s) to be displaced;

b. determine their relocation needs and preferences;

c. explain the relocation payments and other assistance for which the displaced person(s) may be eligible;

d. explain any related eligibility requirements for applicable relocation payments; and

e. explain the procedures for obtaining relocation assistance, including:

   1. location and address of the Relocation Office;

   2. description of relocation resources and services available to assist displaced persons;
(3) description of the assistance and information that will be provided by the Agent during future personal contacts with the displacee; and

(4) give the displacee a current relocation brochure.

The Agent will explain that the residential displacee cannot be required to move permanently until:

a. at least one comparable replacement dwelling has been made available at the 90-day assurance letter and he/she has been informed of its location;

b. he/she has been provided sufficient time to negotiate and enter into a purchase agreement or lease for replacement housing within the time frame of the notices;

c. he/she has been assured of receiving the relocation assistance and acquisition compensation to which he/she is entitled, subject to reasonable safeguards, in sufficient time to complete the purchase or rental of replacement housing; and

d. he/she has been provided with at least 90 days advance written notice of the earliest date by which he/she may be required to move and the selected comparable is still available.

During the first visit, the Agent shall complete the appropriate interview form (i.e. Residential, Non-residential, or Personal Property Only) and secure information about the displacee and the displacement dwelling, business, farm, or non-profit organization, or personal property only move.

The Agent shall evaluate the dwelling or non-residential building and determine the needs of the displacee. During this visit, the Agent shall obtain sufficient information about the displacement dwelling or non-residential property to identify comparable replacement dwellings or suitable non-residential buildings for referrals and replacement housing payment determinations.

From information provided by the residential displacee, the Agent shall determine the displacee(s) eligibility for replacement housing benefits based on the following:

a. for owner, if he/she has been or will be in occupancy for at least 90 days immediately prior to the date of initiation of negotiations for the parcel; or

b. he/she has been or will be in occupancy for at least 90 days immediately prior to the date of initiation of negotiations for the parcel; or

c. he/she was in occupancy at the time he/she was given a written notice of intent to acquire or an offer was made;
d. he/she is less than 90 day or subsequent occupant.

e. All potential displacees shall be informed that any displaced person who is an alien not lawfully residing in the United States is ineligible for relocation advisory assistance and relocation payments, unless such eligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent or child as defined in 49 CFR Part 24.208(h); and

f. The agent shall determine the aforementioned alien status through completion of the appropriate interview form.

Non-residential displacees, including non-occupant displacees such as absentee landlords, shall also be advised of their potential rights and benefits as displaced persons.

The Agent shall explain the applicable replacement housing payments to which the displacee may be entitled when purchasing or renting replacement housing. The Agent shall explain that the eligibility amounts will be determined by the use of comparable dwellings that are presently available to be purchased or rented by the displacee. He/She shall indicate that the address and probable sale or rental price of the dwelling used in the determination will be provided to the displacee.

The Agent shall explain to displacees with disabilities that the cost to make replacement dwellings free of barriers may be added, if necessary, to the replacement housing payment for which they are otherwise eligible. The appraisal should be reviewed to determine if the disability features were included.

The Agent shall explain that comparable replacement dwellings used in computing replacement housing entitlements will meet all the requirements of comparability in accordance with federal/state/local law(s) and regulations.

**Section 2.4-Relocation Notices**

(a) General Information Notice (Relocation Brochure) - As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description, i.e., Relocation Brochure, of the Department's relocation program which does the following:

1. Informs the displaced person that he or she may be displaced by the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

2. Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing
payment claims, and other necessary assistance to help the person successfully relocate;

3. Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;

4. Informs the displaced person that any person who is an alien, not lawfully present in the United States, is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in 49 CFR Part 24.208(h); and

5. Describes the displaced person's right to appeal the Department's determination as to a person's application for assistance for which a person may be eligible.

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

The Department has elected to utilize a 90/30-day notice (assurance letter), which will include the following elements:

c) Ninety-day notice - No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move and given at least one available comparable. The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

The 90 day notice (assurance letter) shall state a specific date as to the earliest date by which the occupant may be required to move; will indicate that a further notice (at least 30 days in advance) will be sent stating the exact date by which the occupant must move. This notice will be combined with and included as a part of the entitlement letter.

The 90-day notice (assurance letter) is a written notice which must be given to each lawful occupant of a property being acquired for a public project. The notice is intended to assure that each person has been provided adequate time to search for and obtain a replacement property. It must be emphasized that the notice is not a notice to move from the property, but does establish the earliest date by which vacation may become necessary.

The 90-day notice (assurance letter) is incorporated in the Relocation Assistance Eligibility offer letters noted previously; the notice/offer will be presented as soon as reasonably possible after
the acquisition offer is tendered. In cases of unusual delay, the file must fully indicate the reason for the delay.

A 90-day notice (assurance letter) shall be given to the displacee at the time the displacee is informed of his or her replacement housing entitlement. The Agent shall explain to all displacees that they will not be required to move for at least 90 days after the date of that notice and that a separate 30-day notice to vacate will be issued later. It should be explained that the 30-day notice may run concurrently with the last 30 days of the 90-day notice. It should be explained that the 30-day notice cannot be issued until the state has legal possession of the property. The Agent shall include the replacement housing entitlements to the displacee in the appropriate entitlements/90-day assurance offer.

30-Day Notice:

The 30-day notice shall be issued at the direction of the Relocation Assistance Unit Supervisor only after the Department has obtained legal possession of the property. Any extensions to the “Final Notice to Vacate” shall be approved by the Right-of-Way Bureau Chief. A 30-day notice may not be required when a parcel is being acquired by court action. In these cases, issuance must be coordinated with the Legal Counsel handling the case.

The Property Management Unit Supervisor must be given a copy of each 30-day notice that is issued.

The Relocation Assistance Unit Supervisor will determine the timing of the issuance of the relocation notice/offer for tenants. Factors that affect the timing of the notice/offer are the required possession date for the property, comparable availability, the period of active searching for a replacement property, etc. Within thirty (30) working days after the initiation of negotiations, the tenant’s status should be updated and the relocation offer made to the tenants. The limited situations involving the use of the 30 day time frame will be the exception and never become the rule.

Should the situation warrant, a letter may be issued to establish eligibility for relocation payments and services prior to the initiation of negotiations for a parcel. This letter is the "Notice of Intent to Acquire" and requires prior concurrence from the Relocation Assistance Unit Supervisor before issuing. This notice establishes eligibility for the payments and services being offered at the initiation of negotiations and also includes the 90-day assurance.

When a displacee refuses to sign a relocation assistance document, the Agent shall be aware that this lack of cooperation does not cause the displacee to forfeit any of his/her rights to relocation benefits and/or assistance. When this occurs, the Agent should write "Refused to Sign" in the location that the displacee would normally sign. The Agent should complete an Agent's Report explaining the occurrence.

When a displacee refuses to accept the personal delivery of a relocation assistance document, or when personal contact of the displacee proves not to be possible, the Agent should use certified
mail, return receipt requested, to accomplish notification requirements for relocation information and eligibility determinations.

**Urgent Need**

In unusual circumstances and in situations of emergency as identified in Title 49 CFR Part 24.204(b), an occupant may be required to vacate the property on less than 90 days advance written notice if the Department determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. The FHWA must grant this waiver of the regulations. A copy of the Department's determination and FHWA approval shall be included in the applicable case file.

This type of situation requires the concurrence of the Relocation Assistance Unit Supervisor and the Right of Way Bureau Chief and the file must be so documented.

**Notice of Intent to Acquire**

A notice of intent to acquire is the Department’s written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Department intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (49 CFR Part 24.2(a)(9)(i)(A).)

**Section 2.5-Availability of Comparable Replacement Dwelling before Displacement**

(a) General - No person to be displaced shall be required to move from his or her dwelling unless at least one “comparable replacement dwelling” (as defined in 49 CFR Part 24.2(a)(6)) has been made available to the person. In addition, where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

1. The person is informed of its location;

2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. Only in situations where three
comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Department make fewer than three referrals.

**Comparable Replacement Dwelling**

A Comparable Replacement Dwelling shall meet the requirements as defined in 49 CFR Part 24.2(a)(6). In the absence of local housing codes, dwellings shall contain an adequate number of bedrooms such that it will not be necessary for persons of the opposite sex, other than husband and wife and children under 12 years of age, to occupy the same bedroom, or for a room other than a bedroom to be used regularly as a bedroom unless it is used in this manner in the acquired dwelling.

In the absence of local housing codes, the following will be used to determine the number of bedrooms required to accommodate a family of a given size and composition:

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(b) Circumstances Permitting Waiver - The Department may request a waiver of the policy 49 CFR Part 24.204(b) (See General, above) in any case where it is demonstrated that a person must move because of:

1. A major disaster as defined in Section 102(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);

2. A presidentially declared national emergency; or

3. Another emergency that requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) Basic Conditions of Emergency Move - Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described above, the Department shall:

1. Take whatever steps are necessary to assure that the person is temporarily relocated to a DS&S dwelling;
2. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

3. Make available to the displaced person as soon as feasible at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

Section 2.6-Eviction for Cause

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in “unlawful occupancy” on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance set forth, unless the Department determines that:

1. the person received an eviction notice prior to the initiation of negotiations and as a result of that notice is later evicted; or

2. the person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

3. in either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth.

For purposes of determining eligibility for relocation payments, the date of displacement is the date a comparable replacement dwelling is made available, or if later, the date the person moves. This section applies only to persons who would otherwise have been displaced by the project.

An eviction related to non-compliance with a requirement related to carrying out a project (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

Section 2.7-General Requirements for Claims for Relocation Payments

(a) Documentation - Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

The previous paragraph allows the Department to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment
is limited to the amount of the lowest acceptable bid or estimate, as provided for in 49 CFR Part 24.301(d)(1).

(b) Expeditious Payments - The Department shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment of a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) Advance Payments - If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Department may issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) Time for Filing - All claims for a relocation payment shall be filed with the Department no later than 18 months after:

1. For tenants, the date of displacement;
2. For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

The Department may waive this time period for good cause.

(e) Notice of Denial of Claim - If the Department disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) No waiver of relocation assistance - The Department shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

While the previous paragraph prohibits the Department from proposing or requesting that a displaced person waive his or her rights or entitlements to relocation assistance and payments, the Department may accept a written statement from the displaced person stating he or she has chosen not to accept some or all of the payments or assistance to which the displaced person is entitled. Any such written statement must clearly show that the individual knows what he or she is entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and the statement must specifically identify which assistance or payments the displaced person has chosen not to accept. The statement must be signed and dated and may not be coerced by the Department.
Section 2.8-Aliens Not Lawfully Present in the United States

1. Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

   A. In the case of an individual, that he or she is either a citizen or national of the United States or an alien who is lawfully present in the United States.

   B. In the case of a family, that each family member is either a citizen or a national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

   C. In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

   D. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

2. The certification provided pursuant to paragraphs 1A. thru 1C., above, shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in the rule shall be within the discretion of the Federal funding agency and within those parameters, that of the Department.

3. In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

4. The Department shall consider the certification provided pursuant to paragraph 1 of this section to be valid, unless the Department determines in accordance with paragraph 6 of this section that it is invalid based on a review of an alien’s documentation or other information that the Department considers reliable and appropriate.

5. Any review by the Department of the certification provided pursuant to paragraph 1 of this section shall be conducted in a nondiscriminatory fashion. The Department will apply the same standard of review to all such certification it receives, except that such standard may be revised periodically.
6. If, based on a review of an alien’s documentation or other credible evidence, a Department has reason to believe that a person’s certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(A) If the Department has reason to believe the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the Department shall obtain verification of the alien’s status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If the Department is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.)

(B) If the Department has reason to believe the certification of a person who has certified that he or she is a citizen or national is invalid, the Department shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with issuer.

7. No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the Department’s satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person’s spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

8. For purposes of paragraph 7 of this section “exceptional and extremely unusual hardship” to such spouse, parent, or child of the person not lawfully present in the United States means the denial of relocation payments and advisory assistance to such person will directly result in:

A. A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

B. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

C. Any other impact the Department determines will have a significant and demonstrably adverse impact on such spouse, parent, or child.
9. The certification referred to in paragraph 1 of this section may be included as part of the claim for relocation payments described in 49 CFR Part 24.207 (Section 2.7 of this Chapter). (Approved by the Office of Management and Budget under control number 2105-0508.)

Section 2.9-Relocation Payments Not Considered Income

No relocation payment received by a displaced person shall be considered income for the purpose of the Internal Revenue Code of 1954, which has been designated as the Internal Revenue Code of 1986 (Title 26, U.S. Code) or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 et seq.) or any other federal law, except for any federal law providing low-income housing assistance.

The Agent shall be aware that a displaced person who is receiving government assistance, including TANF (Temporary Aid to Needy Families), SSI (Disability), etc. may be subject to having such assistance reduced or eliminated altogether because of relocation payments. The Agent shall contact the appropriate government agency providing assistance prior to computing entitlement to determine if any relocation payments made to the displacee will reduce or eliminate such assistance. Results of research will be considered on a case by case basis to not reduce or eliminate such assistance.

Section 2.10-Payments Held or Reduced

In a case where rent is owed to the Department, no reduction is permitted if it would prevent the displacee from obtaining comparable replacement housing. In cases of suspected fraud, miscalculation of payment, lack of documentation, or when rent is owed to the Department, the relocation payments may be held or reduced. If any of the above circumstances are encountered, the Agent and the Relocation Assistance Unit Supervisor will notify the Right of Way Bureau Chief or his designee within 24 hours from such circumstance. Appropriate steps must be taken to resolve the situation.

The Department shall not withhold any part of a relocation payment to satisfy an obligation to any other creditor.

SECTION 3 – PAYMENTS FOR MOVING AND RELATED EXPENSES

Section 3.1-Payment for Actual Reasonable Moving and Related Expenses

(a) General

(1) Any owner-occupant or tenant of a dwelling who qualifies as a displaced person [defined in 49 CFR Part 24.2(a)(9)] and who moves from a dwelling (including a
mobile home) or who moves from a business, farm or nonprofit organization, after an offer or a notice of intent to acquire, is entitled to payment of his or her actual moving and related expenses as the Department determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under 49 CFR Part 24.301 (Section 3.1 of this Chapter) to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described in 49 CFR Part 24.502(a)(3) (Section 5.2(a)(3) of this Chapter), the homeowner occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) Moves From A Dwelling - A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods: (Eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (g)(7) of this section and in 49CFR Part 24.301. Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.)

(1) Commercial move. Moves performed by a professional mover.

(2) Self-move. Moves that may be performed by the displaced person in one or a combination of the following methods:

   (i) **Fixed Residential Moving Cost Schedule.** (49 CFR Part 24.302 and Sections 3.2 and 3.7-Moving Expenses (Additional Department Procedures, Residential Move Expense Schedule) of this Chapter.)

   (ii) **Actual cost move.** Supported by receipted bills for labor 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.

(c) Moves from A Mobile Home - A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods: (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile home include those expenses described in paragraphs (1) through (7) of the section “Eligible Actual Moving Expenses” and in 49CFR Part 24.301. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (g)(10) of 49 CFR Part 24.301.)
(1) **Commercial move.** Moves performed by a professional mover.

(2) **Self-move.** Moves that may be performed by the displaced person in one or a combination of the following methods:

(i)  **Fixed Residential Moving Cost Schedule.** (49 CFR Part 24.302 (Section 3.2 of this Chapter))

(ii)  **Actual cost move.** Supported by receipted bills for labor 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.

(d) **Moves from a Business, Farm or Nonprofit Organization**

Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: (Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and 49 CFR Part 24.303 (Section 3.3 of this Chapter.)

(1) **Commercial move.** Based on the lower of two bids or estimates prepared by a commercial mover. At the Department's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) **Self-move.** A self-move payment may be based on one or a combination of the following:

(i)  The lower of two bids or estimates prepared by a commercial mover or qualified Department staff person. At the Department’s discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii)  Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and equipment rental fees should be based on the actual rental cost of the equipment, but not to exceed the cost paid by a commercial mover.

(e) **Personal Property** Only - Eligible expenses for a person who is required to move personal property from real property, but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) and (g)(18) of this section. (See the following paragraph.)
Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired. For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, the Department may obtain estimates from qualified movers to use as the standard in determining the payment.

(f) Advertising Signs (not to include On-Premise signs) - If the affected outdoor advertising sign (billboard) is located along a highway regulated by the Department’s Outdoor Advertising Control regulations, the agent should first check with the Department’s Outdoor Advertising Specialist (OAS) to see if the billboard can be relocated in the immediate area, preferably onto the remainder, if applicable. TheOutdoor Advertising Specialist may also have information on the availability of replacement sites, zoning restrictions in the area, whether the billboard is a properly licensed, legal sign, etc. In areas outside the Department’s regulatory control, the relocation agent may provide advisory assistance to the billboard owner by checking with the applicable zoning authorities for this information. If the billboard is on a partial taking, the agent should also contact the parcel owner to see if he/she is agreeable to moving the billboard onto the remainder. If the billboard is illegal, then the relocation agent shall immediately notify the OAS and the Office of General Counsel. They should also be informed of the project’s letting date.
The relocation “Entitlements/90-day Assurance” offer for an outdoor advertising sign (billboard), is to be made concurrent with an acquisition offer to purchase the sign. Both offers are to be sent with a cover letter explaining to the sign owner that he/she has the option of relocating the sign limited to within 50 miles, or of the Department offering to acquire the sign. A third option will be to condemn the sign if the first two options fail.

Both offers should be made within thirty (30) days from the date of “initiation of negotiations” for the parcel. This is to allow for an appraisal of the sign. Offers will be made via certified mail/return receipt requested or hand-delivered if feasible. The appropriate documents will accompany both relocation and acquisition offers. The relocation package should also include a relocation brochure, a copy of the right-of-way map showing the parcel, and the agent’s business card.

The sign owner will have 30 days from receipt of the offers to choose either the relocation or acquisition option. If there is no response within 30 days, the acquisition agent may send a “notice of intent to condemn” to acquire the sign. Relocation activities may continue concurrently with condemnation proceedings.

The assigned acquisition and relocation agents will coordinate activities after the offers are made. If the sign company chooses the acquisition option, the acquisition agent shall immediately notify the relocation agent so that the relocation offer may be withdrawn in writing. Conversely, if the sign owner chooses to relocate the sign, the Relocation Agent will immediately notify the acquisition agent and the appropriate counsel handling the condemnation, if applicable.

If the sign owner chooses to relocate the sign, the acquisition agent will be notified immediately so that the acquisition offer may be withdrawn.

Owners of Outdoor Advertising Signs have 3 options for relocating their signs:

1. Actual Cost move performed by a Department-approved third party qualified sign mover. Claims for actual cost move must be adequately supported by itemized receipts or other verifiable evidence of the expense(s) incurred.

2. Self-Move based on a Department-approved sign owner’s bid. Under this option the sign owner takes full responsibility for the move. The owner must submit a detailed bid (excluding profit) showing all cost components, including labor, materials, equipment, time, insurance, taxes, etc., required to relocate the sign(s). If applicable, the sign owner may then move the sign for the Department-approved bid amount and the bid amounts verified by invoices, receipts, employees and equipment record(s) of hours, etc.

3. Sign Move based on Department-approved third party qualified sign mover’s bid. Under this option the Agent will obtain a bid from a third party qualified sign mover
and either be reimbursed for that amount or use the sign mover. The sign owner must choose their moving option within 30 days of the entitlements/90-day assurance offer for the signs(s).

Direct Loss of an Advertising Sign

If the sign is neither acquired nor relocated, the sign owner may receive a payment for direct loss of an advertising sign. The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of:

1. The depreciated reproduction cost of the sign, as determined by the Department, less the proceeds from its sale; or

2. The estimated cost of moving the sign, but with no allowance for storage.

(g) Eligible Actual Moving Expenses

1. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Department determines that relocation beyond 50 miles is justified.

2. Packing, crating, unpacking and uncrating of the personal property.

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property. For businesses, farms or nonprofit organizations 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, and modifications necessary to adapt the utilities at the replacement site to the personal property.

4. Storage of the personal property for a period not to exceed 12 months, unless the Department determines that a longer period is necessary.

Department procedures:
A relocation payment for moving expenses may include actual reasonable storage costs incurred by a business that either does not immediately re-establish at a new location or cannot complete the move until the total required space becomes available.
a. Only current stock and equipment (including stock and equipment on order prior to the move) as inventoried shall be eligible for storage. Delay in shipment of items on order prior to the move, should be recommended by the Agent.

b. A payment for storage costs may not include costs related to items stored in or upon other property owned or leased by the claimant as determined by the Department. Any item removed from storage or any item subsequently replaced by substitute equipment at the new site is not eligible for storage costs.

5. Insurance for the replacement value of the property in connection with the move and necessary storage.

6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

7. Other moving-related expenses that are not listed as ineligible under 49 CFR Part 24.301(h) and Subsection (h) ineligible moving and related expenses of this Chapter. The Department determines reasonable and necessary moving and moving-related costs. See the following:

a. Labor Costs. If the Department concurs in a business concern's proposal to use working foremen or group leaders regularly employed by the business to provide supervisory services in connection with the move, the amount of their wages covering time spent in actual supervision of the move may be included as a moving expense. The wages, included as a part of the move cost, shall be the employee's normal wage rate or the applicable wage rate as per NM Dept. of Workforce Solutions. Such costs are only reimbursable when the mover is not capable of providing proper supervision of the move. The cost of fringe benefits (vacation, sick leave, insurance, etc.) directly related to the employee labor cost during the move may be added to the wage rates. Labor costs and fringe benefits are subject to federal and/or state audit.

Utilization by a business of additional casual labor for the move shall be reimbursable at the rate paid by commercial movers or contractors in the area for similar services. Check with the New Mexico Department of Workforce Solutions.

b. Overtime Costs. It is anticipated that all moves shall be made during normal working hours, thereby negating the need for payment of overtime costs. Should a situation arise which may appear to require the use of overtime to complete the move, full details of that situation must be discussed with the
Relocation Assistance Unit Supervisor. Such move must have the prior concurrence of the Relocation Assistance Unit Supervisor.

c. Limitations. There are certain limitations placed on the move amounts to farms, non-profit organizations, advertising devices, owners of rental property, and for utility costs. These limitations are discussed in detail later in this section of the handbook.

d. Equipment Costs. The cost of any additional equipment necessary to complete a move shall be reimbursable when such costs are supported by receipted bills, if the equipment is rented. Should the business use its own equipment, the agent should check with local equipment rental businesses for a rental rate for the same or similar type of equipment. This rate will be used when computing the displacee’s equipment cost. Use Form A-043, Relocation Assistance Activities, Record of Equipment Used.

e. Leased Equipment. A relocation payment for moving expenses may include the cost of disconnecting and reinstalling leased equipment such as telephones, burglar and fire alarms, and similar items of personal property that are removable. Reinstallation costs are limited to the costs necessary to install a similar system with no increase in capacity or use. In those moves involving leased equipment, an estimate of costs to move the equipment must be included as an addendum to the move estimates. The move specifications and inventory must also include the leased equipment items.

f. Ownership Change. A business that continues in operation subsequent to the initiation of negotiations, but whose ownership changes prior to acquisition of the parcel, remains eligible for relocation assistance payments if required to move. The new owner will be the recipient of the payment, if any, for moving expenses. A new owner who acquires the business subsequent to acquisition of the parcel by the Department and continues under the Department's property management function is ineligible for monetary benefits, but is eligible for advisory assistance.

8. The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings that were not acquired, anchoring of the unit, and utility "hookup" charges.

9. The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made DS&S.

10. The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Department determines that payment of the fee is necessary to effect relocation.
10. Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

12. Professional services as the Department determines to be actual, reasonable and necessary for:

(a) Planning the move of the personal property;
(b) Moving the personal property; and
(c) Installing the relocated personal property at the replacement location.

13. Relettering signs and replacing stationery on hand at the time of displacement made obsolete as a result of the move.

14. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall be the lesser of:

(i) The fair market value in place of the item, as is, for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.);

or

(ii) 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 the following paragraph.) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be 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 regulation, the allowable in-place value estimate (49 CFR Appendix A 24.301(g)(14)(i)) and moving cost estimate (49 CFR Appendix A 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 at the displacement site.
Department Procedures:

Computation for Actual Direct Loss of Personal Property, Form No. A-035 is utilized for computation of actual 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 shall consist of the lesser of:

a. Fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the wholesale cost of the goods to the business, not the potential retail selling price.) A bona fide sale is a sale at the highest price offered, after reasonable efforts have been made to interest prospective buyers, including second hand dealers and, if appropriate, salvage dealers who customarily deal in similar property. An auction held after reasonable public notice is a bona fide sale. A private sale to one's relatives or associates is NOT a bona fide sale.

The ordinary and reasonable expenses related to the sale of personal property such as auctioneer's fees, sales commissions, and advertising costs may be deducted from the amount realized from the sale to determine the net proceeds.

The depreciated value in place (DVIP) of the personal property at its location prior to displacement shall be ascertained by an appraisal secured by the Department except when the apparent value of the property is nominal and the expense of an appraisal is not justified as determined by the Relocation Assistance Unit Supervisor. The value should then be determined by either of the following methods:

i.) Through consultation with an equipment dealer, determine a value which reflects current used market value of the item or its nearest functional equivalent of the same age and condition;

or

ii.) Compute the DVIP by multiplying the original cost of the item to the claimant (exclusive of the installation) by the figure obtained by dividing the remaining useful life of the property at the time of removal, by the period of normal useful life of the property on the date of its acquisition;

or
b. The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

15. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

16. **Purchase of substitute personal property.** If 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, the displaced person is entitled to payment of the lesser of:

   (a) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item;

   or

   (b) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Department’s discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

17. **Searching for a replacement location.** A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $2,500, as the Department determines to be reasonable, which are incurred in searching for a replacement location, including:

   (i) Transportation;
   (ii) Meals and lodging away from home;
   (iii) Time spent searching, based on reasonable salary or earnings;
   (iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;
   (v) Time spent in obtaining permits and attending zoning hearings; and
   (vi) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

**Searching expenses.** In special cases where the Department determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. 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. In those instances when such additional costs to investigate and acquire the site exceed $2,500, the Department may consider waiver of the cost limitation under the 49 CFR Part 24.7, waiver provision. Such a waiver should be subject to the approval of the Federal-funding Agency in accordance with existing delegation authority.
**Department Procedures:**

The Agent shall inform the displacee as to completion of the form prior to the start of the search for a replacement site.

The search period is limited to that period between the date the relocation offer is presented and the date a replacement site is acquired. Acquisition of a replacement site shall mean that date on which the closing for the replacement property occurs or when a lease for a property is executed by all concerned parties.

The amount claimed must be supported by receipted invoices, except for the mileage and time spent in the search. Form No. A-031, Searching Expense Report, is provided for the itemization of search time, mileage, etc.

18. *Low value/high bulk.* When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the Department, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at site or 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 Department.

(h) Ineligible moving and related expenses

A displaced person is not entitled to payment for:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under 49 Part CFR 24.401(c)(2)(iii)) (Section 4.1(c)(2)(iii) of this Chapter);

2. Interest on a loan to cover moving expenses;

3. Loss of goodwill;

4. Loss of profits;

5. Loss of trained employees;

6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 49 CFR Part 24.304(a)(6) (Section 3.4(a)(6) of this Chapter);
(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in 49 CFR Part 24.301(g)(3) and Part 24.304(a) (Section 3.4(a) of this Volume of the Handbook).

(11) Costs for storage of personal property on real property already owned or leased by the displaced person, and

(12) Refundable security and utility deposits.

(i) Notification and Inspection (Nonresidential)

The Department shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in 49 CFR Part 24.203 (Section 2.4 of this Chapter). To be eligible for payments under this section the displaced person must:

1. Provide the Department reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Department may waive this notice requirement after documenting its file accordingly.

2. Permit the Department to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) Transfer of Ownership (Nonresidential)

Upon request and in accordance with applicable law, the claimant shall transfer to the Department ownership of any personal property that has not been moved, sold, or traded in.

Department Residential Move Requirements:

1. Inventory/Specifications. A residential inventory must be completed on actual cost moves by the displacee with the assistance of the Agent. Special note must be made of heavy items, large or bulky items, expensive items such as antiques, etc. If the inventory is larger than the normal residential move, pictures of the inventory

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should be taken to document the file. The inventory must be compared with the appraisal to ensure that only personal property items are considered in the move cost amount. (Form No. A-033A, Inventory of Personal Property)

Normally, move specifications are not necessary for a residential move. If there are any special extenuating circumstances to the move, move specifications must be prepared and presented to the move cost estimators.

For example, in the move of antiques or expensive items, special handling, packing, and insurance could be necessary and this would require the preparation of move specifications.

2. Move Estimates. Payment for a low cost or uncomplicated move may be based on a single bid-estimate. If the move is extensive and requires specifications based on the determination of the Relocation Assistance Unit Supervisor, two bid-estimates are required.

3. Moving Entitlements. Once the reasonable move cost amount has been established the displacee is notified in writing of this amount by an entitlements letter.

4. Monitoring Of Move. An Agent must monitor the move commensurate with the cost and complexity of the move.

5. Post-Move Inspection. The Agent must make a post-move inspection to determine that all items of personalty have been moved to the replacement dwelling. The agent shall ensure that only personal property is relocated. All built-in fixtures and appliances shall remain with the real property unless the Property Management Unit Supervisor determines otherwise.

Once the parcel is vacated, the file is then to be documented accordingly. If the construction bid letting has not taken place, the Agent shall notify the Property Asset Management Section Chief that the property is now vacant. The PDE shall be notified if the letting has taken place, but construction has not begun. The Project Manager shall be notified when construction has already begun.

The Agent shall also inspect the acquired site. Should there be any significant variation in items moved as compared to the original inventory, any payment shall be adjusted accordingly. For insignificant variations, the displacee shall abandon any items not moved without any adjustment to payment.

6. Filing Claim. When a move is completed, the Agent shall obtain the necessary documentation for the claim, assist the displacee in preparing the claim, and present the claim to the displacee for signature. Every effort must be made to process the claim in an expeditious manner. All claims must be reviewed by another qualified Right of Way Agent and approved by the Relocation Assistance Unit Supervisor or
his designee prior to being submitted to the Budget and Audit Unit Supervisor for payment.

Detached Structures. When it is required that personal property be removed from a detached structure such as a storage shed, garage, barn, etc. for residential relocation, the owner of the personalty is eligible to be paid moving costs based on one of the following:

1. The fixed rate schedule by utilizing "pay rooms" to compensate for the cost of moving that personalty; or
2. If a moving estimate (a.k.a. relocation offer estimate) is chosen, an Agent will prepare the estimate (Form No. A-021). Once the amount has been determined, the displacee shall be presented with an entitlement letter; or
3. The actual cost method by including the personal property in the inventory and move cost estimates. The actual cost of move may be either a commercial move or a well-documented self-move using Forms A-043 and A-043A. For cases of low cost or uncomplicated moves, moving costs may be reimbursed based solely on a Relocation Officer’s Estimate, at the Department’s discretion.

Reimbursement for moving personal property items is only done under the Relocation Assistance Program. The appraisal must identify the nature of the fixtures as real or personal property. This is done to determine which items may be moved and which items must remain with the property that has been acquired by the Department.

In all situations where a fixture or fixtures are concerned, the appraiser must contact the Relocation Assistance Unit Supervisor. The Relocation Assistance Unit Supervisor will advise the appraiser if it is necessary to have a joint inspection with a representative of the Relocation Assistance Unit to assist in identifying those fixtures which are to be included in the appraisal report.

Section 3.2-Fixed Payment for Moving Expenses - Residential Moves

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under 49 CFR Part 24.301 (Section 3.1 of this handbook). This payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by the FHWA and published in the Federal Register on a periodic basis (Section 3.7 of this Chapter for New Mexico’s schedule). The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by the Department at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule for New Mexico in Section 3.7 of this Chapter of the Handbook.
Section 3.3 - Related Nonresidential Eligible Expenses

The following expenses, in addition to those provided by 49 CFR Part 24.301 (Section 3.1 of this Chapter) for moving personal property, shall be provided if the Department and the federal funding agency determine that they are actual, reasonable and necessary:

(a) Connect utilities from the property line to the improvements at the replacement site.

(b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the Department a reasonable pre-approved hourly rate may be established.

If a question should arise as to what is a "reasonable hourly rate," the Department should compare the rates of other similar professional providers in that area.

(c) Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the Department.

Section 3.4-Payment for Actual Reasonable Moving and Related Expenses, Non-residential Moves

In addition to the payments available under 49 CFR Part 24.301 (Section 3.1 of this Chapter), 49 CFR Part 24.303, and Appendix A, Subpart D of 24.303 (Section 3.3 of this Chapter), a small business, as defined in 49 CFR 24.2(a)(24), farm or nonprofit organization is entitled to receive a payment, not to exceed $25,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) Eligible Expenses
Re-establishment expenses must be reasonable and necessary; as determined by the Department.
They include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.

2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

3. Construction and installation costs, for exterior signing to advertise the business.
4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

5. Advertisement of replacement location.

6. Estimated increased costs of operation during the first two years at the replacement site, for such items as:
   a. Lease or rental charges,
   b. Personal or real property taxes,
   c. Insurance premiums, and
   d. Utility charges, excluding impact fees.

7. Other items that the Department considers essential to the re-establishment of the business.

(b) Ineligible Expenses

The following is a non-exclusive listing of re-establishment expenditures not considered to be reasonable, necessary, or otherwise eligible.

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures.

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

3. Interest on money borrowed to make the move or purchase the replacement property.

   Payment to a part-time business in the home which does not contribute materially (defined in 49 CFR Part 24.2(a)(7) to the household income.

All eligible items claimed by the displacee must be supported by proper documentation. Documentation can be in the form of paid receipts, tax records, leases, etc. A summary of eligible items claimed can be documented on Form No. A-042, (Claim for Re-establishment Expenses).

Section 3.5-Fixed Payment for Moving Expenses, Non-residential Moves

(a) Business
A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by 49 CFR Parts 24.301, 24.303 and 24.304 (Sections 3.1, 3.3 and 3.4 of this Chapter). Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $40,000. The displaced business is eligible for the payment if the Department determines that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from its displacement site;

2. The 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 the Department determines that it will not suffer a substantial loss of its existing patronage;

3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department, and which are under the same ownership and engaged in the same or similar business activities.

4. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

5. The business is not operated at the displacement site solely for the purpose of renting the site to others; and

6. The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See 49 CFR Part 24.2(a)(7).) The term “Contribute Materially” means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Department determines to be more equitable, a business or farm operation:

   a. Had average annual gross receipts of at least $5000; or

   b. Had average annual net earnings of at least $1000; or

   c. Contributed at least 33 1/3 percent (33.3%) of the owner's or operator's average annual gross income from all sources.

   d. If the application of the above criteria creates an inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.
(b) Determining the Number of Businesses

In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public, and to those customarily dealing with them, as one business; and
4. The same person or closely related persons own, control, or manage the affairs of the entities.

(c) Farm Operation

A displaced farm operation (defined in 49 CFR Part 24.2(a)(12) and below) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable re-establishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $40,000.

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Department determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

(d) Non-Profit Organization

A displaced non-profit organization may choose a fixed payment of $1,000 to $40,000, in lieu of the payments for actual moving and related expenses and actual reasonable re-establishment expenses.
expenses, if the Department determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Department demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses.

Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund-raising expenses. Operating expenses for carrying out the purposes of the non-profit organization 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.

A non-profit organization must present proof of its status as such. That proof may be its tax-exempt status form or the articles of incorporation of the organization. This must be included in the supporting documentation as part of the parcel file.

Should any question arise regarding the eligibility of a non-profit organization for the fixed payment, assistance should be requested from the Relocation Assistance Unit Supervisor.

(e) The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Department determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse and dependents. The displaced person shall furnish the Department proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Department determines is satisfactory.

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, the minimum payment of $1,000 shall be provided.

When there is a loss of earnings for one of the two years being averaged in order to determine the average income for computation purposes, the figure $0 (zero dollars) will be utilized for the year in which a loss occurred.
Salvage Yard

The owner of a salvage yard who meets eligibility requirements for relocation assistance is entitled to all benefits that are available to any other type of business. Relocation of a displaced salvage yard will follow normal procedure as set forth in previous paragraphs.

In addition to the costs incurred in the move of the yard to a replacement site, the costs incurred in the removal of salvage yard inventory to a disposal site or a recycling center is also considered an eligible expense when a salvage yard is acquired for a project.

Section 3.6-Discretionary Utility Relocation Payments

(a) Whenever a program or project undertaken by the Department causes the relocation of a utility facility (defined in 49 CFR Part 24.2(a)(31)) and the relocation of the facility creates extraordinary expenses for its owner, the Department may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

1. The utility facility legally occupies state or local government property, or property over which the state or local government has an easement or right of way; and

2. The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

3. Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the Department; and

4. There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the Department's program or project; and

5. State or local government reimbursement for utility moving costs or payment of such costs by the Department is in accordance with State law.

(b) For the purposes of this section, the term "extraordinary expenses" means those expenses which, in the opinion of the Department, are not routine or predictable expenses relating to the utility's occupancy of rights of way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project.
project, less any increase in value of the new facility and salvage value of the old facility. The Department and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment.

49 CFR Part 24.306 (c) describes the issues that the Department and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

**Utility Facility**

The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications systems, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

Section 3.7-Moving Expenses (Additional Department Procedures)

Property Not Acquired. When the Department determines that the acquisition of property for a project causes a displacement from other property used for a business, farm operation or a dwelling that is not acquired, the expense of moving personalty from the other property is reimbursable.

Hazardous Waste/Material. In the event that hazardous waste or material is located on or in a property being acquired by the Department, the Agent shall notify the Relocation Assistance Unit Supervisor immediately. The agent shall not take any action relevant to the move of the property. The relocation process ceases until the situation is mitigated. The Relocation Assistance Unit Supervisor will immediately notify the Department’s Environmental Section.

Move Insurance. Moving companies normally provide their own insurance and the cost is included in the mover's cost estimate. However, in practically every case, the insurance provided by the moving company is not adequate to cover the full value of property subject to loss due to the move. It is necessary that the displacee is made aware of the probable deficiency in coverage by the mover's insurance and that additional insurance may be desirable. The cost of that additional insurance to cover the specific move is an eligible cost and should be included in the move cost estimate.

Obtaining Move Cost Estimate. The costs incurred in obtaining move cost estimates are normally reimbursable by the Department, not to exceed two estimates per move. However,
when the original two estimates are not compatible, the Relocation Assistance Unit Supervisor may authorize additional estimates.

Move Cost Exceeds Low Estimate/Negotiated Amount. Should a situation occur where the accumulated costs of a move exceed the authorized low estimate amount or the negotiated amount, full details of that situation must be included in the Agent's log and forwarded to the Relocation Assistance Unit Supervisor prior to any claim being submitted or any commitments being made to the displacee.

Nursing Home Moves. When an individual (patient) moves with the nursing home management, that individual is not considered to be a separate displaced person, but is considered to be a part of the business. The costs incurred by the business in moving patients are included in the cost of the business move.

Should a patient elect to move elsewhere, the patient then becomes a separate displacee and would be eligible for all standard tenant benefits. The patient or the legal representative (guardian, attorney, etc.) must be fully advised of the patient's option to move with the home or elsewhere and of the payments and services available in either case. The patient may choose an actual move cost payment or a fixed moving expense payment, i.e., schedule (49 CFR Part 24.301(b) (Section 3.1(b) of this Chapter)

Displacee Requires Personal Transportation To Move. Displacees who choose the actual cost method for moving may be eligible to receive the cost of personal transportation to the new location. Such costs may be on a mileage basis at a rate established by the Department or reasonable actual fees if commercial transportation is used up to the 50-mile maximum distance. The latter may include special services such as the cost of an ambulance to transport invalid displacees.

Meals And Lodging. When the actual cost move is selected, the actual cost of meals and lodging are eligible expenses provided the Department determines that such costs are necessary, reasonable, and within allowable standards determined by the federal funding agency.

Residential Move Expense Schedule. Any person displaced from a dwelling or seasonal residence is entitled to receive an expense and dislocation allowance (i.e. Fixed moving expense (schedule)) payment as an alternative to a payment for actual moving and related expenses. The schedule, as established and published by the federal lead agency, is graduated in relation to the number of pay rooms in the dwelling. Hallways, foyers, closets, bathrooms, etc. are not considered pay rooms. However, under the schedule, additional rooms may be added to cover the cost of moving personalty from storage rooms, workshops, etc., within the dwelling. A similar addition may be made to cover the cost of moving personalty from an outbuilding or detached structure, and/or if applicable, from an area not acquired for the project.

Uniform Relocation Assistance and Real Property Acquisition Policies Act, Residential Moving Expense and Dislocation Allowance Payment Schedule (New Mexico Only)
Effective August 24, 2015

<table>
<thead>
<tr>
<th>State</th>
<th>Occupant Owns Furniture</th>
<th>Occupant does not own furniture</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 room</td>
<td>2 rooms</td>
</tr>
<tr>
<td>New Mexico</td>
<td>650</td>
<td>850</td>
</tr>
</tbody>
</table>
Exceptions: See supplementary information.

1. Person whose residential move is performed by the Department at no cost to the person, $100.
2. Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for move at the Department’s discretion. The Department’s policy is that half of the fixed moving allowance is a “reasonable amount”. Otherwise, the displacee may choose a commercial mover to pack and secure the personal property.
3. A person has minimal possessions and occupies a dormitory style room, $100.

Upon election of the schedule move option, if the displacee cannot afford to move due to extenuating circumstances, the Department may elect, at its discretion, to advance all or part of the moving cost to the displacee using Form No. A-016, Advance Moving Expense Agreement. The Agent will provide supporting documentation in the Agent's Report.

In some instances, the dwelling owner provides some of the furniture and the tenant-occupant owns some of the furniture. In this case, the Agent shall determine the number of rooms furnished by each party. It may be necessary to consolidate furnishings into appropriate furniture for a room in order to establish a move cost amount that is reasonable and equitable for all parties. The property owner is treated as a business and is paid using the business move cost procedures. The tenant is paid by the actual cost method or under the Schedule move by using the “Occupant Owns Furniture” portion for those rooms of furniture that are tenant owned and by the "each additional room" of the “Occupant Does Not Own Furniture” portion, for those rooms that are furnished by the owner. The "first room" of the “Occupant Does Not Own Furniture” portion is not used, as it would duplicate the dislocation allowance to the tenant.

For example, if the tenant occupies six rooms, four of which he furnishes and two of which are furnished by the landlord, the payment would be four rooms from “Occupant Owns Furniture” portion or $1250 and two rooms from "each additional room" of “Occupant Does Not Own Furniture” portion or $120 for a total of $1,370.

The fixed schedule is based on the number of "pay rooms" in the dwelling. Included in the schedule is compensation for telephone hookup, appliance disconnect/reconnect, etc.

The Displacee must not move his personalty without first having been issued an entitlements/90 day assurance letter from the New Mexico Department of Transportation; otherwise eligibility for relocation assistance payments may be jeopardized.

The move cost schedule includes a provision that the expense and dislocation allowance to a person with minimal personal possessions, who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by the Department at no cost to the person, shall be limited to $100.
Non-Residential - Actual Cost Moves and General--Department Procedures

The actual, reasonable, necessary move costs may be established by one of the following means: self-move based on one or combination of: a commercial move or (a) the lower of two bids or estimates (this may include a moving cost estimate) or (b) actual, documented self-move supported by receipted bills for labor and equipment (See 49 CFR Part 24.301(d) (Section 3.1(d) of this Chapter). Details of each type of move are discussed below.

1. Moving Cost Estimate. A moving cost estimate is a means of establishing an amount by an Agent to be reimbursed to an eligible displacee. All moving cost estimates of $2,500 or more shall have the Relocation Assistance Unit Supervisor’s concurrence before being offered to the displacee.

When, in the opinion of the Agent, and with the concurrence of the Relocation Assistance Unit Supervisor, the total cost of a move may be reimbursed through the move cost finding method, through the following procedure:

a. Obtain an inventory of the personal property to be moved. Utilize Form No. A-033A, Inventory of Personal Property (Form No. A-033B includes suggestions on taking an inventory).

b. Prepare the Agent’s Moving Estimate (Form No. A-021) which includes the name of the displacee, the site address, the replacement site address, the distance to same, approximate number of packing cartons needed, required equipment such as fork lifts, trucks, etc., cost for disconnect/reconnect of leased equipment, and number of labor hours. The wage rate to be used shall be the wage rate paid in the area for similar work. Check with the New Mexico Department of Workforce Solutions.

c. Following review and approval of the move amount by the Relocation Assistance Unit Supervisor the displacee is notified of the amount through an entitlement letter.

d. Following completion of the move, the Agent shall inspect the subject and replacement sites to verify completion of the move and clearing of the displacement site.

2. Self-Move. A self-move is one in which the displacee takes full responsibility for the move and accomplishes the move using his own personnel and equipment. Any additional personnel and equipment that is required to complete the move or a portion of the move, can include those furnished by a commercial moving company. Such utilization does not change the type of move.

When the displacee elects to move his own personal property, it is necessary to prepare an inventory of the personal property, unless the personal property is minimal and the relocation uncomplicated, e.g. the contents of a small storage shed.
If the displacee chooses to move via the lesser of 2 bids/estimates, the Department shall obtain such from qualified moving companies. At the Department's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate, or the Department may elect to use a moving cost estimate. Upon receipt of the estimate(s) or upon completion of the move a reviewing agent and the Relocation Unit Supervisor shall review the inventory, specifications (if applicable), and the estimates/bids. Based upon that review, a maximum not to exceed the lowest approved estimate shall be established as the reasonable cost to move the personalty.

Should the displacee perform an actual cost self-move, the wage rates shall not exceed the rates paid by commercial movers for similar types of moves (Check with NMDOL website (see above) for wage rates. Also, include any other pertinent information/cost used as the basis for the finding amount. (Displacee will submit Form No. A-043, “Relocation Assistance Activities - Record of Hours” and A-043B, “Relocation Assistance Activities - Record of Equipment Used.”)

When the move amount is under $50,000, the moving entitlement will not be negotiated.

When the move amount claimed exceeds $50,000, the moving entitlement may be negotiated at the discretion of the Agent with concurrence of the Relocation Assistance Unit Supervisor.

The Agent shall provide support for his/her discretionary decision.

3. Commercial Move. A commercial move is one in which the move is completed by a commercial mover under contract with the displacee. It is necessary to prepare an inventory prior to the move unless the personal property is minimal and the relocation uncomplicated, e.g. the contents of a small storage shed. Move specifications, if necessary shall be prepared.

When the inventory, specifications, and move estimate(s) are reviewed and approved by the Relocation Assistance Unit Supervisor, the lowest estimate sets the limit of Department reimbursement for the move. This amount is offered to the displacee. The displacee may submit an unpaid invoice/bill to the Department and assign payment directly to the moving company, or the displacee may present a paid receipt along with the move claim. (Form No. A-060, Claim for Moving Expenses).

For complex, costly moves, the Agent shall monitor the move in progress.

Upon completion of the move, the file is documented accordingly and the Property Asset Management Section Chief and/or any other appropriate personnel are
notified accordingly. A post-move inspection must be made prior to disbursing payment for the move.

**Additional Department Non-Residential Move Procedures**

The following actions are required for non-residential moves:

1. **Inspections.** The displaced person must permit the Department to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move. The agent shall adequately monitor the move.

2. **Inventory.** A displacee must provide the Department with reasonable advance notice of the approximate date for the start of a move. An inventory of personal property to be moved shall be prepared by the displacee with assistance from the Agent. As a part of the inventory process, the approved appraisal shall be reviewed to ascertain the proper classification of realty/personalty, obtain plant/site layouts as necessary, photograph the major items of personalty to be moved, and where relevant, check lease agreements to determine the ownership of any questionable items. The inventory shall include items that will not be moved, but which will be disposed of in some other manner. Also included shall be those items that are on order, the shipment of which cannot be delayed. The inventory shall be listed on Form No. A-033 and following completion shall be certified correct by both the displacee and the Agent by signing and dating the form.
   
   a. Underground tanks, machine foundations, and concrete pads are normally considered to be realty items if they are so clearly valued in the appraisal of the property.
   
   b. Nursery crops, trees, shrubs, etc. that are balled/burlapped/potted are generally considered personal property and are included in the inventory of personalty to be moved.

3. **Move Specifications/Review.** Normally, it is not necessary to prepare move specifications for a small, uncomplicated business move. If a move requires specifications, they must be prepared by the Agent with assistance from the displacee. The specifications should be submitted to the Relocation Assistance Unit Supervisor for review and approval prior to obtaining move cost estimates. The specifications must include the total scope of work to be performed and, where appropriate, should be subdivided to reflect the specific responsibilities for each trade or craft that will perform a separate category of services in the move, e.g., carpenters, plumbers, electricians, etc. The specifications shall include a breakdown of work necessary to relocate a specific item of personalty. Such breakdown would indicate the sequence of events that are anticipated, i.e.,
disconnect, load, transport, unload, reset, and reconnect. The specifications should indicate the disconnect points. Normally, disconnection of machinery, etc., occurs at the nearest joint or connection to the machine and includes all "kill switches" for the machine. When machinery leveling, calibration, or purging are required because of the nature of the equipment involved, their requirement must be addressed in the move specifications and be part of the move cost estimate.

The Relocation Assistance Unit Supervisor shall review the move specifications to determine conformance with existing requirements and to assure that each category of service is identified, that each action noted is necessary, and that only personal property is to be moved to the new location.

In any case where a move is estimated to exceed $50,000, it is mandatory that the Relocation Assistance Unit Supervisor become actively involved in all phases of the move.

4. Obtaining Move Cost Estimates. When moving estimates are to be obtained, they should conform to an established format and comply with the previously prepared specifications. The Agent shall:

a. Select two qualified movers regularly engaged in the type of move to be performed to provide bids.

b. Present the estimators with a copy of the inventory and move specifications.

c. Make personal contact at the displacement site with the selected moving company representatives and review the content of the inventory and the specifications with them. Any questionable inventory items must be resolved at this point in the procedure.

d. Advise the estimator(s) that the Department will pay the reasonable cost of preparing the estimate and establish a time limit for completion of the estimate.

e. An authorized representative of the moving company must sign and submit the bid to the Relocation Assistance Unit Supervisor.

In those cases where a move is anticipated to be uncomplicated or low cost, it is permissible to base payment on a single bid or estimate with prior approval of the Relocation Assistance Unit Supervisor.

For non-complex moves the Department may use a moving cost estimate prepared by an Agent instead of a moving company’s estimate.
5. Advertising for Move Cost Estimates. If a complicated or unusual move is encountered and cost estimates cannot be readily obtained from normal sources, the Department may utilize public advertising to obtain such move cost estimates.

6. Move Cost Estimate Not Obtainable. Where the nature of a business is such that move cost estimates cannot be obtained, the business may perform an actual cost self-move based on receipted, bills, invoices, records of employees and equipment, etc. This is contingent upon the ability of the company to provide and maintain an accurate record of expenses incurred during the move.

7. Move Amount Approved. When move estimate(s) have been received, reviewed, and approved, the move cost amount is then established. Normally, this amount will not exceed the lower of the approved bid-estimates. When the approved amount is established, the displacee is notified of the amount via an entitlements letter presented in person or by certified mail, return receipt requested.

Section 3.8-Payment Procedures

In order to avoid or reduce a hardship, a relocation payment may be made prior to completion of the move. This provision is also applicable to situations where such payments and services are administered by another agency under contract or agreement with the Department.

The filing of a condemnation case has no bearing on the claiming of move costs.

During large complex moves, partial payments (draws) may be made as portions of the move are completed. A series of warrants will be obtained and released to the displacee or the mover by assignment, as appropriate, based upon the percentage of completion of the move. Such action must have prior approval of the Relocation Assistance Unit Supervisor.

SECTION 4 – REPLACEMENT HOUSING PAYMENTS

Section 4.1 – Replacement Housing Payment For 90-Day Homeowner-Occupants

(a) Eligibility

A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

1. Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and
2. Purchases and occupies a decent, Safe and Sanitary (DS&S) replacement dwelling, as defined in 49 CFR Part 24.2 within one year after the later of the following dates (except that the Department may extend such one year period for good cause):

a. The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

b. The date the Department's obligation under 49 CFR Part 24.204 (Section 2.5 of Volume) is met.

An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe and sanitary replacement dwelling.

**Owner of a Dwelling**

A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

2. An interest in a cooperative housing project which includes the right to occupy a dwelling; or

3. A contract to purchase any of the interests or estates described in paragraph 1 or 2, of this section; or

4. Any other interest, including a partial interest, which in the judgment of the Department warrants consideration as ownership.

(b) Amount of Payment - The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed $31,000. (49 CFR Part 24.404 and Section 4.4 of this Chapter) The payment under this subsection is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with 49 CFR Part 24.401(c) (Section 4.1(c) of this Chapter);
2. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with 49 CFR Part 24.401(d) (Section 4.1(d) of this Chapter); and

3. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with 49 CFR Part 24.401(e) (Section 4.1(e) of this Chapter)

(c) Price Differential:

1. Basic Computation. The price differential to be paid under 49 CFR Part 24.401(b)(1) (Section 4.1(b)(1)) of this Chapter) is the amount which must be added to the acquisition cost of the displacement dwelling and site (49 CFR Part 24.2(a)(11)) to provide a total amount equal to the lesser of:

   a. The reasonable cost of a comparable replacement dwelling as determined in accordance with 49 CFR Part 24.403(a) (Section 4.3(a) of this Chapter); or

   b. The purchase price of the DS&S replacement dwelling actually purchased and occupied by the displaced person.

2. Owner Retention of Displacement Dwelling. If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

   a. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

   b. The cost of making the unit a DS&S replacement dwelling, defined in 49 CFR 24.2(a)(8); and

   c. The current market value for residential use of the replacement dwelling site, (Appendix A, 49 CFR Part 24.402(c)(2)(iii)) unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site. The current market value for residential use should not be taken to mean the Department must have the property appraised. Any reasonable method for arriving at the market value may be used; and

   d. The retention value of the dwelling if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) Increased Mortgage Interest Costs - The Department shall determine the factors to be used in computing the amount to be paid to a displaced person under 49 CFR Part 24.401(b)(2) (Section
4.1(b)(2) of this Chapter). The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the current mortgage(s) on the displacement dwelling. In addition, payment shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced accordingly (Appendix A – Increased Mortgage Interest Costs, following number 5 below). In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

4. Purchaser's point and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
   a. They are not paid as incidental expenses;
   b. They do not exceed rates normal to similar real estate transactions in the area;
   c. The Department determines them to be necessary; and
   d. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

5. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.
Appendix A - Increased Mortgage Interest Costs

The provision in 49 CFR Part 24.401(d) (Section 4.1(d), above of this Chapter ) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the down payment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buy down".

The Department must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage in order to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages, and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations.

Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

Sample Computation:

<table>
<thead>
<tr>
<th>Old Mortgage:</th>
<th>Remaining Principal Balance</th>
<th>$50,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Monthly Payment (principal and interest)</td>
<td>$458.22</td>
</tr>
<tr>
<td></td>
<td>Interest rate</td>
<td>7%</td>
</tr>
<tr>
<td>New Mortgage:</td>
<td>Interest rate</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>Points</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Term</td>
<td>15 years</td>
</tr>
</tbody>
</table>

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10% = $42,010.18

\[
\begin{align*}
\text{Amount to be financed} & = \text{Old Mortgage} - \text{New Mortgage} \\
& = \$50,000 - \$42,010.18 \\
& = \$7,989.82
\end{align*}
\]

Increased mortgage Interest Costs: $7,989.82

3 points on $42,010.50: $1,260.31

Total buy down necessary to maintain payments at $458.22/month: $9,250.13
If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buy down shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buy down payment would be $7,677.61 ($35,000 divided by $42,010.18 equals 0.8331; $9,250.13 x 0.83 = $7,706.57).

The Department is obligated to inform the displaced person of the approximate amount of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Department must advise the displaced of the interest rate and points used to calculate the payment.

(e) Incidental Expenses - The incidental expenses to be paid under 49 CFR Part 24.401(b)3 (Section 4.1(b)(3) of this handbook) or 49 CFR Part 24.402(c)(1) (Section 4.2(c)(1) of this Chapter) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

1. Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
2. Lender, FHA or VA application and appraisal fees.
3. Loan origination or assumption fees that do not represent prepaid interest.
4. Professional home inspection, certification of structural soundness and termite inspection when required.
5. Credit report.
6. Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
7. Escrow agent's fee.
8. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
9. Such other costs as the Department determines to be incidental to the purchase.

Department Procedures (Incidental Expenses & RHP)

Debt service fees, finance charges, and prepaid expenses such as taxes, interest, and homeowner's insurance are NOT reimbursable as incidental expenses.
The Agent shall explain that the exact cost of increased interest and incidental expenses cannot be determined until replacement housing is purchased by the displacee. However, estimates of these amounts can be provided by the Agent, so long as it is clearly understood by the displacee that they are only estimates based on information provided by the displacee.

Any difference between the estimated amount and actual amount of increased interest and debt service will be adjusted by the Agent immediately after closing. The displacee must make available all supporting documentation showing actual costs at this time.

The Agent shall explain that the combined total of the replacement housing payment, increased interest, and incidental expenses cannot exceed $31,000. He/she will advise the displacee that such circumstances will invoke the Last Resort Housing provision of this handbook and the Agent will explain those provisions to the displacee, as applicable.

The Agent shall explain that the Replacement Housing Payment will be added to the state's acquisition offer or carve-out, as applicable, which will assist the owner to purchase a comparable replacement dwelling. If a carve-out method is used, the Agent should explain the basis for its use to the displacee.

The Agent shall explain to displacees that circumstances are possible where the displacee may not receive a payment for replacement housing price differential. However, if the displacee does not meet the eligibility requirements for a replacement housing payment, the displacee may still receive reimbursement for increased interest and incidental expenses if these costs were incurred.

(f) Rental Assistance Payment for 90-Day Homeowner - A 90-day homeowner-occupant who could be eligible for a replacement housing payment under 49 CFR Part 24.401(a) (Section 4.1(a) of this Chapter), but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with 49 CFR Part 24.402(b)(1) (Section 4.2(b)(1) of this Chapter), except that the limit of $7,200 does not apply, and disbursed in accordance with 49 CFR Part 24.402(b)(3) (Section 4.2(b)(3) of this Chapter). Under no circumstances would the rental assistance payment exceed the amount that could have been received under 49 CFR Part 24.401(b)(1) (Section 24.401(b)(1) of this Chapter) had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling.

**Department Procedures**

The Agent shall explain that the amount of the replacement housing payment is determined by using comparable dwellings available for purchase by the displacee. Each selected comparable dwelling must be specifically evaluated by the state to assure comparability with the displacement residence.
It is the Agent's responsibility to make available a comparable replacement dwelling unit and relocate the displaced person. If a change in occupancy status is desired by the displacee, the Agent will be expected to make a reasonable effort to comply with the request. If the optional housing is available, a Rental Assistance Payment will be computed and an entitlements/90-day assurance offer made based on such computation.

When a single family dwelling is owned by several persons and occupied by only a part of the owners, the price differential will be the lesser of:

1. The difference between the owner-occupant share of the acquisition price paid by the state and the actual cost of the replacement dwelling; or
2. The difference between the total acquisition price paid by the state and the actual cost of the replacement dwelling; or
3. The difference between the total acquisition price paid by the state and the amount determined as necessary to purchase a comparable replacement dwelling.

Section 4.2-Replacement Housing Payment for 90-Day Occupants

(a) Eligibility - A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $7,200 for rental assistance, as computed in accordance with 49 CFR Part 24.402(b) (Rental Assistance Payment section below), or down payment assistance, as computed in accordance with 49 CFR Part 24.402(c) (Down payment Assistance Payment (c) of this Chapter), if such displaced person:

1. Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
2. Has rented, or purchased and occupied a decent, safe and sanitary replacement dwelling within one year (unless the Department extends this period for good cause) after:
   a. For a tenant, the date he or she moves from the displacement dwelling, or
   b. For an owner-occupant, the later of:
      (1) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or
      (2) The date he or she moves from the displacement dwelling.
(b) Rental Assistance Payment:

1. **Amount of Payment.** An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $7,200 for rental assistance. (See also 49 CFR Part 24.404 and Section 4.4 of this Chapter) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

   a. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

   b. The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person as computed by the Department.

2. **Base Monthly Rental for Displacement Dwelling.** The base monthly rental for the displacement dwelling is the lesser of:

   (i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Department. (For an owner-occupant, use the market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

   (ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs (The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/low_income_calculations/index.cfm. The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

   (iii) 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.
Low income calculation example. The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with 49 CFR Part 24.402(b). One factor in this calculation is to determine if a displaced person is "low income," as defined by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the Department must:

1. Determine the total number of members in the household (including all adults and children);
2. locate the appropriate table for income limits applicable to the Uniform Act for the state in which the displaced residence is located (found at: http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/low_income_calculations/index.cfm);
3. from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA)*, or Primary Metropolitan Statistical Area (PMSA)* in which the displacement property is located; and
4. locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (49 CFR Part 24.2(a)(15)), which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered "low income." For example: Tom and Mary Smith and their three children are being displaced. The information obtained from the family and verified by the Agency is as follows:

Tom Smith, employed, earns $30,000/yr.

Mary Smith, receives disability payments of $8,000/yr.

Tom Smith Jr., 21, employed, earns $15,000/yr.

Mary Jane Smith, 17, student, has a paper route, earns $3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)

Sammie Smith, 10, full-time student, no income.

Total family income for 5 persons is:

$30,000 + $8,000 + $15,000 = $53,000
The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a 5 person household is: $65,550. (2015 Income Limits) This household is considered "low income."

* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item "Income Limit Area Definition" posted on the FHWA's Web site at: http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/low_income_calculations/index.cfm.

Unfurnished Versus Furnished. In order to compare like situations, comparables obtained for an unfurnished displacement dwelling will be unfurnished and comparables for a furnished displacement dwelling will be furnished. Partially furnished dwelling will be considered unfurnished unless the landlord's furnishings are more numerous that the tenant's. When a displacement dwelling is furnished and all that is available are unfurnished comparables, then an appropriate amount for rental of furniture will be added to the rent of the comparable as determined by the Department.

Utility Costs. If utility costs need to be added to the monthly rent of the displacement dwelling, the comparable or the replacement dwelling, the appropriate utility company will be contacted to obtain the high and low for the past twelve months, if available. If not, whatever period is available will be used. If no adjustment is warranted, an entry will be made in the file documentation to that effect.

Economic Rent. The economic rent, as determined by the Appraiser, shall be established and used for owners who choose to rent their replacement dwellings and for tenants when:

a. the average monthly rent paid exceeds the market rent for a similar dwelling; or

b. the tenant provides a service in lieu of paying rent; or

c. the rent paid does not represent an arms length transaction between the tenant and landlord.

3. Manner Of Disbursement
A rental subsidy payment may, at the Department’s discretion, be disbursed in either a lump sum or in installments. However, except as limited in the paragraph entitled "Payment after Death" (See 49 CFR Part 24.403(f)), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.
(c) Down Payment Assistance Payment:

1. Amount Of Payment. An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive under 49 CFR Part 24.402(b) if the person rented a comparable replacement dwelling. At the Department’s discretion, a down payment assistance payment that is computed at less than $7,200 may be increased to any amount not to exceed $7,200. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under 49 CFR Part 24.401(b) if he or she met the 90-day occupancy requirement. The Department's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90-day owner occupant under 49 CFR Part 24.401(a) is not eligible for this payment.

The down payment assistance provisions in 49 CFR Part 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Department discretion in offering down payment assistance that exceeds the computed rental assistance payment, up to the $7,200 statutory maximum. This does not mean, however, that such Department discretion may be exercised in a selective or discriminatory fashion. The Department’s policy affords equal treatment for persons in like circumstances and this policy is applied uniformly throughout the Department's programs or projects. For purposes of this section, should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling.

2. Application Of Payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Also consider the low income rule, Section 4.2(b), and replacement housing of last resort, Section 4.4 of this Chapter.

**Department Procedures:**

The Department has elected to allow tenants of 90 days or more to claim the actual amount computed or $7,200, whichever is greater.

The Department has also elected to allow owner-occupants of 90 days to claim the actual amount or $7,200, whichever is greater, as a down payment supplement.
The total down payment assistance including incidental expenses will not exceed $7,200 unless the rental subsidy payment was determined to be Housing of Last Resort.

Application of Payment. The full amount of the replacement housing payment for the down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses. The following is a non-exclusive list of situations where the down payment assistance payment may be considered as having been applied to the purchase price.

1. Builds Replacement Dwelling. A qualified displacee can build a replacement dwelling and receive his payment, provided that he applied the entire payment to the cost of constructing the replacement and purchase of a home site.

2. Pays Cash For Replacement. When the displacee pays cash for a replacement dwelling, the full amount of the purchase price will be considered the actual down payment and the displacee may still be eligible for a payment, provided all other requirements have been met.

3. Replacement Is A Mobile Home. A displacee purchasing a mobile home is eligible to receive a payment provided that the mobile home replacement meets DS&S standards.

4. The Cost of Providing Water, Utilities, and/or sewer services, when properly documented to prove expenditure will be considered as having been applied to the purchase price.

5. Cost of Making Replacement Housing DS&S. Money spent by a displacee in correcting DS&S deficiencies in a newly purchased replacement will be considered as having been applied to the purchase price.

6. Other House. If a displacee purchases a house, moves it to a new location, and occupies it within the required time period, he/she will be eligible for down payment assistance.

7. The Cost of The House, including its moving expenses, restoration costs, and new site will be considered as having been applied to the purchase price.

Payment Computation. The payment will be determined by an Agent, reviewed by a qualified agent, and approved by the Relocation Assistance Unit Supervisor.

Section 4.3 - Additional Rules Governing Replacement Housing Payments

(a) Determining Cost of Comparable Replacement Dwelling
The upper limit of a replacement housing payment shall be based on the cost of a “comparable replacement dwelling” (49 CFR Part 24.2(a)(6))

1. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. If reasonable effort fails to disclose at least three comparable replacement dwellings, the Relocation Assistance Unit Supervisor may approve, in writing (in the computation analysis), the use of less than three.

2. If the site of the comparable replacement dwelling, lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

3. 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 lot, the Department may offer to purchase the entire property. If the owner refuses to sell the remainder to the Department, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

4. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

5. Multiple Occupants of One Displacement Dwelling
   If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Department, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Department determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

   Department Procedures:
   Multiple occupants of the displacement dwelling will be considered by the Department to constitute one household. If the displacees are of the opinion that more than one household existed within the dwelling prior to the displacement, it shall be the responsibility of the displacees to document the separate existence of each.
The Relocation Assistance Unit Supervisor will determine if separate households existed prior to displacement based on a preponderance of the documentation submitted. If multiple households exist, such occupants will be considered to have separate entitlements to all relocation payments. A comparable dwelling for each household would be based on the amount of private space that each household occupied separately in the displacement dwelling plus the space which was shared with the other displacee(s). The Relocation Assistance Unit Supervisor may consult with the Office of General Counsel as necessary for assistance in making the determination of the existence of separate households.

6. Deductions from relocation payments.
The Department shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Department shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

7. Mixed Use and Multi-Family Properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the replacement housing payment.

(b) Inspection of the Replacement Dwelling
Before making a replacement housing payment or releasing the initial payment from escrow, the Department or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe and sanitary dwelling as defined in 49 CFR Part 24.2(a)(8).

(c) Purchase of Replacement Dwelling
A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

1. Purchases a dwelling; or
2. Purchases and rehabilitates a substandard dwelling;
3. Relocates a dwelling which he or she owns or purchases;
4. Constructs a dwelling on a site he or she owns or purchases;
5. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

6. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

(d) Occupancy Requirements for Displacement or Replacement Dwelling
No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or the Department; or

2. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Department.

(e) Conversion of Payment
A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under 49 CFR Part 24.402(b) is eligible to receive a payment under 49 CFR Part 24.401 and Part 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under 49 CFR Part 24.401 or Part 24.402(c).

(f) Payment After Death
A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

2. Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

3. Any portion of a replacement housing payment 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 shall be disbursed to the estate.

(g) Insurance Proceeds
To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (49 CFR Part 24.3)

(e) Department Procedures

Computation and Explanation of Entitlements
The Agent shall prepare and submit a documented replacement housing computation to a qualified Agent, for review, and to the Relocation Assistance Unit Supervisor for approval prior to presenting an entitlements 90-day assurance to the displacee.

All displacees shall be informed of the amount of their relocation payment entitlements in a timely and orderly manner near the time when they are actively searching for replacement housing, or at least 90 days prior to the time the displacee is required to vacate the displacement site.

After the Relocation Assistance Unit Supervisor approves the entitlement amount, the Agent shall explain the applicable relocation entitlement to the displacee. The Agent shall identify the amount to which the displacee may be entitled in purchasing or renting replacement housing. The Agent shall explain that the entitlement amount was determined by a market survey of comparable dwellings presently available to be purchased or rented by the displacee. The Agent shall indicate the address and probable sale or rental price of the dwelling used in the computation.

The Agent shall emphasize that replacement housing payments are the difference between displacement and replacement housing costs or the amount determined by the state as necessary to secure comparable replacement housing, whichever is less. Replacement housing payments can only be paid to displaced persons who relocate to DS&S. dwellings. Displaced persons are to request a DS&S. inspection by their Agent prior to making any financial commitments on the replacement dwelling.

Relocation Checks

Relocation checks shall be delivered by certified mail, or in person, by staff other than the Agent who prepared the claim.

If hand-delivered, a copy of the check shall be made. The copy of the check shall be signed and dated by both the person delivering the check and the person receiving it. This will serve as a receipt and will be included in the parcel file. Whenever feasible, checks should be hand-delivered to expedite payment.
Condemnation

If the amounts of the price differential cannot be determined due to pending condemnation proceedings, a provisional price differential payment may be calculated prior to the court proceeding by using the state's maximum acquisition offer for the property for computation purposes. Payment in such cases may be made only upon the owner-occupant signing an agreement that the replacement housing payment will be re-computed upon final determination of the condemnation proceeding.

If the final acquisition cost of the residential property exceeds the amount used in provisional computations, the displaced owner must agree to refund to the state from the final acquisition cost the amount of the excess, not to exceed the amount of the price differential that was paid in advance.

If the displacee will not execute such an agreement, the price differential payment shall be deferred until the condemnation case is adjudicated. Then the price differential payment will be computed using the final acquisition cost for the residential property.

Relocation Involving Court Judgments. In cases other than the total purchase of a dwelling and home site, and in the absence of the court's specifying an amount for the residential dwelling and land in the judgment, a proportional computation shall be an acceptable manner of determining the residential portion of the court award. In the proportion, the price paid by the state for the residence would increase or decrease in direct proportion to the increase or decrease in the court award over the state's offer.

Selection of a Replacement Dwelling

Upon notification by the displacee that he has chosen a replacement dwelling, the Agent shall:

1. Arrange to conduct a DS&S inspection at the earliest possible time. The displacee shall be encouraged by the Agent to request a DS&S inspection prior to making any financial or legal commitment on a replacement dwelling. This inspection shall be a personal on-site inspection conducted by the Agent in compliance with applicable standards. During inspection, the Agent shall complete a DS&S Report and it shall become a part of the parcel file.

2. Make known to the displacee that a statement of relocation eligibility can be forwarded to any person, agency or financial institution at the request of the displacee.

3. Assist the displacee in the filing of his claim by ensuring that the displacee obtains and provides the following:

   A. A statement from the lending institution about the financing on the displacement dwelling. This statement should identify the date the mortgage was secured, the term of the mortgage (number of years), the interest rate, and
the amount of the unpaid principal balance on the date the dwelling was purchased by the state;

B. A copy of the Purchase Agreement for the replacement dwelling in support of the agreed purchase price;

C. A copy of the closing statement for the replacement dwelling which includes an itemization of incidental expenses;

D. A copy of the replacement mortgage, Truth-in-Lending disclosure, and such other information as may be required to document and compute an increased interest payment; and

E. A copy of the deed for the replacement dwelling.

After the displacee has completed the move, the Agent shall:

1. Conduct a post-move inspection of the displacement and replacement dwellings to verify that the displacement dwelling has been vacated and that all personal property has been moved to the new location. For actual cost moves, the approved inventory shall be used as a checklist in this inspection;

2. Conduct a DS&S inspection of the replacement dwelling, if not performed previously;

3. Obtain moving cost and replacement dwelling purchase documentation required for claim preparation; and

4. Notify the Property Management Unit Supervisor of the date the subject dwelling was vacated.

The Agent must perform the following prior to the closing of the parcel file.

1. Verify purchase price of replacement dwelling.

2. Compare the purchase price to the sales price of the selected comparable.

3. Subtract the acquisition cost or carve-out from the sales price of the selected comparable or the purchase price of the replacement dwelling, whichever is less. (The resultant difference is the replacement housing payment amount to which the displacee is entitled.)

4. Verify eligible incidental expenses paid by the displacee and note any adjustments necessary after closing.
5. Verify increased interest payment, if applicable, previously estimated and make any appropriate adjustments.

6. Check the parcel file to see that supporting documentation for items 1 through 5 above, are included.

Section 4.4 Replacement Housing of Last Resort

(a) Determination to Provide Replacement Housing of Last Resort
Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants as specified in 49 CFR Part 24.401 or Part 24.402 (Sections 4.1 and 4.2 of this Chapter) as appropriate, the Department shall provide additional or alternative assistance. Any decision to provide last resort housing assistance must be adequately justified either:

1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
   a. The availability of comparable replacement housing in the program or project area;
   b. The resources available to provide comparable replacement housing; and
   c. The individual circumstances of the displaced person;

or

2. By a determination that:
   a. There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and
   b. A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
   c. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs.

(b) Basic Rights of Persons to be Displaced - Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Department shall not require any displaced person
to accept a dwelling provided by the Department under these procedures (unless the Department and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

This paragraph affirms the right of a 90-day homeowner occupant who is eligible for a replacement housing payment under 49 CFR Part 24.401 to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" in 49 CFR Part 24.2(a)(20). The Department is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Department would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Department may provide additional purchase assistance or rental assistance.

(c) Methods of Providing Comparable Replacement Housing - The Department shall have broad latitude in implementing this, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

The use of cost-effective means of providing comparable replacement housing is implied throughout. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

1. The methods of providing replacement housing of last resort include, but are not limited to:

a. A replacement housing payment in excess of the limits set forth in 49 CFR Part 24.401 or Part 24.402 (Sections 4.1 and 4.2 of this Chapter). A replacement housing payment subsidy under this section may be provided in installments or in a lump sum at the Department's discretion.

b. Rehabilitation of and/or additions to an existing replacement dwelling.

c. The construction of a new replacement dwelling.

d. The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

e. The relocation and, if necessary, rehabilitation of a dwelling.

f. The purchase of land and/or a replacement dwelling by the Department and subsequent sale or lease to, or exchange with a displaced person.


g. The removal of barriers for persons with disabilities.
2. Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (Appendix A, of 49 CFR Part 24.404(c)(2), the following paragraph), including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with 49 CFR Part 24.2(a)(6)(ii) of this part.

49 CFR Part 24.404 (c)(2) (the previous paragraph) permits the use of last resort housing in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling, but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable dwellings are not available. Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

3. The Department shall provide assistance to a displaced person who is not eligible to receive a replacement housing payment under 49 CFR Part 24.401 and Part 24.402 (Sections 4.1 and 4.2 of this Chapter) because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means (49 CFR Part 24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

**Department Procedures (Sections 4.5 thru 4.8)**

**Section 4.5-Advance Payments/Escrow Procedure**

The following escrow procedure permits the processing of a relocation payment package and the issuance of a warrant in advance of actual closing for the purchase of a replacement dwelling or prior to the finalization of a rental agreement or lease for a rental unit.

The purpose of the procedure is to assure that funds will be available for rental deposits, advance rental payments, down payments, etc., thereby negating the necessity for the displacee to borrow funds in order to meet his/her financial responsibilities.
1. Displacee Who Purchases. An eligible displacee, who desires to purchase a replacement dwelling, may arrange to have funds held in escrow at a title company, etc. until closing. The agent shall use the “Incidental Expense Escrow Agreement,” “Authorization to Escrow Relocation Supplement” and “Escrow Agent Agreement” for this purpose.

The claims package preparation shall follow normal procedures, except that a copy of the purchase agreement (with buyer and seller's signature) will be substituted for proof of purchase as support documentation. The warrant shall be mailed via certified mail, return receipt requested, or hand-delivered to the appropriate escrow agent. The Agent shall attend the final closing and obtain copies of all pertinent documents, i.e., deed, closing statements, etc. Arrangements shall be made for any required adjustment in monies resulting from an initial overpayment or underpayment. If there is an overpayment, the Agent shall obtain a copy of the closing statement prior to closing, prepare the “Release of Incidental Expenses” and present it to the closing agent at closing.

2. Displacee Who Rents. The claims package preparation shall follow normal procedures. A copy of the signed lease or a rent receipt for the replacement dwelling is to be included in the package. The displacee's portion shall be disbursed immediately after occupancy of the replacement unit and vacating the displacement dwelling.

3. Moving Cost Payments. Moving cost payments should not be processed by use of the escrow procedure as a rule. An Advance Moving Expense Agreement, Form No. A-016 may be processed with the Relocation Assistance Unit Supervisor's written approval.

Section 4.6-Installment Billings

Last resort housing for rent supplement installments will be processed at the discretion of the Relocation Unit Supervisor. The basis of his decision will be to assure that the displacee has DS&S housing for 42 months.

Section 4.7-Signatures

Claims are legal documents and must be signed in accordance with the following examples:

1. Mrs. John Smith
   Rhonda L. Smith
   Unacceptable
   Acceptable

2. John and Rhonda Smith
   Rhonda Smith
   Unacceptable
   Acceptable
Section 4.8-Relocation Claims Information

The following is a list of claims that are typically submitted for payments:

1. Residential Fixed Moving Expense
2. Residential Actual Moving Expense
3. Residential Claim for Storage Expense Payment
4. Business Actual Moving Expense (Farm)
5. Business Claim for Storage Expense Payment
6. Rent of Unoccupied Improvements
7. In Lieu of Moving Expense
8. Replacement Housing Payment
9. Rent Supplement Payment
10. Down Payment
11. Incidental Expenses of Purchase
12. Increased Interest Payment
13. Business Re-establishment Payment
14. Business Searching Expense

SECTION 5-MOBILE HOMES

SECTION 5.1-APPLICABILITY

(a) General
This section describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements. Except as modified by this section, such a displaced person is entitled to a moving expense payment in accordance with subpart d of this Chapter and a replacement housing payment in accordance with subpart e of this Chapter to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in 49 CFR Part 24.301(g)(1) through (g)(10).

(b) Partial Acquisition of Mobile Home Park
The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Department determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

**Department Procedures**

The relocation of a mobile home occupant follows the same basic procedure as that set forth for the occupant of a conventional dwelling. However, because of the very nature of mobile homes, certain variables which are not present in conventional situations are prevalent in mobile home situations.

A mobile home, as most often encountered in the Relocation Assistance Program, is usually classified as chattel (personalty). However, as will be discussed in subsequent paragraphs, a mobile home may be classed as realty dependent upon a variety of conditions.

In the relocation of any category of mobile home occupant, relocation personnel must be mindful of the fact that under the current rules governing the program, the Department is only obligated to re-establish the displacee in the same status as at the time of initiation of negotiations. The displacee’s eligibility for a replacement housing payment is determined by his or her status as either an owner or tenant of the mobile home, not of the site.

For example, a 90-day owner of a mobile home, who rents his/her mobile home site, is considered an owner-occupant for relocation assistance purposes. This displacee’s RHP entitlements may not exceed $31,000, unless last resort housing is authorized. A 90-day tenant-occupant of the mobile home who owns his/her site is considered a tenant-occupant for relocation assistance purposes. His/her RHP entitlements may not exceed $7,200 unless housing of last resort is authorized.

Any payments for which the displacee is eligible are limited to those which would have been received upon relocating to the same status as at the time of initiation of negotiations. For example, the tenant of a mobile home site is entitled to a rent supplement for a replacement site, assuming, of course, that the replacement site rent is greater than the displacement site rent. The
amount of the computed rent supplement offer establishes the maximum amount the displacee may receive regardless of his/her selection of a replacement dwelling.

The length of occupancy categories discussed in 49 CFR Part 24, Subpart E—Replacement Housing Payments, Section 24.401 and 24.402 (Sections 4.1 and 4.2 of this Chapter) also applies to occupants of mobile homes, i.e., 90-day occupants and less than 90-day occupants. In conventional dwelling situations, the dwelling and the lot upon which the dwelling is situated are considered as one unit. In some mobile home cases, the mobile home may be classed as personal property and the lot as real property.

Under New Mexico law, a mobile home may be either real property or personal property. The determination is one which must be made in each particular case according to certain criteria. The general form of these criteria are set forth in Garrison General Tires Services, Inc. v. Montgomery, 75 N.M. 321, 404 P. 2d 143 (1965) and have been adopted for application to mobile homes by the Department's Office of General Counsel.

A mobile home may be considered to be realty when the following three general criteria are met:

1. Is the mobile home attached to the real estate such that its removal will cause substantial damage to the mobile home or the real estate?
2. Is the item used as a part of the real estate?
3. Is the intent of the mobile home owner to live in the home on the site permanently?

As a result, the following categories of mobile home situations evolve:

1. Owner-occupant of mobile home and site;
2. Owner-occupant of mobile home, rented site;
3. Tenant-occupant of both mobile home and site; and
4. Owner-occupant of site, rented mobile home.

Regardless of the actual situation encountered, a complete dwelling unit must be considered when dealing with mobile homes, i.e., the structure and the lot.

Each displacement situation involving a mobile home must be evaluated individually. Of prime importance, as indicated previously, is the determination as to whether the home is classed as realty or personalty.

Depending upon the locale, but especially when a mobile home park or large number of individual mobile homes are encountered, it will be necessary to conduct a survey of available replacement sites for mobile homes.
Relocation of typical mobile home units most often encountered include the following:

1. Owner-occupant of mobile home and site of 90 days;
2. 90-day owner-occupant of mobile home, rented site; and
3. Tenant-occupant of both mobile home and site, 90 days or more.

When the acquired mobile home has certain furnishings built in, such as a kitchen unit or the bedroom furnishings, those units may be included in the price of the comparable or replacement mobile home dwelling. The cost of any other furnishings package not contained in the original home but desired by the displacee in the replacement home shall be ineligible for reimbursement and excluded from the total cost of the comparable and/or the replacement home.

The costs necessary to make the home DS&S, if the home is placed on an unimproved site, may be eligible for reimbursement. The procedure to be used in developing an estimate or cost for bringing an unimproved site up to DS&S standards is discussed later.

When a mobile home is purchased as a replacement unit, the amount of the sales tax will be included as a part of the purchase price of the mobile home.

Section 5.2- Replacement housing payment for 90-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.

(a) Eligibility

An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed $31,000, under 49 CFR Part 24.401 if:

1. The person occupied the mobile home on the displacement site for at least 90 days immediately before:
   (i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;
   (ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or
   (iii) The date of the Department's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (a)(3)(i) through (iv) of this section.

2. The person meets the other basic eligibility requirements in 49 CFR Part 24.401(a)(2); and
3. The Department acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Department determines that the mobile home:

(i) Is not and cannot economically be made decent, safe and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) Replacement housing payment computation for a 90-day owner that is displaced from a mobile home.

The replacement housing payment for an eligible displaced 90-day owner is computed as described in 49 CFR Part 24.401(b), incorporating the following, as applicable:

1. If the Department acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

2. If the Department 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 paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home), or the cost of the Department's selected comparable mobile home less the Department's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

3. If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(c) Rental assistance payment for a 90-day owner-occupant that is displaced from a leased or rented mobile home site.
If the displacement mobile home site is leased or rented, a displaced 90-day owner-occupant is entitled to a rental assistance payment computed as described in 49 CFR Part 24.402(b). This rental assistance payment 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.

(d) Owner-occupant not displaced from the mobile home.
If the Department 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 not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described in 49 CFR Part 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or 49 CFR Part 24.503 as applicable.

Section 5.3 - Replacement housing payment for 90-day mobile home occupants

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed $7,200, under 49 CFR Part 24.402 (cf. Section 4.2 of this Handbook) if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements in 49 CFR Part 24.402(a); and

c) The Department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Department, but the Department determines that the occupant is displaced from the mobile home because of one of the circumstances described in 49 CFR Part 24.502(a)(3).

The following examples illustrate the offer and payment computation for the most often encountered situations:

Situation A:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price of comparable mobile home site</td>
<td>$8,800</td>
</tr>
<tr>
<td>Acquisition offer for displacement mobile home site</td>
<td>$5,000</td>
</tr>
<tr>
<td>Difference and offer</td>
<td>$3,800</td>
</tr>
</tbody>
</table>

The displacee purchases a replacement site for $9,000. Since the difference between the price of the replacement site and the acquisition offer is greater than the amount of the offer, the final payment is limited to the amount of the offer, which was $3,800. The displacee would have to bear the additional amount of $200 ($9,000 - $8,800).
Situation B:

<table>
<thead>
<tr>
<th>Price of comparable mobile home site</th>
<th>$8,800</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition offer for displacement mobile home site</td>
<td>$5,000</td>
</tr>
<tr>
<td>Difference and offer</td>
<td>$3,800</td>
</tr>
</tbody>
</table>

The displacee purchased a replacement site for $8,600; the final payment would then be $3,600 ($8,600 - $5,000) since the replacement site cost was less than the price of the comparable used for the offer computation.

To receive payment, the owner must purchase and occupy a replacement mobile home site. The mobile home must be connected in such a manner that it will meet the standard DS&S requirements within the time limits established.

A 90-day occupant is eligible to receive a down payment assistance payment of $7,200, which includes incidental expenses in acquiring a replacement mobile home site.

A copy of the closing statement must be included in the parcel file and also must accompany the payment package.

Should a 90-day owner-occupant of a mobile home site desire to rent rather than purchase a replacement site, it is then necessary to establish the economic rent for the displacement site, search for comparable sites for rent and compute a rent supplement offer for the displacee.

**Initiation of Negotiations**

If the mobile home is not actually acquired, but the occupant is considered displaced, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or if the land is not acquired, the written notification that he or she is a displaced person.

**Person Moves Mobile Home**

If the owner is reimbursed for the cost of moving the mobile home, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

The following five items apply to an owner-occupant of a DS&S mobile home who is a 90 Day Owner-Occupant of a mobile home site or who is a 90 Day Tenant-Occupant of a mobile home site:
1. These displacees are eligible to receive up to $7,200 as a rent supplement/down payment supplement to assist them in renting or purchasing a replacement mobile home site.

2. The computation of a rent supplement offer will be accomplished by selecting one, and whenever possible three, comparable mobile home sites for rent. The rent supplement offer will be determined by subtracting the base monthly rental rate with utilities at the acquired site from the base monthly rental rate with utilities of the selected comparable mobile home site. This amount multiplied by 42 (months) will be the rent supplement offer.

Example:

<table>
<thead>
<tr>
<th>Comparable site base rent</th>
<th>$155/mo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract base rent of site</td>
<td>$145/mo</td>
</tr>
<tr>
<td>Difference ($10) X 42 months = rent supplement offer</td>
<td>$420.00</td>
</tr>
</tbody>
</table>

The displacee actually rents a replacement site with utilities for $150/month; the payment is $210 ($5 X 42 months).

The noted rent supplement computation procedure is applicable to 90-day owner-occupants of mobile home displacees who rent a mobile home site.

3. Should these displacees elect to rent conventional housing following displacement, the computed total relocation offer remains effective and establishes the maximum amount of payment, provided mobile home sites for rent are still available. The department is only responsible for re-establishing a displacee in the same status as at the initiation of negotiations.

4. In the event the displacee decides to purchase a replacement mobile home site, the displacee is eligible for a down payment amount limited to $7,200 or the amount actually paid down, if less than $7,200.

5. To receive payment, the displacee must relocate the mobile home to a replacement site and connect the home to utilities, etc., in such a manner that the home meets the DS&S criteria within the specified time period.

Displaced tenant-occupants of 90 days and owner-occupants of 90 days of a mobile home and site may both receive up to $7,200 as a rent/downpayment supplement to assist them in renting or purchasing a replacement mobile home and site. See the following four items:

1. The computation for the rent supplement offer will be accomplished by selecting, whenever possible, three comparable mobile homes and sites which are for rent and are DS&S. The supplemental payment offer will be determined by subtracting the
appropriate base monthly rental rate with utilities paid at the displacement site from the base monthly rental rate with utilities of the most comparable unit. That amount, multiplied by 42 (months), will be the rent supplement offer.

2. The payment will be limited to the lesser of:

   a. The replacement mobile home and site’s monthly rent, including utilities, less the displacement mobile home and site’s rent, including utilities, multiplied by 42 months.
   
   or

   b. The maximum rent/downpayment supplement amount, determined by the Department as necessary to rent the selected comparable mobile home and site.

3. The following example illustrates the offer and payment computation for the most often encountered situations:

Example:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparable mobile home and site rental</td>
<td>$200/mo</td>
</tr>
<tr>
<td>Contract rent of displacement mobile &amp; site</td>
<td>$180/mo</td>
</tr>
<tr>
<td>Difference and offer ($20 X 42 months)</td>
<td>$840.00</td>
</tr>
</tbody>
</table>

a. The displacee actually rents a replacement mobile home and site for $190/month; the payment then is $420.00 ($190 - $180 = $10 X 42 months).

b. Displacee rents a conventional dwelling rather than a mobile home and site for $350/month. Payment would be limited to $840.00, the amount of the original offer based on a comparable mobile home and site.

c. Displacee purchases a conventional replacement dwelling or a replacement mobile home. The payment that would be used for a down payment and/or incidental costs is $7,200 or, if less, the actual amount paid down on the replacement dwelling.

4. To receive payment, the displacee must rent or purchase and occupy a DS&S. replacement dwelling within the specified time limit.

The above procedures are for the normal determinations for replacement sites of a like nature as the before situations. The displacee still retains the option of changing occupancy status, i.e., owner to tenant, tenant to owner, or mobile home to conventional dwelling, etc.
One additional situation for displaced tenants of mobile home sites only is where an improved comparable mobile home site is not available but there are unimproved sites (vacant land) available. The procedure is as follows:

a. Adequate documentation must appear in the parcel file to support and verify the non-availability of improved mobile home sites.

b. The asking price of the unimproved site must be obtained.

c. The site must be:

   (1) comparable in size to the acquired site;

   (2) of sufficient area to satisfy all local ordinances pertaining to the installation of a well and sanitary system; and

   (3) zoned to permit a mobile home.

d. An estimate for drilling a well, installing a pump, and constructing an adequate sanitary system will be obtained for the selected unimproved site. The costs of the required DS&S improvements will be added to the purchase price of the unimproved site.

e. The total costs of the DS&S replacement site must be accumulated and made a part of the parcel file and the claims package. The payment shall be the lesser of the total costs incurred for the replacement site or $7,200. The only time this amount may be exceeded is when the Relocation Assistance Unit Supervisor has authorized Last Resort Housing.

f. The total reasonable, necessary costs of providing electrical service, natural gas or a propane tank, as is standard for the area, to the unimproved site and mobile home shall be also added to the aforementioned costs.

   Example for Last Resort Housing:
   
<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase price of unimproved site</td>
<td>$ 5000</td>
</tr>
<tr>
<td>Estimated costs of DS&amp;S. for site:</td>
<td></td>
</tr>
<tr>
<td>Drilling well and</td>
<td></td>
</tr>
<tr>
<td>installing pump complete</td>
<td>$ 1600</td>
</tr>
<tr>
<td>Septic system</td>
<td>$ 842</td>
</tr>
<tr>
<td>Electrical Service &amp; Natural Gas Yard Lines</td>
<td>$ 3000</td>
</tr>
<tr>
<td></td>
<td>$ 10,442</td>
</tr>
</tbody>
</table>

   Payment In This Situation Would Be: $ 10,442
**Mobile Homes Not Acquired**

A. 90-Day owner-occupant of a non-DS&S mobile home rents a site in a mobile home park. The home is non-DS&S because of structural condition and cannot be moved.

B. Same as A, except that the DS&S deficiency is due only to the lack of habitable living space as per number of persons in occupancy.

C. 90-Day owner-occupant of DS&S mobile home rents site. Replacement sites may be available, but the mobile home is not acceptable at the replacement locations because of age, size, condition, etc. This situation may result in the non-availability of replacement sites.

D. 90-Day occupant rents mobile home and site from owner of a trailer park.

The specific situations noted above and the procedure to be followed in each situation is as follows:

A. Owner-occupant of non-DS&S mobile home rents a site. The mobile home is nonDS&S because of condition and cannot be moved.

Action required. Contact the appraisal unit to establish the salvage or trade-in value of the mobile home. Compute the cost of a comparable mobile home. The difference between the cost of the selected comparable mobile home and the higher of the salvage or trade-in value of the subject mobile home; plus the difference between the selected comparable site base rental and the original site base rental, multiplied by 42 months, will constitute the total replacement housing offer.

In addition, if the displacee elects to purchase instead of rent his/her replacement site, the displacee is entitled to a downpayment supplement equal to the amount of the rent supplement for the site or $7,200, whichever is greater. The displacee will be entitled to all eligible incidental costs incurred in purchasing a replacement mobile home. The acquisition cost of the subject mobile home will be deducted from the cost of the selected comparable mobile home.

The final replacement housing payment will be based upon actual costs incurred by the displacee in purchasing a DS&S replacement site and dwelling and renting or purchasing a DS&S replacement site, not to exceed the total relocation offer for both mobile home and site.

Example:

Before Situation (Displacee Owns Mobile Home For 90 Days And Rents Site)

| Acquisition Cost of subject mobile home | $ 4,000 |
| (Higher of trade-in or salvage value)    |         |

January 2016          RIGHT OF WAY HANDBOOK
                        VOLUME V
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail cost of comparable mobile home*</td>
<td>$12,000</td>
</tr>
<tr>
<td>Difference</td>
<td>$8,000</td>
</tr>
<tr>
<td>Difference in site rentals ($10 X 42 months)</td>
<td>$420</td>
</tr>
<tr>
<td>Replacement Housing Offer</td>
<td>$8,420</td>
</tr>
</tbody>
</table>

*includes sales tax

After Situation (Displacee Purchases Replacement Mobile Home and Rents Replacement Site)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition Cost of subject mobile home (Higher of trade-in or salvage value)</td>
<td>$4,000</td>
</tr>
<tr>
<td>Displacee purchases mobile home (cost)*</td>
<td>$10,000</td>
</tr>
<tr>
<td>Difference</td>
<td>$6,000</td>
</tr>
<tr>
<td>Actual difference in site rental ($10 X 42 months)</td>
<td>$420</td>
</tr>
<tr>
<td>Incidental costs</td>
<td>$100</td>
</tr>
<tr>
<td>Final Actual Replacement Housing Payment</td>
<td>$6,520</td>
</tr>
</tbody>
</table>

*includes sales tax

B. 90-Day owner-occupant of non-DS&S mobile home, due to lack of habitable living space as per number of occupants, rents a site. The home is structurally sound and can be moved.

Action required. Same as in Situation A.

**NOTE:** Other, more economical methods must also be considered. For example, it may be possible to move the mobile home and to add on a room to make the mobile home DS&S.

C. 90-Day owner-occupant of DS&S mobile home rents a site. Replacement sites maybe available, but mobile home is not acceptable to site owner because of age, condition, etc.

Action required. Same as in Situation A.

D. 90-Day occupant rents mobile home and site from owner of trailer park.

Action required. Compute and offer rent supplement based on available housing, i.e., mobile home and site or conventional housing. Rental cost with utilities will be used in either case. Displacee also has the option of a down payment on the purchase of a mobile home and site (or rental of site) or purchase of a conventional dwelling.
Example

Before Situation-Rent Supplement (Displacee Rents Mobile Home And Site)

Rent paid for subject mobile home and site
with utilities $100/mo
Comparable rental amount with utilities $115/mo
Difference ($15 X 42 months) = Offer $630.00

After Situation-Rent Supplement (Displacee Rents Conventional Replacement Dwelling)

Rent paid for subject mobile home and site
with utilities $100/mo
Conventional dwelling rental amount with utilities $115/mo
Difference $15.00
($15 X 42 months) = Payment $630.00

After Situation Down Payment Supplement Displacee Purchases Replacement Dwelling

Actual price of replacement $40,000
Displacee's actual down payment $8,000

Relocation payment is $7,200

Displacees as outlined are not eligible for costs incurred in the move of the mobile home. They remain eligible for costs incurred in the relocation of other personal property from the home or from the property.

In all cases, an attempt will be made to obtain the standard three comparables. Should three comparables not be available, a lesser number may be utilized with the Relocation Assistance Unit Supervisor's approval. Comparable selection shall be based on the following guidelines:

a. A used mobile home of the same or better make and quality and condition, which meets DS&S requirements, should be selected, wherever possible. However, historically it is very difficult to find used mobile homes in good condition. When they are found, the cost is often comparable to that of a new mobile home, without the warranty. This should be considered when selecting a comparable mobile home.

b. Factory inventories may be used in lieu of dealer's "on the lot" inventories with full consideration given to delivery time from the factory. When such time is reasonable and will not adversely affect the project clearance date, factory units
may be considered available to the displacee. Again, good judgment and the careful weighing of the facts of the situation are absolutely necessary.

In those situations where the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount shall include the salvage value or the trade-in value, whichever is higher.

If the mobile home requires repairs or modifications to enable it to be moved to a replacement site, and the Department determines that it is practical to do so, payment shall be limited to the reasonable cost of making such repairs or modifications and moving the mobile home. The additional cost of such repairs or modifications then becomes a part of the moving expense.

**Additional Examples Of Mobile Home Relocations:**

**Example A: 90-Day Owner Occupant of Mobile Home & Site**

- Price of Selected Comparable MH & Site: $80,000
- Acquisition Offer for Displacement MH & Site: $70,000
- Difference (Amount of Price Differential Offer): $10,000

Replacement Scenario 1:
Displacee elects to purchase a replacement mobile home and site for $85,000. Since the replacement is more than the comparable replacement, the amount of the payment is limited to $10,000. Displacee is left paying $5,000 “out of pocket.”

Replacement Scenario 2:
Displacee purchases replacement dwelling for $77,000. Since the replacement price is less than the comparable price, the amount of the payment is limited to $7,000 ($77,000 – 70,000). The displacee is left with no “out of pocket” expenses.

**Example B: 90-Day Owner Occupant of Mobile Home/90-Day Owner of Site**

In this situation, the agent must compute both a price differential for the mobile home and a rent supplement for the site. Therefore, the agent must search for mobile homes for sale and sites for rent. Ideally, a mobile home for sale on site for rent would be best.

- Price of Selected Comparable MH: $20,000
- Market Value Offer for Displacement MH: $15,000
- Difference (Amount Of Price Differential Offer): $5,000
Selected Comparable Site Rent

Displacement Site Contract or Economic Rent $150

Difference $50

X 42 = Amount of Rent Supplement Offer $2,100

or Downpayment Supplement Offer of $7,200

If Site Rented Total Replacement Housing Offer $5,000 + $2,100 = $7,100
If Site Purchased Total Replacement Housing Offer $5,000 + $7,200 = $12,200

Replacement Scenario 1:
Displacee chooses to purchase a conventional dwelling for $100,000. Assuming the dwelling is within their financial means, the agent should advise the displacee accordingly. He/she has a total of $12,200 for a downpayment on the dwelling, leaving a balance of $87,800, which would require a mortgage. This displacee also remains eligible to claim a payment for eligible incidental expenses of purchase.

Replacement Scenario 2:
Displacee decides to purchase a mobile home for $18,000 and a site for $10,000 for a total replacement dwelling cost of $28,000. The displacee may receive the entire $12,200 supplement if it is all used as a downpayment. This displacee also remains eligible to a payment for eligible incidental expenses of purchase of the mobile home and/or the site.

Replacement Scenario 3:
Displacee purchases a mobile home for $18,000 and rents a site for $225.00 a month. He’ll receive a price differential payment of $3,000 ($18,000 - $15,000) to assist with the purchase of the mobile home; and a rent supplement payment of $2,100 to assist with the rental of the site. The total replacement housing payment is therefore $5,100, plus any eligible incidental expenses of purchase for the mobile home.

Example C: 90-Day Owner-Occupant of Site/ 90-Day Tenant-Occupant of Mobile Home

The agent again must perform two computations, a price differential for the mobile home site and a rent supplement for the mobile home. Therefore, the agent must search for sites for sale and mobile homes for rent. This is one of the most difficult situations to compute, since it is rare to find mobile homes for rent on sites that are for sale. First, the agent needs to find, for sale, a site improved with utilities; or if none is available, a vacant site for sale, and get cost estimates to improve the site with all utilities. The mobile home, however, will require creativity. One possible solution, if no mobile
homes are found for rent, is for the Department to purchase a mobile home and rent it to
the displacee on the selected comparable site for 42 months. The Department would
need to determine the economic rent of the selected comparable mobile home. If the
Department is prepared to do this, the replacement housing supplement may be
determined as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Price of Selected Comparable Site</td>
<td>$15,000</td>
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<tr>
<td>Cost of Installing Utilities to Site</td>
<td>5,000</td>
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<tr>
<td>Total Cost of Selected Comparable Site</td>
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<td>Market Value of Displacement Site Including Utilities</td>
<td>18,000</td>
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<tr>
<td>Difference (Price Differential for Site)</td>
<td>2,000</td>
</tr>
<tr>
<td>Economic Rent of Comparable Replacement MH</td>
<td>$500</td>
</tr>
<tr>
<td>Contract Rent of Displacement MH</td>
<td>450</td>
</tr>
<tr>
<td>Difference</td>
<td>50</td>
</tr>
<tr>
<td>X 42 =</td>
<td></td>
</tr>
<tr>
<td>Rent Supplement Offer if MH Rented</td>
<td>$2,100</td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>Downpayment Supplement Offer of</td>
<td>$7,200</td>
</tr>
</tbody>
</table>

If MH Rented Total Replacement Housing Offer
= $2,000 + $2,100 = $4,100

If MH Purchased Total Replacement Housing Offer
= $2,000 + $7,200 = $9,200

Replacement Scenario 1: Displacee decides to purchase a conventional dwelling for
$75,000. The $9,200 may be used as a downpayment. Displacee may also receive a
payment for eligible incidental expenses to assist with closing costs, recording fees, title
insurance, etc.

Replacement Scenario 2: Displacee changes status from a tenant-occupant to an owner-
occupant by purchasing a mobile home for $10,000 and renting a site for $200 a month.
Ideally, as noted earlier, the agent would make a reasonable effort to accommodate the
displacee’s desires in changing status by searching for mobile homes for sale and sites
for rent to compute the supplements. However, this is not always feasible. If this is not
feasible the agent must recompute the supplements anyway. Since the price of the
mobile home is more than the downpayment supplement of $7,200, the displacee is
entitled to the entire $7,200 if it used for downpayment plus eligible closing costs of the
mobile home. Before making a payment for the site, however, the agent needs to
determine the economic rent of the displacement site to compare “apples with apples.”
Then, the agent subtracts the economic rent of the displacement site from the
replacement site, multiplying the difference by 42. The rent supplement payment for the
site will be the lesser of this computed amount or $2,000, the computed price differential payment.

Example D: 90-Day Tenant-Occupant and 90-Day Owner-Occupant of Mobile Home and Site
As in conventional dwelling situations, a rent supplement computation is performed. The agent should first search for comparable mobile homes and sites for rent as individual units. If none are found then it is permissible to use conventional dwellings for rent.

Rent of Comparable MH & Site or Conventional Dwelling

| Rent of Comparable MH & Site | $ 700 |
| Difference                   | 600   |
| X 42 =                      | 100   |
| Amount of Rent Supplement Offer | $4,200 |
| Amount of Downpayment Supplement Offer | $7,200 |

Replacement Scenario 1: Displacee purchases a mobile home for $4,000 and rents a site for $150 per month. The displacee may receive a payment of $4,000 if they place the entire $4,000 down on the purchase price of the mobile home plus eligible incidental costs. However, there is still $3,200 of the supplement offered ($7,200 - $4,000) that hasn’t been used. This amount may be claimed upon the agent determining the economic rent of the displacement mobile home site only. If this amount is the same or more than $150 per month, the displacee may receive the entire $3,200. If the economic rent is less, however, then the difference x 42 months shall be subtracted from $3,200. This can be complicated. To keep things simple and to maximize the entitlement, the displacee should be encouraged to purchase a mobile home for at least $7,200 and use the entire supplement as a downpayment.

Example E: 90-Day Owner-Occupant of Mobile Home On Rented Site; Department Determines MH Can Be Moved

The Agent must compute a rent supplement for the site. In addition, the Department shall reimburse the actual, moving, and related expenses of relocating the mobile home up to 50 miles, including disconnecting and reconnecting utilities, dismantling and re-assembling porches, decks, skirting, etc., teardown and setup, transporting home, storage, etc. In addition, the Department shall reimburse a reasonable amount to secure the personal property inside the mobile home in preparation for the move. Finally, the Department shall reimburse the actual, reasonable, and necessary cost of “room and board” incurred while the mobile home is being relocated and cannot be occupied. See the following:

| Rent of Comparable Replacement Site | $ 300 |
| Rent of Displacement Site           | 250   |
| Difference                          | 50    |
| X 42 =                             | 50    |
| Rent Supplement                     | $2,100 |
or Downpayment Supplement $7,200

Replacement Scenario 2:

Displacee purchases a replacement site for $6,000 and eligible incidental expenses are $2,000 for a total of $8,000. Since this exceeds $7,200, the displacee is eligible to a downpayment supplement of $7,200 plus the aforementioned expenses of relocating the mobile home. These expenses could be the following:

Teardown and setup (including removing skirting, blocks, etc.) $2,000
Disconnecting and reconnecting of all utilities 1,300
Transportation Costs 700
Dismantling Porches and decks and reassembling 1,400
Packing, unpacking and securing personal property in mobile home for move 650
Room and board (2 days /2 nights) while mobile home is being moved & setup 200
Total Moving and Related Expenses of Mobile Home $6,250

Example F: Non-Occupant Owner of Mobile Home and Site (aka Absentee Landlord). Department Determines MH Can Be Moved.

The owner of any mobile home occupied by tenants is entitled to the reimbursement of non-residential actual moving and related costs of relocating the home within 50 miles. The owner may also be entitled to a re-establishment expenses payment of up to $25,000 to re-establish the mobile home on a replacement site. The agent should verify that the mobile home is used as a rental property at the replacement site prior to making a re-establishment payment. All relocation expenses must be actual, reasonable and necessary and well-documented by receipts, paid invoices, etc. The owner is not eligible for costs incurred in packing, unpacking and securing the tenant’s personal property in the mobile home.

SECTION 6 – PARCEL AND CLAIMS PACKAGES (DEPARTMENT PROCEDURES)

Section 6.1 General

The following guidelines are to be used as a reference in preparing a claim for payment package. Most types of payments are covered, however relocation payment packages vary due to the type of eligible benefits and the timing and manner of payments.

Contents of parcel packages and claim packages have been combined. Both must be documented in the appropriate file. Those items specific to claims are so indicated.

Section 6.2-Claiming and Payment
As noted previously, and as established under the Relocation Assistance procedures, all relocation assistance payments will be made on the actual costs basis. As in any normal payment, if the displacee spends less than the computed offer, reimbursement will be only for
the amount actually expended. If an amount greater than the computed amount (offer) is spent, that additional cost must be borne by the displacee.

Normal payment procedures will be followed except that in many cases, because of the financial burden imposed on the displacee, advance payments should be processed in order to negate or avoid any financial hardship.

As in any other cases, it is essential that all payment packages be submitted for payment in an expeditious manner in order to assure prompt payment to the displacee.

Section 6.3 – Closing out Parcel File

Upon completion of all relocation activities, the assigned agent and the Relocation Supervisor shall verify that the original parcel file in the Records Unit is complete, insuring that the file contains all relocation agent reports, payment packages, replacement housing computation packages, relevant correspondence (including e-mail and faxes), and all necessary supporting documentation, etc.
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CHAPTER 1 PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the
administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau
to know, understand and to adhere to the provisions of the Handbook when conducting right of
way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way
program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no
individual shall be subjected to discrimination or be denied benefits to which he/she is entitled,
on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are
treated fairly, consistently, and equitably so that such persons will not suffer disproportionate
injury as a result of projects designed for the benefits of the public as a whole and to ensure that
the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the
right of way program and is designed to assist Department right of way personnel and other
governmental agencies when utilizing Federal-aid funds in complying with both state and federal
laws, regulations and directives. The Handbook is intended to be in sufficient detail to
adequately describe particular functions, and the operational procedures through which those
functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title
49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable
projects regardless of the source of funding, that is, state funded projects will be administered in
the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section,
previously accepted policy and procedure statements currently applicable will remain in effect.
The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

SECTION 3-STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2  AUTHORITY

SECTION 1-GENERAL
The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3 ORGANIZATION

SECTION 1- GENERAL

The Property Management Unit (PMU) is part of Right of Way and is responsible for the management of all transactions made in connection with highway right-of-way and non-right-of-way (NRW) parcels and improvements. An NRW parcel is a parcel acquired in excess of highway right-of-way needs. An NRW parcel is purchased because it was damaged due to a highway project and was determined to be an uneconomic remnant or has been determined to be excess to the needs of the highway facility.

SECTION 2 – DUTIES

The management of Department real properties include the activities listed below which are the basic responsibilities of PMU:

Maintain up-to-date inventories of all right-of-way and non-right-of-way properties and improvements acquired by the Department for all highway, as well as transit and rail programs.

Prepare documentation for the sale of excess real properties, including NRW parcels and associated improvements which have been approved for sale through the Department’s internal review process. (Sec. 7)

Prepare and negotiate airspace agreements and leases of excess property and improvements, including improvements awaiting disposal.

Maintain accurate and up-to-date records of all transactions, including sales and leases of lands, improvements, fixtures and equipment obtained through the acquisition process.

Process information and prepare documentation on illegal encroachments for Department’s enforcement of Rule 18.20.5 NMAC. This process for handling illegal encroachments may be initiated by PMU, or at the request of other units of the Department, other agencies of the State, or the general public.

Process documentation for the vacation and abandonment of right-of-way or non-right-of-way properties in response to requests initiated by other Department units within NMDOT, other agencies of the State, and/or the general public, through the prescribed Department internal review process.

Coordinate Department reviews of proposed land subdivisions presented to local government agencies where Department property may be affected or where access to state highways is required for the proposed subdivision.

Formulate, implement, and manage PMU policies and procedures.
SECTION 3 - CONFLICT OF INTEREST

The following rules shall govern any and all business relationships between all PMU personnel, contractors, and individuals who are pursuing real property transactions with PMU. It shall be the responsibility of the PMU employees to disclose any relationship which is or may appear to be a conflict of interest.

A PMU employee shall not engage in any real estate transaction or participate in any business association or partnership with persons with whom the Department is negotiating, or has negotiated, or anticipates property leases or purchases.

A PMU employee shall not acquire interests involving lands abutting upon or in the zone of immediate influence of a contemplated highway improvement of which he/she has, or could be presumed to have knowledge without first obtaining the written approval of the Department Secretary.

A PMU employee shall not disclose privileged advance knowledge of highway plans, programs, or other activities, which may be the result of the Agent’s position in the Department, to any person, without first obtaining the written approval of the Department Secretary.

A PMU employee shall not accept favors, gratuities, or compensation of any nature from persons conducting business with the Department.

A PMU employee shall not engage in any conflicting employment involving the management of real or personal property.

Employee Eligibility: Department employees, or their families, may not enter bids related to the disposal of Department real property.

SECTION 4 - PERSONAL CONDUCT

Agents shall, at all times, keep in mind that they are employed by a public agency, to work and behave in the public interest. When dealing with the public the Agent’s work should always be characterized by a sincere desire to be of service. Department Agents must render friendly, well informed, and attentive consideration to the person(s) conducting business with PMU.

Agents are expected to practice the following public relations principles:

Frequently the Agent is the only direct contact that a citizen has with the Department. To the public, the Agent is a representative of the Department.

First impressions are very important in the context of public relations. It is the responsibility of the Agent to become familiar with the procedures for managing and disposing of public property and to provide timely, clear and accurate information.
The Agent must always present a positive and helpful attitude. While empathizing with property owners and other citizens, the Agent shall make every effort to encourage their confidence in the integrity of the Department and the abilities of other Department employees.

CHAPTER 4    PROCEDURES

SECTION 1- GENERAL

Procedures described in this Volume are based on both state law and federal regulation. The federal requirements contained in 23 CFR 710, 23 CFR 1.23 and any other regulations that apply are applicable to all state and local political subdivisions that manage real property acquired for any highway or highway related projects in which federal funds participated which includes any part of the right-of-way costs of the project. (23 CFR Part 710.203)

When federal interest exists in a Department property which is sold or leased, PMU shall direct the Department’s Financial Control Unit to deposit the related proceeds into an account from which funds must be used for future Title 23 eligible projects. The proceeds from Department property which is sold or leased and -has a federal interest will be accounted for and the federal percentage of the original acquisition may be utilized for the non-federal matching share of project costs.

PMU activities are performed in a manner that is consistent with the public interest and designed to realize the maximum long term public benefit.

Pertinent provisions of 23 CFR 710 to which the Handbook makes reference are for the convenience of Department employees and anyone who is concerned with highway, transit and rail related right-of-way.

SECTION 2 - PROPERTY MANAGEMENT ACTIVITIES

The procedural activities of PMU are outlined in the following sections. Each section details the process required to accomplish any transaction requested of PMU according to all the Federal and State laws, rules and regulations outlined in prior chapters and will be referenced where necessary.

SECTION 3 - RECORDS

The Department maintains records of all PMU activities. These records shall include up-to-date inventories of real property the Department owns, as previously defined herein, documentation of all authorized uses of real property or the right-of-way, such as airspace and other form of lease agreements. (23 CFR 710.201 (f))
SECTION 4 - FILES

Files shall be created for all activities which are the responsibility of PMU. These files shall include requests regarding state-owned properties from the time they are made to the time they are processed to a final action. The contents of these files are covered in the section detailing each activity.

SECTION 5 - INVENTORIES

PMU shall maintain records that include inventories of all ROW and NRW parcels and/or any improvements originally acquired as part of the right-of-way acquisition process.

5.1- PARCEL AND IMPROVEMENT INVENTORIES

The following details how PMU compiles ROW and NRW parcel and improvement inventories:

Inventory of all Department ROW and NRW parcels and improvements is an ongoing project of research staff. Staff researches archived and recorded files, and enter acquisition data into a database. Staff then organizes the electronic acquisition document and right-of-way maps for accessible as needed.

All new NRW and improvement acquisition information is collected on a monthly basis from the Payment Log Book of the ROW Bureau’s Budget and Audit Unit which lists each new NRW and improvement that has been acquired.

From this information, a copy of all pertinent documents are collected from ROW Records and placed in a file created for each NRW parcel and improvement then filed by project control number. These documents include but are not limited to conveyance documents, payment vouchers, contracts, and right-of-way maps.

Acquisition data from these documents is then entered into a GIS database by creating a digitized parcel shape file and entering the data into the shape file attribute table. Inventory reports are created from this database for submittal to the Department’s Fixed Asset Management Section.
SECTION 6-REQUESTS TO PMU

PMU receives requests, from the public, other state agencies, or local governments for action regarding state owned real property. These requests are generally made in connection to the use and conveyance of state right-of-way or other Department real properties. They may include requests for airspace agreements, leases, sales, donations, abandonments, encroachments, subdivision reviews on behalf of local governments, relinquishments and road exchanges or research.

The Districts, and Regions also need to forward requests that they receive to the PMU.

Each request is assigned to a PMU Agent, who will review it to determine the appropriate responsive action.

Prior to a response being issued, the PMU shall be requested to provide documents related to Department ownership of the subject parcel.

Each PMU request file shall contain the following:

- Request documentation, includes request letter, maps, surveys and drawings,
- Research documentation from Department records, includes acquisition and conveyance documents and right-of-way maps provided by the PMU regarding the subject request.
- Correspondence and/or comments received from the various sections or units that are part of the Department’s internal review process (Chapter 7).
- Other Completed documents. (letters, deeds, abandonment’s, leases, etc.)

SECTION 7-INTERNAL REVIEW PROCESS

An Internal Review is required for any action that may require the conveyance of a real property right owned by the Department. Requests for actions of this type are received by PMU and distributed to appropriate areas within the Department for comments. They are listed below.

- Project Development Section (Regions)
- Drainage Section
- Traffic Safety Bureau
- Lands Engineering Section
- Planning and Research Division
Maintenance Section

Roadside Environment Section

Environmental Section

Appropriate District Office

Appropriate Region

Office of General Counsel (OGC)

FHWA to be included on parcels with Federal interest

When appropriate, the Rail and Transit Division will be requested to comment.

Office of General Counsel (OGC) shall review for legal form and content, all leases, airspace agreements, and other conveyance documents before they are executed.

For each request requiring Department’s internal review, a review package will be prepared which will include the following:

   An Inter-Departmental Correspondence (IDC) requesting comments as part of the internal review.

   A Written request

   Acquisition documents

   Vicinity map.

To be complete, the package must enable the reviewer to make an informed, rational, and timely decision regarding the request. Generally, the IDC provides a four (4) week period from the date of the IDC for the reviewers to respond. If no response is received within the four (4) week period, PMU staff will call or send a reminder to that reviewer that his/her review is essential prior to progressing to the next step of the transaction and request that the response be provided ASAP or by an agreed upon date.
SECTION 8 - ENCROACHMENTS

An illegal encroachment is the unauthorized use of public right-of-way for any purpose other than that of a transportation use and the placing of any type of structure or personal property into public right-of-way without the expressed written consent of the Department. The Department’s encroachment rule provides for the removal of encroachments, obstructions, abandoned motor vehicles, and for regulation of vending. An encroachment is an intrusion into, under, upon, or over highway right-of-way by a structure or fixture. This term shall include, but not be limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, mailboxes, Christmas displays, portable structures, and banners.

Rule 18.20.5.12 NMAC provides for an Obstruction and Encroachment Review Board (Review Board) established in each Highway District Office in New Mexico, for issues regarding the construction or operation of roadway segments. This Review Board shall consist of three (3) persons: the District Engineer or his designee, the District Traffic Engineer or his designee and the District Construction Engineer or his designee.

8.1- Identifying Encroachments

Encroachments can be identified by:

When encroachment issues are identified during the design/project development stages, a Review Panel consisting of the District Engineer or his designee, the PMU Manager or his designee and the Project Development Engineer for the project shall be established. The Project Manager or Project Development Engineer (PDE) of a project, during design or construction of a project:

If an encroachment is identified by the Project manager or PDE as part of a project, they may request assistance from PMU if their property owner contact did not resolve the encroachment issue by removal or signing an appropriate encroachment license. When an encroachment is identified and allowed to remain, it should be documented and permitted in accordance with the NMAC Rule 18.20.5.11 and 23 CFR 1.23.

An internal review is not required in these cases because the determination of whether or not the encroachment may remain can be made between the Project Manager, PDE and the District Engineer or his designee. The decision shall be properly documented in the project’s file. An Encroachment Notice may be required if the property owner is not cooperating or if the owner cannot be contacted personally. Along with the notice, PMU shall send a Request for Hearing form to be filled out by the owner and returned to the PMU contact if the property owner wants a hearing before the Review Board.

The District Engineer or his designee may sign off on the Encroachment License if the appropriate Review Board determined that the encroachment may remain.
The process for removal of an encroachment the owner has failed or refused to remove is set forth in the Encroachment Rule, 18.20.5.11 NMAC, Procedure for Removal of Prohibited Encroachments and Non-Hazardous Obstructions.

By District Office staff:

District Office staff may identify an encroachment and request the owner of the encroachment to remove it or allow it to remain with an Encroachment License when there are issues regarding construction or operation of roadway segments. The District should send a copy of the executed Encroachment License to PMU.

A District Office may request assistance from PMU if it is unable to resolve the encroachment issue at the District level. PMU will determine what steps of the encroachment process outlined below (Section 8.2) must be applied.

By the general public:

Many encroachments identified by the general public occur when owners of the encroachment would like to clear title to their property. To initiate the encroachment process, the owner shall:

Request an encroachment license by letter to PMU explaining the situation and enclosing any documentation and surveys that would assist in locating the encroachment.

With the information submitted to PMU, a review package will be prepared by a PMU Agent and submitted for Department internal review to determine whether the encroachment can remain or must be removed.

The requester will be notified upon approval or disapproval of the request. A new request can be made for a Review Board determination if the requester is not satisfied with the results.

An encroachment may be reported by a concerned citizen who believes an encroachment is not in the best interest of the public. In this case every effort shall be made to determine ownership of the encroachment. The Encroachment Process described in Section (8.2) of this Volume outlines the process that will be followed. However, specific reference should be made to Rule 18.20.5 NMAC to ensure compliance and resolve any inconsistencies.
Section 8.2 - Encroachment Process

When PMU is requested to assist a District Office or Project Manager upon identification of an encroachment, one of the following actions will be taken:

Written request to PMU with the following information for each encroachment:

Name and address of encroaching party.

Address of encroachment or location in reference to project stationing or on Mile Post.

Type and description of encroachment, with measurements of encroachments within the right-of-way and any pictures that would help understand the situation.

Plat showing the encroachment within the right-of-way. In lieu of a plat, a drawing detailing the characteristics of the encroachment and how it lies within the right-of-way and the surrounding area will suffice.

The District Engineer or Project Development Engineer (PDE) must provide a statement justifying whether the encroachment can stay with an Encroachment License or must be removed.

Upon receipt of the necessary information, PMU staff shall take the following actions, depending upon whether the encroachment can remain with an Encroachment License or must be removed:

A PMU Agent will verify that personal contact made by District personnel did not result in the removal of the encroachment by the owner of the encroachment.

The owner of the encroachment will be notified, by certified mail, return receipt requested, of the encroachment with a Notice of Encroachment and Demand Notice advising the responsible party that the encroachment must be removed or a hearing requested within ten (10) days from receipt of the notice and that if the responsible party does not remove the encroachment or request a hearing, the Department will remove the encroachment at the owner’s expense and the responsible party will be billed for the costs of removal. (18.20.5.11 –Encroachment Rule)

A copy of this notice will also be sent by the PMU Agent to the Office of General Counsel.

If necessary, PMU will request in writing that the District Office physically remove the encroachment in a timely and professional manner. The District office will provide PMU with an itemized list of items removed and the associated removal costs. PMU will send an invoice to the responsible party for payment. If payment is not received within 30 days of invoicing, the case will be referred to the Department’s Office of General Counsel for collection.
If a timely request for an Encroachment Hearing is received by the Department, the District Engineer or his designee will assign a hearing date no later than thirty (30) days from the date of the request and send written notification to the owner, the members of the appropriate Review Board and the Department’s Office of General Counsel stating the time, place and date of hearing, the nature of the matter to be heard, and the authority of the Board.

The Cabinet Secretary or the Secretary’s designee has the authority to sign an Encroachment License to permit the temporary occupancy or use of the right of way, including airspace, and/or space under structures for non-highway purposes, upon determining that such occupancy, use, or reservation is in the public interest.

Such occupancy, use or reservation is in the public interest and will not impair the safety of the highway or interfere with the free and safe flow of traffic.

Encroachment License on federal-aid interstate highways are approved only after obtaining permission of the Federal Highway Administration.

A copy of the Encroachment License will be sent to the appropriate District Engineer.

SECTION 9 - DISCLAIMER

Some requests inquire whether the Department legally owns a particular property. After research is completed on the property, PMU may determine that the Department has no interest in the property and the Department may or may not execute a Disclaimer document that disclaims all right, title and interest in a property.

If requested, PMU will initiate the Department Internal Review Process to determine whether or not a disclaimer should be prepared with regard to the parcel. If it is determined through the review process that a disclaimer document should be prepared, PMU may request a survey from the requester to make it part of the Disclaimer documentation and file.

Note: This may be the case when a County Assessor does not have any record of ownership on a parcel located in the vicinity or adjacent to a state highway. The Assessor may find it easier to label the property as owned by the Department rather than spending resources determining actual ownership.

The Disclaimer document shall include the following language:

"The New Mexico Department of Transportation hereby disclaims all right, title and interest in the following described real estate in ________________ County, New Mexico:"
SECTION 10 - IMPROVEMENTS

Improvements acquired as part of the acquisition of right-of-way may include buildings, underground facilities, equipment, fences, etc., the right to which was transferred to the Department at the time of the acquisition. When items other than the land itself become the property of the Department, the PMU process shall be as follows:

The Relocation and/or the Acquisition Agent will coordinate with the PMU Agent to verify that the improvement is intact as described in the appraisal. Verification of the improvement’s condition will be made at the same time as the Relocation Unit’s final inspection.

Any damaged or missing improvements, fixtures, and equipment noted by the Relocation Agent will be reported to the PMU. The PMU Agent shall list these damaged or missing items on Form No. A 388 and take appropriate action as necessary for protection of the remaining improvements. If the PMU Agent discovers the damaged or missing items were not the result of vandalism, but was caused by the former property owner, the PMU Unit shall take one of the following steps:

Make a determination of the value of the missing or damaged improvements, fixtures, and equipment so that a settlement price may be made, or

Allow the former owner to restore the missing improvements, fixtures, and equipment to their original condition, or

Prepare a report and a request for the Office of General Counsel to take legal action as deemed appropriate.

A monthly inventory report shall be prepared by PMU and included in the GIS inventory.

SECTION 10.1 - PARTIAL ACQUISITION OF IMPROVEMENTS

When there is an acquisition of property resulting in a partial taking of an improvement, the following procedures apply:

In the event the property owner desires that not only the portion of the improvement within the right-of-way, but also the portion outside the right-of-way be removed by the Department, the Acquisition Agent will contact the PDE to request that a TCP be added to the plans for the removal of the entire improvement.

When the property owner desires to retain that portion of the improvement(s) outside the acquired right-of-way, the Acquisition Agent shall obtain, in the contract, written permission from the property owner to use the necessary working space outside the new right-of-way that may be needed by the Department to successfully complete the removal of the improvement within the right-of-way. When possible, affected improvements
should be completely removed. The cost to cure any resulting damages will be provided for in the appraisal and acquisition process.

SECTION 10.2 - TEMPORARY USE OF IMPROVEMENTS

When right-of-way is acquired for a project that will be constructed at a future date, the Department may allow others to use the improvements located on the right-of-way by an Airspace Agreement. (Sec. 14.1) Both the residential and commercial improvements may be the subject of an airspace agreement.

The Department may enter into an airspace agreement if the Project Development Engineer determines that a property is not immediately needed for construction or other highway right-of-way purposes. Rental rates will be determined by PMU, based upon current fair market rental values and with proper consideration given to the effect of short-term leases.

Section 301(6) of the Uniform Act limits what the Department may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Department on short notice. Such rent “shall not exceed the fair rental value of the property to a short-term occupier”. Generally, the Department's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment from market information of a lesser rental than might be found in a longer, fixed-term rental situation. [49 CFR Part 24, Appendix A, 24.102(m)]

Before an Airspace Agreement is initiated, PMU shall make a finding as to whether the proposed Airspace Agreement is in the best interest of the Department.

Department property that is leased to others, with the exceptions of a lease to owner-occupant or continuation of a lease existing at the time property is acquired by the Department, shall be in accordance with the following principles:

A reasonable rental value may be established in the appraisal of the improvement, when applicable, and shall not be less than the fair rental value of the property.

Each tenant shall be required to sign an Airspace Agreement Form No. A-346

All rents receivable by the Department shall be due and payable on the first day of each month. If the effective date of the lease is other than the first of the month, the rent shall be prorated from the effective date of the lease to the first of the following month.

Lease agreements that are short term because construction is eminent may be in effect for specified period of time and shall provide for termination, upon thirty (30) days written notice by either party, by certified mail return receipt requested. The termination notification period will be extended to one hundred and eighty (180) days if the project is shelved or a change made and the improvement will not be affected by the construction.
The tenant shall make no repairs or alterations to the improvements without written authorization from the PMU Supervisor. The occupant shall maintain the property in habitable condition or the occupant will be evicted.

The Lease Agreement will state that the tenant will be responsible for payment of all utilities such as gas, electricity, garbage, telephone, water and sewer etc.

Department has discretion to require the rent payment in advance and to require an additional payment to cover the tenant's final month's rent.

The tenant's rental fee will be billed by Accounts Receivable and shall be made payable to the Department at the following address:

New Mexico Department of Transportation
Finance
P. O. Box 1149
1120 Cerrillos Road
Santa Fe, NM 87504-1149
Telephone (505) 827-6880

If the tenant's rental check is returned from the bank marked "Insufficient Funds", all future payments shall be made by certified check or money order.

The PMU Supervisor or the Supervisor’s designee, shall negotiate the leasing of all rental property within Department right-of-way according to the terms of Lease Form No. A-346. An original and two (2) copies of the executed lease are required. PMU shall distribute copies of the Lease Agreement to the following:

- Department Accounts Receivable Section (Include Memo of Charge with lessee name and address and amount of rent)
- Lessee
- FHWA

**SECTION 10.3 - DISPOSITION OF IMPROVEMENTS**

Improvements acquired by the Department as part of the right-of-way acquisition process and which are located within the right-of-way limits and must be removed to accommodate highway construction, shall be disposed of as follows:
Allow the Department or other state agencies the option to move the improvements and use them for such public purposes as they deem necessary. Department approval must be obtained in the event of any further sale or exchange.

Allow the former property owner to purchase the improvements back from the Department if interest in doing so is expressed and the improvement is not needed for Department purposes. A salvage value will be determined in the approved appraisal and may be used as the basis for the transaction. Staff shall complete Form A-350 to record the salvage value estimate if offered to the owner and to ensure the improvement is moved according to the agreed upon terms.

Include demolition or removal of improvements (if applicable) as part of the transportation project’s construction contract.

Conduct a public sale or public auction.

Bid and award a separate demolition contract.

Private Sale - only if a public sale results in no bids.

In cases where the improvement needs to be moved before construction begins, a written approval of the Secretary or Secretary’s designee shall be required prior to the execution of any sale of improvements. Under normal circumstances an internal review process would be initiated before the sale. Improvements, fixtures, and equipment on a parcel in condemnation shall not be sold until a Permanent Order of Entry has been obtained and the improvements have been vacated by the owner or tenant. The Relocation Agent will notify the PMU Agent after the Relocation Unit has completed a final-move inspection indicating that the improvement has been vacated.

‘For Sale’ signs will be placed at the location of the sale and advertised in a local newspaper of wide distribution. The newspaper advertisement shall be published once a week for two consecutive weeks.

When a public sale is used as the method of disposition of improvements, the PMU Supervisor or the Supervisor’s designee shall conduct the auction at the time and place specified in the notice. This person shall publicly read the notice of sale of improvements. Only after the notice has been read shall the auction commence at the amount determined to be the minimum starting bid (fair market value).

When conducting a sale by sealed bid, the request for bids will indicate the minimum amount of the bids at fair market value. The bid opening shall take place at the time and place specified in the notice. A representative from PMU shall record each bid and the name of the bidder on a tabulation sheet. Upon completion of the bid opening, the representative will publicly read the amount of the highest bid and the name of the apparent highest bidder.
It is the responsibility of PMU to prepare an accounting of the disposition of improvements and payments received for placement in the appropriate sales file. Upon receipt of payment in the form of a money order or cashier’s check the payment shall be delivered to NMDOT’s Financial Control Unit with information identifying sale, date of sale, describing item sold, project number, parcel number and amount received. The payment shall be delivered within 48 hours of the sale.

Documentation regarding the sale of improvements shall also indicate whether a federal interest exists in property at the time of its disposition. If a federal interest exists, appropriate PMU staff will direct the Department’s Accounting Services to deposit net receipts into a designated account from which funds will be used for future Title 23 eligible projects.

The highest bid will be submitted by the PMU Supervisor to the Cabinet Secretary or the Secretary’s designee for acceptance or rejection. The Cabinet Secretary has the right to accept or reject the highest bid without incurring any legal liability.

An exception to soliciting the Cabinet Secretary’s acceptance of the high bid is when the improvement needs to be moved for construction purposes and a high bidder will move the improvement out of the right-of-way in the earliest possible time frame. In this case the PMU Supervisor’s authorization is sufficient.

The following information is to be included in the IDC submitted to the Cabinet Secretary for his/her acceptance:

- Control Number
- Project Number
- Parcel Number
- Description of Improvement
- Date of Sale

Amount received for improvements, fixtures and/or equipment. (This information is used to establish salvage value estimates for similar improvements on other projects.)

An original of the acceptance document will be filed in the sales file and inventory file for permanent record.

To complete the sale of a mobile home acquired as right-of-way parcel improvement, a Bill of Sale and/or transfer of title shall be required. The Acquisition Agent will obtain title tax release.

Any other improvement sale requires a PMU Agent Improved Parcel Disposition Sheet to be completed to record the sale in the PMU Sales Files.
The PMU Supervisor shall determine whether assistance from the Department District staff is required when there are construction delays on a project where improvements have been acquired and action needs to be taken immediately for the following reason:

To protect an improvement from vandals or to keep intruders from making unauthorized use of the improvement, thus increasing the Department’s exposure

To protect the public from a potential health and/or safety hazard. This may require either immediate demolition of the improvements, or the erection of fencing or other means of keeping intruders from the improvement.

FHWA request for removal will be obtained on Federal-aid Projects

SECTION 10.4 - MAINTENANCE OF IMPROVEMENTS

The Department shall maintain acquired rights-of-way in a manner that will minimize or correct problems such as illegal dumping or disposal of rubble, debris, and garbage on cleared federal-aid highway right-of-way, until construction takes place.

Once the right-of-way has been acquired and the Department takes possession of the improvements, the following action shall be taken by PMU to protect the property:

All dwellings or structures of value may be boarded up, with the assistance of the Department District staff, if deemed necessary by the PMU Supervisor.

PMU shall notify, by letter or phone call, the local police or Sheriff Department and the local office of the State Police and ask their assistance in protecting the improvements.

PMU Agent shall post “No Trespassing” signs on and around the improvements.

SECTION 11 - DISPLACED PERSONS

All displaced persons shall be allowed a minimum of 90 days free occupancy, to coincide with the dates noted on the 90-day Assurance notice issued by the Relocation Assistance Unit. Furthermore, no displacee(s) shall be required to pay rent for any period prior to the date on which the displacee must vacate in accordance with the 30-Day Notice to Vacate. Written extensions of the deadline to vacate in accordance with the 30-day Notice to Vacate will be granted by the PMU Supervisor only where unusual circumstances exist and which would create hardship for the displacee. Extensions of the deadline to vacate will be considered on a parcel-by-parcel and case by case basis. The PMU Supervisor may allow displacees to retain
occupancy of the improvements for a period in excess of the time allowed to vacate. Such approval shall be in writing and as prescribed by Relocation Assistance procedures. The displacee may then rent the property or interest therein at fair market rent, as established by the Appraisal Unit at the request of PMU, with proper consideration given to the effect upon rent resulting from the short-term conditions.

SECTION 12 - EXISTING LEASE

When property acquired by the Department is subject to an existing lease or tenancy, PMU will review the current rent and where appropriate adjust it to the fair market rent amount.

Notice must be provided to the tenant or owner-occupant to vacate the property prior to the start of highway construction when the improvements are within the right-of-way limits of the project.

On leased property, PMU, in its discretion, may require the lessee to purchase insurance protecting the Department in an amount and form acceptable to the Department. In addition to the agreement, all leases, licenses, supplemental agreements, encroachment agreements, permits, etc. must have a hold harmless clause applicable to the instrument being executed. Also, a non-discrimination clause will be added to instruments where applicable.

SECTION 12.1 - ACCOUNTING AND COLLECTION OF LEASE RENTS

The Department’s Fixed Account Receivable Unit is responsible for the bookkeeping and accounting of expenses and collections of rental properties. When tenants become delinquent with their payments, the Fixed Account Receivable Unit will send out late payment notices. If there is no response, the Fixed Accounts Receivable Unit will notify PMU about the delinquency through an IDC.

Further, if the lease or commercial airspace agreement provides for a late fee, the late fee charged the lessee cannot exceed 10% of the total rent payment for each month the payment is late.

The rental agreement shall require the lessee to pay the Department an amount double the amount of rent per day, based on the annual rate, for each day lessee retains possession of the property or any part thereof after the termination of the agreement for any reason.

SECTION 12.2 - IMPROVEMENT LEASE RECORDS

PMU shall keep records of all expenses made and rent payments received in association with the parcel. The tenant may make repairs or maintenance work on behalf of the Department only if prior written approval is obtained from PMU. Expenses may be deducted from the amount owed
the Department by the tenant/permittee, upon written request, with appropriate documentation, such as receipts.

SECTION 13 - ENVIRONMENTAL REQUIREMENTS

In order to satisfy the requirements of 23 CFR 710.403(c), the Environmental Section of the Department shall be part of the Internal Review Process, Section 7. An environmental document, such as a Categorical Exclusion, may be required for right-of-way parcel sales.

SECTION 14 - MANAGEMENT OF AIRSPACE

PMU is responsible for managing the use of highway right-of-way airspace. Airspace is defined as that space located above, at, or below the highway's established grade line, within the approved right-of-way limits.

Where the Department has acquired sufficient legal right, title, and interest in the right-of-way necessary for a highway in which federal funds participated in any phase of a project, and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporarily use such airspace may be granted by the Department. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, PMU shall secure an approval from the FHWA for such change or use. For any other property acquired with Title 23 of the United States’ Code funds, PMU shall follow Department established procedures for the rental, leasing, maintenance, and disposal of real property before any use of the property is granted by the Department (23 CFR 710.401) and as long as the use is not inconsistent with federal regulations. Concurrence for this action will be obtained from FHWA.

The use and occupancy of highway right-of-way may be authorized with the execution of an Airspace Agreement, only after the following conditions are met:

A written request for the use of an area of highway right-of-way will be submitted by the interested party to PMU, and this request shall include the following:

A detailed drawing showing dimensions of the right-of-way area to be used.

A narrative explaining how the right-of-way will be used.

A vicinity map showing the approximate location of the property.

A PMU Agent will initiate a Department Internal Review.

Upon approval or disapproval, the requester will be notified of the determination.
If approved:

A fair market rental amount will be determined as outlined in the Section titled “Establishing the Rental Rate” (Section 14.2)

A certificate of insurance for standard risk and coverage, naming the Department as an additional insured shall be submitted by the requester at his/her expense.

If disapproved:

The transaction will cease and the existing encroachment (if it exists) will be removed. The cost of such removal will be at the expense of the encroaching party.

An Airspace Agreement will be prepared by PMU, meeting the conditions stated in Section 14.1 and submitted for review and approval to the following:

Department’s Office of General Counsel for form and content.

Cabinet Secretary or the Secretary’s designee for approval and signature.

Permittee for approval and signature.

Some special provisions for the use of airspace for the following purposes regarding Interstate Highways are stated specifically in 23 CFR 710.405 and are in accordance with 23 CFR 1.23. Other uses include the following:

Railroads and public utilities that cross or otherwise occupy federal-aid highways.

Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR 646 and 645 respectively.

Bikeways and pedestrian walkways as covered in 23 CFR 652.

**SECTION 14.1-THE AIRSPACE AGREEMENT**

All authorized uses of right-of-way airspace shall be covered by a properly executed Airspace Agreement. This agreement shall contain, at the very minimum, the following:

The name and other reference information of the party responsible for developing and operating the use of the airspace.

A general statement describing the proposed use.
The general design features of any improvements required for the use of the airspace, including dimensions (length, width, depth, height, etc.) materials, capacities, etc., plus any necessary plans, drawings, or sketches that will define all pertinent features and their relation to the highway facility. (Landscape permit)

A detailed three-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for 4 (f) purposes, (such as, recreation or a public park) beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, with right-of-way stationing, together with appropriate plans or cross sections clearly defining the vertical use limits may be sufficient.

Provision that any change in the authorized use of airspace must be submitted for prior approval by the Department and subject to approval by the FHWA on interstate highways.

Provision that such airspace shall not be transferred, assigned or conveyed to another party without prior Department approval subject to concurrence by the FHWA.

Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

Provision for the agreement to be revoked if its conditions are violated and such violation is not corrected within a reasonable length of time after written notice of non-compliance is issued by the Department. Further, that in the event the agreement is revoked and the Department deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the Department’s Encroachment Rule 18.20.5 NMAC, at no cost to the Department or FHWA. An exception to this provision is permitted when the improvements revert to the state upon termination of the agreement.

Provision for the user to provide adequate insurance to hold the State and FHWA harmless and for payment of any damages that may occur during or after construction of the airspace facilities. Exception to this requirement may be made where the proposal is for the use of the airspace by a public or quasi-public agency, and when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

Provision for the Department and an authorized FHWA representative to enter the airspace facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway facility, whenever necessary.
Provision that the facility that occupies the airspace will be maintained in a manner acceptable to the Department and to protect the integrity of the highway infrastructure and the safety of the highway traffic. Failure by the occupant to meet these maintenance requirements will result in the termination of the agreement, or the Department performing the necessary work at the occupant’s expense.

Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances with respect to Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

**SECTION 14.2 - ESTABLISHING THE RENTAL/LEASE RATE**

In order to establish the market rental/lease rate on requests from the public, other state agencies, or local governments, PMU shall first request that the requester order an appraisal. The rental/lease rate will be established by utilizing an appropriate valuation method reviewed and approved by the Department to obtain current fair market value. This valuation method can range from a market analysis to a full summary appraisal report depending on complexity of the assignment. This process will be determined by the Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor. If the valuation is performed outside of the Department, the requester will be instructed to order an appraisal from a General Certified Appraiser.

For Department owned property, PMU shall request assistance from the Department’s Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor to determine the method needed to obtain fair market value, either by a market analysis or a full appraisal report. The approved valuation will be submitted to FHWA when applicable.

The steps taken by the PMU personnel to establish the rental rate will be documented in the PMU Airspace file. All rental rates will be based on 10% of the established fair market value which was established by a feasibility study.

**SECTION 14.3 - AIRSPACE INVENTORY**

The Department shall maintain an inventory of all permitted uses of airspace. The information in this inventory, which, for audit purposes, shall be available for review by appropriate state and federal agencies, shall include but not be limited to the following items for each authorized use of airspace:

- Location by project, survey station, mile post, physical address or other appropriate method
- Identification of the authorized user of the airspace
A three-dimensional drawing and appropriate metes and bounds description of the facility authorized to occupy the airspace

Right of Way map of the highway facility where the permitted use of airspace is located

A copy of the executed airspace agreement

A copy of the Airspace Request and comments from the other functional units

A current airspace inventory list shall be maintained by the PMU. The inventory list shall contain the location of the airspace using project and parcel numbers, where applicable, district number, street address, city, county, the name and address of the authorized user, and the status of the required fees.

The PMU shall also maintain individual files of each Airspace Agreement. These files shall contain a copy of the executed Airspace Agreement, a legal description of the area in the airspace; a vicinity map, appropriate project construction maps/diagrams, and the diagrams/drawings of the facility approved and authorized to occupy the airspace. (Also include application and concurrence from the functional units.)

The PMU shall make an annual inspection of all property maintained under Airspace Agreements to ensure that the property is being utilized in accordance with the terms of the agreement. The results of the inspection shall be documented by the PMU Agent in a written report to the PMU Supervisor.

SECTION 15 - DISPOSAL OF REAL PROPERTY

Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with 23 CFR 710, Subpart D. The disposal of real property acquired as part of the right-of-way for a highway or transportation construction project, may occur after making a determination that the real property is no longer needed for highway or transportation purposes.

The PMU Supervisor will obtain direction from the Appraisal Unit Supervisor and or the Appraisal Review Unit Supervisor to determine whether an appraisal or a market analysis should be done. Appraisals shall always be performed on properties that are independently marketable, in high value locations, and which have adequate public road access. Market analyses, on the other hand, shall be performed on uneconomic remnants that are not located in high value areas and/or that do not have adequate access from public roads. Properties that do not fall within these two categories shall be subject to consideration by the PMU Supervisor on a case-by-case basis. All valuations for disposals will be submitted to FHWA for approval or concurrence.

The procedures for disposal of improvements are outlined in the Disposition of Improvements section of this Volume. (Sec. 10.3)
The disposal of land parcels can be accomplished through:

- Quitclaim Deeds
- Declaration of Vacation and Abandonment

Federal, state and local conservation, recreation, park or other appropriate agencies shall be afforded the opportunity to acquire properties by purchase or donation when the potential for such uses is evident, state laws allow it, and when submitted to FHWA for approval or concurrence, [23 CFR 710.409(b)]

15.1 - DECLARING HIGHWAY RIGHT OF WAY EXCESS LAND

‘Excess Lands’ are rights-of-way or non-rights of way parcels that have been determined no longer needed for highway or transportation purposes, following a Department Internal Review. Generally, the need for such a determination stems from a request from a member of the public. The Cabinet Secretary or the Secretary’s designee has the authority to initiate the process to determine whether a parcel should be declared excess of the needs of the Department. The process shall be initiated in writing.

15.2 - EXCESS LAND SALES

The disposal of excess real property is initiated by a written request. PMU has the authority to initiate the sale or exchange of land, improvements, fixtures and equipment obtained through the acquisition of right–of-way that are in excess of Department needs.

Excess real property may be disposed of by PMU, in the following manner:

- Public sale;
- Direct sale;
- Exchange for other property needed for highway purposes;
- Vacation and Abandonment;
- Negotiated Direct Sale
- Conveyance to other governmental agencies
- Relinquishment

Before any Department property is disposed of, PMU must ensure that the procedures outlined
below are followed. The only exceptions to this procedure are for exchanges and abandonments. See Exchanges (Sec. 19).

A written request to sell Department property is submitted to PMU.

PMU Agents perform a thorough analysis of the subject parcel history, including acquisition documents and present status.

An Internal Review is initiated if it is warranted. (Sec. 7)

The Department notifies the requester by mail of the determination.

Upon completion of the Internal Review process, the PMU Agent will proceed as follows:

A package will be prepared for review by the Cabinet Secretary or the Secretary’s designee.

The package will include all supporting data to demonstrate that the relevant steps have been taken, and that the Department’s internal reviewers deemed the parcel as unnecessary for highway or transportation use or purposes, and that its disposal is in the public interest.

An Intra-Departmental Correspondence (IDC) from the PMU Supervisor or the Supervisor’s designee to the Deputy Secretary for his concurrence authorizing the final disposal of the parcel by one of the methods outlined above. If the subject parcel was acquired with federal funds, FHWA approval shall also be obtained prior to submitting to the Cabinet Secretary or the Secretary’s designee for execution.

Upon authorization by the Cabinet Secretary or the Secretary’s designee, PMU shall proceed with the preparation of all pertinent documents, which shall also be reviewed as to form by the Department’s Office of General Counsel before being submitted to the requester. PMU shall immediately notify the requester if disposal is not authorized.

15.3 - CONVEYANCE TO FEDERAL, STATE AND LOCAL GOVERNMENTS

Any Department property determined to be in excess of the Department’s needs may be sold directly to a Federal, State or local governmental entity at fair market value. In some cases a donation may be made as outlined below.

Requests received from a Federal, State or local government entity for Department property will be processed in the same manner as any other request from the general public to determine whether the parcel is available for disposal. A donation may be made if:

The property may be donated for public use, e.g. public park, transit facility, public right-of-way for a local government, etc.
The requesting public entity demonstrates it is financially unable to pay fair market value for the parcel. In that case, the public entity must provide copies of its current budget, financial statement, and a governing body supported resolution stating the need for the parcel and the entity’s inability to afford the purchase.

If a donation is approved, a quitclaim deed must include an appropriate reversionary clause, whereby the parcel will revert to the Department. A reversion would occur if the property is not used for the purposes for which it was donated.

PMU shall thoroughly review each request and make the appropriate recommendations to the Cabinet Secretary or the Secretary’s designee for final approvals and execution of the quitclaim deed.

15.4 - ABANDONMENT (VACATION AND ABANDONMENT)

The word “abandonment,” when used in reference to rights-of-way, means giving up all rights or interest in the real estate being abandoned.

A request for abandonment of highway right-of-way may be received from an adjacent property owner, interested citizen, District Engineer, other appropriate officials within the Department or from other state or federal agencies. PMU shall follow any applicable administrative directives of the Department, federal statutes and regulations and any applicable State Transportation Commission (STC) policies.

PMU shall determine the manner in which the subject right-of-way was acquired; generally only right-of-way acquired by easement, whose acquisition documents would contain language enabling its abandonment through determination of non-use, may be abandoned. Prior to the mid 1950’s, many highway rights-of-way were acquired by counties, on behalf of the Department, as a right-of-way easement, and the acquisition documents contained the abandonment language. Today, years later, some of these roads have been realigned, or are not being used for state highway purposes, and many requests for their abandonment have been received, supported by the language in the original acquisition documents.

In these cases, upon the execution of a Vacation and Abandonment document by the Department and after it has been recorded in the County Clerk’s office, the party requesting the abandonment will take the recorded document to the County and request the County to abandon its interest in the property. The County will then follow its abandonment procedures which includes final approval from the County Commission.

Additionally, some rights-of-way for state highways have been acquired by prescriptive use by the public. Abandonment may be used to relinquish ownership of these prescriptive easements where appropriate.

After the request for abandonment has been approved following the Internal Review Process in Section 7, a legal description of the property to be abandoned must be prepared by a New
Mexico licensed surveyor on behalf of, and at the expense of, the party requesting the abandonment. The survey shall be reviewed and approved by the Department’s Survey Section.

Upon receipt of a certified property description, PMU will prepare the Declaration of Vacation and Abandonment document. The Department’s Declaration of Vacation and Abandonment shall state that the Department makes no representation as to title or jurisdiction over the abandoned right-of-way, and that the abandonment may be subject to existing rights of others as evidenced by recorded or unrecorded easements or conveyances unknown to the Department.

A package will be prepared for submittal to the Cabinet for review and signature. The package will include the Declaration of Vacation and Abandonment and all supporting data showing that procedures were followed and that the Department’s internal review results and FHWA approvals, if required, determined it would be in the best interest of the Department and the public to abandon the property.

The PMU Agent will distribute copies of the executed Vacation and Abandonment document to the following:

- The requester(s) to complete processing through the County
- Appropriate District Engineer
- Road Inventory Unit
- Lands Engineering Section
- Highway and Traffic Statistics Section
- Maintenance Management Section
- Planning and Research Section
- PMU Files
- Abandonment Book of the PMU Section to include the Abandonment document with a map or plat of the area abandoned.

(23 CFR 710.403(b) requires coordination among relevant DOT organizational units, including maintenance, safety, design, planning, ROW, environment, access management, and traffic ops.

**SECTION 16 - DISPOSAL OF PROPERTY ACQUIRED BY CONDEMNATION**

All real property purchased for highway program purposes, which is acquired under the power of eminent domain, shall be disposed of pursuant to NMSA 1978, Section 42-2-23, which provides as follows:

**NMSA 1978, § 42-2-23. Condemnation of property in excess of need; sale to prior owner; price**
In the event the state, a state agency or other entity condemns property in excess of the dimensions or amount necessary for public use, as determined by the condemnor, if such determination occurs within five years of the date of condemnation, the prior owner from whom the property was taken, or his personal representative or heirs, shall have the option to purchase the property determined to be in excess. Such persons may purchase such property at a price equal to the price paid for such excess property by the condemnor to the prior owner at the time of taking, plus interest at the rate of six percent per year, for the period beginning with the date the prior owner received final payment for the land taken, and ending when the notice of intent to dispose is mailed, less the amount of any liens which attached against the property while it was held by the condemnor.

The notice of intent to dispose shall be mailed to the last known address of the prior owner by certified mail with a return receipt requested. The notice shall inform the prior owner of his right to purchase, specify which portion of the property of the prior owner is available for purchase by him, the number of acres available, the amount of money, both the principal and interest it will require to repurchase. If within thirty days after mailing the notice of intent to dispose, the prior owner or his personal representative or heirs elect to exercise the option to purchase, the condemner shall enter into an agreement prepared and approved by the attorney general, if the condemner is a state agency, and by appropriate legal officer of the entity if the condemnor is an entity other than a state agency, for the sale of the surplus land to the prior owner, his personal representative or heirs.

If the prior owner, his personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the condemner shall sell the property at public sale also as identified in Section 17.


This act [codified at NMSA 1978, §§ 42-2-23 and 42-2-244] shall not apply to any land which at the time of condemnation was wholly within the boundary of an incorporated municipality.

To comply with the above referenced laws, PMU staff shall follow the requirements of the law as stated above on behalf of the Department. The prior owner will be notified of the intent to dispose by certified mail, return receipt requested, at the prior owner's last known address. The prior owner shall be allowed 30 days from the date on the return receipt to respond. The prior owner is not required to be notified if five years have passed since the property to be sold was condemned or if the excess property to be disposed of is within the boundaries of an incorporated municipality.

Information to the prior owner shall include his right to re-purchase a portion of the property available to him, the size, the amount of money, both principal and interest, required to re-purchase the property and the amount of any known liens which may be deducted from the purchase price.
SECTION 17- PUBLIC SALE - SEALED OFFERS

The Cabinet Secretary or the Secretary’s designee may authorize the sale of an excess property after determining the Internal Review Process was followed and that the proposed sale is in the public interest.

All public sales will be advertised in a newspaper of general circulation in the County in which the property is situated and identify minimum amount accepted. The newspaper advertisement shall be published once a week for two consecutive weeks, the last advertisement to be published not later than ten (10) days prior to the date of sale or opening of offers. Additional advertisement, commensurate to the character and value of the property to be sold, may be made if the PMU Supervisor deems it appropriate.

A “For Sale” sign shall be posted on the property to be sold, to increase awareness of the impending sale to abutting owners and others in the area of the proposed sale.

The notice and advertisement of sale shall contain the following:

- Time, place and date of sealed offer opening
- Legal description of property and general location
- In the case of a sale of improvements or fixtures and equipment separately, there will be a general description of such items
- Notice that a Quitclaim Deed will be given with no restrictions or with stipulated restrictions, properly spelled out in the notice
- Any other pertinent information or requirements
- Notice that the Cabinet Secretary or the Secretary’s designee shall reserve the right to reject any and all bids
- The earnest money payment to be submitted with all offers and final payment, upon final approvals and execution of a Quitclaim Deed, shall be made by Cashier’s Check, Certified Check or Money Order. All checks are to be made payable to the New Mexico Department of Transportation

All sale methods require earnest money to accompany each offer. The amount of earnest money shall be proportionate to the value of the parcel to be sold, not to exceed 20% of the parcel’s established fair market value. The percentage of earnest money shall be determined by the PMU Supervisor. The earnest money shall be forfeited if the balance owed is not paid within 60 days of the date of notice to the offerers that the offer has been approved by the Cabinet Secretary or the Secretary’s designee. The final payment will be the balance owed after the earnest money
paid is subtracted from the approved bid. Earnest money will be refunded to unsuccessful offerors.

Public sale shall take place at the time and place specified in the notice. A PMU representative shall record each offer and the name of the person or persons making the offer on a tabulation sheet. Upon opening all offers, the PMU representative shall publicly read the amount of the high offer.

The first review of offers will be conducted by the PMU Supervisor or the Supervisor’s designee. Offers may be accepted or rejected by the PMU Supervisor or the Supervisor’s designee within five business days after opening the offer. Any offers accepted that are below the established fair market value requires FHWA approval as per 23 CFR 710.403(d). In the event all offers are rejected, the PMU Supervisor has the authority to request a counter offer from all those who submitted an offer. At this time all earnest monies will be returned and shall be resubmitted as a new sealed offer.

The Cabinet Secretary or the Secretary’s designee shall have the authority to accept or reject any and all offers within 30 days. Upon receipt of all offers, the PMU Supervisor or the Supervisor’s designee shall submit the highest offer to the Cabinet Secretary or the Secretary’s designee accompanied by a Letter of Transmittal, which shall contain the following:

- An IDC, indicating Programs and Infrastructure Division Director concurrence and a signature block for the Cabinet Secretary, approving the sale results
- Method of disposal: Quitclaim Deeds
- Place or location of sale
- Statement of how, when, and from whom the entire property was purchased.
- Size of excess parcel and original amount paid
- FHWA approval if applicable
- Amount of highest bid on excess parcel
- Determination of federal interest in the property
- Statement that approved Department procedures have been met and that the parcel was deemed in excess
- Other pertinent information as appropriate
- Copy of right-of-way map highlighting excess parcel
A quitclaim deed shall be executed if the sale is approved by the Cabinet Secretary or the Secretary’s designee. The PMU Supervisor shall ensure that any money due from the purchaser is collected in the form of a cashier's check or certified check prior to the delivery of the executed quitclaim deed.

Properties are sold “as is”, with exchange of a quitclaim deed and a cashier’s check or certified check for the agreed price, unless the offer was accepted contingent upon certain negotiated conditions, which may require a different form of exchange. In these cases, the Office of General Counsel shall be involved during negotiations.

Upon execution of the quitclaim deed by the Secretary or the Secretary’s designee, the original deed shall be provided to the successful bidder/offeror, and copies shall be distributed as follows:

Programs/Planning
Survey/Lands Engineering Section Head
PMU Parcel file
District Engineer

Execution of conveyance documents (Quitclaim Deed) by the Cabinet Secretary shall be conclusive evidence that the sale is finalized.

After each sale, the PMU Supervisor or the Supervisor’s designee will furnish the Fixed Accounts Receivable Unit a copy of the results of the sale. It will contain the following information:

Project number, including Federal # if applicable;
Parcel number;
Name of former owner;
Acquisition date and instrument date;
Area;
Amount paid;
Amount sold for;
Name of purchaser;
Sale date; and

Access: private land, government land, unlimited, or limited.

The notification to the Fixed Accounts Receivable Unit will also indicate whether a federal interest existed in the property at the time of its disposition and, if appropriate, the PMU Supervisor will direct Accounting Services to deposit net receipts into an account from which funds will be used for future Title 23 eligible projects.

**SECTION 18 - DIRECT SALE**

In 2004, the New Mexico Legislature passed SB 215, which was subsequently codified as NMSA 1978, Section 67-3-8.2(C), and provides:

C. If the prior owner or the prior owner's personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the department may sell the property or the property interest on the open market in a commercially reasonable manner. The proceeds from the sale of the property or property interest shall be deposited in the state road fund.

This law allows the Department to sell real property interests on the open market in a commercially reasonable manner. Therefore, the Department may sell its excess property on the open market. Any excess property to be sold by the Department will follow the Internal Review Process set forth in Section 7 of this Volume. In summary, a value will be determined for the property to be sold after a thorough review by the appropriate sections within the Department and after a determination is made that the property is not needed for a public purpose.

The main criterion for having a direct sale is landlocked properties, which have no direct access to public roads and are accessible only through an adjoining parcel. Landlocked properties may be sold directly to adjoining landowners. If there are two or more qualified adjacent landowners, they shall be notified of the intended sale. Only the offers from those adjoining landowners shall be accepted. Landlocked properties will be appraised as value in use, or across-the-fence value, which is a value as if the property were part to the adjacent property. The value established will be that yielding the greatest advantage to the Department.

The first review of the offer will be by the PMU Supervisor or the Supervisor’s designee. The offer may be accepted, rejected, or subject to a counter offer by the PMU Supervisor or the Supervisor’s designee, within five business days after receiving the offer. If the offer is rejected, the PMU Supervisor has the authority to make a counter offer that is more comparable to the asking price. If the offer is accepted, the buyer shall be notified and the PMU Supervisor shall send a recommendation for approval to the Cabinet Secretary or the Secretary’s designee. The Cabinet Secretary shall reserve the right to reject any and all offers.
All documentation through the entire process, from the advertisement of the property for sale to the receipt and acceptance/rejection of the offers, shall be saved and placed in a file for future audit purposes.

SECTION 18.1 - NEGOTIATED DIRECT SALE

In 2004, the New Mexico Legislature passed SB 215, which was subsequently codified as NMSA 1978, Section 67-3-8.2(C), and provides:

C. If the prior owner or the prior owner's personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the department may sell the property or the property interest on the open market in a commercially reasonable manner. The proceeds from the sale of the property or property interest shall be deposited in the state road fund.

This law allows the Department to sell real property interests on the open market in a commercially reasonable manner. Therefore, the Department may sell its excess property on the open market.

Any excess property to be sold by the Department will follow the Internal Review Process set forth in Section 6.1 of this Volume. In summary, a value will be determined for the property to be sold after a thorough review by the appropriate sections within the Department and a determination is made that the property is not needed for a public purpose.

The main criterion for having a negotiated direct sale is to receive an amount of at least the fair market value of the property. A highly marketable property is one which has a good location, good access to public roads, access to public utilities, and any other amenities that would enhance the market appeal of the property. Any property determined to be highly marketable may be conveyed through a negotiated direct sale. Landlocked properties, which have no direct access to public roads, and could only be accessible through an adjoining parcel, may be sold directly to adjoining landowners. If there are two or more qualified adjacent landowners, they shall be notified of the intended sale. Only the offers from those adjoining landowners shall be accepted. Landlocked properties will be appraised as value in use, or as an adjoiner with the adjacent property, which is a value as if the property were attached to the adjacent property. Offers will be processed as outlined below.

All other properties, i.e., those fully accessible from public roads, shall be properly advertised so that relevant information is available to the potential bidder prior to making a rational offer. All offers shall be evaluated in the order they were received, at a date to be specified, provided offerors are allowed a minimum of two (2) weeks between listing and offer date. Offers shall be submitted in writing to the PMU Supervisor. The first review of offers will be by the PMU Supervisor or the Supervisor’s designee and a PMU Agent. Offers may be accepted, rejected, or subject to a counter offer by the PMU Supervisor or the Supervisor’s designee, within five (5) business days after receiving the offers. If an offer appears acceptable, the apparent best offeror shall be notified, and the PMU Supervisor shall send a recommendation for approval to the
Cabinet Secretary or the Secretary’s designee. The Cabinet Secretary shall reserve the right to reject any and all offers. All offers with a federal interest will be submitted to FHWA for approval or concurrence.

Offerors whose offers were not accepted shall be notified of their rejection.

Each offer shall be evaluated, based on the following factors:

1. Offer amount
2. Method of payment
3. Special conditions
4. Best interest of the Department and the State of New Mexico.

A negotiated, direct sale process shall consist of the following steps:

1. Advertising in local newspapers of wide circulation, and other reasonable medium. The notice will include:
   A. Property’s base price
   B. Aerial, photo and vicinity map.
   C. Statement that state law requires property conveyance by a state agency to be by Quitclaim Deed.
   D. Statement that property shall be sold “as is”.
   E. Statement that offers must be in writing, hand-delivered/or certified mail return-receipt-requested, and accompanied by earnest money to:

          NMDOT
          Property Management Supervisor
          P.O. Box 1149
          1120 Cerrillos Rd.
          Santa Fe, NM 87504-1149

   F. Statement that all offers will be evaluated by a specified date (no later than ten (10) calendar days upon receipt) The offer which best meets the evaluation criteria listed above, and all terms of sale, and no further negotiations are deemed necessary, as determined by the PMU Supervisor shall be recommended to the Secretary or the Secretary’s designee for approval. The Secretary may or may not accept the PMU Supervisor’s recommendation and may reject the best or all offers.

2. The entire process, from the advertisement to receipt and acceptance/rejection of the bids, shall be carefully documented in writing for future audit purposes.

3. Properties will be sold, “as is”, with exchange of a quitclaim deed and a cashier’s check for the agreed price, unless the offer was accepted contingent upon certain negotiated conditions, which may require a different form of exchange. In these cases, the Office of General Counsel shall be involved during negotiations.
SECTION 19 - EXCHANGES

Excess right-of-way property may be exchanged for other lands or interests in land that are deemed as needed for present or future right-of-way purposes. Any such exchange must be for equal dollar value with any difference paid in cash, and based on an approved appraisal completed for each property involved. An exchange shall require the final approval of the Cabinet Secretary or the Secretary’s designee after the proposal has been reviewed and recommended by the PMU Supervisor, appropriate District Engineer, Environmental Section Head, and the PDE. The recommendation shall be issued to the Cabinet Secretary or the Secretary’s designee by PMU in the form of an IDC.

Excess land parcels or non-right of way parcels can be exchanged for new right-of-way or other property needed for highway or transportation purposes. NMSA 1978, Sections 42-2-23 through 42-2-24, which usually provide an option in the prior property owner under certain circumstances, do not limit the Department’s ability to exchange excess parcels. The use of a parcel to exchange for new highway right-of-way or other property needed for highway or transportation purposes is a valid highway use or purpose, as long as it is a dollar for dollar exchange.

SECTION 20 - RELINQUISHMENT

Relinquishment means the conveyance of a portion of a highway right-of-way or facility by the Department [??] to another government agency for continued transportation use. (See 23 CFR 620, subpart B.) The Department’s Planning Division and the appropriate District Engineer are to work together with other government agencies and municipalities in determining which roadways would meet the criteria and be mutually beneficial to the agencies and the traveling public and enter into agreements for relinquishing highway or transportation facilities. They must perform proper reviews and make recommendations for the relinquishment of highway facilities. A relinquishment will result in the deletion of a roadway from the Department’s State Highway System or there may be an exchange in which the Department adds a facility to the State Highway System while giving up one.

PMU shall assist with the preparation of the conveyance documents for review by the Department’s Office of General Counsel in response to a written request from the Planning Division or the District Engineer, once they have verified that all requirements of an agreement have been met and the agreement is ready for execution. The quitclaim deed will have a reversionary clause, whereby the parcel will revert to the Department if the property is attempted to be sold or is no longer used for public purposes.

If a relinquishment is to a federal, state or local government entity for highway purposes, there need not be a charge to the said entity nor any credit to federal funds. If for any reason there is a charge, the Department will retain the federal share of the proceeds if used for projects eligible under Title 23 of the United States Code. (23 CFR 620.203(j)
SECTION 21 - SUBDIVISIONS

To comply with the New Mexico Subdivision Act, NMSA Sections 47-6-1 through 47-6-29, the Department reviews each new subdivision submitted. PMU coordinates the subdivision reviews and is responsible for receiving and distributing the submitted subdivision packages to the appropriate reviewers in the Department for comments. The reviewing sections of the Department are:

- Appropriate District Engineer
- District Traffic Technical Support
- Infrastructure Project Development Engineer
- Infrastructure Drainage Engineer
- Lands Engineering

Comments will be returned to the PMU for compilation. PMU shall prepare a letter with reviewer comments to be sent to the appropriate County or local government requesting the review.

If the Developer addresses the reviewers’ comments and makes necessary changes and resubmits the proposed subdivisions through the County, the appropriate units will review the submittal again.

In general the Department is concerned with how the subdivision is going to affect federal and state highways or other transportation facilities. In New Mexico, the proposed subdivision’s impact upon the safety of the traveling public and the integrity of the road system including hydraulic changes are the primary concerns.

All subdivision packages are sent by mail or hand delivered to:

The New Mexico Department of Transportation
Property Management Unit
P.O. Box 1149
1120 Cerrillos Rd.
Santa Fe, New Mexico 87504-1149
ATTN: (Name of PMU Agent coordinating subdivisions)

In order to comply with a thirty (30) day response time requirement, five (5) copies of each subdivision package shall be submitted for timely response.
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May 12, 2020                  RIGHT OF WAY HANDBOOK
                              VOLUME VII
CHAPTER 1  PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way procedural Manual (Handbook) is to present the legal authority and the administrative procedures governing the functions of the Right of way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will help to ensure that state and federal laws and regulations pertaining to the right of way program are implemented in a manner that is efficient and cost-effective.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations in a manner that is efficient and cost-effective.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations, directives, and standards. The handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2 – FHWA PROVISIONS
The handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CDR part 24 as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.
Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.

The T/LGA is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects proper coverage of the requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for acceptance within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

SECTION 3 – STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CDR 710.201 and is approved by the office of the General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of ten volumes as follows:

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The Property Asset Management Volume VI has been established as a procedural Manual; however, it will be considered and referenced as part of the Handbook for purposes of State/Federal law and regulatory compliance.

Each volume is published in a separate loose leaf format. Each volume is available on the Department’s website at www.New Mexico Department of Transportation. state.nm.us, linked through Divisions and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters, sections and subsections. Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505)827-5636.
CHAPTER 2  AUTHORITY

SECTION 1 – GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.
2. Executive Order No. 89-15 signed by Governor Garrey Carruthers, 3/30/89.
3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.
4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.
6. Uniform Standards of Professional Appraisal Practice as Promulgated by the Appraisal Standards Board of the Appraisal Foundation.
7. New Mexico Eminent Domain code, with Special Alternative Condemnation Procedures, Sections 42-2=1 through 42-24 and 42A-1-1 through 42A-1-33, NMSA, 1978, as applicable.
10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.

Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA prior to implementation.

The Department is to follow uniform applicable procedures, as contained in the Handbook, for all projects regardless of the source of funding, that is, State funded projects will be administered in the same manner as federally funded projects. This will ensure compliance with federal funding requirements in case of state funded projects that become federalized.

May 12, 2020  RIGHT OF WAY HANDBOOK  VOLUME VII
CHAPTER 3       ORGANIZATION

SECTION 1 – GENERAL

The tribal/local government-agent is located in the Right of Way Bureau and assists Tribal &
Local Government Agencies (T/LGA) with many phases of construction but not acquisition of
property.

If during the planning stage a T/LGA anticipates the need for right-of-way, the Right of Way
Bureau should be contacted as soon as possible.

T/LGA shall contact the Right of Way Bureau when property must be permanently or temporarily
acquired for roadway projects. The Right of Way Bureau chief authorizes right of way
certification. Without this certification, a T/LGA shall not be eligible to receive federal-aid.

SECTION 2 – DUTIES

T/LGA should select a liaison to coordinate activities with the New Mexico
Department of Transportation (Department). Only qualified personnel or
contractors can be assigned right of way work. The appraisal, negotiation, and
acquisition of property processes are subject to state/federal regulations in most
situations.

The right of Way Bureau will monitor, approve and offer guidance through various
milestones in the process of acquiring right-of-way for federal-aid projects.

The Right of Way Bureau Chief shall only certify those right of way projects that
conform to state/federal regulations.
SECTION 3 – CONFLICT OF INTEREST

If the T/LGA liaison has a personal or family relationship with, or involvement in, the past ownership or sales history of the real property, or a participating business association with the owner, or any other party of interest in the property sought the T/LGA must consult the Tribal/Local Government Agent for guidance.

SECTION 4 – FORMS

Please contact the Right of Way Bureau for any needed form or additional guidance. The Tribal/Local Government Agent can be phoned at (505) 470-4490.
CHAPTER 4 – PROCEDURES

SECTION 1 – TRIBAL & LOCAL GOVERNMENT AGENCIES

This document was developed specifically for providing guidance to T/LGAs and Department staff in understanding and working through the right of way process, from project scoping and title search through Right of Way Certification, as it relates to local government transportation projects funded with federal-aid monies and some state-funded projects.

If any of the state funding sources is used in conjunction with federal-aid funds (Severance Tax, General Fund, Municipal Arterial, County Arterial, School Bus Route, and Co-op), all phases of the project, including the right of way process, becomes “federalized” and the federal processes must be followed. Additionally, in certain situations, usually when State Road Funds used for a project where a road exchange is involved or the facility to be improved is on the State Highway System, the federal process described herein must be followed. This is also true if future federal-aid funds will be used for the project. The Cooperative Project Agreement between the Department and the T/LGA will stipulate the federal processes that must be followed.

The primary federal legislation that regulates the right of way process is the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” as amended (Uniform Act). One of its main purposes is to assure that property owners, from whom property is acquired for projects using Federal funds in any phase, are treated fairly, consistently, and equitably.

Oversight and guidance in complying with Uniform Act requirements on T/LGA transportation projects will be provided by the Department’s Right of Way Bureau. Oversight, guidance, and interpretation are provided to the Department by the FHWA New Mexico Division Office, Right of Way Officer. The right of way process is admittedly complex and one that should not be entered into without the availability of an experienced and knowledgeable right of way professional (staff or consultant).

It is important to recognize early that completing the right of way process can also be time consuming. While the exact time to correctly go through the process is driven by the number of owners, one can generally expect that the time necessary will usually be a minimum of six months and more likely nine or more months. It is not uncommon, however, for the process to take 12 to 18 months, and T/LGAs need to be cognizant of how this relates to project development process as a whole. In general, there is no such thing as a one, two, or three month acquisition process.
Section 1.2-Qualification to perform Right of Way Activities

Qualification is the process whereby the Right of Way Bureau reviews the T/LGA’s staff (or consultants), policies, and procedures to perform right of way activities. Using qualified personnel allows the T/LGA to perform these activities for federal-aid projects. Performing these activities without qualified personnel will jeopardize project funding. Related Volumes shall be used as applicable.

If the project is state funded and involves a road exchange project or a road that will become or remain on the State Highway System or if current or future federal-aid funds will be used for the project, then Right of Way Bureau review of procedures and use of qualified personnel is required, as specified in the project agreement. Use of qualified personnel, however, does not imply that the work product will automatically be acceptable to the Department.

Qualification of the T/LGA should begin when it has become apparent during the scoping stage that right of way might be required on the project.

FHWA requirements concerning state and T/LGA qualifications are based on the following regulations:

1. The Department has overall responsibility for the acquisition of right of way on all federal-aid highway systems, even if a T/LGA is the lead agency. (23 CFR 710.201(b)

2. The Department shall have a right of way organization adequately staffed, equipped, and organized to conduct its right of way responsibilities. (23 CFR 710.201(a).

3. The Department may, by means of a written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights of way for federal-aid projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices are in conformity with the Department’s accepted procedures or it will follow the Department’s procedures. It is the responsibility of the Department to fully inform political subdivisions of their responsibilities in connection with federally assisted highway projects and for imposing sanctions in cases of non-compliance.
Due to the possible changes of personnel within T/LGAs and various changes in federal and state laws and requirements, a review of all qualified agencies will be conducted periodically to determine whether T/LGA procedures appear to be adequate to perform in conformance with state and federal requirements. The Right of Way Bureau will make T/LGA aware of any changes in state and federal policies or procedures.

1. A T/LGA that has not used its right of way procedures for an extended period will be reviewed prior to starting any new projects. A new or “re” qualification is necessary.

2. All T/LGAs are required to notify the Right of Way Bureau of any policy or procedure changes that might affect their qualification status.

3. A T/LGA could lose its status as a qualified agency if discrepancies are brought to its attention but are not immediately corrected. Upon identification of the discrepancy by the Department, an appropriate notice shall be sent to the T/LGA informing the agency it may lose its status. Subsequent to the notification, if a T/LGA is still unable or unwilling to correct its procedures, a notice shall be sent to the T/LGA informing it that it is no longer qualified to perform right of way activities for federal-aid funded projects. The T/LGA will be notified that failure to comply will jeopardize funding for its project(s).

Section 1.3-Monitoring Process

Monitoring (review) of T/LGA right of way work is the process whereby the Department assures that T/LGA right of way practices are in accordance with applicable state and federal laws and regulations, and provides the necessary documentation for “Right of Way Certification”. A Right of Way Certification is an important prerequisite to requesting funding authorization for construction activities on all federal-aid and some state projects. It should be stressed that failure to conform to accepted policies and procedures will likely result in loss of reimbursement for all or part of a project.

It is Department practice to monitor right of way work on T/LGA transportation projects whenever federal funding (and certain state funding) is included in any phase of such projects. Monitoring must be sufficient to ensure that federal and state requirements are being met. If the T/LGA obtained qualification based on their own procedures, monitoring will be done to substantiate conformance with those procedures. Monitoring will be performed to ensure that each right of way function is being completed according to state/federal requirements. Monitoring allows corrective action, if necessary, to be performed in a timely manner. If a Right of Way Certification is prepared on the basis of an authorization to enter or right of entry, monitoring will continue until all the property rights have been acquired.
The Right of Way Bureau (ROW) may be contacted by the T/LGA to explain the monitoring program and offer guidance to identify and minimize potential problems. Following the initial contact, the T/LGA shall notify the Right of Way Bureau at each state of right of way activity. Monitoring of the Right of Way process will be done according to this section.

Monitoring procedures will cover the following right of way elements:

1. Project Scoping Report (or combined Project Identification Form/Scoping Report).
2. Title Search and Title Reports
3. Property Survey and Right of Way Mapping
4. Right of Way Map Review
5. Appraisal and Appraisal Review
6. Acquisition (including administrative settlements)
7. Condemnation
8. Relocation
9. Right of Way Certification
10. Property Asset Management

If an agency has established a good record, and monitoring reveals compliance with federal/state regulations, then only minimal monitoring may be required. If monitoring reveals noncompliance or repeated errors, then project funding may be jeopardized.

A compliance check sheet for each right of way functions being monitored will be completed by the T/LGA on each parcel that has been selected for review, and shall be retained in the project file. If any work needs to be corrected, the Right of Way Bureau will communicate the proposed corrections to the T/LGA in writing. A follow-up inspection will be performed to ensure that the corrections have been performed.
Section 1.4-Training

The Department is responsible for informing the T/LGA of the specific right of way requirements for different types of projects. The T/LGA is responsible for training of T/LGA personnel. The Department also has an obligation to assist and educate the T/LGA in the proper procedures that must be followed during the entire right of way process. The Right of Way Bureau can provide information on any laws and regulations that must be complied with. The Right of Way Bureau may also provide sample forms for the guidance for possible use of the T/LGAs.

Section 1.5-Environmental

It is important to recognize the interrelationship, during project development, between environmental documentation and various right of way activities. The Environmental Document, whether it is a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement, must be approved by FHWA prior to obtaining Federal Authorization to Proceed for right of way activities.

Once FHWA has approved the Environmental Document and Federal Authorization to Proceed for Right of Way Activities has been obtained, the Department’s Technical Support Engineer will notify the Right of Way Section, and in turn the T/LGA will be notified that, assuming everything else is in order, right of way acquisition may commence.

T/LGAs must be alert to the possible existence of contaminated soil or hazardous waste within properties that may potentially be acquired, including for use as easements. The early detection of contaminated soil or hazardous waste in the right of way to be acquired is a major issue with regard to project cost and liability that may be potentially incurred. The possibility of soil contamination or the presence of hazardous waste should be addressed as soon as the potential for its existence is discovered during project scoping. The Department’s “Hazardous Material Assessment Handbook” outlines the procedure of investigating the possibility of and dealing with contaminated properties. Every effort must be made to avoid contaminated sites.

Section 1.6-Title Search

The acquiring agency must obtain title information for each parcel prior to initiating property survey and right of way mapping necessary for right of way acquisition. This is to ensure that all interest holders on a project are identified. The following elements are required:
1. A thirty-three (33) year certified title search (or longer if required) for every parcel affected in the right of way acquisition. This applies to right of way takes and Construction Maintenance Easements (CMEs).

2. A Chain of Title (Index) reflecting all transactions affecting each parcel and copies of all pertinent documents described in the Chain of Title (Index).

3. A five year Tax Search (or computer printout) reflecting the current assessed owner, address, description of property, and the status and amount of taxes for the current assessed year – whether paid or unpaid.

4. Title Sheet(s) that show current owner and address of record and description of property being abstracted.

5. Work map and index identifying each parcel abstracted.

Only mortgages, liens, encumbrances on the property, and judgments that have not been released should be shown. On any probate or district court proceedings, only pertinent proceedings need to be shown. The complete case file is not required. A licensed and bonded title company should prepare all title reports.

For Temporary Construction Permits (TCPs), the Title Sheet should show the current owner and address of record, the description of the property, and the document creating ownership.

The owner of the real property shall be reimbursed for all reasonable and necessary expenses the owner necessarily incurred for the following:

1. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the T/LGA. However, the T/LGA is not required to pay cost solely required to perfect the owner’s title to the real property.

2. Penalty costs and other charges for prepayment of any pre-existing recorded mortgages that were entered into in good faith and are encumbering the real property.

3. The pro rata portion of any prepaid real property taxes which are allocable to the period after the T/LGA obtains title to the property or effective possession of it whichever is earlier. (49 CFR 24.106(a)).
4. Whenever feasible, the T/LGA should pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the T/LGA. (49 CFR 24.106)

**Section 1.7-Property Survey / Right of Way Mapping**

The property survey must be done by a licensed surveyor who shall certify (and stamp) the right of way map(s) and legal descriptions. The current version of the Department’s “Right of Way Mapping Development Procedures” in the NMDOT Survey Handbook explains in detail all right of way mapping requirements. A copy of this document may be obtained from the Department’s survey and lands Engineering Section.

Right of Way Maps shall be submitted by the T/LGA to the appropriate Department District Technical Support Engineer, who will transmit the maps to the Department’s Lands Engineering Bureau for review. Lands Engineering will not accept direct submittals from T/LGAs. Once the review is completed, Lands Engineering will transmit the materials and a memo to the Right of Way Bureau with recommendations and/or a statement that the maps are approved for use in appraisals. The T/LGA will be notified of the review results.

Additionally, if the proposed construction is contained within right of way previously acquired by the T/LGA or within the State Highway System right of way, the T/LGA shall transmit to the Right of Way Bureau the following:

1. Two (2) sets of the construction plans on which the existing right of way lines are clearly shown, labeled, and referenced to centerline of survey. The right of way should be shown crosshatched.

2. Two (2) copies of the documentation substantiating the method (deed, plat, etc.) by which the right of way was acquired. This shall include deed and plat reference dates.

3. For any existing right of way acquired after January 2, 1971, a certification with documentation that this right of way was acquired in conformance with the Federal “Uniform Relocation Assistance and Real Property Acquisition Act of 1970” is necessary.

The requirements of the Uniform Act are very specific. They apply to property acquired after January 2, 1971, for Federal-aid projects. T/LGAs contemplating right of way acquisition on or adjacent to such a route are advised to contact the Right of Way Bureau. Failure to comply will jeopardize the use of federal funds on the project.
Section 1.8-Appraisal

Before the initiation of the acquisition process, the fair market value of parcels to be acquired must be determined by a qualified appraiser. T/LGAs (or fee appraisers) must be properly qualified in accordance with the New Mexico Real Estate Appraisers Act. The minimum Qualifications for an appraiser, as set forth in the Department’s Right of Way Handbook, Volume III, - Appraisal, shall be certified to the Right of Way Bureau. The Right of Way Bureau may review the qualifications of the proposed individual(s). If the T/LGA hires a consultant for the appraisal function, a copy of the contract between the T/LGA and the consultant shall be provided to the Right of Way Bureau.

Establishing “just compensation” is regulated by Department’s standards and procedures. The T/LGAs staff or fee appraiser must recommend the just compensation in compliance with current Department policy and federal regulations. On request, the Right of Way Appraisal Supervisor may provide guidance of the appraisal function.

The format and level of documentation for an appraisal depend upon the complexity of the appraisal situation. Detailed information on requirements is contained in the Department’s Right of Way Handbook, Volume III – Appraisal. The Right of Way Bureau Appraisal Unit Supervisor may coordinate with a Department Review Appraiser to provide answers to any specific questions or guidance. The T/LGA must give the property owner the opportunity, in writing, to accompany the appraiser on a tour of the property.

Under certain conditions the T/LGA may request permission in writing to use the Department’s appraisal waiver process. Ann Appraisal may not be required if the property owner is donating the property and releases the T/LGA form this obligation or the T/LGA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the land value is estimated at $2,500.00 or less, based on a review of available data.

Unless a property owner waives his/her right to an appraisal of the real property to be donated or the T/LGA determines to use the Appraisal Waver option, an appraisal must occur as in any other property acquisition. Additionally, a property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on the “Donation of Real Property Form”. Which may be obtained from the Department’s Right of Way Bureau.

If the property owner wishes to use the donation for tax purposes, an appraisal must be done by a qualified fee appraiser to satisfy the Internal Revenue Service Code. It is also important to note that even if property is donated, the project’s routine environmental requirements must still be met. Additionally, caution must be used to assure that contaminated property will not be donated unless and until appropriate hazardous waste remediation measures are accomplished to the satisfaction of the Department.
Section 1.9-Appraisal Review

The Department may conduct the Appraisal Review actions unless specific prior arrangements have been made and documented. The Department’s Right of Way Bureau Review Appraiser is responsible for the sufficient review of appraisal reports of real property to be acquired in connection with federal and some state funded transportation projects.

The appraisal reviewer will assure that the appraisal conforms to federal and state statutes and regulations prior to the initiation of acquisition. The appraisal review function can be contracted to a consultant or done in-house.

Section 1.10-Acquisition

While one goal of the T/LGA is the completion of its projects, they must also insure that there are no short cuts around the acquisition process. The type of project, and the various stages of construction may vary, but the acquisition process will remain the same. Acquisition is one of the most sensitive aspects of the activities that the T/LGA will be involved with since it involves direct personal contacts with property owners.

The T/LGAs primary goal during the acquisition process is to acquire any property rights required to construct, operate and maintain the project. The Acquisition Agent should be a person on the T/LGA staff (or their fee negotiator) that is qualified to perform acquisition. In cases where the T/LGA has untrained or insufficient staff to perform the acquisitions, fee negotiators hired under contract may be used, with certain stipulations. The T/LGA will be required to furnish a summary, such as a resume, of the individual(s) being proposed for use by the T/LGA. The Right of Way Bureau will review the person’s qualifications.

Fee negotiators must be employed through written contract, a copy of the proposed contract with selected bidder must be supplied for concurrence with the Right of Way Bureau. The amount of the compensation (fees) should be established on a parcel or owner basis and shall not be determined as a percentage of fair market value. The fee shall represent a fair payment for the work performed.

Before any offer can be made to a property owner, the Acquisition Agent must have the reviewed and approved appraisal, stating fair market value and including any damages or benefits for the parcel. Right of Entry may not be used prior to presentation of a written offer of fair market value based on a reviewed and approved appraisal. An agency official is required to make the determination of what it believes to be just compensation which is the basis of the offer. This action cannot be delegated to a consultant or non-agency official.
Any T/LGA utilizing state and/or federal-aid funds for any portion of a transportation project must ensure that owners of property rights to be acquired are treated fairly, equitably, and consistently.

The Acquisition Agent must make all reasonable efforts to personally contact each property owner of their designated representative at a time and place convenient to the property owner. The property owner must receive an explanation of the acquisition process, which should be supplemented by a copy of the acquisition brochure. Copies of the brochure are available from the Right of Way Bureau.

A formal Letter of Offer must be presented to the property owner showing the determination of fair market value for the property. The formal Letter of Offer must contain a Statement of Offer, a description and location of the parcel to be acquired, and a summary statement identifying compensation for fee land, easements, improvements, damages, etc. Identification of any buildings, structures, and improvements being acquired that are considered part of the real property must be included.

The Acquisition Agent must give the property owner the 30 days to review the offer and any opportunity to present any information that the owner feels might affect the value of the property and was not considered in the appraisal. Any new information must be considered, and the appraisal should be updated if necessary to establish a new offer.

Right of way acquisition by exchange for additional construction features, may be used in certain cases. This form of compensation must be clearly noted in the contract (contact the Right of Way Bureau for sample forms) and must be approved by the Tribal/Local Government Agent, the Department District Technical Support Engineer, and Right of Way Bureau Chief, who shall initial and date the contract.

Under certain conditions, the purchase price for property to be acquired may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have filed and an authorized T/LGA official justify in writing to the ROW Acquisition Supervisor such “administrative settlement” as being reasonable, prudent, and in the public interest according to the Department’s Right of Way Handbook, Volume IV – Acquisition. The T/LGA shall identify to the Right of Way Section the responsible official who has authority to approve administrative settlements. In arriving at a determination whether to approve an administrative settlement, the designated official must give full consideration to all pertinent information and prepare a written justification which indicates that available information (e.g., appraisals, including the owner’s appraisal if one is available, recent court awards estimated trial costs, and valuation problems) support such a settlement. The extent of the written justification is a judgmental determination and should be consistent with the situation, circumstances, and amount of money involved.
Reimbursement of right of way costs will not occur unless all written justifications have been transmitted to the Right of Way Bureau for approval. All counter offers proposed by a property owner shall be made in writing and shall be addressed to the appropriate T/LGA official.

Real property may be donated for project right of way. Property owners who wish to donate all or part of their property, any interest thereof, or the compensation which they could have received for the property must be fully informed by the T/LGA that they may receive just compensation. Property owners must not be coerced or pressured into donating property.

Unless a property owner waives his/her right to an appraisal of the real property to be donated or the T/LGA determines to use the Appraisal Waiver option, an appraisal must occur as in any other property acquisition. Additionally, a property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on the “Donation of Real Property Form”, which may be obtained from the Department’s Right of Way Bureau.

If the property owner wishes to use the donation for tax purposes, an appraisal must be done by a qualified fee appraiser to satisfy the Internal Revenue service Code. It is also important to note that even if property is donated, the project’s routine environmental requirements must still be met. Additionally, caution must be used to assure that contaminated property will not be donated unless and until appropriate hazardous waste remediation measures are accomplished to the satisfaction of the Department.

An individual file shall be maintained for each ownership. The Acquisition Agent shall maintain timely, complete, and adequate records of all negotiations, on an ownership basis. The record shall be written in a permanent form and completed within a reasonable time after each contact with the property owner. The need to document each property owner contact and/or any pertinent information concerning every parcel should be emphasized. The finished report shall be signed and dated by the Acquisition Agent. Samples of this “negotiator’s log” may be requested from the Right of Way Bureau.

Records shall also be maintained on an individual parcel/project basis. Furthermore, all records shall be kept for at least three (3) years from submittal of the final request for right of way reimbursement by the T/LGA. The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State. The parcel file shall contain copies of the Title Report, Reviewed and Approved Appraisal, formal Letter of Offer, Right of Way Map, copies of the signed contract, signed and notarized conveyance documents, any loan releases, justification for settlements, and the signed and dated negotiator’s log. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.
Section 1.11 - Relocation

Federal and state laws and regulations mandate specific rights and entitlement of individuals, families, and businesses displaced by transportation projects and required to relocate due to the public acquisition of right of way. Generally speaking, all families and businesses meeting occupancy requirements on or before the date negotiations began are eligible for relocation assistance.

Legal requirements for implementing relocation assistance are lengthy and detailed. T/LGAs are required to relocate any persons or businesses displaced by projects that are funded with federal or certain state funds. T/LGAs must contact the ROW Relocation Unit for guidance and a proposed list of T/LGA staff or fee relocation agents must be submitted to the Right of Way Bureau for review prior to the initiation of relocation activities (See Volume V for Relocation Procedure). Relocation actions are subject to ROW oversight and approval.

Section 1.12 - Encroachments

An illegal encroachment is the unauthorized use of public right of way for any purpose other than that of public travel and/or the placing of any type of structure or personal property into public rights of way without the expressed written consent of the Department. Rule 88-5 (L), (18 NMAC 20.5), defines encroachments as “An intrusion into, under. Upon, or over highway right of way by a permanent structure or fixture. This term shall include, but not limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, Christmas displays, Parking Ares and banners.” All encroachments should be noted on project plans so that appropriate action can be taken to remove them. For projects on State and federal highways, contact the Property Asset Management Unit of the Department’s Right of Way Bureau for guidance.

Section 1.13 - Right of Way Certification

Following completion of all right of way activities (title search, property survey, right of way mapping, appraisals and review, acquisition, and relocation) and prior to receiving authorization to advertise the physical construction for bids, the T/LGA shall complete a Right of Way Certification and submit it to the Right of way Bureau certifying that:
1. A statement is received from the T/LGA, either separately or combined with the information required by 23 CFR 635.3099 (c), that either all right of way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid Proposals identifying the right of way clearance, utility, and railroad work which is to be underway concurrently with highway construction.

2. A statement is received from the T/LGA certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the state has made available to relocates adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

**Full Certification**

All necessary rights of way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right of way but all occupants have vacated the lands and improvements and the state has physical possession and the rights to remove, salvage, or demolish these improvements and enter on all land.

**Conditional Certification**

Although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the state has physical possession and right to remove, salvage, or demolish these improvements.

The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them. The state may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the state shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.
When the T/LGA requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore including identification of each such parcel will be set forth in the T/LGAs request along with a realistic date when physical occupancy and use has not been obtained.

3. The T/LGA certifies either that there are no encroachments on the right of way or that all encroachments have been removed from the right of way on the project.

4. A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(S) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.

5. All Steps required for Relocation Assistance have been completed in accordance with federal and state procedures or no relocation assistance was required for the project.

6. Right of Way has been acquired or will be acquired in accordance with current state and FHWA directives covering the acquisition of real property, or that acquisition of real property was not required.

Upon receipt of the Right of Way Certification, the Right of Way Bureau will review it. If the certification letter from the T/LGA is not acceptable, the Right of Way Bureau will inform the t/LGA as to what steps are required for compliance. After review of the Certification, the Right of Way Bureau agent will prepare an appropriate certification and submit it to the FHWA if federal-aid funds are being used. If only state funds are involved, the T/LGA will be notified in writing by the Right of Way Bureau that the certification is complete and correct or that changes are required.

Section 1.14-Reimbursement for Right of Way Activities
Reimbursement for any of the costs of right of way activities must be specifically addressed in the Joint Powers or Cooperative Project Agreement. For processing of reimbursements, copies of the following documents shall be submitted:

1. Any contracts between the T/LGA and fee appraisers, fee title examiners, or fee negotiators;
2. All invoices showing specific charges, and proof that payment has been made for the actual parcels:
3. Copies of all appraisals, and;
4. Any settlements above the reviewed and approved amount of the original appraisals, with supporting documents justifying the settlement.
All submittals will be reviewed for accuracy and duplication before payment is made according to Right of Way Monitoring Procedures as stated in Section 1.3. The reimbursement must be approved by the Technical Support Engineer (TSE) prior to payment being made. The Right of Way Bureau will provide guidance to the T/LGA with any questions or issues concerning the reimbursement process. When all requirements have been met, the Right of Way Bureau Chief will certify the work to the FHWA, as necessary and send a copy to the TSE.

Section 1.15-Property Management

Whenever right of way is acquired in the name of the T/LGA, the T/LGA is responsible for control of the right of way and all property management functions. By definition, property management is managing, administering, maintaining, and protecting any property acquired for transportation project purposes so that the public interest is served. Property managers are stewards of the public interest. Property management begins when title is vested in the T/LGA.

The T/LGA property inventory should be continually updated for acquisitions and disposals. Rental of airspace, disposals of property not needed by the Department, encroachment agreements, and changes in access control are all part of the management function. The T/LGA shall request state approval prior to any disposals, airspace agreements, changes in access control, or similar activities.

If federal-aid funds are used for any portion of property acquisition or project construction, the T/LGA is required to adhere to the Department’s procedures regarding property management as defined in the Right of Way Handbook, Volume VI – Property Asset Management.

Section 1.16-Records and Reports

All plats, appraisal, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance, payment records, and any other data or documents relative to any right of way activities shall be available for inspection at reasonable times by authorized representatives of the Department, FHWA, and other authorized federal representatives. These records shall be kept and maintained for a minimum of three (3) years after the final voucher of the project; the date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or the date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.
SECTION 2-TRIBAL/LOCAL PUBLIC AGENCY
RIGHT OF WAY ACCEPTANCE

Section 2.1-General

1. The T/LGA shall be responsible for certifying that all work has been performed as required according to federal and state statutes, rules, and regulations.

2. The Department’s Right of Way Bureau will review selected portions of the work to ascertain whether it has been performed according to Department standards.

3. Based on this acceptance plan, a written evaluation of the performance of all Right of Way activities by the T/LGA shall be made by the Right of Way Bureau Chief when appropriate statements have been received from the Lands Abstracting, Appraisal Review, Relocation, and Acquisition Unit Supervisors.

4. When all requirements have been met, the Right of Way Bureau Chief will certify the work to the FHWA as necessary.

Section 2.2-Land Abstracting

1. The T/LGA shall deliver a copy of the title reports and preliminary Right of Way maps to the Lands Abstracting Unit of the Right of Way Bureau for review.

2. The Lands Abstracting Unit will review a number of reports to determine whether the work was performed in conformance with applicable state and federal rules and regulations.

3. In the event that the work is found to be unacceptable, all submitted reports will be returned to the T/LGA.

4. When the work has been determined to be in compliance, the Lands Abstracting Unit will inform the Right of Way Bureau Chief in writing that the work is acceptable.
Section 2.3-Appraisals

1. Before beginning any acquisition activities, the T/LGA shall deliver all appraisals, including the basic data, to the Appraisal Review Unit of the Right of Way Bureau.

2. The Appraisal Review Unit will review all reports to determine if the work was performed in conformance with applicable state and federal rules and regulations.

3. In the event that the work is found to be unacceptable, all submitted reports will be returned to the T/LGA.

4. The purpose of this appraisal review is not to determine just compensation, but rather to determine whether the T/LGA appraisals conform to federal and state statutes and regulations.

5. In no event shall the appraisal review function be contracted by the T/LGA to a consultant.

6. When the work has been determined to be in compliance, the Appraisal Review Unit will inform the ROW Bureau Chief in writing that the appraisals are acceptable.

Section 2.4-Acquisition

1. When the appraisals have been sufficiently reviewed and accepted by the Right of Way Bureau Appraisal Review Unit, the T/LGA may begin acquisition activities.

2. When Acquisition is complete, the T/LGA shall inform the Tribal/Local Government agent of the Right of Way Bureau and schedule and on-site review.

3. The Tribal/Local Government agent will review a number of payment packages to determine if the work was performed in conformance with the applicable state and federal rules and regulations.

4. All actions and documents relating to the acquisition of any particular parcel are subject to review by the Department and the FHWA. This includes, but is not limited to, offer amounts, settlement agreements, applicable dates (title and/or appraisal), contracts, and signatures. Documentation supporting each acquisition must be maintained in a parcel file in the proper order.
5. In the event that a work is found to be unacceptable, all submitted payment packages will be returned to the T/LGA. No approval will be issued for the project until the Department’s Right of Way Bureau is satisfied that the work meets federal and state requirements.

6. When the work has been determined to be in compliance, the T/LGA will inform the Right of Way Bureau Chief that acquisition activities are acceptable.
RIGHT OF WAY PROCESS
- Minimum Times -

1-2 Months  Title Search  Review Title Reports
1-2 Months  Property Survey
2-6 Months  Right of Way Maps  Review R/W Maps
1-2 Months  Appraisal  Review Appraisals
2-3 Months  Acquisition  Condemnation???
4-5 Months  Relocation

Right of Way Certification

IT TAKES TIME
PLEASE START EARLY
T/LGA RIGHT OF WAY
ACCEPTANCE PLAN
MONITORING PROCEDURES

General

All items submitted to the Right of Way Bureau for approval must be made through the Cost Scheduling Manager. The Cost Scheduling Manager will assure that the appropriate ROW Unit receives the submittals sent from the T/LGA.

In order to assure compliance with applicable regulations, and in view of the fact that not all of the work will be reviewed, the following minimum considerations will be included in the assessment made by the appropriate Right of Way Bureau unit prior to certifying the portion of the work relating to their responsibility:

Land Abstracting

1. The qualifications of the firm and of the individual actually doing the research and/or examination will be determined.

2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees.

3. The date of the last update relative to the signing of the conveyance documents and approval of the ROW maps will be noted to assure that the update is within the allowed limits.

4. The appropriateness of the type of search to the ROW need will be reviewed.

5. No less than one review of each type of research required will be conducted (Takes, CMEs, TCPs).

6. Is Title Insurance provided?

7. Have all encumbrances been satisfied?
Appraisals

1. The qualifications of the firm and of the individual actually doing the appraisal will be determined (Appraisal Unit Supervisor).

2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees (Appraisal Unit Supervisor).

3. If the Waiver of Appraisal was used, was written permission obtained from the Department prior to the initiation of the appraisal process (Appraisal Unit Supervisor)?

4. Were the appraisals begun after the approval of the ROW maps?

5. Was the owner provided an opportunity to accompany the appraiser?

6. Does the name and date on the ROW map correspond to the title report (Contract Coordinator)?

Acquisition

1. The qualifications of the firm and of the individual actually doing the acquisition will be determined by the Tribal/Local Government agent.

2. The contract between the public entity and the fee service providers will be examined by the Tribal/Local Government agent to determine the reasonableness of the fees.

3. The Letters of Offer will be checked to assure that they were not presented prior to the date of the reviewed and approved appraisal, and the Federal authorization to proceed if Federal-aid funds are sought for this activity.

4. The process for Legal and Administrative settlements will be reviewed in all cases to assure that procedures were followed.

5. When donated property is involved, the Tribal/Local Government agent will review the proper documentation to authenticate the acquisition process.
SECTION 3-RAILROADS

Section 3.1-Railroad Adjustments

During the process of project development it may become apparent that it will be necessary to relocate and/or adjust railroad facilities, install warning systems, and/or provide new crossings. The state can, in some cases, use an existing railroad Department Master Agreement or the Railroad and State can negotiate a new one. Agreement shall conform to the most current CFR relating to Railroad-Highway Projects.

Railroad Agreements differ from other type agreements for several reason, the main ones being:

1. Each railroad favors a separate form of agreement;

2. A transfer of real property or use of railroad property is involved, for which provisions must be made in the agreement;

3. When Highway construction is performed on railroad property, the railroad is interested in the highway construction plans for the proposed work on railroad property and/or rail operations;

4. Construction on railroad property entails certain risk of damage to railroad property and rail traffic. Provisions must be made in the agreement for protective services that provide for railroad flagmen, or other watchmen, and for protection of the railroad by the highway contractor in the form of insurance. The insurance provided by the highway contractor, obtained on behalf of the railroad, shall conform to the most recent CDR relating to, Railroad-Highway Insurance Protection and the Department’s current Standard Specifications for Highway and Bridge Construction, Section 107.25, Insurance requirements, and any modifications thereto. In some cases, the insurance requirements may differ from those previously outlined, in which case such requirements must be handled as per arrangements between the Department and the railroad.

In projects involving railroad right of way, the railroad company shall be furnished plans illustrating a tie from the highway project centerline to a railroad milepost. A proposed project typical section and other appropriate drawings and information shall also be supplied.
If the project involves an existing grade separation, the Railroad/DOT No. of crossings shall also be included in the plans and documents. The intent of this effort is to provide the railroad as much information as possible so that its engineers may evaluate the impact of the T/LGAs construction project on the railroad’s facilities and tracks and also to develop the agreement and cost estimate in a timely fashion. Typically it takes the railroad six to twelve months to process an agreement. If any project changes occur that affect railroad property after the engineering authorization has been provided, the process will most likely need to begin all over again, as railroad personnel who reviewed the project plans prior to the change shall review other potential impacts to the railroad due to these changes.

For more detailed information on railroad considerations, impacts, and guidance, please refer to the Department’s Railroad Unit Supervisor.

**Section 3.2—Railroad Agreement Provisions**

Standard Agreements – The written agreement between the T/LGA and the railroad shall, as a minimum, include the following, where applicable:

1. A reference to the provisions of the 23 CR, Part 646, Subpart A, and Subpart B, and also 23 CFR, Part 140, Subpart I, as a part of the text;

2. A detailed statement of the work to be performed, including the obligations of both parties;

3. The method of payment, lump sum or actual cost of the work performed;

4. On projects which are not for the elimination of hazards at highway/railroad crossings, the extent to which the railroad is obligated to move or adjust its facilities at its own expense shall be outlined;

5. The railroad’s share of the project cost, if any;

6. An itemized estimate of the cost, and description of the work to be performed by the railroad;

7. Provisions regarding reimbursement record keeping and audits.
8. Method to be used for performing the work, either by the forces of the railroad, or by contract awarded to the lowest qualified bidder, or by a contractor on a continuing contract at reasonable rates;

9. Maintenance responsibilities;

10. Form, duration, and the face amount of the insurance policy(s) required, or certificates of insurance attesting to the adequacy of coverage required for contractor work on railroad property;

11. Appropriate reference to or identification of plans and specifications;

12. Statements defining the conditions under which the railroad will provide or require protective services and the method of reimbursement to the railroad; and

13. Provisions regarding inspection of any reimbursable work performed.

14. The T/LGA must send a draft of the proposed agreement to the Railroad Unit Supervisor. The railroad Unit will review the agreement or discuss any necessary changes with T/LGA.

SECTION 4-UTILITIES

During the process of project development it may become apparent that it will be necessary to relocate and/or adjust utilities in order to accommodate the construction effort. For more detailed information on utility considerations, impacts, and guidance, please refer to the Department’s current Railroad and Utilities Manuals. A copy of the manual may be obtained from the Department’s Railroad and Utilities Section.

Section 4.1-Reimbursable Relocation Costs

NMSA 1978, Sections 62-1-2 and 67-3-12, as amended, provide for use of public right of way by utilities. NMSA, 1978, Sections 67-8-15 and 67-8-21, as amended, provide the authority for the Department to reimburse for utility adjustments under limited circumstances. If the utility can provide the following, then the utility relocation may be compensable:

1. The utility owner must demonstrate a compensable property right, or that the relocation is necessary to accommodate a project on the Interstate System;
2. A pre-existing FHWA agreement between the parties, that has been executed and provides for reimbursement.
The T/LGA must send a draft of the proposed agreement to the Utilities Unit Manager. The Utilities Unit will review the agreement or discuss any necessary changes with T/LGA.

All records pertaining to utility relocation on federal-aid or state projects must be retained by the utility and the T/LGA for three (3) full years from the date of the final reimbursement has been received by the utility. Department and FHWA personnel shall be provided access to project records upon reasonable notice.

**Section 4.2 - Documentation for Reimbursable Relocations**

The minimum documentation required for relocations is listed below:

1. Copies or proof of compensable property interest, such as a private easement, warranty deed, or other property interest documentation;

2. A relocation plan diagrammed on the highway construction plan and profile sheets showing the existing and proposed roadway features and utility relocation plan. The plan shall be drafted so that the utility relocation plans become a part of the original construction plan assembly, if possible;

3. A detailed estimate of the proposed relocation costs. A format of the detailed estimate is available from the Department’s Utilities Unit;

4. A contractual agreement with prior approval from the Right of Way Bureau and FHWA if federally funded between the utility owners and the T/LGA addressing the relocations. Forms may be obtained from the Department’s Utilities Unit;

5. Permit Application and Plans, if required, to install the utility or relocate the utilities within the public right of way;

6. As-built plans of the relocated/installed building utilities;

7. If road or street work involving utilities takes place within a railroad’s right of way, a railroad agreement and related documents (e.g., railroad permit) may be required;

8. Other documentation as deemed appropriate by the Department.

**Section 4.3 - Non-Reimbursable Relocations**

Non-Reimbursable relocations require that the utility owner pay for the relocations. Items 2, and 8, outlined above, are also applicable in these cases.
SECTION 5-RAILROAD CERTIFICATION AND UTILITY CERTIFICATION

T/LGAs must recognize that railroad and utility certifications are a critical component in the process of preparing a project for construction bids. This certification is a prerequisite to FHWA authorizing project funding and therefore, must be prepared in a timely manner. The T/LGA must certify that all railroad and/or utility relocation coordination and arrangements have been made. The T/LGA must certify that all railroad and/or utility relocation coordination and arrangements have been made. The T/LGA must identify all conflicts caused by the proposed construction and certify that negotiations to resolve these conflicts have been completed. If no relocations are required, the Certification Letter must so state.

The Railroad and Utilities certification letters must be received by the Department’s Railroad Unit Supervisor and Utility Unit Supervisor at least thirty (30) calendar days prior to the anticipated PS&E Review date. This is to allow sufficient time to coordinate with the FHWA. The following is requires in the certification letter:

1. Identification of the railroad utility owner.

2. Description and scope of relocation work, including the type and size of the facility and the extent of the relocation, including locations of relocations.

3. Who will perform the relocation and when the work will begin and end? If the exact dates are not known, the utility owner shall provide an estimate of time.

4. Who will be financially responsible for the relocation; are the costs reimbursable or non-reimbursable (participating or non-participating).

SECTION 6-RAILROAD NOTICES TO CONTRACTOR AND UTILITY NOTICE TO CONTRACTOR FOR INCLUSION IN HIGHWAY CONTRACTS.

On projects involving railroad facilities, it may be necessary to include a notice to contractor so as to include previously unavailable information that may affect bids in the Railroad T/LGA Agreement. On projects that will involve concurrent utility and highway work, the T/LGA must develop and submit a Notice to Contractors that details which utility will perform concurrent utility work, the location(s) where the work will occur, who will perform the work, when it will start and end, a contact person and phone number, and any other details that may impact highway construction and operation. The Notice to Contractors must be submitted in final form along with the Certification Letter. More information on either of these processes is available from the Railroad and Utilities Units.
RIGHT OF WAY HANDBOOK

VOLUME VIII

BUDGET AND AUDIT UNIT

JANUARY 2016
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CHAPTER 1   PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.
The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

SECTION 3-STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf, linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2 AUTHORITY

SECTION 1-GENERAL
The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3 ORGANIZATION

SECTION 1-GENERAL

The Right of Way Budget and Audit Unit is located in the Right of Way Bureau. The Unit is responsible for the fiscal planning and management activities of the Road Betterments Program for the Right of Way Bureau.

The Budget and Audit Unit is under the direction of an Accountant and Auditor Supervisor, who reports directly to Right of Way Bureau Chief. The Budget and Audit Unit staff is composed of Accountants and Auditors.

SECTION 2-DUTIES

Unit Supervisor

The Budget and Audit Unit Supervisor is responsible for planning, assigning, directing and supervising the work of the Unit’s personnel. The Unit Supervisor shall review the work of the Accountants and Auditors and advice and guide them on difficult problems and issues.

The Accountants and Auditors duties include:

1. Assure Right of Way Bureau is in compliance with all federal laws and guidelines, all state statutes and procurement codes, and all Department policies, guidelines and requirements in the acquisition of properties and in contractual agreements of all kinds.

2. Prepare requests for State and FHWA authorizations, which are submitted to Project Oversight Division for further processing, to proceed with the acquisition of right of way and relocation assistance.

3. Review and process all documents, which comprise a payment package for issuance of a warrant to property owners or to the Courts in cases of condemnation.

4. Audit all fiscal transactions for correct application of budget and cost accounting codes relative to the Road Betterments Program Fund as it relates to the Right of Way process.

5. Establish contractual service agreements and review and process for payment contract billings for fee appraisal, acquisition services, relocation services, title abstracting, Title Plant Use, special technical reports, utility, court reporter services, and all other professional services contracted by the Right of Way Bureau relative to the Road Betterments Fund.
6. Review and process all documents for utility contracts and payment packages.

7. Serve as a liaison unit to the concerning claims to the Federal Highway Administration for right of way expenditures, and to the Contracts Administration Units concerning encumbrances.

8. Initiate and maintain Project Authorizations, Forms PJ, PZ, and SPDT for all Right of Way projects.

9. Initiate and maintain annual Road Betterments project budget and prior year encumbrances.

10. Maintain ledgers covering all Right of Way project activity payments; Right of Way individual projects and overall Section Program balances shall be available upon request.

11. Prepare special reports as requested by management.

12. Reconcile all Section project encumbrances with final project costs and disencumber amounts not needed annually.

CHAPTER 4 PROCEDURES

SECTION 1—RIGHT OF WAY PROJECT BUDGET

The Budget and Audit Unit prepares the annual ROW Road Betterments budget for Right of Way acquisition and related costs and utility costs for those construction projects listed in the State Transportation Improvement Program (STIP), which require right of way and utility adjustments.

The Budget and Audit Unit maintains prior year encumbrances for those projects approved in prior year annual programs.

The Budget and Audit Unit prepares Road Betterment budget and other financial reports for management or other governmental entities upon request.

SECTION 2—FEDERAL PARTICIPATION

Section 2.1—Requirements and Limitations
The following general overview of the federal requirements is presented to provide the process allowances and limitations as prescribed in 23 CFR 710. The reader is cautioned to refer to the authority resources listed in Chapter 2 for complete information.

Authorizations for the use of federal funds are obtained as follows:

1. The Budget and Audit Unit requests, in writing, Federal Highway Administration (FHWA) authorization to proceed with right of way acquisition and for utility adjustments if federal funds are to participate in the costs related thereto.

   Acquisition of real property or interests therein for highway or highway related purposes which are determined necessary by project design requirements or other FHWA policy requirements will be authorized by FHWA on Federal-aid projects.

2. Real property or interests therein pursuant to Title 23 CFR and Title 49 CFR, and

3. Whole properties or portions thereof to a logical boundary or barrier, thus avoiding severance damage payments and providing a highway facility more in conformity with the neighborhood through which it passes.

Concurrent with or subsequent to program approval, FHWA may, in response to a Department request:


1. Authorize the Department to proceed with those right of way activities necessary for the completion of the final environmental impact statement or environmental assessment and preparation for public hearings, or

2. Authorize the Department to proceed with all preliminary right of way activities, including property appraisals, up to but not including negotiations, with the condition that appraisals of partial takings will not be made until the Department has prepared right of way plans, or

3. Authorize the Department to proceed with those right of way activities and authorize the acquisition of rights of way on a project with the stipulation that the following requirements will be met before acquisition:

   A. The provisions of 23 CFR 771, have been met relative to environmental impact statements, findings of no significant impact, and public hearing transcripts and certifications, and

   B. The provisions of 23 CFR 450 have been met.

Authorizations for hardship and protective buying are obtained as follows:

1. In extraordinary cases or emergency situations the Department may request, and the Federal Highway Administrator may approve, federal participation in the acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of processing the final environmental impact statement or adoption of the negative declaration, but only after:

   A. The Department has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or

   B. A public hearing has been held or an opportunity for such a hearing has been afforded. Proper documentation shall be submitted to show that the acquisition is in the public interest and is necessary to:

      1) alleviate particular hardship to a property owner, on his request, in contrast to others because of an inability to sell his property;

      2) Prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives.
2. Hardship acquisition and protective buying procedures shall not apply to properties subject to the provisions of 49 U.S.C. 1653(f) (commonly known as section 4(f) or 16 U.S.C. 470(f) historic properties) until the required section 4(f) determination and the procedures of the Advisory Council on Historic Preservation are completed. Acquisition of property shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

3. Ultimate federal participation in the cost of property acquired is dependent upon the incorporation of such property in the final highway right of way. Where a parcel is partially incorporated, federal participation will be in accordance with the alternative selected for statewide application pursuant to 23 CFR 710.203.

4. Subject to paragraph 23 CFR 200.9, the Department may acquire property with its own funds before FHWA program approval, and not jeopardize federal participation in subsequent project costs, provided the Department's acquisition activities comply with the provisions of Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) et seq.], the Uniform Act of 1970 (42 U.S.C. 4601 et seq.), and 49 CFR Part 24. Costs so incurred are not eligible for federal participation.

Federal-aid project agreements on right of way projects shall be prepared as per 23 CFR 630 Subpart A:

1. Project agreements and modifications thereof shall be prepared and executed in accordance with 23 CFR 630 Subpart A.

2. Project agreements may be entered into at any time after federal funds have been obligated on the project. The estimate of cost of right of way required for programming a project may be used for project agreement purposes provided a more accurate and up-to-date estimate is not available.

3. Project agreements covering acquisition of right of way shall, pursuant to 23 U.S.C. 108(a), contain a clause providing for the refund of any payments made by the FHWA in the event that actual construction of a road on such rights of way is not undertaken by the close of the 20th fiscal year following the fiscal year in which the agreement was executed. Pursuant to the State's written request, FHWA may approve a longer period which is determined to be reasonable. The Department will be considered in compliance with the statutory requirements where, before the expiration of the approved period, it has taken all of the following actions:

   A. Awarded a contract for construction of a reasonable section of the highway covered by the agreement,

   B. Proceeded with sufficient actual work to give visual evidence thereof at the construction site,
C. Provided evidence of good faith to proceed without delay to complete construction of the highway upon the entire length of right of way covered by such project agreement.

Federal-aid participation in right of way costs incurred by the Department for highway or highway related projects shall meet the following in accordance with 23 CFR 710.203:

1. When there has been approval of a program and the Department has been authorized to proceed with right of way activities and, after the effective date of the authorization, the Department legally obligates itself under state law to pay right of way costs.

2. When costs are incurred in conformity with state law and Federal Highway Administration (FHWA) directives.

3. When costs are recognized and recorded as an obligation in the accounts of the Department.

4. Federal-aid participation may not exceed the statutory limitation for the particular federal-aid funds used.

5. On public land highways and on defense access roads as defined in Title 23 U.S.C. 101a and 210, the extent of federal participation will be in accordance with specific agreements between FHWA and the Department.

6. Reimbursement of costs shall be made only after the project agreement has been executed.

Section 2.2-Reimbursement Policy

Federal funds may participate in payments made by the Department for real property or interests therein acquired in accordance with applicable state and federal law and FHWA directives. Unless otherwise provided, federal funds may not participate in the costs of real property not incorporated into the final highway right of way.

Federal participation guidelines are as per 23 CFR 710.203:

1. Federal funds may participate in any expenditure of a type normal to the operation of the Department and incidental to the acquisition of rights of way, whether the acquisition is by negotiation or condemnation.
2. Federal participation will not be allowed in charges for the administrative and overhead expenses of either the headquarters or, field offices of the Department or other publicly maintained land acquisition organizations. When a supervisory or administrative employee is engaged in work chargeable to a specific project, federal participation may be allowed in claims for salary and related expenses on that project.

3. Federal funds may participate in the usual costs and disbursements chargeable to a condemning authority under state law as part of a valid bill of costs approved by a court in a condemnation proceeding. Whether the costs are included in court judgments or awarded as courts costs in litigated cases; federal participation will not be permitted in the cost of a property owner's attorney fees, appraiser fees, expert witness fees, or similar costs which are paid by the Department in connection with acquisition of rights of way, with the following exceptions:

   A. Where the final judgment is that the property cannot be acquired by condemnation, or
   B. The proceeding is abandoned by the acquiring agency, or
   C. An inverse condemnation proceeding is successfully maintained.

In any of the foregoing exceptions, participation will be limited to such sum as will in the opinion of the court or the head of the agency on whose behalf the proceeding was instituted; reimburse the owner for reasonable costs, disbursements, and expenses he actually incurred, including reasonable attorney, appraisal, and engineering fees.

4. Federal funds may participate in payments by the Department to a property owner for the following costs necessarily incurred in transferring property to the State:

   A. Recording fees, transfer taxes, and similar expenses incidental to conveying real property.
   B. Penalty costs for prepayment of pre-existing recorded mortgage entered into in good faith.
   C. The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the Department or effective date of possession by the Department, whichever is earlier.

5. Where state employees are directly engaged in project activities or provide technical guidance, consultation, training, or otherwise work directly on specific projects with employees of a political subdivision
to accomplish real property acquisition or in escalating such project operations to an acceptable level of performance, federal funds may participate in the costs of such project activity.

Federal participation will not be permitted in the payment of special assessments or in the Payment of taxes, except as provided in 23 CFR 710.203.

Additional guidelines for federal participation are:

1. Federal funds may participate in the net cost incurred by the Department in the leasing, rental, maintenance, disposal and protection of improvements, rodent control, and clearance of real property acquired for right of way purposes. Taxes or payments in lieu of taxes required to be paid by the Department are a legitimate property management expense and may be deducted from the gross rentals received.

2. Federal funds may participate in property management or demolition costs on excess lands acquired by the Department when federal participation in the costs of the related right of way acquisition is based on provisions of Title 23 CFR 710.

Federal funds may participate in the costs of access control in accordance with the following guidelines.

1. Where full or partial control of access is obtained on an existing highway, federal funds may participate in the cost of access rights, whether or not other real property interest is acquired, providing the payments for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain. Participation in these costs is not contingent upon further construction of the highway facility.

2. Federal funds may not participate in payments for access rights where the controlled access highway is on a new location.

Subject to the provisions of Title 23 CFR 635, federal funds may participate as either a right of way or construction item in the costs of acquiring land or interests therein outside the normal right of way for the purpose of obtaining road building material to be made available to the contractor.

The cost of acquiring interests in lands outside the normal right of way is eligible for federal participation as a right of way or construction item:
1. For permanent use; such as for drainage or slope easements.

2. For temporary use; such as for construction purposes or for right of way clearance.

Federal funds may participate in severance or consequential damages, or both resulting from a highway project upon an affirmative showing that the acquiring agency is obligated to pay such damages under applicable law, provided that such damages are of a type generally compensable in eminent domain, and are determined by FHWA to be generally reimbursable on federal-aid highway projects. Payments made for personal property (except as otherwise provided), loss of business or goodwill, circuit of travel, diversion of traffic, and other items of damage not generally compensable in eminent domain are not eligible for federal participation unless eligible under State Law.

Utility adjustment costs may be participating according to the following criteria:

1. If a utility is displaced by a federally assisted highway project, federal funds may participate in the cost of real property acquired by a utility to replace real property owned by the utility and conveying to the Department for highway right of way as provided in Title 23 CFR 645, Subpart.

2. Federal funds may participate in the cost of acquisition of non-operating real property of a utility in the same manner as for other privately owned property.

Court deposits and resulting interest are to be treated as follows:

1. Federal funds may participate in the amount deposited in court in connection with the condemnation of a parcel when the deposit is:

   A. The amount of the Department's approved estimate of just compensation, or

   B. The amount established by court order, or

   C. The amount established by other means required under state law as a condition of the Department obtaining possession of the right of way.

2. When the amount deposited exceeds the amount of the final settlement or award, the federal share of the excess deposit shall be promptly credited to the project by the Project Billing Unit under the Project Oversight Division.

3. Where, in the opinion of FHWA, the total payments on progress vouchers for the federal share of court deposits become excessive, further payment may be withheld until the situation is remedied. The federal share of the total amount of court
deposits, plus the federal share of other eligible expenses incurred on a project may not exceed the federal funds included in the project agreement.

4. Federal funds may participate in the cost of interest on the amount of the deposit into court for a period of not to exceed 45 days, from the date of deposit, where due to court procedures the deposit is not immediately available to the owner. Federal funds may not participate in such interest costs where the deposit is available but the owner chooses not to withdraw it.

5. Where a condemnation settlement or court award exceeds the amount deposited into court, federal participation may be allowed in interest paid on the amount in excess of the deposit from the date of the original deposit until the date of settlement or court award. Where court procedures prevent the amount from being delivered immediately following settlement or court award, federal participation may be allowed in interest paid on the excess amount for a period not to exceed 45 days following such award, federal participation may be allowed in the required interest payment on the excess until 45 days after the final determination.

6. Federal participation shall not be allowed in interest cost on payments to an owner where the Department accepts a voluntary right of entry instead of making such payment available to the owner, either directly or by deposit with the court, except in cases of unusual circumstances with prior approval by FHWA. Where the final settlement or award exceeds the amount which could have been deposited or paid, federal participation in interest costs on the amount of the excess may be allowed from the date of physical entry upon the parcel.

7. FHWA will be billed for a maximum of 45 days interest. Interest accrued beyond 45 days will be paid with state funds.

Federal participation may be allowed in payments made to a tenant for his buildings, structures, or other improvements which are acquired by the Department to the extent that such payment is not a duplication of any payments otherwise authorized by law.

When state owned lands are exchanged for lands required for highway purposes, federal funds may participate in the current fair market value of the land being exchanged. This concept is conditioned in that participation in the total consideration, including land, any cash payments, and any construction features to mitigate damages, may not exceed the pro rata share of the fair market value of the land required for highway purposes plus damages.

When only a portion of a property is required for highway right of way or highway related needs and the Department elects to acquire a larger portion or the whole property, federal participation will be in accordance with one of the following alternatives selected by the Department for statewide application, as set forth in its Right of Way Handbook. The provisions of this paragraph do not apply to uneconomic remnants.
1. First alternative:
   
   A. Federal participation in the Just Compensation of the portion of the property required for the highway project plus damages, if any, to the remainder.

2. Second alternative:
   
   A. The purpose of this alternative is only to provide an alternative means of establishing the amount of damages where only a part of a property is required for federally assisted highway project purposes. There will be no federal participation in any relocation costs associated with that part of the tract acquired which is outside the right of way.

   B. An initial installment of the federal pro rata share of the cost of the land required for the project determined by apportioning the land cost of the entire tract between the parts required and part remaining solely on the basis of area, plus the cost of improvements necessarily removed for the project, less salvage value of the improvements if the improvements are retained.

   Federal funds may participate in the acquisition costs of uneconomic remnants if acquired whether or not the remnants are incorporated in the highway right of way.

   Except as provided in 23 CFR 710, Subpart D, federal funds may not participate in the cost of acquisition of a property, or related incidental costs, where:

   1. Payments have been delivered in person by those who have negotiated, appraised, or acted as reviewing appraiser for the property, or

   2. Payments have been delivered in person by the attorney who negotiated a settlement with the owner.

   The provisions of this paragraph apply whether such person was a salaried employee of the Department or other acquiring agency, or was retained on a fee basis.

   Costs of construction performed by the Department in order to mitigate damages to a remainder of real property are eligible for federal participation, provided that such construction results in an appropriate reduction in compensation to be paid the owner.

   If otherwise eligible, federal funds may participate in the cost of appraisal and specialty reports obtained by the Department in accordance with its accepted plan of operation.

   Where the Department prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, federal participation shall be allowed.
The owner of real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

1. The final judgment of the court is that the Department cannot acquire the real property by condemnation; or

2. The condemnation proceeding is abandoned by the Department other than under an agreed upon settlement; or

3. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Department effects a settlement of such proceeding.
Section 2.3-Support for Claims

All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance and payment records, and other data and documents relative to the acquisition of the right of way shall be available for inspection at reasonable times by authorized representatives of the FHWA and other authorized federal representatives.

Right of way plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents and papers to which FHWA needs to refer shall carry the federal-aid project number for ready identification.

The same procedures will be required for state projects.

A second level review of the support for claims will be conducted by the Acquisition and/or Relocation Assistance Unit Supervisors and will indicate on the appropriate checklist that the payment request is adequately supported.

Section 2.4-Withholding Federal Participation

If the FHWA determines that any amount claimed is not adequately supported, subject to the provisions of 23 CFR 1.9, FHWA may approve federal participation in the amount it determines is adequately supported and shall notify the Department in writing. If FHWA does not agree with the justification it will provide notification to the Department, citing the reasons why items and amounts are not eligible for federal participation. Where correctable noncompliance with provisions of law or FHWA requirements exists, federal funds may be withheld until compliance is obtained. Where the noncompliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total.

If, at any time, the FHWA determines that the organization, practices, and procedures actually applied by the Department are not in substantial conformity with those accepted by the FHWA, or are otherwise not acceptable, the FHWA shall notify the Department in writing. No further authorizations or reimbursements for acquisition of right of way shall be issued by the FHWA after the date of such notification until:

1. A review of the facts substantiates to the satisfaction of FHWA that the Department's accepted practices and procedures are satisfactory and will be adhered to by the Department, or

2. Revised practices and procedures have been submitted by the Department and accepted by FHWA. The FHWA may participate in claims made or to be made by the Department following review of the facts pertaining to this matter.
SECTION 3-PROJECT AUTHORIZATION

Section 3.1-Federal Authorization for Right of Way Acquisition and Relocation Assistance

Federal authorizations for right of way acquisition and relocation assistance are requested through the Funding Control Section when the cost estimates for the project are submitted to the Budget and Audit Unit by the Appraisal, Acquisition, and Relocation Assistance Units.

Requirements for an authorization include:

1. Request for Authorization or Approval, must be completed and forwarded to the Funding Control Section with the following:

   A. Cost estimate;

   B. Number of partial takes to be acquired;

   C. Number of total takes to be acquired;

   D. Total number of ownerships;

   E. Estimated number of improvements;

   F. Estimated number of relocation payments for:

      1) owners,

      2) tenants,

      3) residential moves, and

      4) business, non-profit organizations, and farm moves;

   G. Indication of whether acquisition and relocation are to be performed by staff personnel or consultants. Contracts and scope of work agreements for acquisition and/or relocation assistance must be submitted to FHWA for approval prior to the consultant beginning work.

2. A letter from the Environmental Section shall be submitted to the FHWA by the Budget and Audit Unit stating that all environmental and archaeological reviews on the project have been approved by FHWA.
3. The Lands Engineering Unit shall submit maps to the FHWA with a letter. A copy of this letter shall be submitted to the Budget and Audit Unit which is to be included with the Request for Federal Authorization.

A log is maintained by the Budget and Audit Unit with all pertinent information entered which documents the status of all state and federal project authorizations.

Appraisal, acquisition, and relocation offers shall not be performed prior to authorization.

Section 3.2-State Authorization for Right of Way Acquisition and Relocation Assistance

Prepare PJ, PZ, SPDT, and other required forms and submit to Funding Control.

Section 3.3- Authorization for Advance Acquisition

In exceptional cases, after program approval, the Budget and Audit Unit will request authorization for the advance acquisition of certain parcels. The Right Of Way Section Manager will advise the Budget and Audit Unit whenever it is in the public interest to request authorization for an advance acquisition. Notice of approval of the environmental clearance for the specific action is required.

Real Property Acquisition: The Department may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The Department may undertake early acquisition for corridor preservation, access management, or other purposes.

Eligible Costs: Acquisition costs incurred by the Department prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State’s share of a Federal-aid project if the following conditions are met:

1. The property was lawfully obtained by the Department;
2. The property was not land described in 23 U.S.C. 138;
3. The property was acquired in accordance with the provision of 49 CFR part 24;
4. The Department complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
5. The Department determined and the FHWA concurred that the action taken did not influence the environmental assessment for the project, including
   i. The decision or need to construct the project;
   ii. The consideration of alternatives; and
   iii. The selection of the design or location; and
6. The property will be incorporated into a Federal-aid project.
7. The original project agreement covering the project was executed on or after June 9, 1998.
Protective Buying and Hardship Acquisition.

General Conditions. Prior to the Department obtaining final environmental approval, the Department may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

1. The project is included in the currently approved STIP;
2. The Department has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
3. A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

Protective Buying. The Department must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

Hardship Acquisitions. The Department must accept and concur in a request for a hardship acquisition based on a property owner’s written submission that:

1. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and
2. Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

Environmental Decisions.

Acquisition of property for protective buying or hardship acquisitions shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.
Section 3.4-Project Agreements

A request for a project agreement is prepared and submitted to the Funding Control Section for further processing and then submittal to the FHWA, simultaneously with the authorization request for appraisal, acquisition, and relocation assistance.

SECTION 4-FEDERAL AID, PRE-AUDIT INELIGIBILITY NOTIFICATIONS

All Federal-Aid Pre-Audit Ineligibility Notifications relating to Right of Way matters are received by the Right Of Way Bureau Chief. The Right Of Way Bureau Chief then forwards the notification by memorandum to the Right of Way Unit responsible for furnishing the additional documentation required to clear up the problem cited in the notification with a copy to the Budget and Audit Unit.

If the notification is received prior to the time payment has been processed for items on the notification, the Budget and Audit Unit places a copy of the notification in the parcel file. Payments will be coded "non-participating" providing the notification has not been cleared at the time of the actual payment.

If the notification is received after payment is made, the Budget and Audit Unit will immediately process a journal voucher to change the item from participating to non-participating.

When the Federal Highway Administration advises that the item has been satisfactorily cleared and the exception is then eligible for federal participation, the Budget and Review Unit prepares a second journal voucher to reverse the entry from non-participating to participating.

SECTION 5-PAYMENTS

Section 5.1-Payments to Property Owners

When negotiations have been successfully concluded, the Acquisition Agent shall attach a Payment Package Checklist and submit the executed documents to the Acquisition Unit Supervisor. The Acquisition Unit Supervisor will review the package and determine if it is accurate, complete and that the payment request is adequately supported. He/ She will submit the payment package to the Right of Way Bureau Chief for approval and forwarding to the Budget and Review Unit for processing.
The Budget and Audit Supervisor will verify that the payment amount is within the amount authorized and encumbered.

The following items comprise the minimum documents required when the package is submitted for payment:

1. Payment Package Checklist.
2. Parcel Summary Sheet.
4. Form No. A-307 New Mexico Department of Transportation Contract.
5. Conveyance Documents - Warranty Deed, Easement Form, Quitclaim Deed, and other mortgage and loan releases if applicable.
6. Negotiator's Report (First through Final).
7. Form No. A-634 Title Report dated within 60 calendar days of the conveyance documents.
8. Other supporting documents such as a Power of Attorney, death certificate, written counter offer, administrative settlement prepared by the acquisition agent, etc. On parcels with a land value of $2,500.00 or less, the partial release and current taxes may be waived upon concurrence of the Lands Abstracting Unit Supervisor and the Acquisition Unit Supervisor.

Any incomplete or incorrect payment packages will be returned to the Acquisition Unit Supervisor, with an explanation attached stating the deficiencies either in the payment package, parcel file or other required documentation. Corrections shall be made priority and returned to the Budget and Audit Unit as soon as possible.

Budget approval is done by the Budget and Audit Unit Supervisor. When the payment package has been audited by two Budget and Audit Unit staff members, and the data is entered (into SHARE), the payment package is forwarded to the Budget and Audit Unit Supervisor for review and concurrence; then to the Right Of Way Bureau Chief for approval and signature. After proper signature, the Budget and Audit Unit Supervisor applies third level approval to the invoice in SHARE causing the issuance of a warrant.
The warrant is picked up from Accounting by the Budget and Audit Unit for mailing to the property owner or to be hand delivered by Right of Way personnel other than the person negotiating for the property. After the payment information has been posted to the payment ledger, the payment package is forwarded to Records for filing in the parcel file. When all payments have been made on a project and the project is considered complete, the project is closed by the Project Oversight Division. The Budget and Audit Unit disencumbers any remaining balances.

Section 5.2-Relocation Assistance Payments

Payment requests for relocation assistance, relocation moving costs, and supplemental housing payments are prepared by the Relocation Assistance Agent. Executed documents and the Relocation Payment Checklist shall be submitted to the Relocation Unit Supervisor who shall determine if the package is complete, accurate and that the request is adequately supported.

The payment request will then be forwarded to the Budget and Audit Unit for processing and entering of data into SHARE.

Payments are processed and handled in the same manner as the payments to property owners as described in Subsection 5.1.

Section 5.3-Payment of Administrative Settlements

When a settlement is made on the basis of an administrative determination and such settlement is in excess of the Review Appraiser's determination of value, the payment package shall contain a detailed justification statement with verifiable documentation in which the reasons for such settlement are set forth by the Agent and concurrence by the Acquisition Unit Supervisor. Approval is then obtained by the Right of Way Bureau Chief.

Section 5.4-Advance Payments to the Court

It is a requirement under NMSA 1978, Section 42-2-B that the amount of the Department's offer be deposited into the Court Registry at the time the condemnation suit is filed. Documents and information for condemnation shall be submitted by the Acquisition Unit Supervisor through the Right Of Way Bureau Chief to the Office of General Counsel (OGC) as soon as possible thereafter.
The OGC furnishes the Budget and Audit Unit a list of the parcels being included in the condemnation suit for the issuance of a warrant. The Clerk of the District Court signs for receipt of warrant when the attorney delivers the warrant for deposit. The OGC returns the signed document to the Budget and Audit Unit.

This original voucher is then forwarded to the ROW Records Unit for permanent filing.

Section 5.5-Payment of Court Judgments

After a court award has been rendered by a judge or jury and a judgment has been entered, the OGC forwards a copy of the judgment by memorandum through the Right of Way Bureau and then to the Budget and Audit Unit requesting payment. The payment is made to the Clerk of the Court of the indicated Judicial District and delivered by the attorney handling the case. A copy of the final signed judgment must be submitted to the Budget and Audit Unit prior to the time the warrant is delivered. The OGC also returns the signed original voucher (Form A-328) to the Budget and Audit Unit. This original voucher is then forwarded to the accounting section for permanent record. When an award exceeds the amount deposited by the Department with the Clerk of the District Court, Budget and Audit Unit will process payment for the additional sum to comply with the terms of the judgment.

Section 5.6-Trial Report

When a case is taken to trial and the court award is in excess of the Department's reviewed and approved appraisal amount, the OGC must furnish the Right Of Way Bureau Chief a confidential trial report to be used as the basis for issuing a warrant for payment or appealing the court decision. This report will be included in the parcel file for permanent record.

The report by the OGC should give a brief factual account of the trial, including the range of testimony by each party and the major issues developed. It should include an explanation of any variance between the Department's highest reviewed and approved appraisal amount and the amount of the Department's high testimony at trial, or the amount stipulated by the parties and submitted to the Court for its judicial determination of compensation. Also included are comments as to availability of material, legal errors, or other basis of appeal; an explanation of action regarding motions for remittal, or new trial or the taking of their appeal; and where applicable, a statement by the Department's Review Appraiser as to his determination of value of ineligible items.
Section 5.7-Payment of Legal Settlements by Stipulated Judgments

When a settlement is based on the recommendation of the Department's OGC, a signed request for legal settlement is submitted by the General Counsel, with supporting information as appropriate, in which the reasons for the settlement are described. The statement shall contain the concurrence of the Right Of Way Bureau Chief, approved by the Department Secretary or designee. A request for payment is submitted through the Right Of Way Bureau Chief to the Budget and Audit Unit with appropriate documentation. The warrant is hand delivered to the OGC so that signature may be obtained from the proper District Court Clerk along with a signed Stipulated Judgment. Data is furnished to the Budget and Audit Unit for permanent inclusion in the parcel file. The original signed payment voucher (Form A-328) is forwarded to the accounting section for permanent records.

Section 5.8-Payments for Escrow Services and Title Insurance

If escrow services or title insurance services become necessary, payments for these services will be made and charged to the appropriate project and parcel.

Section 5.9- Right of Way Professional Service Contracts

The Budget and Audit Unit is responsible for:

1. Collaborating with appropriate Unit Supervisor and the OGC preparing the Request for Proposal,
2. Preparing and advertising the legal notices,
3. Preparing the proposal package for prospective vendors,
4. Providing a prospective vendor listing and the proposal package to the contract administration section for distribution,
5. Collaborating with the appropriate Unit Supervisor and OGC and preparing the contract, for vendors selected by an appropriate committee,
6. Securing the OGC approval, of the contract,
7. Procuring other necessary contract signatures, and
8. Transmitting the contract to the Contract Administration Section for execution.
If telephone proposals are requested, the appropriate Bureau contract liaison will solicit bids. If the award is to be a sole source, the contract liaison, with the help of the Budget and Audit Unit Supervisor, will compose the letter of justification for approval.

After an executed contract original is received from the Contracts Administration Section, the Budget and Audit Unit will set up a ledger for each contract. This ledger will contain the following:

1. Name and address of contracted vendor;
2. Contract Information;
   A. Individual dollar amounts of contract as well as a total contract dollar amount,
   B. Contract number,
   C. Vendor number,
   D. Effective date of contract, and
   E. Termination date of contract.
(Repeat complete information for items 1 through 8 above for all amendments to the contract.)
3. All of the above information for any and all amendments if there are any;
4. Date of warrant;
5. Type of service being paid for;
   A. Warrant number,
   B. Amount paid, and a running balance remaining from the original encumbrance amount.

The Budget and Audit Unit shall forward the executed contract originals to the vendor. The Budget and Audit Unit shall authorize and encumber funds for payment to the vendor. The appropriate contract liaison shall review the billing and determine if it is to be approved for payment and so note on the billing. If not approved, it shall be returned to the vendor. After receiving an "approved for payment" billing, the Budget and Audit Unit shall be responsible for reviewing each payment as it is submitted, and assuring the payment is made only for reviewed and/or approved products and/or services. Payments made shall be entered into the ledgers for permanent record. These ledgers shall be reviewed at regular intervals internally, and may be supplied to the Contracts Administration Section at its request. The Budget and Audit Unit will
be responsible for assuring that the warrants for products and/or services rendered are delivered to the participating vendors.

If any amendments to the existing contracts become necessary, it will be the responsibility of the contract liaison, with the assistance of the Budget and Audit Unit contact, to initiate such amendments in accordance with the State Procurement Code and existing state and federal statutes. The contract liaison and the Budget and Audit will monitor all contracts.

**Section 5.10-Payments for Title Abstracting or Title Abstract Plant Use**

When title abstracting or plant use services are needed, existing requirements of the State and Federal Procurement Code shall be followed to secure an executed contract. Often only one or two qualified vendors exist in any given county. Often these contracts must, out of necessity, be sole source awards with justification. The Budget and Audit Unit, when necessary, shall be responsible for:

1. working with the Lands Abstracting Unit Supervisor and OGC in preparing the request for proposal
2. preparing and advertising the legal ads,
3. preparing the proposal package for prospective vendors,
4. providing a prospective vendor listing and the proposal package to the contracts administration section for distribution,
5. working with the Lands Abstracting Unit Supervisor and the OGC in preparing the contract,
6. securing the OGC approval of the contract,
7. procuring other necessary contract signatures, and
8. Transmitting the contract to the Contract Administration Section for execution.
If price quotes are requested, the Lands Abstracting Unit Supervisor will solicit proposals. If the award is to be a sole source, the Budget and Audit Unit, with the help of the Lands Abstracting Unit Supervisor, will compose the letter of justification for approval.

After an executed contract original is received from the Contracts Administration Section, the Budget and Audit Unit will set up the ledger for each contract. This ledger will contain the following:

1. Name of contracted title company,
2. Address,
3. Total contract dollar amount,
4. Contract number,
5. Vendor number,
6. Effective date of contract,
7. Termination date of contract,
8. Date of warrant,
9. Type of service being paid for,
10. Warrant number,
11. Amount paid,
12. Running balance remaining unpaid from the original encumbrance. (Repeat complete information for items 1 through 7 above for all amendments to the contract.)

The Budget and Audit Unit shall forward the title company's executed contract originals to the title company. The Budget and Audit Unit shall encumber funds for payment to the vendor. After receiving an approval for payment by the Lands Abstracting Unit Supervisor, the Budget and Audit Unit shall be responsible for auditing each payment as it is submitted, assuring the billing reflects the conditions of the contract. Payments made will be entered into the ledgers for permanent record. These ledgers will be audited at regular intervals internally and may be supplied to the Contracts Administration Section upon request. The Budget and Audit-Unit will be responsible for assuring the warrants for services rendered are delivered to the participating vendors.
If any amendments to existing contracts become necessary, it shall be the responsibility of the Budget and Audit Unit, with the assistance of the Lands Abstracting Unit Supervisor, to initiate such amendment in accordance with the State Procurement Code and existing state statutes. The Budget and Audit Unit shall monitor all title abstracting contracts, notifying the Lands Abstracting Unit Supervisor when contract expenditures approach the monetary limits of the contract.

The Department has existing, in as many counties as bids could be solicited, contracts for plant use services. When work becomes necessary in a county with no existing contract and no vendor is willing to bid, individual invoices will be paid from the Right of Way operational budget.
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CHAPTER 1 PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws and regulations pertaining to the Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.

The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new
FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

SECTION 3-STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at www.New Mexico Department Of Transportation.state.nm.us, linked through Divisions and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters, sections and subsections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5635.
CHAPTER 2  AUTHORITY

SECTION 1-GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Garrey Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA prior to implementation.
The Department is to follow uniform applicable procedures, as contained in the Handbook, for all projects regardless of the source of funding, that is, State funded projects will be administered in the same manner as Federally funded projects. This will ensure compliance with federal funding requirements in case of state funded projects that become federalized.

CHAPTER 3 ORGANIZATION

SECTION 1-GENERAL

Section 1.1-General Provisions

Right of Way office procedures fall within the domain and purview of the Right of Way Bureau Chief.

All Right of Way Units, whether involved with operations or administration are subject to these Office Procedures.

Section 1.2-Administrative Staff

The Right of Way Administrative staff is directly involved with office procedures. It does not participate, unless by direction of the Right of Way Bureau Chief, in field operations.

The Right of Way Administrative staff includes the Right of Way Bureau Chief, the Administrator, the Administrative Secretary, and the Cost Schedule Manager.

Section 1.3-Right of Way Staff

Though the Right of Way staff spends a considerable portion of their time involved with field operations, they shall, while in the General Office, observe all office procedures as outlined in this handbook.

The Right of Way Operations staff includes the Operations Section Chief, the Lands Abstracting Unit, the Acquisition Unit, the Relocation Assistance Unit, the Property Management Unit, Tribal/Local Government Unit, and the Water Acquisition Unit.

The Right of Way Valuations staff includes the Valuation Section Chief, the Review Appraisal Unit, the Appraisal Unit, the Records Unit and the Budget and audit Unit.

The Right of Way Railroad and Utilities staff includes the Railroads and Utilities Section Chief and the Railroads and Utilities Unit.
SECTION 2-DUTIES

Section 2.1-General

As this handbook is purposely limited to the duties of those units and personnel involved with office procedures, it will confine the scope of the duties herein described to those units and personnel. The duties of Right of Way units, which have their own separate handbooks, need not be detailed here. Such duties can more properly be found in the applicable handbook.

Section 2.2-Administrator

Assures that assignments are completed correctly and on time in order that Right of Way Bureau Chief's administrative functions, with respect to fiscal, property management and personnel, proceed in a proper and orderly fashion. Prepares Confidential Reports for Right of Way Bureau Chief and Section Chiefs of a technical and non-technical nature.

Counsels employees and provides guidance to the general public on various Right of Way Bureau issues.

Is responsible for the preparation of time sheets and summaries for payroll documents to assure proper payment to Bureau employees. Monitors personnel actions to assure accurate processing of annual increases, upgrades and promotions. Prepares and audits payroll and per diem vouchers to ensure accurate recording of expenses and timely payments to employees.

Prepares and monitors Operational Budget. Advises Bureau Chief and Section Chiefs on Budget Status and makes all of the Bureau's procurements. Prepares Annual Budget Request information to be used by Department during Legislative Budget Hearings. Maintains Property Inventory and manages fixed assets to provide an accounting of the Bureau's furnishings and equipment and insure that capital outlay items are tagged and placed on inventory.

Section 2.3-Administrative Secretary

Provides secretarial support to the Right of Way Bureau Chief, Administrator, Section Chiefs, Unit Supervisors, and other staff.

Administers and maintains general files, Project Development files and feasibility studies to allow Section staff the needed reference material to analyze status of highway projects throughout their development.

Updates and maintains the information for staff and advises Section's District Negotiation Agents of all inspections (Field, Grade & Drain, Plan in Hand, etc.) to allow proper coordination of right of way activities to meet critical letting dates.

Receives and distributes all incoming correspondence.

Handles distribution of legal descriptions, maps, judgments, condemnations, etc., from various consultants and municipalities to the proper Section staff for processing and development of right of way.
Initiates personnel actions to assure accurate processing of annual increases, upgrades and promotions.

Serves as the Bureau Personnel Liaison. Maintains the personnel records.

Coordinates training for all Right of Way staff.

Transcribes legal descriptions onto conveyance documents as transmitted to the Right of Way Bureau by the Lands Engineer Section.

Section 2.3-Records Unit

Logs, maintains, and secures all Right of Way project files, maps, Basic Data Reports, miscellaneous reference books and such other documents deemed worthy of safeguarding by the Right of Way Manager.

Inputs all new project files into the VAX All-in-One computer system, and assigns a discreet, electronic bar code to each file. File security is maintained at all times. Loans out project files to all Right of Way FHWA, and other individuals authorized to access such files by the Right of Way Bureau Chief.

Informs the Right of Way Bureau Chief immediately when any unauthorized individual seeks to gain access to Right of Way files.

Upon the receipt of funds from the Accounting Unit, and with the approval of the Right of Way Bureau Chief, the Records Unit Head will transmit to the proper county jurisdiction all necessary Right of Way conveyance documents for recording. It is anticipated that documents submitted to the Records Unit for recording will be sent to the appropriate county clerk's office no later than 30 days after receipt in the Records Unit.

Copies certain documents, e.g., Negotiator's Reports, contracts and conveyance documents, prior to their transmittal as part of a Payment Package to the Budget and Audit Unit.

Loans out new parcel files, awaiting payment vouchers, to the Budget and Audit Unit for processing.

Transfers completed project files and certain other documents to the File Room.

Files all loose and miscellaneous documents in the appropriate Right of Way file.
CHAPTER 4 PROCEDURES

SECTION 1 - GENERAL

Section 1.1-Correspondence Distribution INCOMING CORRESPONDENCE

All incoming Right of Way correspondence shall be placed into the Bureau's incoming box. The mail will be collected by the Right of Way Administrator. Correspondence addressed will be opened by the Administrator and date stamped prior to delivering it. Correspondence will be separated according to whether it relates to each unit. All incoming mail misdirected to the Right of Way Bureau will be placed in the Bureau's outgoing box.

OUTGOING CORRESPONDENCE (EXCEPT FHWA)

All outgoing Right of Way correspondence shall be placed into the Bureau's outgoing box. As applicable, it shall have the approval and bear the signature of the Right of Way Bureau Chief, outgoing correspondence shall be approved and signed by the Right of Way official so designated to assume this responsibility.

OUTGOING CORRESPONDENCE TO FHWA

All outgoing Right of Way correspondence directed to the Federal Highway Administration shall be placed in the appropriate outgoing box. As above, it shall, in each case, have the approval and bear the signature of the Right of Way Bureau Chief or designee. In the absence of the Right of Way Bureau Chief, outgoing correspondence to the FHWA shall be approved and signed by the Right of Way official so designated to assume this responsibility.

Section 1.2-Chain of Command

For purposes of authorization, document signature, correspondence signatures, decision making, and the like, the sequential chain of command for management of the Bureau is as follows:

1. Right of Way Bureau Chief
2. Unit Managers

SECTION 2 - LANDS ABSTRACTING

The initial documentation for Right of Way acquisition is the Title Report.

The Title Report is prepared by the staff of the Lands Abstracting Unit. It may also be prepared by a private contractor (consultant).
The Title Report is a vital part of a parcel file for a specific Right of Way project.

After submission, the Title Report will be logged in by the Lands Abstracting Unit. Title Reports will be maintained and secured by the Record Document Unit.

The Title Report may not be loaned out to non-Right of Way personnel without expressed approval of the Right of Way Bureau Chief.

For additional details on lands abstracting functions, please refer to Volume II, Lands Abstracting, Right of Way Handbook.

SECTION 3-RIGHT OF WAY MAPS

Right of Way maps are prepared by the Lands Engineering Unit, as per the Department's Right of Way Mapping Development Procedures, on the basis of information contained within the Title Reports. Preliminary maps and several editions of "final" Right of Way maps may be issued depending upon circumstances as a project develops.

When the Right of Way maps reach the Administrative Secretary, new project files are created. These new project files are sent to the Records Unit for bar coding and safekeeping. Copies of the Right of Way maps are distributed to Appraisal, Appraisal Review, Acquisition and Relocation.

Right of Way maps are maintained and secured by the Records Unit. They may be loaned out for official purposes to all authorized Right of Way staff.

Right of way maps may not be loaned to non-Right of Way personnel without the expressed approval of the Right of Way Bureau Chief.

Upon receipt of the preliminary approved Right of Way project maps, combined with title reports, legal descriptions, and the knowledge that funds have been encumbered, the Appraisal Unit has the authorization to proceed with its task, or hire a private fee appraiser.

Upon receipt of "final" approval Right of Way project maps, the appraisal, acquisition and relocation process may proceed to completion.

SECTION 4-APPRAISAL

The Appraisal Report is prepared by the staff of the Appraisal Unit. It may also be prepared by a private contractor (consultant).

The Appraisal Report will ultimately become an integral part of a parcel file for a specific Right of Way project.

Attached to the Appraisal Report will be the (CONFIDENTIAL, NOT FOR DISTRIBUTION) analysis and conclusions of a Review Appraiser.
The Appraisal Review will be prepared by Right of Way Review Appraiser. Upon completion of the review, the original appraisal will be given to the Records Manager for filing and a copy to the Acquisition Section Supervisor.

After submission, the Appraisal Report will be maintained and secured by the Records Unit. It may be loaned out for official purposes to all authorized Right of Way staff.

A duplicate copy of the Appraisal Report will be given to the specific Right of Way Acquisition Unit Agent assigned to the Right of Way project by the Acquisition Unit Head.

The Appraisal Report may not be loaned out to non-Right of Way personnel without the expressed approval of the Right of Way Bureau Chief.

Submitted concurrently with the Appraisal Report, if necessary, is the Basic Data Report. The Basic Data is an essential component of the Right of Way project file. The original and a duplicate copy will be maintained and secured by the Records Unit.

For additional details on the appraisal functions, please refer to Volume III, Appraisal, Right of Way Handbook.

SECTION 5-ACQUISITION

Section 5.1-Acquisition Unit

The Right of Way Acquisition Unit Manager is the unit specifically charged with acquiring rights of way for highway program purposes, other property rights as necessary, pit sites for highway construction materials, and haul road easements for pit sites.

The Right of Way Acquisition Agent reviews scoping reports, preliminary Right of Way study reports, property owner interviews, print outs, manpower and project scheduling system, deeds, maps, plans, cross-sections, projection development files, etc., to gain a broad basic understanding of the project.

The Right of Way Acquisition Unit is dependent on documentation contained within the parcel files which are maintained and secured by the Records Unit.

Right of Way Agents from the Acquisition Unit are authorized to borrow parcel files from the Records Unit.

The Negotiator's Report, Letter of Offer, Contract, and other official land conveyance documentation, submitted by a Right of Way Acquisition Agent, will ultimately become an integral part of a parcel file for a specific Right of Way project. Original negotiation documents remain with the Acquisition Agent until submitted for payment; Upon review and approval of payment, all documents are retained in the permanent file in the Records Unit.

For additional details on the acquisition details please refer to Volume IV, Acquisition, Right of Way Handbook.
Section 5.2-Pit Agreements and Federal Land

All documentation related to the Department's use of public or private pits, haul roads, and federal land, will be maintained and secured by the Records Unit.

When such documentation is pertinent to a specific Right of Way project, it will be filed in the appropriate parcel file of the project.

When such documentation relates to the use of pits on federal land for District-wide purposes, such as stockpiling for Patrol Yards, it will be maintained by the Records Unit in special files set aside for each of the six Highway Department Districts.

Copies of the Pit Agreements are to be transmitted by the Records Manager to the appropriate Project Manager and District Office.

Section 5.3-Water Acquisition

All documentation related to the Department's acquisition of water rights is to be maintained and secured by the Records Unit. When documentation on water acquisition relates specifically to a Right of Way project, it will be incorporated into the Right of Way Documents file of the appropriate project.

For additional details on water acquisition functions please refer to Volume X, Water Acquisition, Right of Way Handbook.

SECTION 6 RELOCATION ASSISTANCE

The Right of Way Relocation Specialty Unit is dependent on documentation contained within the parcel files, which are maintained and secured by the Records Unit.

Right of Way Agents from the Relocation Specialty Unit are authorized to borrow parcel files from the Records Unit.

Right of Way Relocation Reports, Owner/Tenant Reports, Statistical Reports, and other official documentation submitted by a Right of Way Relocation Specialty Agent, will ultimately become an integral part of a parcel file for a specific Right of Way project. Original relocation documents will remain with the Relocation Assistance Agent until submitted for payment; upon review and approval of payment, all documents are retained in the permanent file in the Records Unit.

All documentation involving relocation matters will be filed on the left-hand side of the parcel file.

Payment Packages and logs will be hand carried by the unit supervisor or designee to be personally filed or to observe the documents being filed.

For additional details on the relocation assistance functions, please refer to Volume V,
SECTION 7-PROPERTY MANAGEMENT

The Property Management Unit has responsibility for the areas of Airspace Agreements, Encroachments, Rental Properties, Abandonments, Excess Property, NRW Parcels, and Improvement Sales.

The Property Management Unit maintains records and issues reports on all its activities in accordance with State and Federal law. The records maintained by the Property Management Unit involve completed highway projects. All active Right of Way project files are maintained by the Records Unit.

Requests for information regarding the disposition of Department property shall be addressed to the Property Management Unit Head.

Further details on property management functions may be found in Volume VI, Property Management, Right of Way Handbook.

SECTION 8-RECORDS UNIT

Documents are submitted to the Records Unit for centralized storage, ease of retrieval, and security maintenance.

All Title Reports, Appraisals, Basic Data Reports, Payment Vouchers, Relocation Reports, Negotiator's Reports, Project Certifications, Correspondence, and miscellaneous documents related to specific Right of Way projects will be sent to the Records Unit for safeguarding.

Title Reports, Appraisals, Relocation Reports, Negotiator's Reports, Payment Vouchers, Legal Briefs and all correspondence pertinent to a specific parcel file of a specific Right of Way project will be filed in the appropriate parcel file.

Upon receiving new project files which contain Title Reports and Appraisals, they will be checked out to the appropriate Right of Way Acquisition Agent.

All land conveyance documents, e.g., Warranty Deeds, Partial Releases of Mortgage, Federal or State Right of Way Grants, etc., received by the Records Unit, will be sent off for recording at the earliest possible opportunity. They shall be sent, under cover letter signed by the Records Manager, to the appropriate county clerk's office for such recording no later than 30 days from the date of receipt.
SECTION 9 BUDGET AND AUDIT

When requests are received from the Office of General Counsel (Legal) to examine certain project parcel files, or individual documents within a file, such viewing may be permitted within the immediate vicinity of the Records Unit. Copies of original documents may also be permitted. However, original files or documents may not be loaned out to Legal without the prior knowledge and expressed consent of the Right of Way Bureau Chief or his designee.

The Records Unit will also maintain a Right of Way library and any unique documents so designated by the Right of Way Bureau Chief for special safeguarding.

All Right of Way project maps will be maintained and secured by the Records Unit.

After all right of way has been acquired, and a project has been "let" for its construction phase, the parcel files will be transferred to the Records Management Unit for storage.

Right of Way parcel files, Title Reports, Basic Data Reports, maps, etc., which have been loaned out to one individual shall not be given to another individual before first being returned to the Records Unit.

Until the Documents are returned, their safekeeping will remain the responsibility of the individual who initially checked them out. The Budget and Audit Unit is responsible for the processing of authorizations for Right of Way Acquisition and Relocation Assistance; for preparation of the Right of Way Acquisition Section of the Statewide Transportation Improvement Programs; for issuing payment vouchers and for the generation of contracts between the Right of Way Bureau and private contractors (consultants).

Upon the submission of cost estimates by the Appraisal, Acquisition, and Relocation Assistance Units, the Budget and Audit Unit will prepare a Request for Authorization (of funds) for Right of Way projects.

The Budget and Audit Unit is also responsible for processing payments for all, legal settlements, purchase of real property, relocation, and professional services.

All contractual agreements between the Right of Way Bureau and private contractors (consultants) will be processed by the Budget and Audit Unit.

Further details on the budget and audit functions may be found in Volume VIII, Budget and Audit, Right of Way Handbook.
SECTION 10° UTILITIES

The Utilities Unit is responsible for the coordination and functional control pertaining to all aspects of public utility and railroad related construction considerations, accommodations and installations affecting the New Mexico Department of Transportation. These functions include, but are not limited to the following list.

1. The relocation of utilities and railroad facilities in conflict with the construction of highway projects.

2. The control of utility occupation of public highway right of way, including utility permits, coordination, regulation and central administration.

3. General liaison with public and private utilities.

4. To assist other New Mexico State Highway and Transportation Department functionaries concerning matters pertaining to the administration of utility company occupation of public right of way, utility and railroad relocations on construction projects, and other matter relative to railroad safety.

Further information on the Utilities Unit can be found in the Utilities Manual.
CHAPTER 5 GLOSSARY

AGENT

One who represents another from whom he/she derived authority. The distinguishing characteristics of an agent are that he/she acts on the behalf of, and are subject to, the control of his/her principal; that he/she does not have title to the property of the principal; and that he/she owes the duty of obedience to the principal's orders.

AIRSPACE

That space above, below, or at the established gradeline of a highway lying within the approved right of way limits.

APPRAISAL

A written statement or report independently prepared by a qualified appraiser setting forth an opinion of value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market data.

[49 CFR 24.2(b)]

The supporting data should be of sufficient depth to show the analysis and reasoning to document the appraiser's conclusions, developing and relying on the market approach if adequate market data is available, and if not, using other appropriate appraisal techniques supported by market data.

APPRAISAL REPORT

Any communication, written or oral, of an appraisal, (the document that is transmitted to the client upon completion of an appraisal assignment).

A formal written document which contains:

1. the estimate of value,
2. the date at which the value is estimated,
3. the certification and signature of the appraiser,
4. the purpose of the appraisal,
5. the qualifying conditions,
6. an adequate description of the neighborhood and the property
7. the factual data,
8. an analysis and interpretation of the data,
9. the processing of the data by one or more of the three approaches, and
10. Other descriptive supporting material (maps, plans, charts, photographs).

**APPRAISER**

A person who, by special training and knowledge, is qualified to determine the value of real and personal property. In probate proceedings, the court appoints an appraiser to determine the value of the property in the estate for inheritance tax purposes. The list of the property is filed in the estate for inheritance tax proposes. The list of the property filed in the estate with the values shown is called an inventory and appraisal.

**CODE OF FEDERAL REGULATIONS (CFR)**

A codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

**CONDEMNATION**

The act of government (Federal, State, County, or Municipal), and of duly authorized units of government and public utility companies, invested with the right of eminent domain, to take private property for public use and benefit, upon the payment of just compensation. It is the act of the sovereign in substituting itself in place of the owner, and/or the act of taking all or a part of the rights of an owner.

**CONDEMNATION REPORT**

A report issued to a government agency to give the names of persons to be made defendants in an action when property is to be taken by the government under right of eminent domain.

**CONTRACT**

An agreement to sell and purchase under which title is withheld from the purchaser until such time as the required payments to the seller have been completed.

**CONVEYANCE**

A written instrument which passes as interest in real property from one person to another; may be a deed, mortgage, lease, but not a will.

**DESCRIPTION**

A reference to maps, plats, instruments, etc., recorded in the Office of the County Recorder or the Federal Land Office, upon which, by careful interpretations, the property can be located or identified.
FHWA

Federal Highway Administration, of the U.S. Department of Transportation, the regulatory and funding agency of the Federal government that administers Federal funds and programs concerning highway construction and reconstruction in New Mexico.

JUDGMENT

A decree of a court. "In practice this is the lien or charge upon the lands of a debtor resulting from the court's award of money to a creditor (Judgment Lien)."

LEGAL DESCRIPTION

A statement containing a designation by which land is identified according to a system set up by law or approved by law.

PROGRAM OR PROJECT

The phrase "program or project" means any activity or series of activities undertaken by a Federal or State agency or with Federal or State financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal or State funding agency guidelines. [49 CFR 24.2(r)]

RELOCATION

The process by which a governmental agency fulfills the statutory requirement that decent, safe, and sanitary dwellings within the displacee's financial means be made available to families displaced by State or Federal-aid projects.

RIGHT OF WAY

The right which one has to pass across the lands of another.

WATER RIGHTS OR RIPARIAN RIGHTS

Rights to the use of water in lakes or rivers.
RIGHT OF WAY HANDBOOK

VOLUME X

WATER ACQUISITION

January 2016

New Mexico Department of Transportation
Right of Way Bureau
P.O. Box 1149
Santa Fe, NM 87504-1149
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CHAPTER 1  PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.

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                        VOLUME X
The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.

SECTION 3-STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2 AUTHORITY

SECTION 1-GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3  ORGANIZATION

SECTION 1-GENERAL

The Water Acquisition Agent of the Right of Way Bureau administers the water acquisition activity of the Department. Such acquisition of water resources will comply with the state statutes, Department regulations, and Office of the State Engineer regulations.

The Office of the State Engineer (OSE) is responsible for administering the water resources of the state and promulgates water appropriation regulations for New Mexico. A current manual delineating these regulations shall be on file with the Water Acquisition Unit. The Department is required to comply with the rules and regulations governing water and surface water and underground water in order to acquire water for highway-related projects.

OSE has adopted the following rule sets:

- State law, particularly Chapter 72
- Rules Governing the Use of Public Underground Waters for Household or other Domestic Use adopted on August 15, 2006 - http://www.ose.state.nm.us/index.php
- 2005 Update of the Rules Governing the Appropriation and Use of the Surface Waters of New Mexico - http://www.ose.state.nm.us/index.php
OSE Manual of Rules and Regulations governing ground water in New Mexico consists of the following seven articles (see also the website http://www.ose.state.nm.us/index.php

1. Declaration of Existing water rights; Initiation of water rights.
2. Change of Well location, place and/or purpose of use; Supplemental Wells; Extensions of Time; Prerequisites for Drilling; Deepening and Repairing
3. Hearings.
6. Forms and fees.

The OSE Manual of rules and regulations governing surface water in New Mexico consists of the following articles (see also Title 19, Chapter 26, NMAC found in the website http://www.ose.state.nm.us/index.php

1. Definitions
2. Declaration of A Water Right Developed Prior to March 19, 1907
3. Notice of Intention to File Application For Permit to Appropriate Surface Water
4. Application For Permit to Appropriate Surface Water
5. Changes to Declared, Permitted, Licensed or Adjudicated Rights
6. Application Processing
7. Permits
8. Livestock Water Impoundments
9. Ponds and Other Impoundments
10. Change of Ownership
11. Lease of Water Rights
12. Water Development Plans
13. Forfeiture and Abandonment of a Water Right
14. Application Maps
15. Format For Plan Drawings, Proof of Beneficial Use and Declaration Maps

This Volume of the Handbook outlines the procedures for the timely, efficient, and equitable acquisition of water resources for highway-related projects. The function of the Water Acquisitions Unit involves both the acquisition and management of adequate water sources; and if necessary, water property rights. Further, the Water Acquisition Unit is responsible for providing accurate information concerning cost, quantity, quality and location of water resources related to road construction projects, to the Contract Administration Section.
Section 1.1-Office of the State Engineer (OSE)

Offices of the State Engineer are at the following locations (This listing is current as of this publication and is subject to change. The Department is not liable for changes):

**Water Rights District I – Albuquerque:**
5550 San Antonio Dr. NE
Albuquerque, NM 87109-4127
Location
Phone: (505) 383-4000
Fax: (505) 383-4030

**Water Rights District II – Roswell:**
1900 West Second St.
Roswell, NM 88201
Location
Phone: (575) 622-6521
Fax: (575) 623-8559

**Water Rights District III – Deming:**
321 West Spruce Street
PO Box 844
Deming, NM 88031
Location
Phone: (575) 546-2851
Fax: (575) 546-2290

**Water Rights District IV – Las Cruces:**
1680 Hickory Loop, Suite J
Las Cruces, NM 88005-6598
Location
Phone: (575) 524-6161
Fax: (575) 524-6160

**Water Rights District V – Aztec:**
100 Gossett Drive, Suite A
Aztec, NM 87410-2432
Location
Phone: (505) 334-4571
Fax: (505) 334-4575

**Water Rights District VI-Santa Fe:**
407 Galisteo St.
Bataan Memorial Bldg., Room 102
PO Box 25102
Santa Fe, NM 87504-5102
Location
Phone: (505) 827-6120
Fax: (505) 827-6682

**Water Rights District VII – Cimarron:**
Water Master
PO Box 481
301 East 9th Street
Cimarron, NM 87714

Costilla Creek Water Master
P.O. Box 173
Amalia, NM 87512

Ute Dam Caretaker
PO Box 281
Logan, NM 88426

Phone: (575) 376-2918
Fax: (575) 376-4565

Phone: (575) 586-2476
Fax: (505) 827-6188

Phone: (575) 487-2292
For the most current water rights information please contact the OSE’s website at http://www.ose.state.nm.us.

SECTION 2-DUTIES

Section 2.1-General

The Contractor is responsible for the location, negotiation, acquisition, and management of water/water rights for highway construction, maintenance, and related projects with the Water Acquisition Agent providing guidance and direction in that regard.

The Water Acquisition Agent will maintain a file on all projects when water or water rights are acquired. This will provide a detailed written report concerning water rights acquisition activities for each project. This information shall be provided by the Right of Way Acquisition Unit Supervisor on a project by project basis.

The Water Acquisition Agent shall review the Department’s Production Schedule, to ascertain when projects with water requirements are scheduled for letting. The water rights acquisition activity shall be scheduled in such a manner as to give the Water Acquisition Agent sufficient lead-time, prior to the certification date, in order to complete the water rights acquisition.

Prior to acquiring water, the Water Acquisition Agent shall have been provided with water requirement estimates for all proposed highway projects, six weeks prior to the letting, by the Design Bureau Project Design Engineer (PDE). The Department’s Design Bureau is responsible for providing the Water Acquisition Agent with water requirement estimates for all proposed highway projects six weeks prior to the letting date.

Section 2.2-Information to Contractors Letter, Water Specifications

The Water Acquisition Agent is responsible for preparing the Notice to Contractors letter. The Notice to Contractors letter shall be prepared prior to invitation for bids on proposed highway projects.

The Notice to Contractors letter shall include the following:

1. Control number.
2. County.
3. Identification of water basin.
4. Location of water source, if available.
5. Location of water rights, if necessary.
6. Lease or purchase of water rights, if necessary.

7. Statutes and regulations governing the use of the water.

8. Limiting conditions and contractual obligations.

9. Metering requirements.


11. Reporting requirements.

12. Hold harmless clause.

Notice to Contractors letters may be revised or modified at the Department’s discretion. In the event such a notice is revised or modified after being distributed, the Design Bureau shall notify all prospective bidders as soon as feasible. Accurate notices are required so that prospective bidders may estimate their costs in a reasonable manner.

Section 2.3-Project Manager

The Department’s Project Manager shall be responsible for metering and monitoring the Contractor’s water use from an OSE permitted source. The project manager shall file a written report detailing the amount of water used on each specific highway project with the OSE and the Water Acquisition Agent of the Department from an OSE permitted source. The report is due once a month. In the event it appears that the Contractor will exceed the amount of water authorized by the water permit, the Project Manager shall immediately notify the Water Acquisition Agent for resolution. The agent will then follow the process outlined in Chapter 4.

SECTION 3-CONFLICT OF INTEREST

No Water Acquisition Agent of the Department shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity, or incur any obligation of any nature, which are in conflict with the proper discharge of his/her duties.

No Water Acquisition Agent of the Department shall use, or attempt to use, his/her position to secure unwarranted privileges for him/herself or others. No Agent shall engage in any transaction with any person or business interest that might reasonably tend to conflict with the proper discharge of his/her duties.
No Water Acquisition Agent shall place him/herself in a position that will impair his/her independence of judgment in the exercise of his/her duties, or give rise to suspicion of conflict with the interest of the Department.

In the event that a possible conflict of interest may arise due to the before mentioned reasons, the Water Acquisition Agent must immediately disqualify him/herself for that project.

SECTION 4-PERSONAL CONDUCT

The Agent shall at all times keep in mind that he/she is an employee of the public. Since negotiation is a person-to-person relationship, it is difficult to establish firm rules that will apply in every situation. This Volume of the Right of Way Handbook seeks to define current Right of Way Water Acquisition practices and procedures and make recommendations that will aid the Agent in discussions with the water rights owner.

When dealing with the public, the Water Rights Agent’s work should be characterized by a sincere desire to be of service. Every Agent of the Department is obliged to render friendly, well informed, sincere, and attentive consideration to the person(s) contacted. The Agent is expected to be aware of, and practice, the following public relations principles:

1. A majority of the time, the Water Rights Agent is the only direct contact the water rights owner has with the Department. To the water rights owner, the Water Rights Agent is the Department.

2. The Water Rights Agent represents the Right of Way Bureau and the Department when negotiating for the property owner’s real property but is not confined to this activity and may assist in resolving any other “highway problem” the water rights owner may have.

3. First impressions mean a great deal in public relations. It shall be the responsibility for each Agent to be acquainted not only with appraisal, construction, and title information on which that negotiation is to be based, but with all factors that will contribute to effective and efficient acquisition, including the ability to understand and explain maps and plans.

4. In personal appearance the Water Rights Agent shall be appropriately groomed at all times.

5. Proper, warranted, and careful use of equipment, supplies, and time is expected at all times.

6. While empathizing with property owners, the Water Rights Agent shall make every effort to encourage their confidence in the integrity of the Department and the abilities of other Department employees.
7. It is important that the Water Rights Agent treat each water rights owner on the project with consideration and courtesy. Dollar value of the water rights should not influence the Water Rights Agent’s attitude in dealing with the property owner.

8. The contractor, who has contracted to construct the roadway project, may provide his/her own source of water. Water rights may be provided to ensure feasibility for project construction and are not a guarantee regarding the contractor’s election of a water source. If the contractor elects to acquire water from other private, State or Federal lands, the contractor must obtain proper written permission from the alternative landowner.

The Department assumes no responsibility and provides no assurance to its contractor that water will be available on any particular project, either prior to or after the letting.

The contractor shall hold the Department and private water vendors harmless from any and all claims or causes of action that may arise as a result of the use and services provided to the contractor relative to water on the project.

During negotiations, the Agent shall address all questions using available maps, photographs, charts, and appraisals for this purpose. If the answer is not known, the Agent shall inform the property owner that the required information will be obtained and furnished as soon as possible.
CHAPTER 4 PROCEDURES

SECTION 1-GENERAL

Procedures to appropriate underground and surface water for beneficial use are similar. However, there are different appropriation rules or regulations as the Agent proceeds to different underground basins or streams. The Agent shall confirm the procedure with the OSE in reference to the particular basin or stream with which is being worked before proceeding to negotiate water rights. However, the following procedures may be useful in describing this function.

Section 1.1-Filing of Application to Appropriate Water

An application to appropriate water shall be filed in triplicate on forms provided by the OSE accompanied by the proper filing fee. The date of receipt of an application by the OSE shall be endorsed thereon. The date of filing establishes the original priority date of any application, subject to the acceptance of the application and the issuance of a permit by the OSE. Such appropriated water must be applied to a beneficial use in a timely manner as defined by the OSE. The application and permit limit the nature and extent of the water right. A permit may be granted for an amount less than that asked for in the application.

After construction of the project has begun, and has been determined by the contractor or the PDE that the water estimated use for the project is insufficient; the Contractor must acquire an additional permit to cover the additional amount of water.

Section 1.2-Correction to Appropriation Application

Before acceptance by the OSE, applications tendered must conform to the requirements of the OSE. Unsatisfactory applications are returned promptly to the applicant with a statement of required changes. If the necessary changes are made by the applicant and the application is re-filed within 30 days after its return to the applicant, the application shall be processed with a filing date the same as the original filing date.
Section 1.3-Office of the State Engineer (State Engineer’s manual)

WATER RIGHTS APPLICATIONS FLOWCHART

Application Flow Chart

1. Application filed with State Engineer
2. Is Application Complete?
   - YES: Publish Legal Notice for 3 weeks
   - NO: Application Returned to the Applicant
4. Does Application Meet Criteria?
   - NO: Application Denied
   - YES: Application Approved
5. Application Approved
   - Apply Water to Beneficial Use and Satisfy Other Conditions
6. Appeal Won?
   - YES: Certificate & License
   - NO: No Permit
7. Pre-Hearing Conference
8. Has a Protest been Filed in a Timely Manner?
   - YES: Pre-Hearing Conference
   - NO: Application Denied
9. Applicant Approves the Application?
   - NO: Application Denied
   - YES: Applicants Appeals
10. Administrative Hearing by OSE
   - Yes: No Permit
   - No: Application Denied
11. NM Appeal Process
    - District Court
    - Appeals Court
    - Supreme Court
12. Applicant Approves the Application?
    - NO: Application Denied
    - YES: No Permit
Section 1.4-Office of the State Engineer Flowchart Procedures

Upon receipt of an acceptable application, the Office of the State Engineer will prepare and issue a notice for publication and will return it to the Contractor. The Contractor shall publish same once a week for three consecutive weeks in a newspaper of general circulation within the county in which the well is to be drilled, (the newspaper will be prescribed by the Office of the State Engineer in the cover letter accompanying the legal notice), ground water taken, or surface water diverted. Cost of publication is borne by the Contractor.

Further, the Contractor shall file a proof of publication statement from the subject newspaper with the OSE within 60 days from the date of issuance of the notice for publication. Failure to do so may result in either the postponement of the priority date or cancellation of the application.

Section 1.5-Protest Hearing

The following requirements apply to filing an objection to protest to an application:

A. Standing: The following entities have standing to file protest or objections to an application:

   (1) Any person, firm, corporation or other entity objecting that the granting of the application will impair the objector’s water rights shall have standing to file objections or protests.

   (2) Any person, firm, corporation or other entity objecting that granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests.

   (3) The state of New Mexico or any of its branches, agencies, and political subdivisions.

B. Protest - Content: All objections and protests shall set forth the grounds for asserting standing and shall include the contact information of the objector or protestant.

C. Filing deadline: All objections and protests shall be filed with the state engineer not later than 5:00 p.m. (mountain time) on the tenth calendar day after the date of the last publication of the notice unless the final day for filing a protest falls on a weekend or a state of New Mexico recognized holiday. When the final day for filing a protest falls on a weekend or a state of New Mexico recognized holiday, protests received no later than 5:00 p.m. (mountain time) on the next business day shall be deemed timely.

D. Filing an objection or protest by facsimile: An objection or protest may be filed via facsimile no later than 5:00 p.m. (mountain time) of the filing deadline listed in Subsection A of 19.27.1.52 NMAC, provided the original objection or protest is mailed and postmarked within 24 hours after transmission of the facsimile.
E. Invalid protest: An objection or protest that fails to meet the criteria for standing listed under Subsection A of 19.27.1.52 NMAC will not be recognized as valid protest. All untimely objections or protests will not be recognized as valid. For a faxed protest, if the original objection or protest is not filed by mail and postmarked within 24 hours of transmission, the protest will be deemed untimely, and will not be recognized by the state engineer as a valid protest.

F. Notification of protest and objection: The state engineer will mail a copy of each valid objection or protest to the applicant.

G. Application with standing protest or objection – state engineer hearing: The state engineer encourages the parties to resolve the objection or protest. Withdrawal of a protest or objection shall be submitted in writing to the state engineer. If the applicant and protestant cannot reach agreement by which the protest can be withdrawn, the matter shall be set for hearing in accordance with the hearing rules filed under 19.25.2 NMAC and 19.25.4 NMAC, unless the state engineer determines that the application should be denied prior to hearing in accordance with Section 72-12-3.F NMSA.

Section 1.6-Water Permit Issuance

Upon approval of a water appropriation application, the OSE will issue a water permit to the Department or Contractor, whoever is the Applicant. Such permit will detail the amount of water to be appropriated and will establish other conditions of approval including the deadline to furnish proof of completion of works and application of water to beneficial use to the OSE.

Section 1.7-Time Extensions

If for some unforeseen reason the contractor cannot complete the work within the deadline established in the water permit, the Agent or contractor (permittee) may request an extension of time from the OSE to finish the project. Such an application should describe the work completed and provide a revised estimate of time needed to complete the work. No time extension will be granted for a period of more than three (3) years.

Section 1.8-Application of Water to Beneficial Use

Upon completion of work or upgrading of well, an application is required in order to apply the appropriated water to beneficial use from the State Engineer’s Office. On or before the due date set by the permit or a State Engineer approved extension of time, the permit holder shall file with the state engineer a final inspection report of beneficial use. The beneficial use of water shall be in accordance with the permit conditions of approval.
The Final Inspection Report will be in triplicate on forms provided by the OSE in addition to providing a plat, prepared by a Registered Professional Engineer and Land Surveyor or by a Registered Land Surveyor.

Section 1.9-Certificate and License

After a final inspection and report of beneficial use has been filed, or after the state engineer or his designee has performed a field inspection of the permit holder’s application of water to beneficial use, the state engineer may issue a license to appropriate water. The license defines the extent water has been applied to beneficial use under the conditions of the permit.

Section 1.10-Notice of Intention to Appropriate Surface Water

In the case of surface waters, the Agent or contractor may desire to file a Notice of Intent to Appropriate Surface Water prior to making formal application to do so. This is an optional procedure designed to establish a priority date. The OSE requires a surface water appropriation applicant to submit maps, plans, field notes, and specifications of the proposed works attached to the formal appropriations application. Obtaining this information may cause delay of the appropriation application. This is important, as it will delay establishing a priority date for the water right. Therefore, the Agent or Contractor may desire to submit a Notice of Intent to Appropriate Surface Waters to the OSE.

Section 2-SOURCES OF WATER DATA

The following water data are provided as resources for the Agent so that the Agent may provide any requested information to the OSE. Also this information is an aid to manage owned water rights for the most beneficial use and determine options for owned but inactive rights.

Section 2.1-Underground Water Tables and Surface Water Levels

The United States Geological Survey, in cooperation with the OSE, systematically measures and records water tables in underground water basins. Currently there are forty-one (41) declared underground water basins in New Mexico. Further, these agencies maintain nine major stations to measure water levels on various streams or reservoirs throughout the state.

Section 2.2-Water Right(s) Numbering System

The OSE uses the following systems to identify ground and surface water rights with fixed locations.
• Surface Water Declaration (SD): includes a SD prefix and a number assigned in order of receipt of declaration.
• Surface Water Permit (SP): includes a SP prefix with a number assigned in order of receipt of application.
• Groundwater permit or declaration in a declared basin: designated by groundwater basin code, a hyphen, and a number assigned in order of receipt.
• Examples: SP 340, RG-340

Section 2.3-Water Allocation

The OSE determines the ratio of acre-feet of water to each acre of irrigated land within each underground basin or other designated area like a watershed or sub-basin. An example is that in some areas 0.5 to 3.0 acre-feet of water rights may be allocated to each acre of land. The OSE bases the diversion amount per acre based on the water required to meet the average crop requirement in a specific area. Depth, quantity, and quality of water vary throughout the state.

Any determination of water requirements for highway-related purposes should be based upon the applicable water ratio for the subject basin. The OSE will furnish the applicable water right to irrigated land ratio. Further, this information is used by the OSE to determine the number of acres of irrigated land that need to be retired from use while the subject land’s water rights are being used for highway construction purposes.

The Water Acquisition Agent is responsible for the management of water rights owned by the Department. This includes maintaining an inventory of the leasing, transferring, or selling of such water rights to other agencies or individuals.

The Water Acquisition Agent also monitors rights that the Department owns but are not active. The Agent follows-up on the most beneficial use of these rights. These rights can be leased, transferred, or sold.
SECTION 3-DEPARTMENT WATER RIGHTS

Section 3.1-Sale of Department Water Rights

The Appraisal Unit is responsible for estimating the fair market value of any water right that the Department may determine to sell.

The Water Acquisition Agent is responsible for arranging the public sale of Department water rights, preparing conveyance contracts, and any other associated task.

Any sale of Department water rights will be subject to state statute, Department policy, and the OSE’s regulations.

Any contract to sell Department water rights must be approved by the Right of Way Bureau Chief, the Office of General Counsel, the Deputy Secretary of Transportation of Planning and Design and the State Highway Commission.

Section 3.2-Leasing of Department Water Rights

When the Water Acquisition Agent determines to lease the Department owned water rights, the Water Acquisition Agent is responsible for requesting an estimation of the lease fee from the Appraisal Unit, preparing the lease, and negotiating the lease. Lease payments shall be sent directly from the lessor to the Water Acquisition Agent. The Water Acquisition Agent will then deliver the payment to the Right of Way Budget and Audit Unit on the same day of receipt for logging and recording. The payment will then be forwarded to the Department’s Fixed Asset Accounts Receivable Unit.

Lease agreements are typically written for one-year periods with a one-year renewal option. Such agreements will be written to allow the Department to raise the lease fee at the end of the first one-year period, if determined to be necessary.

Any water right lease agreement will contain a provision allowing the Department to cancel the agreement upon giving the lessee 120 days written notice. The lease may not be sold or subleased by the lessee. Any act by the lessee in violation of the lease agreement, including delinquency of fee payments, is sufficient cause for the Department to cancel the lease.

The lessee shall be required to comply with all applicable state statutes and the OSE regulations while leasing Department water rights.

The Right of Way Bureau Chief must approve any agreement to lease Department water rights.

Prior concurrence to lease Department water rights shall be obtained from the Deputy Secretary of Transportation of Planning and Design. This will be done to ensure that the Department has no immediate use for the subject water right(s).
**Section 3.3-Transfer of Department Water Rights**

The Water Acquisition Agent is responsible for coordinating the transfer of Department water rights from one area to another area (within the same basin) where they may be used for highway-related projects. Further, the Contractor, with guidance and direction from the Water Acquisition Agent is responsible for preparing and filing all transfer documents with the OSE.

Such transfers will comply with state statutes and OSE regulations.

**Section 3.4-Recordation of Department Water Rights**

The Department, via its right of way acquisition activity, sometimes acquires additional water rights. Such water rights are conveyed to the Department and are later used for highway construction purposes.

The Water Acquisition Agent is responsible for maintaining an Inventory of the Department’s water rights. This Inventory shall identify the subject water rights, locate and quantify these rights, and account for the use of said rights. The Water Acquisition Agent shall furnish a copy of the Inventory once a year to the OSE.

The Water Acquisition Agent is responsible for preparing “Change of Ownership” documents required by the Office of the State Engineer. Such a document is necessary to record the Department’s interest in the newly acquired water right(s) with OSE. The “Change of Ownership” document shall be supported by proof of ownership, i.e., a warranty deed, and a map showing the location of the water right. This information will be provided by the Right of Way Acquisition Supervisor. The parcels being conveyed will be colored on the map to correspond with the “Change of Ownership” document. Upon approval by the Right of Way Bureau Chief, the Water Acquisition Agent will enter these water rights in the inventory.

**Section 3.5-Water Rights Acquisition**

Any Agent that acquires a water right(s), via assignment to acquire necessary highway right of way, will so notify the Water Acquisition Agent. When an Agent is required to condemn real estate, including water right(s) he/she shall so inform the Water Acquisition Agent. Upon acquisition of the water right(s), either by negotiation or condemnation, it will be recorded in the Water Rights Inventory. The Water Acquisition Agent will then prepare the required “Change of Ownership” documents for the OSE.
SECTION 4-WATER VENDORS

Section 4.1-General

The Water Acquisition Agent will obtain written confirmation from potential water vendors stating the unit price per 1,000 gallons of water or the price per acre of irrigated land in order to furnish water to the contractors on specific highway-related or street improvement projects.

1. Water vendors may be private individuals, businesses, and public agencies, or municipal governments.

2. The Water Acquisition Agent will reconfirm with vendor, the unit price before purchasing water from the same vendor for subsequent highway projects in order to ascertain if there has been a price increase or decrease.

SECTION 5-REST AREAS

The Department maintains approximately 23 rest areas and sanitation facilities. The OSE water permits are required for all rest areas pumping underground water from declared basins. Note that the Department can apply for a domestic use permit to provide for drinking and sanitary needs at a rest stop. The permit will have a maximum diversion of 3.0 acre-foot and will require submittal of meter readings. The Water Acquisition Agent is responsible for obtaining the necessary water permits. The appropriate District Operations Section is responsible for metering and reporting usage of district rest areas to the OSE and to the Water Acquisition Agent. The Agent then places in appropriate file.

SECTION 6-PATROL YARD SITES

The Department operates approximately 83 patrol maintenance yards statewide. The OSE requires permits for all patrol yards pumping underground water from declared basins. The Water Acquisition Agent is responsible for obtaining the necessary water permits. The appropriate District Patrol Yard is responsible for metering and reporting usage to the OSE and the Water Acquisition Agent. Then Water Acquisition Agent places report in appropriate file.

SECTION 7-WATER APPROPRIATION

Section 7.1-Coordination with the Office of the State Engineer (OSE)
This Agency is responsible for the management of public waters in New Mexico. Any application to appropriate surface or underground water in declared underground water basins for beneficial use must be approved by the OSE.

**Section 7.2-Water Rights**

Surface and underground waters in New Mexico belong to the public; and therefore, are subject to appropriation. The OSE recognizes highway construction as a beneficial use of public waters. Other beneficial uses may be for crop irrigation, industrial use, and recreational use, municipal and domestic water supplies, etc. Any individual, business, municipality, public or Private Corporation, the state of New Mexico or the Federal Government may make application to the OSE to appropriate water for beneficial use.

The OSE, in issuing a permit to an applicant, allows the applicant to appropriate water and apply water to an approved beneficial use. Upon application of water to beneficial use and completion of necessary research and inspections, the OSE may issue a license to appropriate public surface or underground water to that applicant. This effectively recognizes that the applicant has perfected a water right(s).

The unauthorized use, or the willful waste, of water is unlawful. No person may divert public water to use where no recognized water right exists. It is unlawful to start construction of works or a well to divert, transport, or store water without prior approval from the OSE. Further, a legally recognized water appropriation may not use more water that has been authorized by the OSE.

Water rights may be bought, sold, leased and/or transferred from one location of purpose to another provided that the changes do not injure the existing rights of other water users. Again, the OSE will make this determination.

**Section 7.3-Prior Appropriation**

Prior appropriation, the earliest or oldest beneficial use of public water, is the key doctrine of New Mexico water law. Since 1907, the state of New Mexico has been charged with the responsibility of establishing priority dates. If the application is approved, and the OSE issues a permit to appropriate water to the successful applicant, this water right receives preference over later or junior water rights. This is important in water short years. Older or prior water right(s) shall receive whatever water is available for beneficial use prior to subsequent or junior water rights. If water was put to beneficial use prior to 1907, the community with the oldest adjudicated priority date is entitled to the water first.
Section 7.4-Irrigation Water

All water in New Mexico used for irrigation purposes is appurtenant to, or belongs with, the land irrigated. This means that the water right(s) is legally tied to the irrigated land until such time as they are separated in accordance with state law. With the consent of the landowner, the Department may lease and transfer a water right(s) to another location and/or beneficial use. Prior approval by the OSE is necessary.

Once the OSE issues a permit to change the location and use of a water right(s), it is separated from the irrigated land and is transferred to the new use, i.e., highway construction. Further, the same principle applies for transfers of water rights from other beneficial uses to highway construction.

Section 7.5-Stock Watering Tanks

A permit is required to impound surface water for watering livestock. If the proposed impoundment is created by a dam that exceeds ten feet in height measured from the lowest point on the downstream toe to the dam crest, or exceeds ten acre-feet in storage capacity, the applicant shall comply with the applicable dam construction requirements in 19.25.12 NMAC. Watering of livestock does not include the impoundment of surface or groundwater in any amount for fishing, fish propagation, recreation, or aesthetic purposes.

Section 7.6-Right of Way for Water Appropriation

When necessary, New Mexico state law allows a water appropriator to exercise eminent domain. Eminent domain may be used to acquire ditch or canal rights of way needed to transport water from the point of diversion to the area where it will be put to beneficial use. Any exercise of the power of eminent domain must comply with New Mexico state law. Usually, the right of way corridor consists of a surface easement.

Section 7.7-Application to Change Use, Point of Diversion or Withdrawals for Highway-Related Purposes

With reference to valid Department water right(s), the OSE must review and approve any application to change the location of use, change of method of use, change of point of diversion, advance withdrawals or withdrawals of accrued unused water. Delineated water property rights are for surface, subsurface, artesian, or underground waters. Further, the OSE regulations concerning publication and hearings apply.
Section 7.8-Transfer of Ownership of Accrued Unused Water by the Department

If the Department acts to transfer ownership of all its water rights in one basin under which there has been an accrual of unused water, any accrued unused water shall lapse and revert to unappropriated water. The rights shall not pass on transfer of ownership.

If the Department acts to transfer ownership of a partial water right, or one of several water rights, within a declared underground basin or an irrigation or conservancy district, the accrued unused water, if any, shall not pass to the new owner. However, the Department may move the unused accrued water to a different point of diversion retained by the Department within the same basin. Such a move of accrued unused water requires prior OSE concurrence and may not exceed five times the annual amount of water right retained.

Section 7.9-Change of Ownership; Assignment, Lease Fee, or Fee Simple

Any filing, permit or license to appropriate water may be assigned but no such assignment shall be binding except on the parties thereto unless filed for record in the County Court House. Such filing shall be made on the proper Change of Ownership forms or accompanied by a certified copy of the actual assignment.

If the Department also seeks to change the Point of Diversion, or well site, for acquired or leased water right(s), then the Change of Ownership document must be accompanied by an application for permit to make the change and supporting surveys, maps, plans, and specifications which adequately describe the changes to be made. Specifications required by the OSE include a legal description of the land, amount of acre-feet per year, present use priority date, and the names of involved parties.

Publication and protest hearing requirements apply.

The owner of valid water right(s) may lease all or part of the water appropriation to another party. During the term of the lease agreement, the water appropriation to which the lessor is entitled will be reduced by the amount of water leased.

1. The lease may be effective for immediate or future use. However, the OSE will not allow a lease to accumulate or increase in such a manner that will be detrimental to the valid water rights of others.

2. A water right(s) lease may not exceed a ten-year period for both initial term and renewal terms. Upon termination of the lease agreement, the water right is returned to the lessor’s original location and/or use.
3. Lessee is required to apply the subject water rights to beneficial use within four years of the date of approval of the assignment by the OSE. Failure of lessee to do so, and upon notification by the OSE, may result in the water rights being declared unappropriated due to non-use.

Section 7.10-Value of a Lease Fee

The value of a lease fee water right is best indicated by market research. Public utilities, industry, agriculture and mining corporations, along with the Department, are the largest consumers of water resources in New Mexico. Therefore, the lease fee value of a water right may vary from area to area depending upon the availability of water and the concentration of the aforementioned interests. A market value of the water right, fee simple, may have to be arrived at before a lease fee value may be determined. If reliable market data is not available, New Mexico State University (NMSU) has published information estimating the fee simple value of New Mexico water rights. Surface or underground water basins further delineate each NMSU estimate. A copy is on file with the Water Acquisition Agent. The Water Acquisition Agent shall contact the Appraisal Unit Supervisor to request an estimate of the value of a lease fee for any water right(s) leased by the Department for highway-related purposes.

A suggested method and example to estimate the lease fee value of a specific water right may be obtained through the state library as publication WRRI Report No. 092, “Forecasting Future Market Values of Water Rights in New Mexico,” dated November 1977.

SECTION 8-UNDERGROUND AND ARTESIAN BASINS

Any individual or organization wishing to appropriate unappropriated water from a declared underground water basin in New Mexico must make an application to the OSE. The OSE upon request provides application forms.

Section 8.1-Domestic Wells

A permit to divert water for domestic uses is required by the OSE.

Domestic wells are limited to domestic use, stock watering, and irrigation uses of not more than an acre of trees, lawn, and non-commercial gardens in amount not to exceed three acre-feet per year.

No public notice or publication is required to appropriate water for domestic purposes.
If the application is acceptable to the OSE, a permit will be issued to the applicant and will require that the well be drilled within one year’s time.

An existing well with only a domestic water right, and no commercial right, may not be used for highway related-projects until such right(s) as commercial water rights are established for the subject well or transferred to the subject well.

Section 8.2-Well Drilling

A permit from the OSE is required to drill a water well in New Mexico. Only well drillers duly licensed by the state of New Mexico may drill in New Mexico. Further, the well driller is required to maintain an accurate written record of each well drilled, describing subsurface formations, water bearing strata, etc. The OSE requires the well record or log be filed with them within twenty days after completion of the subject well(s). Further, the applicant is required to file a Proof of Completion of Work form with the Office of the State Engineer. Upon verification, the OSE may certify the well(s) completion.

When determined to be necessary, the Department may drill or contract to drill water wells on approved state lands or rights of way. As with other applicants, the Department is required to comply with the OSE regulations concerning well drilling and water rights use.

Change of Location of Well. A well owner may change the location of the well or purpose of use of the subject water. However, the procedures to do so are the same as if this were a new appropriation of water. Exceptions are as follows:

1. The OSE may approve, without requiring a notice of publication or opportunity for protest hearings, an application to change the location or declared use of well water on a temporary basis. A temporary change of location or use of well or well water shall not exceed a period of more that one year for a maximum of three acre-feet of water.

2. Prior to making application for a water permit, an owner of an existing well may drill and use a replacement well if it is located within 100 feet from the original well. However, water from the replacement must be drawn from the same source of the original well. Further, the appropriation of water shall be for the same amount as allowed by the owner’s water right for the original well. Also, the owner must demonstrate to the OSE that an emergency existed which would have resulted in crop loss or other serious economic loss. The well owner must so notify the OSE of the facts and make an application for a water permit within 30 days after well drilling begins. Further, the OSE must determine that changing the location or use of well or well water is not detrimental to the owners of other valid water rights.
A well owner may drill additional wells to supplement existing well(s) up to the maximum amount of water right(s) available to the well owner. The well owner must make application for a water permit first; however, publication and protest hearing requirements may be complied with at a later date. The OSE must determine that an emergency situation exists requiring supplemental wells and that the drilling of supplemental wells is not detrimental to the owners of other valid water rights.

Section 8.3-Regulation of Artesian Wells

The OSE is responsible for the regulation and use of those artesian waters declared to be public. However, in the case of specific artesian water conservancy districts, it is probable that the OSE shares its authority with the same.

Section 8.4-Advance Withdrawal of Artesian and Underground Water for Highways

Where the Departments holds a valid water property right to be used for highway-related projects, the OSE may authorize the Department to make withdrawals for water in advance of the accrual of such waters. The advance withdrawal of water may not be in such amounts as to be detrimental to the other holders of valid water rights. Further, advance withdrawals of water may not exceed an amount equal to five times the annual amount of the water right actually held by the Department. When so authorized by the OSE.

Section 8.5-Accrual of Unused Water Under Artesian or Underground Water Rights for Highways

The OSE may permit the Department to accrue unused water under one or more artesian or underground water right(s) for a period of time not to exceed five years. Such water may be used for highway-related projects and must not be detrimental to the holders of other valid water right(s). When so authorized by the OSE, an application can be filed to appropriate water.

Section 8.6-Ground Water; Three Acre-Feet Rule

New Mexico state law, section 72—12—1, provides three acre-feet of underground water rights to any contractor for a single construction project. In order to exercise this water right, the Department and/or Contractor must make application to the OSE and within the same describe the location of the well to be used. Further, all such well water will be metered and the amount used reported to the OSE at the end of each month. On highway-related projects, the Project manager is responsible for preparing and submitting the required report to the OSE and the Water Acquisition Agent. The Water Acquisition
Agent is responsible for locating or assisting the contractor in locating a well source and negotiating a unit price for this water actually used for highway-related purposes. Such information shall be included in the Notice to Contractors Letter.

**SECTION 9-SURFACE WATERS**

Surface water flowing in rivers, streams, or other natural courses in New Mexico are public waters subject to appropriation. As is the case with other public waters, the OSE is responsible for regulating surface water appropriation in New Mexico. Surface waters may not be put to any new beneficial use without first obtaining a water permit from the OSE.

All natural waters flowing in streams and water courses in New Mexico are declared to be public and subject to appropriation for beneficial use.

Since natural waters are declared to be public, the OSE considers artificial waters to be private waters not subject to appropriation. Drain waters, seepage, waste or percolating waters which rise to the surface from constructed works and which do not flow into streams or watercourses belong to this class. Artificial flows belong to the creator or developer of such flows as long as they are confined to his/her property.

The OSE does not allow surface water rights to accumulate from one year to the next. Such rights must be used in the year, which they are appropriated.

**SECTION 10-EFFLUENT WATER**

Under proper circumstances, effluent wastewater may be used for highway construction or highway-related purposes. Such water should be analyzed to ensure that the chemical composition of the water would not prohibit its use in highway construction.

Further, the use of such water will have to comply with community or county health standards. Water trucks, storage tanks, or other water facilities should be identified as containing effluent water. The vendor shall attest in writing that the effluent water has been processed to the point that it poses no health threat to the general public if used on a highway project.

**SECTION 11-INDIAN WATER**

Note: OSE approval for water transfers from Indian water is required when a new place or purpose of use is not on Indian lands. If the entire project is on Indian lands, the Office of the State Engineer does not have jurisdiction.
As is the case with other water appropriations, prior approval is required by the OSE to use water sources and/or water rights acquired from Tribal Lands for highway-related projects not on Indian Lands. The Nation/Tribal leaders and the OSE will approve such an agreement in writing.

SECTION 12—BUREAU OF RECLAMATION

If the Department determines that it wishes to divert surface water from the San Juan River Basin for highway-related purposes, the following procedures are applicable:

1. The Department may make application to the Bureau of Reclamation to lease water subject to the valid senior water rights of other users, or

2. The Department may transfer privately held water rights it has leased or acquired to the San Juan Basin upon prior approval of the OSE.

SECTION 13—CONTRACTS AND AGREEMENTS

The Water Acquisition Agent is responsible for the preparation of water contracts or agreements between the Department and water vendors and water right owners. The Taxation and Revenue Department and the Office of General Counsel will approve such contracts prior to approval by the Right of Way Bureau Chief. The contract administration section will assign a vendor number for a Contract Brief.

SECTION 14—DESIGNATION OF WATER SOURCE

Current Department policy requires that the Department attempt to provide adequate water resources to the highway contractor to be used for highway-related projects, or to assist and guide the contractor in finding sufficient water resources. The purpose for providing this service to the highway contractor is to expedite the timely and orderly construction of highway-related projects, and to reduce and/or eliminate conflicts with OSE regulations. However, the highway contractor is normally under no obligation to use those water resources provided by the Department. The highway contractor, at his own discretion, may determine to acquire and use alternate water sources providing that he complies with OSE regulations.

However, the Department may determine that it is in the public interest to designate a specific water source to the highway contractor for his/her use on highway-related projects. In general, the Department may determine to designate a water source if its acquisition results in a withdrawal of acreage from agricultural production, which results in a substantial expenditure to the Department. On federal and federal-aid projects, the Department may request Federal Highway Administration participation in such costs.
SECTION 15-TITLE

The Water Acquisition Agent shall confirm ownership of irrigated lands, wells, and/or water property rights, which the Department seeks to lease or purchase. This information is normally of record at the appropriate county. However, when confronted with complex title searches, the Water Acquisition Agent may request assistance from the Department’s Lands Abstracting Unit.

SECTION 16-FEES

Section 16.1-List of Fees

A list of fees charged by the OSE for issuing certain documents and performing other services in connection with the administration of the underground law. may be obtained from the appropriate OSE or by referring to the following web-pages:

http://www.ose.state.nm.us/water_info_rights_apps_forms.html
http://www.ose.state.nm.us/doing-business/forms-inst/ApplicationFilingFees.pdf

Section 16.2-Fees for Other Services

The OSE charges for reviewing plans for the development of ground water from a well or wells that have not been put to beneficial use prior to the time a basin is declared or extended. A list of fees may be obtained from the OSE.

SECTION 17-RECORDS AND REPORTS

Section 17.1-Document Availability

All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, payment records, and any other data and documents relative to the acquisition of water/water rights shall be available for inspections at reasonable times by authorized representatives of the FHWA and other authorized federal representatives.
Section 17.2-Records

Record keeping

The acquiring agency shall maintain adequate records of its acquisition and property management activities in regard to water rights issues.

Section 17.3-Confidentiality of Records

Records maintained by the Department in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise. [49 CFR 24.9(b)]

Section 17.4-Water Acquisition Files and Correspondence

The Records Unit of the Right of Way Bureau is responsible for maintaining project files, which may contain a water resources file for each project where the Department is required to acquire water resources. Original agreements, documents, Agent reports, maps, and copies of all relevant correspondence shall be placed in this file. This is necessary in order to ensure that this information is eventually included in Department microfilm files, and is therefore, included in the project permanent record.

The Water Acquisition Agent shall maintain working records on a project basis for those projects where the Agent acquires water resources. Such files will contain copies of agreements, documents, Agent reports, maps, and relevant correspondence. Currently, these working records are divided into four categories:

1. Pending Projects
2. Active Projects
3. Completed Projects
4. Rest Areas and Patrol Yards

The Water Acquisition Agent shall maintain a reference library of technical publications, OSE maps, and a quadrangle book of maps colored to identify declared water basins.

The Water Acquisition Agent shall maintain permanent records of historical data concerning past water resources acquisition. Such information shall be filed in reference to county and water basin. Such information is useful in determining sources of water and water rights for future projects.
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, New Mexico 87504-1149

Public Utilities & Utility Services

NMAC 17.4.2
Utility Rights-of-Way and Easements Requirements for Occupancy of State Highway System, Rights of Way by Public Utility Facilities
Regulations, Policy and Procedure Governing Occupancy of Utility Facilities

Signature and Title of Issuing Authority

Name: ___________________________ Date: __________________

Title: ___________________________
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CHAPTER 1  PURPOSE

SECTION 1-GENERAL

The purpose of the Right of Way Procedural Manual is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will ensure compliance with state and federal laws pertaining to Right of Way program in New Mexico.

The Department’s practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations.

In general, the Handbook has been developed for the Department’s use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations and directives. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

SECTION 2-FHWA PROVISIONS

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.

The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects those requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for approval within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval.
SECTION 3-STRUCTURE OF HANDBOOKS

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of eleven volumes as follows:

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Each volume is available on the Department’s website at [http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf](http://dot.state.nm.us/content/dam/nmdot/Infrastructure/ROW_Handbook.pdf), linked through Office of the Infrastructure and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters and sections.

Forms and sample documentation are available from each unit’s supervisor. The main information phone number at Right of Way is (505) 827-5631.
CHAPTER 2 AUTHORITY

SECTION 1-GENERAL

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.

2. Executive Order No. 89-15 signed by Governor Carruthers, 3/30/89.

3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.


6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.


10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.


Sections of laws and regulations may be referred to in this Handbook for the user’s reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA for approval prior to implementation.
CHAPTER 3 – ORGANIZATION

SECTION 1 – GENERAL

The Utility Section is located within the Right-of-way Bureau under the direction of the Right-of-way Bureau Chief. The Utility Section/Engineering Coordinator is responsible for relocation/adjustment/installation of public utilities within existing New Mexico public highway Right-of-way, or Right-of-way to be acquired for highway construction purposes activities of the Right-of-way Bureau.

The Utility Section functions under the direction of the Utility Section Manager who reports directly to the Right-of-way Bureau Chief.

The Utility Engineering Coordinators, under the direction of the Utility Section Manager, reports directly to the Utility Section Manager.

The Utility Section has Utility Engineering Coordinators assigned for each Department district and various projects throughout the state. All Utility Section employees shall meet the New Mexico State Personnel Board Classification Plan requirements designated for each position.

SECTION 2 – DUTIES

The duties of the Right-of-way Utility Section include, but are not limited to:

1. The coordination and functional control pertaining to all aspects of public utility related construction considerations, accommodations and installations affecting the Department.

2. The coordination of adjustment/relocation/installation of utilities in conflict with the construction of highway projects.

3. The control of utility occupation of public right-of-way, including utility permits, coordination, regulation and central administration.

4. General liaison with public and private utilities/owners.

5. Assist other Department functionaries concerning matters pertaining to the administration of utility company occupation of public right-of-way, utility relocations on construction projects and other matters relative to safety.

SECTION 3 – CONFLICT OF INTEREST

If the Utility Engineering Coordinator has a personal or family relationship with, or involvement in, the past ownership or sales history of the real property or a participating business association with the owner or any other party of interest in the property sought, the Utility Engineering Coordinator must consult the Utility Section Manager or Bureau Chief for guidance.
The following rules shall govern business relationships between the Utility Engineering Coordinator and utility/owners.

Utility Engineering Coordinators shall not accept favors, gratuities or compensation of any nature from persons/utility owners with whom they conduct Department business.

SECTION 4 – STATUTES

Ref: NMAC 17.4.2:

PUBLIC UTILITIES AND UTILITY SERVICES
UTILITY RIGHTS OF WAY AND EASEMENTS
REQUIREMENTS FOR OCCUPANCY OF STATE HIGHWAY SYSTEM RIGHT-OF-WAY BY UTILITY FACILITIES.

SECTION 5 – FHWA UTILITY ACCOMMODATION POLICY

NEW MEXICO DEPARTMENT OF TRANSPORTATION

Utility Accommodation Policy

This Utility Accommodation Policy is a statement of the policies and procedures used by the New Mexico Department of Transportation to regulate and accommodate utilities on the highway right of way. Specifically under 23 CFR 645.215 (b) the Federal Highway Administration (FHWA) requires each state that receives federal funding for highways to develop its own utility accommodation policy. The Utility Accommodation Policy of the Department of Transportation consists of specific state statutes, state regulations, federal laws and regulations, and the Department’s Right of Way Manual for Utilities.

The Legislature of the State of New Mexico has declared by the passage the following NMSA 1978 Comp., Section 67-8-15 that accommodation of utilities within public highways is necessary and in the public interest:


A. The construction of modern highways is necessary to promote public safety, facilitate the movement of present-day motor traffic, both interstate and intrastate in character, and to promote the national defense, and in the construction of such highways it is also in the public interest to provide for the orderly and economical relocation of utilities when made necessary by such highway improvements, including extensions thereof within urban areas, without occasioning utility service interruptions or unnecessary hazards to the health, safety and welfare of the traveling or utility consuming public.

B. Utilities have been authorized by statute for many years to locate their facilities within the boundaries of public roads and streets in this state; because utilities are subject to extensive regulation by state agencies and they are affected with the public interest in that, among other things:

(1) the business and activities of utilities involve the rendition of essential public
services to large numbers of the general public, and no cessation of utility service is permitted without authority of law;
(2) the financing of utilities involves the investment of large sums of money, including capital obtained from many members of the general public;

(3) the development and extension of utilities directly affects the development, growth and expansion of the general welfare, business and industry of this state; and

(4) all persons in this state are actual or potential consumers of one or more utility services, and all consumers will be affected by the cost of relocation of their utilities as necessary to accommodate highway improvements.

Public highways are intended principally for public travel and transportation; but they are also intended for proper utility uses in serving the public, as authorized pursuant to the laws of this state, and such utility uses are for the benefit of the public served. Without making use of public ways utility lines could not reach or economically service the adjacent public, particularly in urban areas.

C. Federal-aid highways of the interstate system and other modern highway improvements serve the need of nonlocal and long distance traffic.

D. The burden of such utility relocations is a burden on the public in this state, whether initially borne by the state or the utility or in part by both, and it is, therefore, in the public interest that such burden be minimized to the extent that same can be done consistently with the principal purpose of such highways for vehicular movement of persons and property; therefore, it is the intent of the legislature to ensure that the state’s police power in requiring relocation of utilities shall be exercised in a reasonable manner.

E. Utility relocations necessitated by construction of public highways or improvements thereto are a public governmental function, properly a part of such construction and to the extent in this act [67-8-15 to 67-8-21 NMSA 1978] provided such relocations shall be made at state expense; however, although made in obedience to the commission’s orders in exercise of the police power under this act, relocations hereunder for which compensation is not provided by this act or otherwise by law are declared to be damnum absque injuria and no claim therefor shall be enforceable against the state. Utility relocations to which this act is applicable shall be made only in pursuance hereof.

F. The statements in this Section 1 [this section] are legislative determinations and declarations of public policy, and this act shall be liberally construed in conformity with its declarations and purposes to promote the public interest.

The Department of Transportation, having the powers previously granted to the State Highway Commission (now State Transportation Commission), is empowered by the legislature to promulgate rules and regulations to carry out the responsibilities of the Department and to prescribe the manner in which utilities may occupy public highway rights of way.

67-3-12. Powers and duties

In addition to the powers now conferred upon it by law, the state transportation commission:

A. shall prescribe by rule the conditions under which pipelines, telephone, telegraph and electric transmission lines and ditches may be placed along, across, over or under public highways in
this state and shall forcibly remove or cause to be removed pipelines, telephone, telegraph or electric transmission lines or ditches that may be placed along, across, over or under such public highways in violation of such rules and regulations;

67-3-11. Rule-making power
The State Transportation Commission is hereby authorized to make all rules and regulations as may be necessary to carry out the provisions of Chapter 67 NMSA 1978.

Pursuant to its statutory authority cited, the Department has promulgated its regulations pertaining to the use of public highway rights of way by utilities and others. These regulations are codified in the New Mexico Administrative Code as 17 NMAC 4.2. The scope of the regulations is expressed at 17.4.2.2.

17.4.2.2 SCOPE: This utility accommodation policy shall apply to all publicly, privately, cooperatively, municipally or governmentally owned facilities used for the carriage, transmission or distribution of electric power, telephone, telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar lines, that are to be accommodated, adjusted or relocated within the right-of-way of highways, roads or streets under the jurisdiction of the New Mexico State Highway and Transportation Department.

A. This utility accommodation policy is provided for the regulation of the location, design and methods for installing, adjusting or relocating, accommodating and maintaining physical utility facilities on highway rights-of-way.

B. Where laws or orders of public authority or industry codes prescribe a higher degree of protection or construction than provided by this utility accommodation policy, such laws, orders or codes shall prevail.

The regulations state the general utility accommodation policy and the accommodation policy on freeway or interstate right of way below:

17.4.2.11 UTILITY ACCOMMODATION POLICY

A. Application: This utility accommodation policy shall apply to all publicly, privately, cooperatively, municipally, or governmentally owned facilities used for the carriage, transmission or distribution of electric power, communication facilities, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar items, that are to be accommodated or relocated within the rights of way of highways, roads or streets under the jurisdiction of the New Mexico State Highway and Transportation Department.

(1) This utility accommodation policy is provided to regulate the location, design and methods for installing, accommodating and maintaining physical utility facilities within public highway rights-of-way. This Section provides for the continuation of past regulations, State law and modifies and adds new regulations where necessary to comply with new State Laws and/or Federal Codes pertaining to the accommodation and relocation of utilities on State and Federal Aid Projects. The accommodation policy does not address the financial responsibility for replacing right-of-way or relocating the facilities of utilities in conflict with planned highway construction. The reimbursement policy of this Department is set forth in Section 19 [now 17.4.2.19 NMAC] of this manual.

(2) When laws or orders of public authority or industry codes prescribe a higher degree of protection for utility facility construction than provided for in the accommodation procedures set forth in this regulation, such laws, orders, or codes shall prevail.
17.4.2.17 THE ACCOMMODATION OF UTILITY FACILITIES WITHIN FREEWAY OR INTERSTATE RIGHT-OF-WAY: Pursuant to Federal Highway Administration (FHWA) regulations regarding the accommodation of longitudinal utility facilities within the access control limits of Freeways and Interstate Highway rights-of-way, the Department will allow under controlled circumstances, the placement of longitudinal utility facilities within the access control limits of the Interstate System or other fully access controlled Freeways. These regulations do not apply to utility lines for servicing facilities required for the operation of the Freeway.

A. Term and cost of permit: Permits for longitudinal utility facilities within the access controlled Freeways shall have a term as set by the Engineer, but in no event shall the term exceed twenty-five (25) years. The Engineer may impose charges, fees or other compensation or consideration as may be reasonable for the occupancy of the right-of-way by the utility. The permit shall be subject to any other reasonable conditions deemed appropriate by the Department under the circumstances. Even though payment may be made by the utility to the Department, no permit shall be exclusive, meaning the Department may issue additional permits to other utilities within the same Freeway right-of-way.

The details of the policies of the Department which must be prescribed by regulation to be enforceable are contained in the full set of regulations at 17 NMAC 4.2. These regulations have the full force of law since they were enacted and filed as provided by statute.

To further implement and apply the Utility Accommodation Policy and the regulations uniformly, the Department has prepared a “Utility Manual” which is intended to be an internal guide for employees of the Department in carrying on their day to day operations with respect to the accommodation and relocation of utility facilities within highway right-of-way or affected by highway construction or reconstruction. The Utility Manual is part of the Right-of-way Procedural Manual to be approved by FHWA. If any conflict between the Utility Manual and the regulations, 17 NMAC 4.2, arises the regulations shall prevail and be controlling since the Manual is supplemental to the regulations and the regulations have the force of law.

Laws, Rules, and Regulations

A. Federal Laws


1. 23 U.S.C. 109 (l)
   This section deals with the accommodations of utilities on the right-of-way of federal-aid highways.

2. 23 U.S.C. 123
   This section deals with reimbursement for the relocation of utility facilities necessitated by the construction of a project on any federal-aid system.

The Telecommunications Act of 1996

B. Federal Regulations

For federal-aid highways, the utility regulations are contained in Part 645 of Title 23 of the Code of Federal Regulations (23 CFR 645) and non-regulatory supplements are contained in Chapter 1, Subchapter G, part 645 of the Federal-Aid Policy Guide (FAPG).

1. Subpart A of Part 645
Subpart A of part 645 deals with utility relocations, adjustments, and reimbursement.

2. Subpart B of Part 645

Subpart B of part 645 deals with the accommodation of utilities. Specifically under 23 CFR 645.215(b), the Federal Highway Administration (FHWA) requires each state that receives federal funding for highways to develop its own utility accommodation policy. Once a state’s policy is approved by the FHWA, any utility installations to be installed on federal-aid highways in accordance with the approved state policy may be approved by the state without referral to the FHWA.
C. Other Guides

The following FHWA publications provide additional guidance:

   www.fhwa.dot.gov/reports/utilguid/  
   This publication explains the federal utility regulations contained in 23 CFR 645 and provides non-regulatory guidance for using federal aid highway funds for the relocation and adjustment of utility facilities and for accommodating utility facilities on highway right-of-way.

   www.fhwa.dot.gov/programadmin/utility.html  
   This publication provides comprehensive knowledge and guidance on highway/utility issues, including planning and coordination, design, permits, information management and mapping, notification procedures, legal matters, safety, construction, maintenance, reimbursement, and other issues.

Other State Law


Submitted and Approved:

New Mexico Department of Transportation

______________________________ Date: __________________
Tom Church
Cabinet Secretary, Designate
Utility Broadband Accommodation Policy

Access to broadband facilities is essential to the Nation's global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource. Presidential Executive Order 13604 of March 22, 2012 (Accelerating Broadband Infrastructure Deployment), requires each state that receives federal funding for highways to develop its own broadband accommodation policy.

In order to meet this national interest, it is the policy of the New Mexico Department of Transportation (NMDOT) that broadband telecommunication facilities shall be accommodated within its highway rights of way under the jurisdiction of NMDOT in conformance with state law. Although public highways are intended principally for public travel and transportation, state law recognizes that public highways serve the public by accommodating utilities, including broadband telecommunication uses, in such that utility uses are for the benefit of the public served. Like other utilities, broadband providers subject to regulation by state agencies, affect the public interest by the rendering essential public services to large numbers of the general public, by investing extensively in the state with capital obtained from many members of the general public, and by directly affecting the development, growth and expansion of the general welfare, business and industry of this state.

This Broadband Accommodation Policy is a statement of the policy to be used by NMDOT to accommodate broadband facilities within the highway right of way. This Broadband Accommodation Policy is implemented by existing state law and in particular, NMDOT's Utility Regulations at 17 NMAC 4.2. These regulations have the full force of law since they were enacted and filed as provided by statute.

To the same extent as other utility relocations, the burden of telecommunication utility relocations is a burden on the public in this state, whether initially borne by the state or the telecommunication utility or in part by both. Therefore, it is in the public interest that such burden be minimized to the extent that same can be done consistently with the principal purpose of such highways for vehicular movement of persons and property. Under the utility regulations, telecommunication relocations necessitated by construction of public highways or improvements thereto are a public governmental function and shall be carried out in a reasonable manner.

Federal Regulations

For federal-aid highways, the utility regulations are contained in Part 645 of Title 23 of the Code of Federal Regulations (23 CFR 645).
23 CFR 645 summarized as follows:

1. Subpart A of Part 645:
   Subpart A of part 645 deals with utility relocations, adjustments, and reimbursement.

2. Subpart B of Part 645:
   Subpart B of part 645 deals with the accommodation of utilities. Specifically under 23 CFR 645.215(b), the Federal Highway Administration (FHWA) requires each state that receives federal funding for highways to develop its own utility accommodation policy. Once a state’s policy is approved by the FHWA, any utility installations to be installed on federal-aid highways in accordance with the approved state policy may be approved by the state without referral to the FHWA. On Interstate projects, FHWA approval is needed.

State Regulations

For State/Federal highways, the utility regulations are contained in 17 NMAC 4.2 noted as follows: Title 17: Public Utilities and Utility Services Chapter 4: Utility Rights of Way and Easements Part 2 - Requirements for Occupancy of State Highway System Right-of-Way By Utility Facilities

Other Federal Guides


This publication explains the federal utility regulations contained in 23 CFR 645 and provides non-regulatory guidance for using federal aid highway funds for the relocation and adjustment of utility facilities and for accommodating utility facilities on highway right of way.

Other State Law

SECTION 1 - GENERAL
The Department’s Utility Section has established professional working relationships with personnel from utility companies throughout the state of New Mexico, as well as with many interstate utility companies who currently have utility facilities within state owned right-of-way. Because of these relationships, the Utility Engineering Coordinators are able to call these companies and receive assistance and information almost immediately. Conversely, utility companies depend on the Department to educate them on utility occupancy of state right-of-way policy and to provide guidance on state, federal and other jurisdictional documentation requirements. In many cases, and on an as needed basis, the Department Utility Engineering Coordinators can and have assisted utility companies/owners such as rural cooperatives in fulfilling state, federal and other jurisdictional requirements and procedures relative to the accommodation of utilities within state right-of-way so as to facilitate meeting our highway project schedules. The coordination team will also take the initiative to visit utility offices to provide one-on-one training sessions (as required) to ensure the utility functional processes are properly addressed in a timely fashion during highway project development. The Department views each project individually and utilizes its experience with past projects in our approach to each situation.

Early planning with utilities and identifying existing utilities on plans during the preliminary highway design phase and also identifying potential conflicts are one of the utmost important processes during preliminary highway design. Early planning benefits the Department and utility owners in the following ways:

- With the use of the Subsurface Utility Engineering (SUE) process, unexpected conflicts with utilities are eliminated because the exact location of all utilities are known and accurately shown on the construction plans. SUE is used on projects that are most likely to involve conflicts with underground utilities.

- It reduces delays to the contractor during highway construction caused by cutting, damaging or just discovering utility lines that were not known to be there.

- It reduces subsequent contractor claims for delays resulting from unexpected encounters with utilities.

- Unnecessary utility relocations are avoided because utility information becomes available to the highway designers early enough in the development of a project to design around many potential conflicts.

- It reduces costly relocations normally necessitated by highway construction projects.

- It reduces delays to the project caused by waiting for utility work to be completed so highway construction can begin.

These benefits translate into substantial savings in cost and time to the Department and the utility owner.
SECTION 2- UTILITY ACCOMMODATION POLICY

A. Application: The Utility Accommodation Policy shall apply to all publicly, privately, cooperatively, municipally or governmentally owned facilities used for the carriage, transmission or distribution of electric power, communication facilities, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation and similar items that are to be accommodated or relocated within the rights-of-way of highways, roads or streets under the jurisdiction of the New Mexico State Highway and Transportation Department.

(1) The Utility Accommodation Policy is provided to regulate the location, design and methods for installing, accommodating and maintaining physical utility facilities within public highway rights-of-way. This section provides for the continuation of past regulations, state law and modifies and adds new regulations where necessary to comply with new state laws and/or federal codes pertaining to the accommodation and relocation of utilities on state and federal aid projects. The accommodation policy does not address the financial responsibility for replacing right-of-way or relocating the facilities of utilities in conflict with planned highway construction. The reimbursement policy of the Department is set forth in Section 19 [now 17.4.2.19 NMAC] of this manual.

(2) When laws or orders of public authority or industry codes prescribe a higher degree of protection for utility facility construction than provided for in the accommodation procedures set forth in this regulation, such laws, orders, or codes shall prevail.

B. General utility design requirements: Except when a higher degree of protection is required by industry or governmental codes, laws or by regulations of the Department or orders of the public authority having jurisdiction over the utility, all utility facility installations on, over, along or under the surface of the rights-of-way of state highways, including attachments to highway structures shall, as a minimum, meet the following utility industry and governmental requirements:

(1) Electric power and communication facilities installations shall conform with the current applicable National Electric Safety Code.

(2) Water, sewage and other effluent lines shall conform with the requirements of the American Public Works Association or the American Water Works Association.

(3) Pressure pipelines shall conform with the current applicable sections of the Standard Code of Pressure Piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and/or applicable industry codes.

(4) Liquid petroleum pipelines shall conform with the current applicable recommended practice of the American Petroleum Institute for Pipeline Crossings Under Railroads and Highways.
(5) Any pipeline carrying hazardous commodities shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of such materials.

C. Pipelines located in casings, galleries, utility tunnels or highway structures shall be designed to withstand expected internal pressures and to resist internal and external corrosion. Casings or uncased pipelines shall be designed to withstand external pressures as well.

D. Joints in carrier pipelines operating under pressure shall be of a mechanical or welded leak-proof construction.

E. Ground-mounted utility facilities shall be of a design compatible with the scenic quality of the specific highway segment being traversed.

F. All utility installations on, over, along or under highway rights-of-way and attachments to highway structures shall be of durable materials designed for a long service-life and relatively free from routine maintenance.

G. On new installations or relocation of existing facilities, provisions shall be made for expansion of the facilities, particularly those underground or attached to highway structures. These provisions shall be planned so as to avoid interference with highway traffic when additional facilities are installed in the future.

H. Utility installations that are required for highway purposes, such as highway lighting, traffic signals, pump stations, telecommunications services for rest areas, etc., shall be handled as highway project construction items on proposed highway projects. As such, coordination by the appropriate Department design unit and the affected utility is required so as to ensure that proper bid items are included in the highway construction plans/documents and that appropriate agreements are developed for addressing service, maintenance and other costs. Where no highway project is proposed, but utility services for highway purposes are required, coordination between the appropriate Department design unit requesting the service, the utility and the affected highway district shall be required and appropriate documentation developed so as to outline the responsibilities of each party. In all cases, the location of such facilities within highway right-of-way shall be properly established and included in the District’s utility database.
I. The utility owner shall be responsible for compliance with industry code, the conditions and/or special provisions specified in the permit, applicable statutes and regulations of the State of New Mexico, and the U.S. Department of Transportation Code of Federal Regulations.

J. The utility owner shall be responsible for the design, construction and maintenance of all facilities to be installed within highway rights-of-way. All elements of these facilities are subject to review and approval by the Department, particularly the materials, location and method of installation. The utility owner is responsible for, and will provide all measures as required to preserve the safe and free-flow of traffic, structural integrity of the roadway or highway structure, ease of highway maintenance and appearance of the highway resulting from their installation. Traffic control plans and signing shall be approved by the Department prior to any utility work within the highway right-of-way.
SECTION 3- FLOW CHART

1. COOPERATIVE AGREEMENT FLOW CHART FOR MUNICIPALITIES TO PUT MONIES UP FRONT
CHAPTER 5 – UTILITY PROCEDURES IDENTIFYING

30% PROJECT ALERT LETTER

Date, 2015

Name
Company Name
Address
City, NM 87XXX

Subject: 30% Design Project
Project CN XXXXXX

Termini: BOP, EOP

Dear Name:

The New Mexico Department of Transportation has scheduled the subject project(s) for construction contract letting on Date, 2015. The proposed improvements may require adjustment/relocation of facilities owned by your company. It appears that your facilities, which may be affected by our proposed construction, are presently located within public right-of-way.

Enclosed is a set of preliminary roadway design plans (30% Design Stage) for the project. Please review and confirm the accuracy of this information and advise us in writing by Date, 2015 whether or not you anticipate any conflicts between proposed highway features and any of your existing facilities. It is very important that you supply accurate information concerning the type and location of your facilities so that they can be correctly addressed and expeditiously relocated if in conflict. Also, submit copies of your approved accommodation permits to occupy the present location with public right-of-way. If you do not occupy this location by means of an approved permit, you are advised to prepare and submit the required accommodation permits along with accommodation plans for both proposed relocations and existing utilities which do not require relocation at the earliest opportunity. These permits and plans are required to accommodate this project and so that your company is in compliance with State Law and Regulations.
Utility Company is hereby authorized and requested to incur preliminary engineering costs for the purpose of conducting field studies, investigating methods of plant adjustment/relocation, research of evidence of compensable interests, developing preliminary cost estimates and adjustment/relocation plans, and other preparatory work associated with utility adjustment/relocation.

Please note that final utility adjustment/relocation engineering, design and detailed estimates may be predicated on more advanced and detailed highway design plans (60% Design Stage), which will be made available to you as soon as they become available. As such, any final utility adjustment/relocation engineering and design expenses incurred by you prior to receipt of such plans (60% Design Stage), are your responsibility.

New Mexico State Statutes will not permit us to reimburse your company for any adjustment/relocation costs associated with facilities located within public right-of-way. If it should develop that portions or all of your facilities are located on private property, advise us at once and submit copies of your easements or other compensable property documents to occupy private property. We will subsequently forward the necessary utility adjustment/relocation forms that provide for reimbursement in accordance with State Law.

The project utility certification date is Date, 2015. It is our desire to have all possible utility adjustments/relocations completed at that time. We will be coordinating with your company on an ongoing basis, as well as conducting utility coordination meetings. Your cooperation in responding to our communications and attending scheduled meetings will facilitate timely adjustments/relocations and will be appreciated.

Please note that in order to protect the long-term durability of the pavement, the Department has a “No-Cut” policy that prohibits trenching in new pavement. You are therefore encouraged to plan for repair of existing utility facilities and provide for future expansion of utility services as necessary, as part of this project. Furthermore,
30% PROJECT ALERT LETTER (CONT.)

Utility Company
Page 3

Pursuant to MAP-21 (Moving Ahead for Progress in the 21st Century Act), http://www.fhwa.dot.gov/programadmin/contracts/bas182.cfm and (23 U.S.C 313) implemented by the Federal Highway Administration on October 1, 2012, utility owners must use “steel, iron and manufactured products that are produced in the United States”.

If you have any questions or require additional assistance, please don’t hesitate to call (505)827-XXXX or fax (505)827-6862. I can also be reached via email at First.Last@state.nm.us.

Your cooperation and interest in this highway project are appreciated.

Sincerely,

Name
Utility Coordinator

Enclosures: Plan Set (30% Design)

cc: Ronald Noedel
   Shawn Chafins
   Project File
Date, 2015

Name
Company
Address
City, NM 87XXX

Subject: 60% Design (Authorization to Engineer)
Project CN XXXXXX

Termini: BOP, EOP

Dear Name:

As you are aware, the New Mexico Department of Transportation has scheduled the above project for construction contract letting on Date, 2015 and it may be necessary to adjust portions of your facilities in conflict with this project. This correspondence is your authority to proceed with final utility engineering and design for utility adjustment/relocation construction. It is very important that you provide any easement or prior right documentation needed to determine the eligibility for reimbursement no later than Date, 2015.

Enclosed you will find Utility Permit Accommodation Permits (4) with Permit Instructions for your use in finalizing your adjustment/relocation plans. Please complete and execute all four (4) permits for any facilities that will be located within NMDOT Right-of-Way and return them along with four sets of adjustment/relocation plans which depict your facilities within the right-of-way.

We request that you submit the above documents by Date, 2015. Failure to comply with this request may result in utility adjustment/relocation delays, highway contractor delays and/or claims, which could become the responsibility of your company pursuant to current regulations. Please enclose a statement with your submittal indicating the number of calendar days it will take to complete your construction after you have been authorized to proceed.
Pursuant to MAP-21 (Moving Ahead for Progress in the 21st Century Act), http://www.fhwa.dot.gov/programadmin/contracts/bas182.cfm and (23 U.S.C 313) implemented by the Federal Highway Administration on October 1, 2012, utility owners must use “steel, iron and manufactured products that are produced in the United States”. Therefore, please provide certification verifying that your facility relocation/installation is in compliance when submitting your documentation by the date listed above.

If you have any questions or require additional assistance, please don’t hesitate to call (505) 827-XXXX or fax (505) 827-6862. I can also be reached via email at First.Last@state.nm.us.

Your cooperation and interest in this highway project are appreciated.

Sincerely,

Name
Utility Coordinator

Enclosures: Plan Set (60% Design)
   (4) Permit Application
   (1) Permit Checklist
   (4) Utility Adjustment Agreements
   (1) Utility Adjustment Questionnaire
   (1) Environmental Form
   (1) Estimate and Billing Guide

cc: Ronald Noedel
    Shawn Chafins
    Project File
90% AUTHORIZATION TO CONSTRUCT

Date, 2015

Name
Company
Address
City, NM 87XXX

Subject: 90% Design (Authorization to Construct)
Project CN XXXXXX

Termini: BOP, EOP

Dear Name:

This is your authorization to proceed with the adjustment/relocation work required to accommodate the subject highway project.

As indicated in your relocation package, this includes a description of work to be performed to accommodate the project, and location of work.

This approval is granted contingent on the following conditions:

1. You must have your Traffic Control Plan approved by the District Traffic Engineer prior to your construction. You are also required to notify the District Traffic Engineer, in writing, five (5) days prior to your construction to advise of the starting date and completion date. This notification should be addressed to the attention of:

   Name
   District X Traffic Engineer
   NM Department of Transportation
   Phone: (XXX)XXX-XXXX
   STREET ADDRESS
   CITY, NM XXXXX

2. Should you find it necessary to significantly revise the work specified in your proposal, request any such revision, in writing, for our approval before proceeding with construction. This authorization to proceed with the adjustment/relocation/installation of work required to accommodate the project does not grant the utility owner access or the adjustment/relocation/installation of facilities within private easements. It shall be the utility owners’ responsibility to ensure permission is granted from private landowners, other than NMDOT, when crossing private easements or utility easements outside NMDOT Right-of-Way for the adjustment/relocation/installation of utility facilities.

Susana Martinez
Governor

Tom Church
Cabinet Secretary

Commissioners

Ronald Schmeits
Chairman
District 4

Dr. Kenneth White
Secretary
District 1

David Sepich
Commissioner
District 2

Butch Mathews
Commissioner
District 5

Jackson Gibson
Commissioner
District 6
90% AUTHORIZATION TO CONSTRUCT (CONT.)

Utility Company
Page 2

3. The utility owner shall provide “as-built” horizontal and vertical utility location information within thirty (30) days of completion of the project in hard copy and electronic file in AUTOCAD DWG (3D) or MICROSTATION DGN (3D) format. The standard horizontal datum shall be North American Datum 1983 (NAD 83) and the standard projections shall be the New Mexico State Plane Coordinate System 1983 (NMSPCS 83). The standard vertical datum shall be North American Vertical Datum 1988 (NAVD 88). The preferred media in which this data must be submitted is CD ROM. 3.5” diskette may be used for the data submittal. The utility location information shall be tied to Department monuments and referenced to highway mileposts or to highway project construction stationing and certified by a New Mexico Registered Land Surveyor. Metadata or “data about the data” shall be submitted with each utility’s as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include: 1) District Utility Permit Number 2) Name, address and phone number of the responsible land surveyor 3) Date of completion of survey 4) Equipment used to conduct the survey 5) Horizontal and vertical control marks used to tie the survey to the NMSPC83 and NAVD88 6) Ground to Grid combined scale factor used 7) Elevations shall be provided every 500 feet and at all survey break points, including all high and low points.

4. According to NMAC 4.2, 13.1 Aerial Facilities Parallel: The proposed installation of aerial utility facilities parallel to a state highway shall be located no more than .3048 m (1 foot) within the right-of-way line on a uniform alignment, wherever practical. Down guys and anchors shall not project into the cut or fill slopes. Minor variations will be considered on an individual basis upon substantiation submitted by the utility.

5. According to NMAC 4.2, 13.2 Aerial Facilities Crossing: Proposed installations of aerial facilities crossing a highway shall cross the highway at an angle near (90) degrees whenever practical. Poles, anchors and other appurtenances shall be located at, near, or outside of the highway rights-of-way. No crossing components shall obstruct upon the roadway prism unless approved by the Department, and all vertical clearances shall conform to the National Electric Safety Code as a minimum, but not less than twenty feet (20’). Minor variations will be considered on an individual basis, or upon substantiation submitted by the utility. {3/10/71, 11/15/96}

According to NMAC 4.2, 13.3 Buried facilities, parallel: The proposed installation of buried utility facilities parallel to a highway shall be located no more than 1.52 m (5 feet) within the right-of-way line, whenever practical. Surface components of buried facilities, i.e., valves, manholes, vents, etc., shall be located as close as possible to the right-of-way line. The high point of structural elements such as manholes, vaults and anchor blocks shall be at or below the grade of the right-of-way surface. Minor variations will be considered on an individual basis, on substantiation submitted by the
utility. All buried facilities shall be installed at a minimum depth of .91 m (36 inches) from natural ground elevation to the top of the buried facility. All trenches and ditches will be backfilled and compacted to the satisfaction of the Engineer. All excavations outside the roadway fore slopes shall be compacted to a density equal to the surrounding undisturbed soil. All excavations within the toes of the fore slopes shall be compacted to 95% maximum dry density. (Modified Proctor Method “C” T-99 or equivalent).

6. Pursuant to MAP-21 (Moving Ahead for Progress in the 21st Century Act), http://www.fhwa.dot.gov/programadmin/contracts/bas182.cfm and (23 U.S. C 313) implemented by the Federal Highway Administration on October 1, 2012, utility owners must use “steel, iron and manufactured products that are produced in the United States”.

Once the as-built information has been submitted and all requirements have been met, the permit will be issued.

If you have any questions or require additional assistance, please don’t hesitate to call (505)827-5502 or fax (505)827-6862. I can also be reached via email at ShawnC.Chafins@state.nm.us. You may also contact the Utility Coordinator at (505)XXX-XXXX or by email at First.Last@state.nm.us.

Your cooperation and interest in this highway project are appreciated.

Sincerely,

Shawn Chafins
Utility Manager

cc: Name, District X Traffic Engineer
    Name, Project Development Engineer
    Name, Utility Coordinator
    Ronald Noedel, ROW Bureau Chief
    Project File
NEW MEXICO DEPARTMENT OF TRANSPORTATION
Utilities Section
Estimate and Billing Guide

PLEASE NOTE:
- All vendors requesting reimbursement must show all details of estimated and actual costs, direct and indirect, according to this format. For Lump Sum contracts, all details of costs are also required.
- The derivation of all costs must be supported and verifiable (by computer reports, source documents, copies of invoices, price agreements, etc.).
- Unsupported or ineligible charges will preclude reimbursement.
- There must be a logical relationship and/or explanation between all item charges and quantities.

THE FOLLOWING INFORMATION SHOULD BE PROVIDED ON PAGE ONE OF YOUR ESTIMATE OR BILLING:

This estimate/billing reflects the remedial work on the utility’s facilities necessitated by the construction of the highway project identified below.

UTILITY OWNER: ____________________________________________________________
ADDRESS: ________________________________________________________________
WORK ORDER NUMBER(S): ________________________________________________
NEW MEXICO TAX I.D.: __________________________
FEDERAL TAX I.D.: ______________________________
SHARE VENDOR#: ______________________________
NMDOT PROJECT NUMBER: __________________________
NMDOT CONTROL NUMBER: __________________________
BILLINGS MAY BE AUDITED AT (ADDRESS): ________________________________
DATE PRELIMINARY ENGINEERING WORK STARTED: ________________________
DATE PRELIMINARY ENGINEERING WORK COMPLETED: _____________________
DATE CONSTRUCTION STARTED: __________________________
DATE CONSTRUCTION COMPLETED: __________________________

********************************************************************************************************************
Utility work that remains unpaid for a period of one (1) year from the date of completion of utility relocation work shall be subject to forfeiture pursuant to Title 17, Chapter 4, Part 2, Section 25 of the State Utility Regulations.

********************************************************************************************************************
A. PRELIMINARY ENGINEERING (Planning, preparatory and engineering work performed after official authorization from the Department to proceed and prior to actual construction.)

1. LABOR
   a. Applicable salaries and wages for each employee who worked on this project, as shown below. Attach appropriate contract labor agreements, payments and other labor documentation and note if pay rates include overtime or any other labor rates.

<table>
<thead>
<tr>
<th>EMPLOYEE NAME OR NUMBER</th>
<th>CLASSIFICATION</th>
<th>HOURS</th>
<th>WAGES/HR</th>
<th>AMOUNT</th>
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   b. Include activities shown below for each class of employee who worked on this project.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>LOADINGS (%)</th>
<th>TOTAL OVERHEAD</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>Workman’s Comp</td>
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<td>Vacation Leave</td>
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<tr>
<td>Other Additives</td>
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</tbody>
</table>
   (Detailed descriptions must be attached)

   c. Personal expenses incurred by employees working on this project as shown below. Vouchers/receipts must be attached.

<table>
<thead>
<tr>
<th>EMPLOYEE NAME OR NUMBER</th>
<th>VOUCHER NO.</th>
<th>AMOUNT</th>
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2. SUPPLIES

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<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>UNIT COST</th>
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3. TRANSPORTATION

<table>
<thead>
<tr>
<th>VEHICLE/EQUIPMENT NO.</th>
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   TOTAL PRELIMINARY ENGINEERING $__________$
B. RIGHT OF WAY ACQUISITION

1. PROPERTY COSTS (Market Value; voucher and value documentation must be attached.)

<table>
<thead>
<tr>
<th>VOUCHER NO.</th>
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2. LABOR
   a. Applicable salaries and wages for each employee who worked on this project, as shown below. Attach appropriate contract labor agreements, payments and other labor documentation and note if pay rates include overtime or any other labor rates.

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<th>AMOUNT</th>
</tr>
</thead>
</table>

TOTAL RIGHT OF WAY ACQUISITION $__________

C. CONSTRUCTION (Including applicable engineering and inspection.)
1. LABOR
   a. Applicable salaries and wages for each employee who worked on this project, as shown
      below. Attach appropriate contract labor agreements, payments and other labor
      documentation and note if pay rates include overtime or any other labor rates.

<table>
<thead>
<tr>
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<th>WAGES/HR</th>
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   b. Include activities shown below for each class of employee who worked on this project.

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   c. Personal expenses incurred by employees working on this project as shown below. 
      Vouchers/receipts must be attached.

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2. MATERIALS
   a. As shown below. Include vouchers/receipts for items from other sources other than stores 
      inventory.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>UNIT COST</th>
<th>VOUCHER:RECEIPT NO.</th>
<th>AMOUNT</th>
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   b. Material installed for temporary use, as shown below. (Per item + handling cost)

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<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>UNIT COST</th>
<th>VOUCHER:RECEIPT NO.</th>
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   c. Material recovered from temporary use, as shown below.

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<tr>
<th>ITEM</th>
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</tbody>
</table>

3. EQUIPMENT AND TRANSPORTATION

<table>
<thead>
<tr>
<th>VEHICLE/EQUIPMENT NO.</th>
<th>TYPE</th>
<th>USE/ MILES OR HOURS</th>
<th>RATE/ MILES OR HOURS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   TOTAL CONSTRUCTION $ ____________

D. ADMINISTRATIVE (Accounting and Billing)

1. LABOR
a. Applicable salaries and wages for each employee who worked on this project, as shown below. Attach appropriate contract labor agreements, payments and other labor documentation and note if pay rates include overtime or any other labor rates.

<table>
<thead>
<tr>
<th>EMPLOYEE NAME OR NUMBER</th>
<th>CLASSIFICATION</th>
<th>HOURS</th>
<th>WAGES/HR</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|                         |                |       |          |        |
|                         |                |       |          |        |

b. Include activities shown below for each class of employee who worked on this project.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>LOADINGS (%)</th>
<th>TOTAL OVERHEAD</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workman’s Comp</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacation Leave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sick Leave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Additives</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Detailed descriptions must be attached)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

e. Personal expenses incurred by employees working on this project as shown below. Vouchers/receipts must be attached.

<table>
<thead>
<tr>
<th>EMPLOYEE NAME OR NUMBER</th>
<th>VOUCHER NO.</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|                         |             |        |

2. TRANSPORTATION

<table>
<thead>
<tr>
<th>VEHICLE/EQUIPMENT NO.</th>
<th>TYPE</th>
<th>USE/ RATE/ AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>MILES OR HOURS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>MILES OR HOURS</td>
</tr>
</tbody>
</table>

|                       |      | AMOUNT            |
|                       |      |                  |

TOTAL ADMINISTRATIVE $ ____________

E. CREDITS (Salvageable materials)

1. MATERIALS

a. List all salvageable materials, as shown below.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>SALVAGE CREDIT</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|             |          |                |        |

TOTAL CREDIT $ ____________

BILLING RECAPITULATION
A. PRELIMINARY ENGINEERING $____________________
B. RIGHT OF WAY ACQUISITION $____________________
C. CONSTRUCTION $____________________
D. ADMINISTRATIVE $____________________
E. CREDIT $____________________

TOTAL BILLING $____________________

CERTIFICATION
(Not required on estimates)

I certify that the above bill is true and correct, and payment has not been received.

________________________________________
Name

________________________________________Date: _____________
Signature
INTRA DEPARTMENTAL CORRESPONDENCE

TO: Delia Sanchez  
    Budget & Audit Unit Supervisor

FROM: Fred Bertola  
    Utility Coordinator

DATE: June 27, 2011

SUBJECT: Utility Adjustment Agreement for EOG Resources
        AC-GRIP-(TPM)-0128(15)34, CN G2132
        NM 128, M.P. 22.20 to M.P. 34.20;
        District 2

EOG Resources – State TAX ID. No. 01-738758-002

EOG Resources – Federal TAX ID. No. 47-0684-739

EOG Resources – Share Vendor No. 0000087614

Attached is a cost estimate in the amount of $27,520.06 submitted by EOG Resources. Please proceed to encumber $27,520.06 for final payment using the attached four copies of the Utility Adjustment Agreement. This amount will be used to reimburse EOG Resources for relocation/adjustment of their facilities on the subject project.

Thank you in advance for your cooperation regarding this matter. Please do not hesitate to contact me should you have any questions at (505) 827-5336.

Attachments: Approvals:

(4) Utility Adjustment Agreement
(1) FHWA 37 Data Report

Utility Manager

Right-of-Way

Bureau Chief

Xc: Project File
NEW MEXICO DEPARTMENT OF TRANSPORTATION
Utilities Section

Utility Adjustment Agreement

PROJECT

TERMINI

COUNTY OF

PARTY OF THE FIRST PART = State of New Mexico, acting by and through the New Mexico Department of Transportation, hereinafter called the STATE.

PARTY OF THE SECOND PART = ________________________________, hereinafter called the OWNER, acting by and through its duly authorized representative.

WHEREAS, THE STATE has deemed it necessary to construct certain highway improvements as set forth in the plans and specifications for the above Project; and

WHEREAS this highway improvement project will require the relocation, or adjustment, of certain utility facilities of OWNER as indicated on STATE’S plans furnished to OWNER, and OWNER’S specifications and cost estimates which are attached hereto and made a part hereof, and which are prepared in form, manner, and content by applicable State or Federal statutes, policies, and regulations.

WHEREAS, THE STATE desires to implement the relocation or adjustment of OWNER’S utility facilities by entering into this Utility Adjustment Agreement with said OWNER.

NOW, THEREFORE, BE IT AGREED that the STATE will reimburse the OWNER upon final review by the Department’s Engineer for the eligible costs incurred in relocating and adjusting OWNER’S utility facilities on this highway project, as set forth in the attached OWNER’S cost estimate, up to the amount said costs may be eligible for State or Federal cost participation only when final stamped As-Builts have been submitted to the Department.

The OWNER states that the method to be used in developing and substantiating this utility adjustment cost shall be as specified for the method checked hereafter;

☐ (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable State or Federal regulatory agency.

☐ (2) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the OWNER which, if not previously approved, will be available for prior approval by the STATE.

☐ (3) An agreed lump sum of __________, as supported by the analysis of estimated cost attached hereto. This method is not permissible if the estimated cost of this utility adjustment exceeds $100,000.

If costs are developed under procedure (1) or (2) as specified above, the STATE will, upon satisfactory completion of the utility adjustment, and review of OWNER’S final billing in accordance with Title 23, 645A, 117, make payment to OWNER of all eligible costs which are subject to audit. When requested, the STATE will make intermediate payments on utility adjustments exceeding $100,000 estimated cost, based on OWNER’S billings of completed portions of the work at not less
than monthly intervals. These intermediate billings shall be submitted in the same form and manner as above. The OWNER shall provide materials in accordance with the Buy America Requirements (23 C.F.R § 635.410) on federal-aid projects.

The OWNER shall bear the burden of proof and the cost to prove the origin and place of manufacture of steel products and materials.

If utility adjustment costs are developed under procedure (3) as before specified, the STATE will, upon satisfactory completion of this utility adjustment and upon receipt of OWNER’S billing, make payment to OWNER in the agreed lump sum amount. No revisions to the agreed lump sum will be permitted without the prior written approval of the STATE.

After execution of this Utility Adjustment Agreement by both parties, and all required approvals, the STATE will, by written notice, authorize the OWNER to proceed with the construction of this utility adjustment, and the OWNER agrees to prosecute this work diligently to completion in such manner as will not result in avoidable interference or delay to either the STATE’S highway project or other utility owners on this project. Such authorization to proceed shall constitute a commitment on the part of the STATE that this utility adjustment has been included in an approved program, that a project agreement which includes the work will be executed, and that the utility adjustment will be required by the final project agreement and plans.

The OWNER will carry out said utility adjustment in accordance with the approved plans and estimate which are attached hereto and made a part hereof; and will accurately record the costs relative thereto in accordance with applicable State or Federal statutes, rules or regulations. The costs paid by the STATE pursuant to this agreement shall be full compensation to OWNER for all eligible costs incurred by OWNER in making this utility adjustment.

Bills for work hereunder shall be submitted to STATE not later than ninety (90) days after completion of the work.

If any significant revision from the approved work is performed, reimbursement therefore shall be limited to costs covered by a written change or extra work order approved by the STATE prior to the performance of the revision.

The OWNER by execution of this agreement does not waive any of the rights which OWNER may legally have within the limits of the law.

UTILITY OWNER: __________________________

By: ________________________________

Title: ________________________________ Date: ________________
UTILITY CERTIFICATION WITH CONFLICTS

Date, 2015

Mr. J. Don Martinez
Division Administrator
Federal Highway Administration
New Mexico Division
4001 Office Court Drive, Suite 801
Santa Fe, New Mexico 87507

Through: Jeffrey Martinez, Project Letting Engineer
P.S. & E Section

Subject: Utility Certification, CN XXXXXX

Project scope consists of bridge replacement with roadway reconstruction at approach and departure, new guard railing, traffic control during construction and new permanent signing and striping.

Termini: BOP, EOP

Location: County, New Mexico

District X

UTILITY CERTIFICATION

Dear Mr. Martinez:

The following is a statement of the status of utility negotiations and relocations for the subject project in compliance with the requirements of the Federal-Aid Policy Guide:

**CenturyLink**: CenturyLink will begin from an existing handhole within the southeast right-of-way of US XX at Sta. XX+XX. CenturyLink is proposing to trench heading northeast 151’ to place new fiber cable, then change directions heading northwest by directional bore for 226’, and finally exiting the northwest right-of-way of US XX at Sta. XX+XX. This work will be done prior to construction. This work is not reimbursable.

I certify that the forgoing statement regarding the status of utility relocations is true and correct.

Sincerely,

Shawn Chafins,
Utility Manager

Xc: Name, Project Development Engineer
Certification File

Susana Martinez
Governor

Tom Church
Cabinet Secretary

 Commissioners

Ronald Schmeits
Chairman
District 4

Dr. Kenneth White
Secretary
District 1

David Sepich
Commissioner
District 2

Butch Mathews
Commissioner
District 5

Jackson Gibson
Commissioner
District 6

General Office  P. O. Box 1149  Santa Fe, NM 87504
Date, 2015

Mr. J. Don Martinez
Division Administrator
Federal Highway Administration
New Mexico Division
4001 Office Court Drive, Suite 801
Santa Fe, New Mexico 87507

Through: Jeffrey Martinez, Project Letting Engineer
P.S. & E Section

Subject: Utility Certification, CN XXXXXX

The current scope of work will include construction of new concrete sidewalks. The current scope of work will include design of ADA compliant curb cuts and sidewalks.

Termini: BOP, EOP

Location: County, New Mexico

District 1

UTILITY CERTIFICATION

Dear Mr. Martinez:

The following is a statement of the status of utility negotiations and relocations for the subject project in compliance with the requirements of the Federal-Aid Policy Guide:

Utility relocation is not anticipated with this project.

I certify that the forgoing statement regarding the status of utility relocations is true and correct

Sincerely,

Shawn Chafins,
Utility Manager

Xc: Name, Project Development Engineer
Certification File
<table>
<thead>
<tr>
<th>Utility Coordination Checklist</th>
<th>Yes or No &amp; Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review Project and Scope with Manager:</td>
<td></td>
</tr>
<tr>
<td>Contact utility company by phone to pre-alert:</td>
<td></td>
</tr>
<tr>
<td><strong>30% Stage</strong></td>
<td></td>
</tr>
<tr>
<td>Formally notify (Alert Letter, package) to utility companies/owners</td>
<td></td>
</tr>
<tr>
<td>From Utility Company/Owners:</td>
<td></td>
</tr>
<tr>
<td>Property interest documents, if reimbursable,</td>
<td></td>
</tr>
<tr>
<td>if the Utility Owners are impacting the project in writing.</td>
<td></td>
</tr>
<tr>
<td><strong>60% Stage</strong></td>
<td></td>
</tr>
<tr>
<td>Formally notify (Authorization to Engineer letter/package)</td>
<td></td>
</tr>
<tr>
<td>to Utility Companies/Owners</td>
<td></td>
</tr>
<tr>
<td>Receive (AtoE) information back from Utilities/Owners</td>
<td></td>
</tr>
<tr>
<td><strong>90% Stage</strong></td>
<td></td>
</tr>
<tr>
<td>Submit relocation plans to PDE</td>
<td></td>
</tr>
<tr>
<td>Submit relocation estimates/encumbrance documentation to Audit and Budget</td>
<td></td>
</tr>
<tr>
<td>Certify project by PS&amp;E</td>
<td></td>
</tr>
<tr>
<td>Review AtoE information/documentation and send out formal</td>
<td></td>
</tr>
<tr>
<td>letter authorizing Construct with 90% to 100% plan set,</td>
<td></td>
</tr>
<tr>
<td>right-of-way map if available</td>
<td></td>
</tr>
<tr>
<td>Attend pre-construction meeting</td>
<td></td>
</tr>
<tr>
<td>Receive from Utility/Owner reimbursement documentation</td>
<td></td>
</tr>
<tr>
<td>Pre-audit information from Utility</td>
<td></td>
</tr>
<tr>
<td>Submit reimbursement audit information to Audit and Budget Section</td>
<td></td>
</tr>
<tr>
<td>Receive utility/owner reimbursement audit information back from Audit and Budget Section</td>
<td></td>
</tr>
<tr>
<td>Request payment (IDC) to Audit and Budget Section</td>
<td></td>
</tr>
<tr>
<td>Reimbursement of Utilities if their audit is good</td>
<td></td>
</tr>
</tbody>
</table>
Review file for completeness and file
GENERAL UTILITY COORDINATION PROCESS INFORMATION

The process is summarized in the following phases and is inclusive of the Subsurface Utility Engineering (SUE) process:

1. **Project Task Assignment Phase** – Utility Section Manager assigns project to Utility Engineering Coordinator after which the Utility Engineering Coordinator will discuss the project with the Utility Section Manager to confirm the project location, project number, project control number and Project Development Engineer and the highway securing the Project Scoping Report. The Utility Engineering Coordinator will set up a Utility Coordination project file which will contain all relevant project communications/notes, including but not limited to, the assignment communication, highway project information and all future project communications between the utility owners (Utility) and other stakeholders. The Utility Engineering Coordinator will use the Utility Meeting Itinerary, Sign-in Sheet and Meeting Notes documents when initiating or pertaining to utility meetings, field reviews and with utility owners, district personnel and the PDE’s throughout the life of the project. If meeting was not initiated by the Utility Engineering Coordinator, a copy of the meeting notes must be obtained and filed in project folder.

It is also during this project phase that Subsurface Utility Engineering (SUE) services are assigned on the basis of the Scoping Report and the potential impact the highway project may have on utility infrastructure. If SUE services are warranted, the Utility Section Manager will advise its SUE consultant and provide a SUE Scope, after which the SUE Provider and the Utility Section Manager will agree on a SUE fee. Subsequently, the Utility Section Manager will provide the consultant with a Notice to Proceed for the SUE services.

2. **Utility Coordination Field Review Phase** (Conceptual Highway Project Plans; less than 30% Design Stage) – If the project assignment is provided in advance of the Department’s Preliminary Design Phase, the Utility Engineering Coordinator will conduct a field review with all affected Utility within the project limits to get a better understanding of the project environment and to visually observe existing utility infrastructure. This field review is conducted whether or not conceptual plans are available. The Utility Engineering Coordinator will use the Utility Meeting Itinerary, Sign-in Sheet and Meeting Notes documents when initiating meetings, field reviews with utility owners, district personnel and PDE’s.

3. **Utility Alert Phase** (Preliminary Highway Design Phase-30% Design Stage Plans) – At this stage of the process, the Utility Engineering Coordinator will formally notify and provide all Utilities identified within the project area as a result of the QL ‘D’ SUE services, highway project plans, right-of-way maps (if available) and other appropriate documents. The notification and associated documents will be delivered to the Utility by the Utility Engineering Coordinator or will be sent to the Utility via certified mail. Each Utility will be requested to review and confirm the accuracy of utility information and/or provide new/updated utility data, as well as requested to initiate preparatory work to resolve potential utility conflicts with the project. In addition, each Utility will be required to provide appropriate property interest (prior rights) documentation if adjustment/relocation reimbursement will be requested by the Utility. During this project phase, the Utility Engineering Coordinator will conduct, in collaboration with the Department Project Development Engineer and other representatives, including the Utility and their representatives; a review of current project plans to establish if the relationship between existing utilities and the roadway project design elements warrant further utility coordination. Potential highway project utility conflicts will be discussed with respect to utility type, potential roadway impacts on the utility, impacts on the roadway project design element by a utility conflict analysis, potential impacts on the Department highway project schedule, and ultimately, potential impacts of utility
relocation/adjustment. In addition, the Utility Engineering Coordinator will make every effort to establish if the Utility has any immediate plans for installing new and/or upgrading existing utility facilities that may have adverse impacts on the proposed roadway project so as to appropriately plan for such work. It is also during this stage of the highway design that quality level ‘B’ SUE services are ongoing, if previously authorized, with the intent of having SUE plans available for incorporation into the 60% highway project plans.

4. Engineering Authorization Phase – (Intermediate Highway Design Phase – 60% Design Stage Plans) At this stage of the highway project, an Authorization to Engineer letter, advanced highway plans (60% minimum), right-of-way maps, if appropriate, and available and other relevant documents will be provided to each Utility, either delivered by the Utility Engineering Coordinator or sent via certified mail. The plans provided to Utilities at this point should have all QL ‘D’ and QL ‘B’ SUE data incorporated into them so that the Utility can proceed with their utility engineering purposes, such engineering on the basis on established roadway profiles and right-of-way limits.

As part of this phase, it will also be necessary for the Utility Engineering Coordinator to collaborate with appropriate Department design team members on utility conflict analysis (based on designated utilities) to ensure designated utility data is prudently utilized to establish if and where Quality level ‘A’ SUE services (test holes for vertical location data) are required. If test holes (Quality Level ‘A’) are required, all the elevation data secured will be incorporated into the roadway plans and a final determination made regarding conflict resolution alternatives. At this point each impacted Utility will be required to engineer and develop its adjustment/relocation plan and submit it to the Department, along with the completed pertinent documentation, including utility adjustment/relocation cost estimate and Utility Adjustment Agreement if utility work is reimbursable to the Utility by the State. Additionally, the Utility Engineering Coordinator will communicate and coordinate with Utilities, the Utility Section Manager and the Department Project Development Engineer if any utility relocation design plans and specifications will be incorporated into the highway contract for relocation by the highway contractor. The Utility Engineering Coordinator will ensure that all relevant plans, specifications, estimates and other required documents are prepared so that the utility certification is in place by the certification date.

5. Utility Relocation Review Phase - (90% Final Plans) At this stage of the utility coordination process, the Utility Engineering Coordinator will communicate and coordinate with the impacted Utility to ensure that utility relocation plans, specifications and other appropriate documents are reviewed for accuracy, completeness and compliance. After such documentation is final and acceptable, processing through the appropriate Department design unit and administrative channels for approval and/or encumbrance of funds will be assured. By this stage of the project, if any Utility Addendums, Notice to Contractor and/or Utility Special Provisions are required, it is at this time that such documentation will be prepared and made available to the Department Utility Section Manager for subsequent incorporation into contract documents or distribution to potential project bidders. All SUE Quality Levels, ‘D’, ‘C’, ‘B’, and ‘A’ should be incorporated into the highway project utility sheets and ultimately into the project plans assembly for the highway contractors information and used as appropriate.

6. Utility Certification Phase – This phase essentially represents the completion of utility coordination activities during the highway project design and utility relocation design phases. The highway project design features at this point and the utility relocation design plans should be compatible and ready for bidding and construction purposes. In addition, the Utility Engineering Coordinator prepares the required Certification Letter for signature by the Department Utility
Section Manager, which generally states that all required utility arrangements have been completed and the highway project is ready for construction from utility standpoint.

7. **Utility Construction Authorization Phase** – Upon approval of the submittals from the Utility, a certified letter authorizing the Utility to proceed with construction will be issued. It will contain the permit numbers assigned to specific relocations (which will have been obtained by the Utility Engineering Coordinator from the respective District Permit Agent). This letter will further instruct the Utility about traffic control requirements and their point of contact. Utility as-built drawing requirements will also be discussed in this letter. A set of construction plans, usually 95 to 100% complete, and in some cases, structural plans and right-of-way maps, will be included. The impacted Utility will be advised to review such plans to ensure that any changes which may have been made to the plans do not adversely affect their relocation plans. The Utility Engineering Coordinator will also be prepared to attend other appropriate meetings such as constructability reviews, pre-construction meetings, partnering sessions, etc. to assure utility issues are properly addressed.

8. **Utility Billing and Reimbursement Phase** – On projects where reimbursement is eligible, the Utility Engineering Coordinator will coordinate with the Utility so upon completion of the facility relocation/adjustment, the Utility will submit the finalized Estimate and Billing Format Guide (E&BFG) with appropriate supporting documentation. Reviewing E&BFG packages and supporting documentation is time consuming and can be a complex task, so efficient and timely review by the Utility Engineering Coordinator can contribute to the successful completion of numerous reimbursement requests. Strict adherence to the State policy ensures cost efficiency to both the state and to the Utility. Once the Utility Engineering Coordinator has completed the review and the package is deemed acceptable, a request for reimbursement is submitted. The Utility Engineering Coordinator is also available to assist the Utility Section Manager as required to oversee project close-out and auditing, if necessary.

9. **Utility Coordination Project Close Out Phase** – At this final stage of the utility coordination process, the Utility Engineering Coordinator assures that all documentation relative to each specific utility relocation project is complete and accurate for future possible audit. After project close out, the project files are stored.
NEW MEXICO DEPARTMENT OF TRANSPORTATION  
Utilities Section  
Utility Adjustment Agreement  

PROJECT ________________________________  
TERMINI ________________________________  
COUNTY OF ______________________________  

PARTY OF THE FIRST PART = State of New Mexico, acting by and through the New Mexico Department of Transportation, hereinafter called the STATE.  

PARTY OF THE SECOND PART = ________________________________, hereinafter called the OWNER, acting by and through its duly authorized representative.  

WHEREAS, THE STATE has deemed it necessary to construct certain highway improvements as set forth in the plans and specifications for the above Project; and  

WHEREAS this highway improvement project will require the relocation, or adjustment, of certain utility facilities of OWNER as indicated on STATE’S plans furnished to OWNER, and OWNER’S specifications and cost estimates which are attached hereto and made a part hereof, and which are prepared in form, manner, and content by applicable State or Federal statutes, policies, and regulations.  

WHEREAS, THE STATE desires to implement the relocation or adjustment of OWNER’S utility facilities by entering into this Utility Adjustment Agreement with said OWNER.  

NOW, THEREFORE, BE IT AGREED that the STATE will reimburse the OWNER for the eligible costs incurred in relocating and adjusting OWNER’S utility facilities on this highway project, as set forth in the attached OWNER’S cost estimate, up to the amount said costs may be eligible for State or Federal cost participation.  

The OWNER states that the method to be used in developing and substantiating this utility adjustment cost shall be as specified for the method checked hereafter;  

☐ (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable State or Federal regulatory agency.  

☐ (2) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the OWNER which, if not previously approved, will be available for prior approval by the STATE.  

☐ (3) An agreed lump sum of __________, as supported by the analysis of estimated cost attached hereto.  

This method is not permissible if the estimated cost of this utility adjustment exceeds $100,000.  

If costs are developed under procedure (1) or (2) as specified above, the STATE will, upon satisfactory completion of the utility adjustment, and review of OWNER’S final billing in accordance with Title 23, 645A, 117, make payment to OWNER of all eligible costs which are subject to audit. When requested, the STATE will make intermediate payments on utility adjustments exceeding $100,000 estimated cost, based on OWNER’S billings of completed portions of the work at not less than monthly intervals. These intermediate billings shall be submitted in the same form and manner as above.
The OWNER shall provide materials in accordance with the *Buy America Requirements* (23 C.F.R § 635.410) on federal-aid projects.

The OWNER shall bear the burden of proof and the cost to prove the origin and place of manufacture of steel products and materials.

If utility adjustment costs are developed under procedure (3) as before specified, the STATE will, upon satisfactory completion of this utility adjustment and upon receipt of OWNER’S billing, make payment to OWNER in the agreed lump sum amount. No revisions to the agreed lump sum will be permitted without the prior written approval of the STATE.

After execution of this Utility Adjustment Agreement by both parties, and all required approvals, the STATE will, by written notice, authorize the OWNER to proceed with the construction of this utility adjustment, and the OWNER agrees to prosecute this work diligently to completion in such manner as will not result in avoidable interference or delay to either the STATE’S highway project or other utility owners on this project. Such authorization to proceed shall constitute a commitment on the part of the STATE that this utility adjustment has been included in an approved program, that a project agreement which includes the work will be executed, and that the utility adjustment will be required by the final project agreement and plans.

The OWNER will carry out said utility adjustment in accordance with the approved plans and estimate which are attached hereto and made a part hereof; and will accurately record the costs relative thereto in accordance with applicable State or Federal statutes, rules or regulations, and with all provisions of Federal-Aid Highway Program Manual 6-3-3-1. The costs paid by the STATE pursuant to this agreement shall be full compensation to OWNER for all eligible costs incurred by OWNER in making this utility adjustment.

Bills for work hereunder shall be submitted to STATE not later than ninety (90) days after completion of the work.

If any significant revision from the approved work is performed, reimbursement therefore shall be limited to costs covered by a written change or extra work order approved by the STATE prior to the performance of the revision.

The OWNER by execution of this agreement does not waive any of the rights which OWNER may legally have within the limits of the law.

---

**UTILITY OWNER:**

By: 

Title: Date: 

---

**New Mexico Department of Transportation**

By: 

Title: Date: 

---

43
UTILITY COOPERATIVE AGREEMENT
NEW MEXICO DEPARTMENT OF TRANSPORTATION
LEE ACRES WATER USERS CO-OPERATIVE ASSOCIATION, INC.

THIS AGREEMENT, is made and entered into this day of __________, 2013 by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "STATE", and the LEE ACRES WATER USERS CO-OPERATIVE ASSOCIATION, INC., hereinafter referred to as the "LAWA".

RECITALS
WHEREAS, the STATE plans to reconstruct US 64 between MP 60.00 and MP 62.00, further identified as Project Number F100111, Control Number F100111 herein referred to as the “PROJECT”, located within the limits of San Juan County, New Mexico; and

WHEREAS, the LAW A has an existing Water Line in conflict with the proposed roadway work,

WHEREAS, the LAW A desires that the STATE relocate their Water Line in conflict with the proposed roadway work as part of the STATE’s construction contract.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION ONE - PURPOSE:

The purpose of this AGREEMENT is to specify and delineate the rights and duties of the parties hereto pertaining to the relocation of the LAW A existing Water Line as part of the STATE’S PROJECTS.

SECTION TWO - THE STATE:

1. In its PROJECT plans and contract for construction or the PROJECT, the STATE shall include provisions for the STATE’S contractor to relocate LAW A’s Water Line. The STATE’S PROJECT construction plans shall include a General Note directing the awarded Contractor to relocate the portion of LAW A’S Water Line to be reconstructed as part of the STATE’S PROJECT. The STATE does not and shall not warrant or guarantee the quality of work performed by the STATE’S contractor, nor shall the STATE be responsible for any damage or injury caused to LAW A or its property by the STATE’S contractor.
2. During construction, the STATE shall not exclude LAWA designated representative from the site so long as such person strictly abides by all the rules and regulations promulgated by the STATE. The STATE shall include provisions in its contracts with its contractors to extend the hold harmless provisions of Section 107.29 of the STATE’S Standard Specifications for Highway and Bridge Construction 2007 Edition, to LAWA so that LAWA is included as an additional insured by the STATE’S contractors.

3. Upon completion of LAWA’S Water Line relocation the STATE shall prepare a detailed invoice for the actual costs of relocating LAWA’S water line, as provided herein, and shall submit the invoice to LAWA for all costs incurred in the relocation of LAWA’S Permanent Water Line.

SECTION THREE - LAWA:

1. The LAWA shall reimburse the STATE for all relocation costs of LAWA’S Water Line, specified in the Estimate provided by the STATE’S awarded contractors at the unit bid price by the contractor awarded the STATE’S contract. The reimbursement shall be calculated on the final quantity measured in place and built to the specifications outlined in the Design and Estimate provided by the STATE’S contractor. The LAWA shall also reimburse the STATE for any additional expenses incurred by the STATE for any contractor delay claim made due to delays caused by the project change orders made at the request of LAWA regarding the Water Line. All such change orders must be requested in writing by LAWA and have written STATE approval. LAWA shall reimburse the STATE for all relocation costs in the amount of the invoice within 180 days of final acceptance of the final highway construction project covered by this agreement.

2. The LAWA shall reimburse, as provided herein, the STATE the cost of the work pursuant to the terms of the AGREEMENT, so long as the relocation of the Water Line is done in good and workmanlike manner by the STATE’S contractor and in substantial compliance with the specifications referred to in the Design and Estimate.

3. Provide all necessary coordination and compliance with any advisory, regulations, ordinances, codes or other requirements involving any public officials and functionaries, regarding the shutdown of utilities, or temporary outages and notifications. The LAWA shall also provide twenty-four (24) hour advance notice to all its customers prior to shutdown or temporary outages of utilities.

4. The LAWA shall be responsible for any damage claims arising out of LAWA’s activities involved in the installation, relocation, operation and maintenance of such systems to the extent provided by the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

5. The LAW A shall execute the STATE’S standard form utility permit pursuant to the STATE’S utility regulations upon completion of the relocation of the Water Line.
6. In the event LAWA does not reimburse the STATE as required by this Agreement, LAWA agrees to remove its Water Line from the state highway right of way within one year of written notification by the STATE.

SECTION FOUR  OWNERSHIP:

By mere reason of the STATE's participation in the relocation of the Water Line, the STATE is not incorporating the Water Line into the State Highway System nor is the STATE assuming ownership, maintenance, responsibility or liability for the Water Line because of its participation in the PROJECT. The LAWA shall be the sole owner of the Water Line and be solely liable for its operation and maintenance, including all costs associated therewith.

SECTION FIVE  STATES AUTHORIZATION OF EXPENDATURES:

This AGREEMENT is contingent upon sufficient appropriation made by the Legislature of New Mexico for the performance of this AGREEMENT. If sufficient appropriations are not made by the Legislature, this AGREEMENT shall terminate upon written notice given by the STATE. The STATE'S decision as to whether sufficient appropriations are available shall be accepted by the parties hereto and shall be final.

SECTION SIX - INTENT OF THIS AGREEMENT:

It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of the AGREEMENT to create in the public or any member thereof, a third-party beneficiary or to authorize anyone not a party to the AGREEMENT to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claims whatsoever pursuant to the provisions of this AGREEMENT.

SECTION SEVEN - NEW MEXICO TORT CLAIMS ACT:

By entering into this AGREEMENT, neither party shall be responsible for liability incurred as a result of the other parties acts or omissions in connection with this AGREEMENT. Any liability incurred in connection with this AGREEMENT is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties liabilities as governed by common law and the New Mexico Tort Claims Act. The LAWA, and their “public employees” and the STATE, and their “public employees” as defined in the New Mexico Tort Claims Act, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this AGREEMENT modifies and/or waives any provision of the New Mexico Tort Claims Act.

SECTION EIGHT - TERMS OF THIS AGREEMENT:

The performance of all duties and obligations herein will conform with and not contravene any applicable Federal, State, and Local laws.
SECTION NINE - UNEXPENDED AND UNENCUMBERED PROPERTIES:

If upon termination of this AGREEMENT, there remains any property, materials or equipment belonging to the STATE, the STATE shall account for and dispose of same in its discretion.

SECTION TEN - ACCOUNTING OF RECEIPTS AND DISBURSEMENTS:

There shall be strict accountability for all receipts and disbursements relating hereto.

SECTION ELEVEN - EQUAL OPPORTUNITY COMPLIANCE:

The parties agree to abide by all Federal and State Laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Parties agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this AGREEMENT. If the parties are found to not be in compliance with these requirements during the life of this AGREEMENT, the Parties agree to take appropriate steps to correct these deficiencies.

SECTION TWELVE – CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:

There STATE and LAWA shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The STATE and LAWA further agree to operate under and be controlled by Title VI and TITLE VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled “Equal Employment Opportunity,” as amended by Executive order 11375 and as supplemented by the Department of Labor Regulations (41 CFR 60). Accordingly, 49 CFR 21 is applicable to this AGREEMENT and incorporated herein by reference.

SECTION THIRTEEN - SEVERABILITY:

In the event that any portion of this AGREEMENT is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this AGREEMENT shall remain in full force and effect.

SECTION FOURTEEN - MERGER:

This AGREEMENT incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written AGREEMENT. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or
enforceable unless embodied in this AGREEMENT. The terms of this AGREEMENT are lawful. The performance of all duties and obligations herein shall conform with and do not contravene any applicable state, local, or federal statutes, regulations, rules, or ordinances.

SECTION FIFTEEN - AMENDMENT:

This AGREEMENT shall not be altered, modified or amended except by an instrument in writing and executed by the parties hereto.

SECTION SIXTEEN - EXPIRATION:

This AGREEMENT shall expire 90 days after final acceptance of the highway construction project listed above, unless terminated earlier by mutual consent of the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

BY: ___________________________ DATE: ___________________________
   SECRETARY (or Designee)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE NEW MEXICO DEPARTMENT OF TRANSPORTATION OFFICE OF GENERAL COUNSEL.

BY: ___________________________ DATE: ___________________________
   ASSISTANT GENERAL COUNSEL

LEE ACRES WATER USERS CO-OPERATIVE ASSOCIATION, INC.

BY: ___________________________ DATE: ___________________________
   PRESEDENT (or Designee)

Approved as to legal form:

BY: ___________________________ DATE: ___________________________
The Utility Cooperative Agreement (UCA) will establish the responsible parties regarding the installation of certain utilities as it relates to, among other things, fiduciary control.

1. **UTILITY SECTION**

   1. At 30% Plan Design, Utility Section will determine need for UCA. If needed, the utility owner will provide estimate.

   2. The UCA will be drafted in the Utility Section. The UCA will document the following information as it relates to funding:

      A. Responsible entity for project
         i. Contact Name/Title
         ii. Entity Name, Address, Phone No.
      B. Responsible entity for funds (If other than Responsible Entity for Project)
         i. Contact Name/Title
         ii. Entity Name, Address, Phone No.
      C. Project Number
      D. Control Number
      E. Item Number
      F. Type of Funding Agreement
         i. Advanced Funding
         ii. Reimbursement
      G. Utility Owner Estimate

   3. Once drafted, a copy of the draft UCA and estimate will be submitted to General Counsel, and a copy to Fund Control.

   4. Upon General Counsel approval, the Utility Section will submit UCA document to entity and Department executive staff for signature.
5. Once executed, the Utility Section will provide a completed signed copy to Fund Control and Construction Bureau within ten (10) days of execution.

2. **FUND CONTROL**

   1. Upon receipt of the executed UCA from the Utility Section, Fund Control will, within seven (7) days, prepare the Memo of Charge (MOC). The MOC will include:

   A. Entity to be billed  
   B. Contact Name, Address, phone  
   C. Customer Number (if one does not exist, leave blank and will be assigned by Accounting)  
   D. Type of work to be billed  
   E. Amount  
   F. GRT  
   G. Chartfield accounting information  
   H. Proper signatures  
   I. Backup Documentation  

   2. Fund Control will submit the MOC packet to Accounting for billing. Fund Control will submit a copy of the prepared MOC to the Utility Section. Through proper coding on MOC and through verification of posted revenue, Fund Control will ensure that expenditures associated with the UCA are not charged to FHWA. Fund Control will verify expenditures as non-participating and will be posted in SHARE.

3. **ACCOUNTING**

   1. Upon receipt of the MOC, the Accounts Receivable (AR) Specialist will verify the customer number, or if left blank, designate a new customer account.

   2. The AR Specialist will enter the MOC information accordingly into the AR share billing module.

   3. Invoices are processed once a week on Wednesdays. If the MOC was received after a process has been completed, it will be created the following week.

   4. Once invoices have been processed and printed, the AR Specialist will mail the invoices along with backup, if noted. A copy of the invoice will be sent to Utility Section and Fund Control.

   5. AR Specialist will receive cash receipts from Financial Control, specifying the money received that we can apply to the invoices created. If a money wire is received from the entity billed with an invoice, the AR Specialist will apply the wire to the open invoice. For a manual invoice that is created, it will be posted to deferred revenue account 251900. Once services are performed, the money will be journal entered from Deferred Revenue to Revenue. AR will notify Fund Control and Utility Section of receipt of funds within ten (10) days of receipt by providing copies of Cash Receipts Register and supporting documentation.

   6. AR specialist runs monthly statements, which any past due invoices will allocate. These are then mailed to outstanding customers.
7. After 60 days of an unpaid balance, the AR specialist will notify the originator of the MOC to begin the collection process via telephone calls and/or collection letters.

8. Deferred revenue not moved within a certain timeframe must have justification to provide to external auditors. A review of remaining revenues in Deferred Revenue account approximately three (3) months prior to external audit will be made. AR will submit these projects to Fund Control for justification.

4. **CONSTRUCTION BUREAU**

1. The Construction Bureau will submit monthly activity reports to AR, reporting items paid against deferred revenue. AR will process a journal entry to re-class the funds from Deferred Revenue to Revenue based upon submitted reports. Report will be generated using pre-established item number in Site Manager. Utility Section will provide the UCA and item number to Construction Bureau.

5. **UTILITY SECTION**

1. Upon completion of the project, a final change order to record overruns and underages will be prepared by the Utility Section. Utility Section will notify Fund Control by providing a copy of the change order.

6. **FUND CONTROL**

1. Fund Control will prepare a final MOC to bill expenditures (overruns) or an Internal Departmental Correspondence Memorandum to generate refund (underages).

2. Fund Control will prepare the above document within seven (7) days of receipt of final change order from Utility Section. This final MOC or Refund will be handled as outlined above.
UTILITY COOPERATIVE AGREEMENT
NEW MEXICO DEPARTMENT OF TRANSPORTATION
CITY OF LAS CRUCES

THIS AGREEMENT is made and entered into this____ day of______________, 2013 by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, herein referred to as “STATE”, and the CITY OF Las Cruces, herein referred to as “CITY”, pursuant to NMSA 1978, Section 67-3-28, as amended and Sections 67-8-15 thru 67-8-21.

RECITALS
WHEREAS, the STATE plans to reconstruct the roadway on US 70 between M.P. 148.50 and M.P. 149.46, further identified as Project Number 1100470, Control Number 1100470, herein referred to as the “PROJECT”, located within the limits of Dona Ana County, New Mexico; and

WHEREAS, the CITY desires to replace its Sanitary Sewer, Water Line and High Pressure Gas Line within highway right-of-way and requests assistance from the STATE to effect said installation, the details of said Sanitary Sewer, Water Line, and High Pressure Gas Line installations are itemized in the attached Estimate designated as Exhibit “A”; and

WHEREAS, the CITY desires that the STATE install their Sanitary Sewer, Water Line and High Pressure Gas Line as part of the STATE’S PROJECT construction contract; and

WHEREAS, the STATE is agreeable to installing the CITY’S Sanitary Sewer, Water Line and High Pressure Gas Line as part of the PROJECT.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:
SECTION ONE – PURPOSE:
The purpose of this AGREEMENT is to specify and delineate the rights and duties of the parties hereto pertaining to the installation of the CITY’S Sanitary Sewer, Water Line and High Pressure Gas Line as part of the STATE’S PROJECT.

SECTION TWO – THE STATE:
4. In its PROJECT plans and contract for construction of the PROJECT, the STATE shall include provisions for the STATE’S contractor to install the CITY’S Sanitary Sewer, Water Line and High Pressure Gas Line in accordance with Exhibit “B.” Exhibit “B” is the STATE’S construction plans and specifications for the STATE’S PROJECT. The CITY’S Utilities Standards, the May 2008 Edition and revisions and both specifications are hereby incorporated by reference into this AGREEMENT. The STATE’S project construction plans shall include utility plan sheets in the “11” series, attached hereto and also designated as Exhibit “B”. The STATE does not and shall not warrant or guarantee the quality of work performed by the STATE’S contractor, nor shall the STATE be responsible for any damage or injury caused to the CITY or its property by the STATE’S contractor.

5. During construction, the STATE shall not exclude the CITY’S designated representative from the site so long as such person strictly abides by all the rules and regulations promulgated by the STATE. The STATE shall include provisions in its contract with its contractor to extend the hold harmless provisions of Section 107.29 of the STATE’S Standard Specifications for Highway and Bridge Construction, 2007 Edition, to the CITY so that the CITY is included as an additional insured by the STATE’S contractor.

SECTION THREE – THE CITY:
1. The CITY shall provide funding to the STATE for all installation costs of CITY Sanitary Sewer, Water Line and High Pressure Gas Line based upon the detailed estimate provided by the CITY specified in Exhibit “B”. The funding shall be provided to the STATE prior to the opening of bids for the Project and the STATE shall hold the advanced funds in a special account identified for the Project. Upon opening of the bids, the bid items of the apparent low bidder included for the installation of the CITY’S Sanitary Sewer, Water Line and High Pressure Gas Line will be totaled. If the total bid amount of the bid is greater than the CITY’S advanced funding, the CITY shall provide additional funding in the amount of the difference. Should the bid amount be less, the STATE will retain the difference until the completion of the Project. Any change orders that may occur during installation shall be reimbursed by the CITY to the STATE. The CITY shall also reimburse the STATE for any additional expenses incurred by the STATE for any contractor delay claim made due to delays caused by the project change orders made at the request of the CITY regarding the Sanitary Sewer, Water
Line, and High Pressure Gas Line installations. All such change orders must be requested in writing by the CITY and have written STATE approval.

2. The CITY shall provide funding to the STATE for the cost of the work pursuant to the terms of the AGREEMENT and the STATE shall withhold a ten percent (10%) retainage to insure that the installation of the Sanitary Sewer, Water Line and High Pressure Gas Line is done in a good and workmanlike manner and in substantial compliance with the specifications referred hereto as Exhibit “B”. Upon satisfactory completion of the Project, the STATE shall pay to the CITY any unused funds attributable to the CITY’S installations.

3. Payment for any necessary work added and approved by the CITY shall be due within sixty (60) calendar days of the date of the billing by the STATE. If payment is not made and the account becomes delinquent after the due date, interest shall accrue on the unpaid balance at the rate of ten percent (10%) per annum until the account becomes current.

4. Any necessary coordination or advisory regulations, ordinances, codes or other requirements involving CITY officials and functionaries regarding the shutdown of utilities or temporary outages and notifications shall be the responsibility of the CITY. The STATE shall instruct its contractor to provide twenty-four (24) hour advance notice to the CITY prior to any required shutdown or temporary outages of utilities.

5. The CITY understands and agrees that a six percent (6%) Construction, Engineering & Inspection (CE&I) surcharge shall be applied to the costs of the Sanitary Sewer, Water Line and High Pressure Gas Line installation to cover the STATE’S construction, engineering and inspection costs.

6. The STATE expressly does not warrant or guarantee the quality of the work to be performed by the STATE contractor and shall not be responsible for any damage or injury caused to the CITY or its property by the STATE contractor. Upon completion of the Sanitary Sewer, Water Line and High Pressure Gas Line, the CITY shall assume total responsibility for the maintenance and operation of the Sanitary Sewer, Water Line and High Pressure Gas Line, including all costs associated therewith.

SECTION FOUR—OWNERSHIP:
By mere reason of the STATE’S participation in the installation of the Sanitary Sewer, Water Line and High Pressure Gas Line, the STATE is not incorporating this utility system into the State Highway System nor is the STATE assuming ownership, maintenance, responsibility or liability for participation in the installation of the Sanitary Sewer, Water Line and High Pressure Gas Line. The CITY shall be the sole owner of the Sanitary Sewer, Water Line and
High Pressure Gas Line and solely liable for the operation and maintenance, including all costs associated therewith.

**SECTION FIVE—STATE’S AUTHORIZATION OF EXPENDITURES:**
This AGREEMENT is contingent upon sufficient appropriations made by the Legislature of New Mexico for the performance of this AGREEMENT. If sufficient appropriations and authorizations are not made by the Legislature, this AGREEMENT shall terminate upon written notice given by the STATE. The STATE’s decision as to whether sufficient appropriations are available shall be accepted by the parties hereto and shall be final.

**SECTION SIX—INTENT OF THIS AGREEMENT:**
It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof of a third-party beneficiary or to authorize anyone not a party to the AGREEMENT to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or any other claims whatsoever, pursuant to the provisions of this AGREEMENT.

**SECTION SEVEN—NEW MEXICO TORT CLAIMS ACT:**
By entering into this AGREEMENT, neither party shall be responsible for liability incurred as a result of the other party’s acts or omissions in connection with this AGREEMENT. Any liability incurred in connection with this AGREEMENT is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties liabilities as governed by common law and the New Mexico Tort Claims Act. The CITY and their “public employees” and the STATE and their “public employees” as defined in the New Mexico Tort Claims Act, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this AGREEMENT modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION EIGHT—TERMS OF THIS AGREEMENT:**
That performance of all duties and obligations herein will conform with and not contravene any applicable federal, state and local laws.

**SECTION NINE—UNEXPENDED AND UNENCUMBERED PROPERTIES:**
If upon termination of this AGREEMENT there remains any property, materials or equipment belonging to the STATE, the STATE shall account for and dispose of same at its discretion.
SECTION TEN—ACCOUNTING OF RECEIPTS AND DISBURSEMENTS:
There shall be strict accountability for all receipts and disbursements relating hereto.

SECTION ELEVEN—EQUAL OPPORTUNITY COMPLIANCE:
The Parties agree to abide by all federal and state laws, rules and regulations and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Parties agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this AGREEMENT. If the Parties are found to not be in compliance with these requirements during the life of this AGREEMENT, the Parties agree to take appropriate steps to correct these deficiencies.

SECTION TWELVE—CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:
The STATE and CITY shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The STATE and CITY further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans With Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act and Executive Order No. 11246 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 and as supplemented by the Department of Labor Regulations (41 CFR 60). Accordingly, 49 CFR 21 is applicable to this AGREEMENT and incorporated herein by reference.

SECTION THIRTEEN—SEVERABILITY:
In the event that any portion of this AGREEMENT is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this AGREEMENT shall remain in full force and effect.

SECTION FOURTEEN—MERGER:
This AGREEMENT incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written AGREEMENT. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this AGREEMENT. The terms of this AGREEMENT are lawful. The performance of all duties and obligations herein shall conform with and do not contravene any applicable state, local, or federal statutes, regulations, rules or ordinance.
SECTION FIFTEEN—AMENDMENT:
This AGREEMENT shall not be altered, modified or amended except by an instrument in writing and executed by the parties hereto.

SECTION SIXTEEN—EXPIRATION:
This AGREEMENT shall expire on November 24, 2014, unless terminated earlier by mutual consent of the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: ___________________________ Date: ________________
SECRETARY OR DESIGNEE

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT’S OFFICE OF GENERAL COUNSEL

By: ___________________________ Date: ________________
ASSISTANT GENERAL COUNSEL

BOARD OF COMMISSIONERS FOR THE CITY OF LAS CRUCES UTILITIES ON BEHALF OF THE CITY OF LAS CRUCES:

By: ___________________________ Date: ________________
BOARD CHAIR

APPROVED AS TO LEGAL FORM

By: ___________________________ Date: ________________
Marcia B. Driggers
UTILITIES ATTORNEY
MUNICIPALITIES UTILITY COOPERATIVE AGREEMENT
Financial Processing Procedures

<table>
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<tr>
<th>Right of Way/ Utility Section:</th>
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<td>490-3137</td>
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The Utility Cooperative Agreement (UCA) will establish the responsible parties regarding the installation of certain utilities as it relates to, among other things, fiduciary control.

1. **UTILITY SECTION**

   1. At 30% Plan Design, Utility Section will determine need for UCA. If needed, the utility owner will provide estimate.

   2. The UCA will be drafted in the Utility Section. The UCA will document the following information as it relates to funding:

      A. Responsible entity for project
         i. Contact Name/Title
         ii. Entity Name, Address, Phone No.
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      C. Project Number
      D. Control Number
      E. Item Number
      F. Type of Funding Agreement
         i. Advanced Funding
         ii. Reimbursement
      G. Utility Owner Estimate

   3. Once drafted, a copy of the draft UCA and estimate will be submitted to General Counsel, and a copy to Fund Control.

   4. Upon General Counsel approval, the Utility Section will submit UCA document to entity and Department executive staff for signature.
5. Once executed, the Utility Section will provide a completed signed copy to Fund Control and Construction Bureau within ten (10) days of execution.

2. **FUND CONTROL**

1. Upon receipt of the executed UCA from the Utility Section, Fund Control will, within seven (7) days, prepare the Memo of Charge (MOC). The MOC will include:

   A. Entity to be billed  
   B. Contact Name, Address, phone  
   C. Customer Number (if one does not exist, leave blank and will be assigned by Accounting)  
   D. Type of work to be billed  
   E. Amount  
   F. GRT  
   G. Chartfield accounting information  
   H. Proper signatures  
   I. Backup Documentation

2. Fund Control will submit the MOC packet to Accounting for billing. Fund Control will submit a copy of the prepared MOC to the Utility Section. Through proper coding on MOC and through verification of posted revenue, Fund Control will ensure that expenditures associated with the UCA are not charged to FHWA. Fund Control will verify expenditures as non-participating and will be posted in SHARE.

3. **ACCOUNTING**

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2. The AR Specialist will enter the MOC information accordingly into the AR share billing module.

3. Invoices are processed once a week on Wednesdays. If the MOC was received after a process has been completed, it will be created the following week.

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4. CONSTRUCTION BUREAU

1. The Construction Bureau will submit monthly activity reports to AR, reporting items paid against deferred revenue. AR will process a journal entry to re-class the funds from Deferred Revenue to Revenue based upon submitted reports. Report will be generated using pre-established item number in Site Manager. Utility Section will provide the UCA and item number to Construction Bureau.

5. UTILITY SECTION

1. Upon completion of the project, a final change order to record overruns and underages will be prepared by the Utility Section. Utility Section will notify Fund Control by providing a copy of the change order.

6. FUND CONTROL

1. Fund Control will prepare a final MOC to bill expenditures (overruns) or an Internal Departmental Correspondence Memorandum to generate refund (underages).

2. Fund Control will prepare the above document within seven (7) days of receipt of final change order from Utility Section. This final MOC or Refund will be handled as outlined above.
THIS AGREEMENT is made and entered into this day of ____________, 2013 by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “DEPARTMENT”, and the VILLAGE OF JEMEZ, hereinafter referred to as the “VILLAGE”.

RECITALS

WHEREAS, The DEPARTMENT plans to construct New Mexico Highway Project 6100550, Control Number 6100550 hereinafter referred to as the “PROJECT”, located within the limits of Sandoval County, New Mexico.

WHEREAS, the VILLAGE wishes to relocate a portion(s) of the VILLAGE’S sanitary sewer system, hereinafter referred to as “SYSTEM”, that is in conflict with the construction of the PROJECT and requests financial assistance from the DEPARTMENT to effect said relocation pursuant to NMSA 1978, Section 67-8-21B, (1995 Cum. Supp.).

NOW THEREFORE, the DEPARTMENT and VILLAGE mutually agree as follows:

SECTION ONE – PURPOSE:
The purpose of this AGREEMENT is to specify and delineate the rights and duties of the parties hereto to relocate portions of the VILLAGE’S SYSTEM on the PROJECT and for the payment of said relocation.

SECTION TWO – THE DEPARTMENT SHALL:
1. Relocate the VILLAGE’S SYSTEM within state Right-of-Way in accordance with the plans, specifications, and requirements promulgated by the STATE and incorporated by reference, which plans shall be in accordance with the DEPARTMENT’S utility regulations. The VILLAGE shall approve the sanitary sewer facilities relocation plans prior to the bid letting of the PROJECT.
2. Pursuant to NMSA 1978, Section 67-8-21B (1995 Cum. Supp.), the DEPARTMENT shall pay for the costs of, or provide the necessary engineering design work and relocation plans for, the VILLAGE’S SYSTEM. The actual utility relocation shall be considered a part of the Highway Construction Contract and the costs will be borne by the DEPARTMENT.

3. The DEPARTMENT expressly does not warrant or guarantee the quality of the work to be performed by the DEPARTMENT’S contractor on this PROJECT and shall not be responsible for any damage or injury caused to the VILLAGE or its property by the DEPARTMENT’S contractor.

SECTION THREE – THE VILLAGE SHALL:

4. Be liable for providing the necessary written proof required to effect the provisions of NMSA 1978, Section 67-8-21 B (1995 Cum. Supp.) and any regulations promulgated by the DEPARTMENT. This written proof shall be provided to the DEPARTMENT prior to the bid letting.

5. Any necessary coordination or advisory regulations, ordinances, codes or other requirements involving any public officials and functionaries regarding the shutdown of utilities or temporary outages and notifications therefore, shall be the responsibility of the VILLAGE. The VILLAGE shall also provide twenty-four (24) hour advance notice to all its customers prior to shut down or temporary outages of utilities.

6. By mere reason of the DEPARTMENT’S participation in the relocation of the SYSTEM, the DEPARTMENT is not incorporating the SYSTEM into the state highway system nor is the DEPARTMENT assuming ownership, maintenance, responsibility or liability for the SYSTEM because of its participation in this PROJECT. The VILLAGE shall be the sole owner of the SYSTEM and be solely liable for their operation and maintenance, including all costs associated therewith.

SECTION FOUR – INTENT OF THIS AGREEMENT:

It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of the AGREEMENT to create in the public or any member thereof, a third-party beneficiary or to authorize anyone not a party to the
AGREEMENT to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claims whatsoever pursuant to the provisions of this AGREEMENT.

SECTION FIVE – NEW MEXICO TORT CLAIMS ACT:
By entering into this AGREEMENT, the VILLAGE and its “public employees” as defined in the New Mexico Tort Claims Act and the DEPARTMENT and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive any sovereign immunity, do not waive any defense(s), and/or do not waive any limitation(s) of liability pursuant to law. No provision of this AGREEMENT modifies and/or waives any provision of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 to 41-4-27.

SECTION SIX – LIABILITY:
As between the parties hereto, each party shall be responsible for liability arising from personal injury or damage to persons or property occasioned by its own agents or employees in the performance of this AGREEMENT, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION SEVEN – TERMS OF THIS AGREEMENT:
7. The performance of all duties and obligations herein shall conform with and not contravene any federal, state and local (if applicable) statutes, regulations, rules or ordinances.

8. This AGREEMENT incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written AGREEMENT. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

9. In the event that any term, clause or portion of this AGREEMENT is found to be unenforceable in a court of law, all other clauses, terms, and portions of this AGREEMENT shall remain in full effect and be enforceable.

SECTION EIGHT – STATE’S AUTHORIZATION OF EXPENDITURE:
This AGREEMENT is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico for the performance of this AGREEMENT. If sufficient appropriations and authorizations are not made by the Legislature, this AGREEMENT shall terminate. The DEPARTMENT’S decision as to whether sufficient appropriations are available shall be accepted by the parties hereto and shall be final.

SECTION NINE – CONTINGENT ON PROJECT BEING LET:
The parties agree that this AGREEMENT is contingent upon the entire PROJECT being completed. In the event that the entire PROJECT is not completed for any reason, this AGREEMENT shall become null and void and shall create no obligation on any of the parties.

SECTION TEN – AMENDMENT:
This AGREEMENT shall not be altered, modified or amended except by an instrument in writing and executed by the parties hereto.

SECTION ELEVEN – UNEXPENDED AND UNENCUMBERED PROPERTIES:
If upon termination of this AGREEMENT, there remains any property, materials or equipment belonging to the DEPARTMENT, the VILLAGE shall account for and dispose of same as directed by the DEPARTMENT.

SECTION TWELVE – ACCOUNTING OF RECEIPTS AND DISBURSEMENTS:
There shall be strict accountability for all receipts and disbursements relating hereto.

SECTION THIRTEEN – EXPIRATION:
This AGREEMENT shall expire four (4) years from effective date, unless terminated earlier by mutual consent of the parties.

IN WITNESS THEREOF, the parties have set their hands this day and year set forth below.
NEW MEXICO DEPARTMENT OF TRANSPORTATION

BY: ___________________________  Date: ___________________________
  SECRETARY OR DESIGNEE

MAYOR, VILLAGE OF JEMEZ

BY: ___________________________  Date: ___________________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE NEW MEXICO
DEPARTMENT OF TRANSPORTATION, OFFICE OF GENERAL COUNSEL.

By: ___________________________  Date: ___________________________
  Assistant General Counsel

I certify that ___________________________, New Mexico Tax ID # ____________ is
registered with the New Mexico Department of Taxation & Revenue.

Department for payment of Gross Receipts Tax

By: ___________________________  Date: ___________________________