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## CHAPTER 1

### ORGANIZATION SECTION

### INDEX

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## The Organization

- 1.01 The MassDOT Highway Division (MHD) is under the direction of an Administrator who is appointed by the Secretary of the Massachusetts Department of Transportation (MassDOT).

\*\*\*

- 1.02 The operations of the Right of Way Bureau (the Bureau) are carried out by personnel under the direction of the Director of the Bureau, who reports directly to the Deputy Chief Engineer for Design as shown on the Table of Organization of the MHD (refer to Exhibit # 1-1).

\*\*\*

- 1.03 The Bureau is responsible for the acquisition of all property and rights in property required for the highway program. These responsibilities include: assisting in highway location studies; reviewing and commenting on advance drafts of final Environmental Impact Statements(EIS); performing preliminary ROW investigations and title studies; preparing relocation plans; making advance and hardship acquisitions; appraising property and establishing the fair market value of property acquired as a result of the highway program; meeting with property owners to discuss the settlement of their land damage case; functionally replacing certain properties and assisting in the relocation of displaced persons; managing, protecting, and disposing of structures and/or excess land acquired as part of the highway right of way; processing of payments for eminent domain takings and court judgments; assisting the Office of the Attorney General in the preparation of land damage court cases, and performing other duties which may be assigned by the Administrator's Office.

\*\*\*

- 1.04 To perform these duties, the Bureau is under the supervision and control of a Director. Directly responsible to the Director are the Deputy Director and the Administrators, Managers, Directors and Supervisors of the various Sections of the Bureau as shown on the Bureau's Table of Organization (refer to Exhibit # 1-2).

\*\*\*

- 1.05 The Deputy Director will be responsible for the general administrative, financial, human resource and clerical operations of the Bureau. In the absence of the Director, the Deputy Director will administer the functions of the Bureau and is authorized to sign the Right of Way Certificate and supporting documents.

\*\*\*

- 1.06 The Finance Manager will be responsible for the general administration operations (office procedures), as well as Finance Operations and Clerical sections of the ROW Bureau.

\*\*\*

- 1.07 The State Projects Administrator will be responsible for oversight for all MassDOT Federal-aid and non-Federal-aid public construction projects requiring the acquisition of rights of way.

\*\*\*

- 1.08 The Community Compliance Administrator will be responsible for oversight and assistance for all municipal public construction projects requiring the acquisition of rights of way, including Federal-aid transportation enhancement projects.

\*\*\*

- 1.09 The Conveyance Supervisor will be responsible for real estate title reviews and the recordation of all MassDOT plans and instruments.

\*\*\*

- 1.10 The Legal Section will be responsible for assisting the Attorney General's Office (AGO) in eminent domain case preparation, including: transmitting all case folders to and from the AGO's Office; accounting for the contents of such folders during the process; answering interrogatories; approving the use of outside experts; commenting on the settlement of such cases; and ensuring payment of all MassDOT-related court judgments.

\*\*\*

- 1.11 The Director of the Office of Outdoor Advertising is charged with the regulation of the outdoor advertising industry and all off-premise signs in the Commonwealth in compliance with Federal regulations and pursuant to Massachusetts General Laws (M.G.L.) Chapter 93, Section 29 as well as 711 CMR 3.00 et seq. and Chapter 25 of the Acts of 2009.

\*\*\*

## CHAPTER 2

### GENERAL ACQUISITION PROCEDURE SECTION

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## CHAPTER 2

### GENERAL ACQUISITION PROCEDURE SECTION

#### INDEX (cont.)

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## GENERAL ACQUISITION PROCEDURES

2.01 Massachusetts is a State that permits acquisition of its right-of-way (ROW) by exercising the power of eminent domain (ED).

\*\*\*

2.02 ED is the right by which government may take private property for a public use, without the consent of the owner. Just compensation must be paid for such a taking.

\*\*\*

2.03 The ED taking must be made in accordance with the requirements of Massachusetts General Laws, Chapter 79. Section 1 states, in part: "A board of officers upon whom authority to take real estate by eminent domain on behalf of any body politic or corporate has been conferred by law, having first complied with all the preliminary requirements prescribed by law, may adopt an order of taking, which shall contain a description of the land taken sufficiently accurate for identification, and shall state the interest therein taken and the purpose for which such property is taken, and in case such taking is for an improvement for which betterments may be assessed shall state whether betterments are to be assessed therefore. In case there are trees upon the land taken, or structures affixed thereto, the order of taking shall state whether the same are to be included in the taking, and, if they are not so included, shall allow the owner a reasonable time after the date of the order or after entry or possession to remove the same, to be specified in the order".

\*\*\*

2.04 The MassDOT Highway Division (MHD), acting on behalf of MassDOT and through its Highway Administrator, is authorized to take land for state highway purposes in accordance with the provisions of Chapters 79 & 81 of the Massachusetts General Laws, Chapter 196 of the Acts of 2004 and Chapter 25 of the Acts of 2009, as amended.

\*\*\*

2.05 In laying out and taking charge of a state highway, the MHD first complies with the requirements of M.G.L. Ch. 81, Sec. 5, which states: "If the Division determines, after public notice and a hearing of all parties interested, that public necessity and convenience require that a way should be laid out or taken charge of by the MassDOT, it shall file in the office of the Secretary of State or the County Administrators for the County where the way is situated a certified copy of a plan thereof and a certified copy of a certificate that it has laid out and taken charge of said way in accordance with said plan, and shall file in the office of the clerk of each town where the way is situated a copy of the plan showing the location of the portion lying therein and a copy of the certificate that it has laid out and taken charge of said highway in accordance with said plan, and thereafter said way shall be a state highway".

\*\*\*

2.06 The MHD may acquire land outside the limits of an existing highway under M.G.L. Ch. 81, Sec. 7, which states: "If it is necessary to acquire land for the purpose of a state highway outside the limits of an existing public way, the Division may take the same by eminent domain on behalf

of the Commonwealth under chapter seventy-nine. When injury has been caused to the real estate of any person by laying out or alteration of a state highway, he/she may recover compensation therefore from the Commonwealth under Chapter seventy-nine".

\*\*\*

2.07 Other Sections of said Chapter 81 authorize the MHD, acting on behalf of MassDOT, to use the power of ED in the following instances:

1. To alter ways connecting with State Highways- Sec. 7A;
2. To take a slope easement - Sec. 7B;
3. To lay out a limited access way - Sec. 7C;
4. To locate facilities of a public utility company - Sec. 7G;
5. To supply road materials - Sec. 11;
6. To lay out certain ways other than State Highways in Cities and Towns - Sec. 29A.

\*\*\*

2.08 The provisions governing the laying out of a Limited Access Highway under Sec. 7C, define a limited access way as follows: "A limited access way is hereby defined to be a highway over which the easement of access in favor of the abutting land exists only at such points and in such manner as is designated in the order of laying out".

\*\*\*

2.09 Standard procedures of acquisition are followed when a right of way is acquired for future needs (e.g. expansion from two lanes to four lanes). Generally, no use is allowed of the unused portion of the layout. If a use is allowed, it is done under the standard procedures of the Property Management Section (refer to Chapter 19 in this manual). All damages, including payment for the control of access, are paid at the time of taking.

\*\*\*

2.10 In connection with the laying out or alteration of a limited access highway, the MHD may take land or rights therein, by purchase, gift, devise, or by ED under M.G.L Ch. 79, or land adjoining the highway location whose right of access has been acquired.

\*\*\*

2.11 The MHD may also exercise the powers of ED in accordance with the provisions of Special Acts providing for accelerated transportation development and improvements within the Commonwealth of Massachusetts. Such Acts generally provide for the funding of MHD projects and authorize MassDOT to make all acquisitions which are necessary for carrying out the provisions of these Acts.

\*\*\*

2.12 The MHD may acquire land by purchase under the provisions of such Acts. The value of the property to be acquired is established through standard appraisal practices (refer to Chapters 9, 11 and 12 in this manual).

\*\*\*

- 2.13 In exercising the MassDOT power of ED under said Chapter 79, the MHD Administrator adopts a plan and/or an Order Of Taking which has been prepared by the Layout Section or a design consultant. The Highway Administrator approves and signs the required plans, and, at the same time, authorizes an award of damages for property or rights taken. This award is based on the determination of an assigned Review Appraiser. In cases where the award is over \$300,000.00, said award must also be approved and determined by the Real Estate Appraisal Review Board of the MHD.

\*\*\*

- 2.14 A copy of the Order of Taking must be filed at the Registry of Deeds for the County in which the land lies within thirty (30) days of the date of its adoption by the Highway Administrator. A plan is prepared, as referred to in the Order of Taking, and is recorded at the same time.

\*\*\*

- 2.15 Upon the recording of an Order of Taking, title to the "fee of the property" taken, or to such other interests as has been designated in the taking, vests in MassDOT.

\*\*\*

- 2.16 Also, the right to damages for such taking vests in the person(s) entitled thereto upon the recording of the Order of Taking.

\*\*\*

- 2.17 Immediately upon the vesting of the right to damages, the MHD gives a Notice Of Taking (refer to Exhibit # 17-21) to every person, including every mortgagee of record, whose property has been taken, or who is otherwise entitled to damages because of the taking. The notice is in writing and includes a general statement of the purpose and extent of the taking; the amount of damages, if any; the time and place at which payment of the award may be obtained, and the time within which a petition for assessment of damages may be brought in Superior Court. These notices are generally sent via certified mail.

\*\*\*

- 2.18 The MHD must, within sixty (60) days of the date of taking, tender payment to the owner or persons entitled thereto.

\*\*\*

- 2.19 The check may be accepted by the person(s) entitled thereto as full settlement (refer to Exhibit # 2-1, Land Damage Agreement Standard Form) or as a pro tanto payment. Acceptance as a pro tanto payment means the person(s) entitled thereto accept the check without waiving any of their rights to petition the Superior Court for an assessment of damages. Interest to be paid on court awards, as provided by Ch. 79, Sec. 37, is calculated on the net amount of the judgment, from the day damages are vested to the last day of the month prior to the payment thereof (refer to Exhibits # 14-4A, 14-4B, 14-5A and 14-5B).

\*\*\*

2.20 The MHD may also petition the Superior Court for an assessment of damages. If such were deemed applicable, the MHD, acting through its Administrator, would request the Attorney General's Office to file the petition for assessment of damages.

\*\*\*

2.21 An owner's petition must be filed within three (3) years after the right to damages has vested, that is, within three (3) years of the recording of the Order of Taking, providing proper notice of the taking has been given pursuant to Section 16 of Chapter 79.

\*\*\*

2.22 MHD has the authority to make an administrative settlement exceeding the initial award of damages. If the amount of such a settlement varies substantially from the determination of the Reviewing Appraiser, justification in writing must be made part of the case file, in order to receive Federal reimbursement. If the total amount exceeds \$300,000, approval of the MHD/ROW Real Estate Appraisal Review Board must be required.

\*\*\*

2.23 In the event of such a settlement, the Highway Administrator must approve same.

\*\*\*

2.24 A notice of the Order of Taking is also sent to each tenant or lessee in possession of property taken, as required by Ch. 79, Sec. 8B.

\*\*\*

2.25 All takings under Ch. 79 are subject to the following provision relating to time of possession by the taking authority: "No person in possession of property, which has been taken under the provisions of the Chapter, shall be required to vacate any portion of such property which is being used by same as a dwelling place or place of business at the time the Order of Taking is made, until four (4) months after notice of such taking has been given them in accordance with the provisions of Sec. 7C.

\*\*\*

2.26 Possession of vacant land, which does not fall into the category of land used as a dwelling place or place of business, can be obtained by the MHD after a thirty (30) day notice, in writing.

\*\*\*

2.27 No person entitled to damages is required to vacate the premises before or until the amount of damages awarded has been tendered.

\*\*\*

2.28 The owner of personal property, situated on land taken by MassDOT, is given reasonable time to remove it (refer to M.G.L., Ch. 79, Sec. 13 and Chapter 17 in this manual).

\*\*\*

2.29 If a person in possession of land taken by MassDOT refuses to vacate within the time stipulated in the Notice Of Taking, the MHD may, after the thirty (30) day notice sent by registered mail or posted on the property, issue a warrant to the Sheriff of the County in which the property is situated, directing them to make entry and take possession on behalf of the MHD (refer to M.G.L. Ch. 79, Sec. 3 and Section 19.03 in this manual).

\*\*\*

2.30 The provisions of M.G.L., Ch. 79A relative to the relocation of occupants or businesses must be complied with (refer to Chapters 16 and 17 in this manual).

\*\*\*

2.31 The MHD does not have authority to control or protect a right-of-way from improvement or re-zoning before it is acquired for highway purposes, other than through advance takings (refer to Chapter 6, Advance Acquisition in this manual).

\*\*\*

2.32 The MHD has the authority to acquire property outside of the right-of-way for the construction of replacement housing [49 CFR §24.404(b)(1)(vi)] or if the acquisition of only a portion of a property would leave the owner with an uneconomic remnant. The MHD shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project [49 CFR §24.102(k)].

\*\*\*

2.33 When the MHD requires land already in ownership of the Commonwealth, or one of its political sub-divisions, for use as a right-of-way, enabling legislation is prepared by the MHD for enactment by the State Legislature. The Layout Plan and Order of Taking will show the parcel numbers, proposed area, and name of the agency that controls the land.

\*\*\*

2.34 Where Federal land is required by MassDOT for highway purposes, a land transfer request must be made to that Federal Agency having control of the land, in order to have the land transferred to MassDOT. The Order of Taking will state that "unless and until" an instrument is received from the United States government granting the MassDOT the fee (or easement), the land involved shall not become part of the layout.

\*\*\*

2.35 Rights of entry for construction purposes, other than for temporary occupancies, shall be obtained only in exceptional circumstances (refer to Exhibits # 2-2 and 2-3).

\*\*\*

2.36 When the MHD identifies buildings, structures and other improvements (including removable buildings, equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made, a statement shall identify any separately held ownership interest in the property, (e.g. a tenant-owned improvement).

An item will be classified as a tenant-owned improvement if both the fee owner and tenant-owned improvement owner agree to this classification, or if the lease indicates a tenant-owned improvement designation.

The MHD, in these instances, will inform the owner and tenant of their individual interests, and submit separate offers to the parties involved, if the fee owner disclaims all interest in the subject improvement. If fee owner does not disclaim interest, both names should appear on the check for payment of just compensation.

\*\*\*

2.37 Generally, internal verification and State audit of claims involving Federal funds are not part of the ROW function. They are processed by the Fiscal Management Section of the MHD. Where claims against, or credits due, to Federal funds involve the Bureau, verification is made by the respective Bureau Section responsible for the action, including compliance with pertinent Federal Highway Administration (FHWA) regulations and State laws.

A final accounting of monies expended and credits back to Federal funds is maintained in the Fiscal Management Section for each Federal-aid Project.

Federal-Aid Ineligibility Notifications (refer to Exhibit # 2-4) received from the FHWA, are resolved under the guidance of the FHWA Liaison Section of the Bureau and are submitted to FHWA for concurrence.

\*\*\*

2.38 Real property donations (refer to Exhibits # 20-7 and 20-11).

710.505(a) Donations of property being acquired. A non-governmental owner whose real property is required for a Federal-aid project may donate the property to MassDOT. Prior to accepting the property, the owner must be informed 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 MHD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$2500. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 United States Code 323(d).

710.505(b) Credit for donations. Donations of real property may be credited to the MHD's matching share of the project. Credit to MHD's matching share for donated property shall be based on fair market value established on the earlier of the following: either on the date on which the donation becomes effective, or the date on which equitable title to the property vests with MassDOT. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The MHD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed MHD's pro-rata share under the project agreement to which it is applied.

710.505(c) Donations and conveyances in exchange for construction features or services. A property owner may donate property in exchange for construction features and 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 MHD's share of project costs.

2.39 State and local contributions (refer to Exhibits # 20-7 and 20-11).

710.507(a) General. Real property owned by state and local governments incorporated within a federally funded project can be used as a credit toward MHD's matching share of total project cost. A credit cannot exceed MHD's matching share required by the project agreement.

710.507(b) Effective date. Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

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

710.507(d) State contributions. Real property acquired with State funds and required for federally assisted projects may support a credit toward the non-Federal share of project costs. The MHD must prepare documentation supporting all credits including:

710.507(d)(1) A certification that the acquisition satisfied the conditions in 23 CFR 710.503(b); and

710.507(d)(2) Justification of the value of credit applied. Acquisition costs incurred by MHD to acquire title can be used as justification for the value of real property.

710.507(e) Credit for local government contributions. A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance Title 23 CFR shall be credited against MHD's share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The MHD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

\*\*\*

## CHAPTER 3

### RIGHT OF WAY ENGINEERING AND LAYOUT SECTIONS

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## RIGHT OF WAY ENGINEERING AND LAYOUT SECTIONS

### 3.01 The Planning, Design and Construction Process

The planning, design and construction of a MHD improvement project generally follows these steps:

- The need for a MHD project is identified through traffic studies, accident reports, pavement condition analysis, bridge inspection, and citizen input.
- A conceptual design is developed, and the project is approved and programmed by the Project Review Committee (PRC).
- Base mapping plans are developed. Design begins by either in-house personnel, or an outside Consulting firm.
- Alternative designs are developed and studied, and a Preferred Alternative is selected.
- Funding sources are identified. The project is then programmed into the Transportation Improvement Program (TIP) fiscal year by the Budget Office.
- If ROW acquisitions will be required, a set of Preliminary ROW Plans are prepared.
- When the project reaches the 25% Design stage, a Public Hearing is held. The Construction plans and Preliminary ROW plans are made available for public viewing. Questions and comments from concerned parties are received and incorporated into the design, where applicable.
- Environmental requirements are identified, and the environmental permitting process begins. Depending on the size of the project, an Environmental Impact Statement (IES), Environmental Impact Report (EIR), or Environmental Notification Form (ENF) is prepared.
- The ROW acquisition process begins. (See Section 3.02)
- The design of the proposed construction proceeds through the 75%, 100% and Plans, Specifications & Estimates (PS&E) stages.
- The project is advertised, and the construction contract is awarded.
- Construction begins.

\*\*\*

### 3.02 The ROW Acquisition Process

The ROW Acquisition Process generally follows these steps:

- The Preliminary ROW plans are reviewed and commented on to ensure they meet the Projects requirements, are sufficient for the interviewers and appraiser's needs, and that the acquisitions will comply with the requirements of Federal and MA General Laws.
- Funding for ROW acquisitions is requested from the Budget Office, and a PARS number is assigned.
- Title Examinations are requested.
- When the ROW plans are Approved by the Bureau's State Projects or Community Compliance Sections, they are given to Projects and Appraisal Sections.
- Layout or Order of Taking plans, and Instrument (the "Taking Documents"), are requested from the Designer to be submitted to the Layout Section.
- Title Examinations are received and sent to the MHD District Project personnel.
- Property owner interviews are conducted and the Case Folders are prepared. After review by the Projects Administrator, the Case Folders are given to the Appraisal Section.
- Appraisals are conducted and reviewed.
- Title Examinations are reviewed, and the Layout Schedule is finalized.
- The Highway Administrator's Package is prepared. This consists of the Mylar Taking plans and Instrument, Layout Schedule, and Computation and Award sheets.
- The Mylars and Instrument are signed by the Highway Administrator.
- The Negotiation Section discusses the Award with the property owners.
- The Taking Documents are recorded in the Registry of Deeds.
- The ROW Certificate is issued. The ROW Certificate certifies to FHWA that MHD has acquired all necessary property rights to construct the project. If required, the Cert. must be issued before the project can be advertised.

\*\*\*

### 3.03 ROW and Design Coordination

The Bureau's State Projects and Community Compliance Sections assist in the conceptual design process, and the evaluation of alternatives. Input is provided about ROW costs, relocation issues and scheduling of projects.

\*\*\*

### 3.04 ROW Field Review

As part of the ROW plan review process, a field inspection of the proposed project site is conducted jointly with the Bureau's State Projects or Community Compliance personnel. This consists of verification of existing conditions, and an investigation of potential design changes that could bring about land damage savings.

\*\*\*

### 3.05 Initiation of the ROW Acquisition Process

The ROW Acquisition Process is scheduled to support and advance the MHD's Transportation Improvement Program's proposed Advertising Dates for contractors seeking to bid on MassDOT public improvement construction projects. Weekly meetings are held with the Deputy Chief Engineer to coordinate the ROW process with the proposed schedule for Advertising Dates.

\*\*\*

### 3.06 ROW Plans

ROW Plans are prepared by the Project's designer, which may be either in-house personnel or an outside contracted Design Consultant. ROW Plans must show all pertinent information needed to conduct the property owner interviews, and the appraisals. ROW Plans must also contain all the information required to legally describe the real property interest to be acquired in the Orders of Taking.

\*\*\*

### 3.07 Verification of Parcel Ownership

A Title Examination is done by a Title Examiner and reviewed by a Massachusetts licensed Attorney for each property impacted by an acquisition by the Bureau's District personnel through research at the local Assessor's Office.

\*\*\*

### 3.08 Coordination with the Layout Section

The Bureau's State Projects and Community Compliance Sections work with the Bureau's Layout Section as part of the overall review and acceptance of ROW Plans. When the Layout Section is reviewing draft Taking Documents, Bureau personnel will confirm that the information matches the information as shown on the Preliminary ROW Plans as used for Title Examinations, land owner interviews and appraisals.

\*\*\*

### 3.09 Taking Documents

Taking Documents consist of Land Survey Plans and a Written Instrument. If a new State Highway Layout (SHLO) is being proposed, the plans are referred to as "Layout Plans", and a proposed SHLO number is assigned. If an existing SHLO is being revised or altered, the plans are referred

to as "Alteration Plans", and a proposed SHLO alteration number is assigned. If there are only acquisitions being made, and the existing Layouts will not be changed, the plans are referred to as "Taking Plans", and NO SHLO number is assigned.

The Taking Document plans show the proposed acquisitions, proposed Layout lines, and the base mapping condition. Proposed construction details are not shown.

When the Taking plans are approved by the Layout Section, Mylars are requested.

The Instrument cites MassDOT's authority to acquire property, describes the proposed SHLO line (if any), describes the baseline used, gives metes and bound descriptions of permanent acquisition, states the purpose of any Temporary Easements, gives the Title of the plans, and has a schedule of Parcel number, owners name, parcel area, and the Book and Page of the property being impacted.

The Highway Director signs both the Mylars and written instrument.

\*\*\*

### 3.10 Standard Symbols and Linestyles

The Linestyles used on the ROW and Layout or Taking Plans are shown in the latest edition of the Project Development and Design Guidelines, Chapter 18, Exhibit 18-23. The abbreviations and symbols used are given in Section 18.2 of the Design Guidelines.

\*\*\*

### 3.11 Project Scheduling

MHD schedules its construction program to provide lead-times for the ROW acquisition process to proceed in an orderly manner. For projects not involving relocation, the lead time is typically 6 to 12 months, while those requiring relocation range from 12 to 18 months. The scheduling of adequate lead-times for projects allows for:

- Professional and competent interaction with property owners
- Sufficient time to conduct approved fee and/or staff appraisals
- Sufficient time for proper negotiation of acquisitions
- Orderly relocation of affected persons and/or businesses
- Accurate preparation of the Taking Documents.

\*\*\*

CHAPTER 4  
PROJECTS SECTION

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STATE PROJECTS

- 4.01 It is the responsibility of the State Projects Section to take the necessary steps prerequisite to the acquisition of private or public property needed for the location and construction of a highway improvement.

\*\*\*

- 4.02 The State Projects Section is called upon to supply the Design Section (at their request), with an estimate of right of way costs for each alternate corridor proposed as a highway location. The State Projects Section, when requested by MHD's Environmental Section, will provide input for the environmental impact statement (EIS) and will review a draft EIS where a project may involve replacement land or a functional replacement.

\*\*\*

- 4.03 Subsequent to public hearings, MHD's Design Section transmits preliminary ROW plans and correspondence to the Bureau's Project Administrator (refer to the 2006 Project Development Design Guide, Chapter 18, Exhibit #18-1, Exhibits 4-1 & 4-2). The plans are assigned to the plan review staff. Upon acceptance of the plans, the necessary information for the preparation of the advance title examination is extracted from them (refer to Chapter 14 - Titles, Conveyancing, and Payments Section). At this point the Right of Way Bureau's Project Administrator prepares a land damage estimate for the project (refer to the Preliminary Right of Way Cost Estimate form, Exhibit #4-3). This estimate is forwarded by memorandum from the Deputy Director of ROW to MHD's Chief Financial Officer for programming (refer to Exhibits #4-4 and 4-5 for Federal-aid projects and Exhibit #4-6 for non-Federal-aid projects). If Federal funds are involved, the Chief Financial Officer will forward a project authorization request to Federal Highway Administration (FHWA) for approval on the Federal-aid Project Agreement form, PR-2A-MA (refer to Exhibit #4-12). Upon receipt of a Pars Number form (refer to Exhibit #4-13), the preliminary project work will commence.

\*\*\*

- 4.04 The accepted preliminary ROW plans are forwarded to the applicable Bureau District office supervisor for assignment of a Project Leader and/or ROW Agent.

\*\*\*

- 4.05 The Project Leader and/or ROW Agent compiles the local real estate tax assessments for the present and two (2) prior years for each property to be taken or affected by the highway improvement.

\*\*\*

- 4.06 While awaiting receipt of the title abstracts, the Project Leader and/or ROW Agent compile all plans, i.e., construction plans, cross-sections, profiles, individual property sketches, and all pertinent data included in the case folder prepared for each individual property taken or affected by the highway improvement.

\*\*\*

- 4.07 On receipt of the title abstracts, the Project Leader and/or ROW Agent will verify the ownership and locus of each parcel to be affected. All errors or omissions on the preliminary ROW plans, e.g., changes in

ownership, etc., will be reported by the Project Leader and/or ROW Agent directly to the Bureau's plan review staff for necessary corrections.

\*\*\*

- 4.08 After all preparatory data is obtained, the State Projects Section will conduct the preliminary interviews (refer to Chapter 5-Preliminary Interviews).

\*\*\*

- 4.09 The Fee Appraisal Request and Assignment Form will be completed by the Projects Administrator, when or if fee appraisals are needed or warranted (refer to Chapter 10 - Fee Appraisal Assignment Form, Exhibit#4-8).

\*\*\*

- 4.10 A Layout Schedule (refer to form ROW-452, Exhibit # 4-9) prepared by the Project Leader and/or ROW agent will contain the following information in the heading:

- |              |  |
|--------------|--|
| 1. City/Town | 3. Federal-aid project number, if applicable |
| 2. Project   | 4. Layout number                             |

In the body of the Layout Schedule, the Project Leader and/or ROW agent will include:

- |   |   |
|---|---|
| 1. Parcel numbers                         | 5. Easement holders and addresses (if affected) |
| 2. Owner name(s) and addresses            | 6. Area taken in each parcel                    |
| 3. Mortgagees (if any) and addresses      | 7. Title reference for each parcel              |
| 4. Lessees name(s) and addresses (if any) | 8. Telephone number(s) of owner(s)              |

\*\*\*

- 4.11 A cover letter to the Highway Administrator signed by the Deputy Director and Director of Bureau will accompany each Layout Schedule (refer to Exhibit #4-10).

\*\*\*

- 4.12 A Structure and Occupancy Report (refer to Form ROW-735, Exhibit #4-11) is prepared by the Project Leader and/or ROW Agent and shall contain the following information in the heading:

- |                             |  |
|-----------------------------|--|
| 1. City/Town                | 5. Name of individual preparing the form     |
| 2. Project                  | 6. Federal-aid project number, if applicable |
| 3. Layout or Order number   | 7. Date of preparation                       |
| 4. Date on filing of taking |  |

In the body of a Structure and Occupancy Report, the Project Leader and/or ROW Agent will report:

- |                                  |   |
|----------------------------------|---|
| 1. Parcel number                 | 5. Occupants (owners/tenants)                   |
| 2. Owner(s) name                 | 6. Actual rent                                  |
| 3. Location and type of building | 7. Number of rooms                              |
| 4. Residence or business         | 8. Number of square feet each occupant utilizes |

4.13 A cover letter from the Projects Administrator or designee to the Property Management Administrator will accompany each Structure and Occupancy Report (refer to Exhibit #4-7).

\*\*\*

4.14 A Demolition Report (refer to Form ROW-128, Exhibit #4-17) is also prepared by the Project Leader and/or ROW Agent and shall contain the following information in the heading:

- |                  |  |
|------------------|--|
| 1. City/Town     | 5. Date of layout                            |
| 2. Route number  | 6. Name of individual preparing the form     |
| 3. Stations      | 7. Federal-aid project number, if applicable |
| 4. Layout number | 8. Date of preparation                       |

In the body of the Demolition Report, the Project Leader and/or ROW Agent will include:

- |   |                                   |
|---|-----------------------------------|
| 1. Parcel number  | 3. Owner and location of building |
| 2. Item number (each structure is identified by number of inclusion in demolition contract) | 4. Type of building               |
|   | 5. Demolition cost estimate       |

\*\*\*

4.15 A cover letter from the Projects Administrator or designee to the Property Management Administrator will accompany each Demolition Report (refer to Exhibit #4-14).

\*\*\*

4.16 A Sign Inventory Report (refer to Exhibit #4-15) will be prepared by the Project Leader and/or ROW Agent for all signs and billboards classified as personal property and requiring relocation assistance that will be affected by the proposed takings and/or construction. This report will contain the following heading:

- |              |  |
|--------------|--|
| 1. City/Town | 3. Layout or Order                           |
| 2. Project   | 4. Federal-aid project number, if applicable |

In the body of the Sign Inventory Report, the Project Leader and/or ROW Agent will include:

- |                  |                                     |
|------------------|-------------------------------------|
| 1. Parcel number | 4. Location (by station and offset) |
| 2. Sign owner    | 5. Photograph                       |
| 3. Land owner    |                                     |

\*\*\*

4.17 A cover letter from the Projects Administrator or designee to the Relocation Administrator shall accompany each Sign Inventory Report (refer to Exhibit #4-16).

\*\*\*

## CHAPTER 5

### PRELIMINARY INTERVIEW

### INDEX

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PRELIMINARY INTERVIEW SECTION

5.01 An Agent of the Right Of Way Bureau will be assigned to conduct a preliminary interview with all owners, tenants, lessees, or other parties who hold an interest in property to be taken or affected by a proposed taking and/or construction of a proposed highway improvement.

\*\*\*

5.02 The ROW Agent conducting the interview must be fully prepared to do so. The ROW Agent will have a conference with the Project Leader and/or Projects Administrator who will provide all the information needed to inform the party(s) involved of the intentions of MHD with respect to the subject property. The ROW Agent should have in their possession at the time of interview, a complete set of the latest ROW Plans and should be prepared to explain them in detail to the property owner(s) or other parties.

\*\*\*

5.03 The ROW Agent must be fully acquainted with MHD procedures for acquiring property. The ROW Agent must explain to all parties involved the various processes that the Bureau has to comply with in making an acquisition, i.e. that the property will be inspected by appraisers, relocation and/or property management personnel, etc.. Payment procedures should be explained, as well as MHD ROW procedures with respect to relocation assistance and benefits, to which they may be entitled.

\*\*\*

5.04 The preliminary interview will be conducted in such a manner as to convey and obtain full and complete information on the subject property. All title data should be verified including mortgage(s) and other encumbrances, both of record and privately held, and property boundaries confirmed. Form ROW-617, Property Interview Record, (refer to Exhibit #5-1) will be fully completed.

\*\*\*

5.05 The Property Interview Record form and necessary copies will be distributed as follows upon completion of a review by the Bureau Projects Administrator:

1. Original - to case folder
2. Appraisals
3. Finance
4. Relocation, if applicable
5. Conveyancing
6. Negotiations
7. Property Management, if applicable

\*\*\*

5.06 The ROW Agent conducting the preliminary interview will, in most instances, be the first personal contact that the party(s) in interest will have with MHD, and the Agent should be ever mindful that the impression made will be a lasting one and affect all ensuing relationships between MHD and the party(s) impacted.

\*\*\*

5.07 The ROW Agent making the preliminary interview should be conservatively dressed, having a neat, clean, wholesome appearance and an understanding attitude. It is to be expected that the party(s) in interest may be disturbed at the prospect of a serious displacement or change affecting their property. The Agent should be diplomatic, courteous, and tactful and discussion of politics, religion, or any subject that may be of an argumentative nature should be avoided. If a ROW Agent is using a personal vehicle during project related work, there should be no display of advertising material that would draw the attention and/or criticism of a property owner or the public at large. If a vehicle is provided by MassDOT, it should be operated and maintained as referenced in the state publication "Office of Vehicle Management - Policies and Procedures". The ROW Agent is in a delicate position relative to public relations and, if operating a state vehicle as well, the position is all the more sensitive.

\*\*\*

5.08 As a matter of standard operating practice, the preliminary interview should be held through personal contact. In the event the party(s) of interest is located out of state or, where it is impossible or impracticable to make personal contact, a written request for completion of the preliminary interview package will be forwarded to the property owner(s) by mail over the signature of the Bureau Director to the property owner(s) for completion (refer to Exhibit #5-3).

\*\*\*

5.09 If the ROW Agent is advised that an attorney has been retained by a party in interest, the Agent should request that the Bureau be so notified by letter and in turn notify the party in interest that all future communications will be with and through said attorney.

\*\*\*

5.10 All relevant informational materials made available by the Bureau will be presented to the party(s) in interest including the Eminent Domain brochure (refer to Exhibit #5-4).

\*\*\*

## CHAPTER 6

### ADVANCE AND EARLY ACQUISITION PROCEDURES

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ADVANCE AND EARLY ACQUISITION SECTION

6.01 Advance acquisitions are under the overall supervision of the Projects Administrator who has the responsibility for processing these requests in advance of remaining project acquisition(s). This procedure provides a means of alleviating physical or financial hardships to property owners caused by an impending project; precludes substantial and imminent property development within the preferred highway location; or provides lead time for the acquisition and relocation of improved properties where project acquisition authorization is pending the completion of approved ROW plans and/or an approved relocation plan.

\*\*\*

6.02 Bureau personnel will conduct field inspections on a continuing basis throughout the development of a project in order to assure the consideration of significant ROW elements in the location and design of a project, making certain to document project records relative to such ROW elements. Where it is appropriate, personnel who participate in these inspections should note areas of potential development and make specific recommendations involving properties which may have to be acquired in advance of remaining taking procedures.

\*\*\*

6.03 Advance acquisitions due to hardship will primarily apply to owner-occupants of real property who have been placed in an extraordinary or emergency situation by an impending highway project. In rare instances, an owner of income producing (residential or commercial) or vacant property may also be eligible for advance hardship acquisition. In cases where substantial and imminent property development might unduly restrict the only reasonable highway location, an advance or protective acquisition may be the only practical means of alleviating the problem in order to protect the public interest. Hardship acquisitions or instances of protective acquisitions may occur prior to final environmental clearance(s). On Federal-aid projects, MHD 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:

- 17 The project is included in the currently approved STIP;
- 27 MHD has complied with the applicable public involvement requirements in 23 CFR Parts 450 and 771;
- 37 A determination has been completed for any property subject to the provisions of 23 U.S.C. 138;
- 47 Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

Protective buying. MHD must clearly demonstrate that development of the property is imminent and such development would create extreme adverse

impacts on future transportation use. A significant increase in cost may be considered as an element justifying a protective purchase.

Hardship acquisitions. MHD must accept and concur in a request for a hardship acquisition based on a property owners' written submission that contains:

Support for the hardship acquisition by providing justification on the basis of health, safety or financial reasons that remaining in the property poses and undue hardship compared to others; and

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 under this section 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.

Acquisitions made after a public hearing and environmental clearances are simply advance acquisitions made prior to total project acquisition authorization.

\*\*\*

6.04 Hardship acquisitions are instituted upon written request by the owner of real property citing the hardship to be created by the proposed taking. Protective acquisition cases are usually initiated through notification by a City/Town Planning Board, MHD-District Office, or a ROW Agent.

Residential property- the criteria used to approve a hardship approval will include, but not be limited to: serious illness in the family; advanced age of the owner; financial hardship; job relocation beyond a reasonable commuting distance; a sudden change in the adequacy of a structure (i.e. non-compliance with building/health code) beyond the control or financial resources of the owner.

Commercial property- protective acquisitions will be considered in cases where major changes (e.g. expansion of a building) are to be made to an existing property and/or building prior to standard acquisition; or in cases where foreclosure or bankruptcy proceedings are imminent.

The above listed criteria are referenced as guidelines. Many requests will not fall within the above criteria and, therefore, will have to be investigated by an assigned ROW Agent. Determinations will be made on a case by case basis in a uniform and compassionate manner

\*\*\*

6.05 Upon request or notification, an investigation will be made into all the circumstances involving the property to be affected by the proposed highway improvement. Correspondence indicating that an investigation has commenced will be written by the Bureau Director.

\*\*\*

6.06 The Project Administrator, upon completion of an investigation of an affected property, will make a recommendation to the Bureau Director. Upon completion of the investigation on non-federal aid projects, the

Right of Way Bureau Director will notify the property owner in writing of MHD's decision regarding his/her request for advance acquisition.

\*\*\*

- 6.07 If the Project Administrator determines a property is within the proposed highway corridor, he/she will recommend that a taking be made in advance of remaining acquisition procedures.

\*\*\*

- 6.08 The Project Administrator will furnish the following information to the Bureau Director, when recommending an advance acquisition, to document that a hardship exists or protective acquisition is in the public interest:

1. A copy of the owner's request for a hardship acquisition, setting forth the nature of the hardship (health, safety or financial reasons) along with all supporting documentation in support thereof, e.g. a doctor's statement; letter from a real estate broker or employer; financial statement(s) or court record(s). In cases of protective acquisition, a copy of pertinent correspondence detailing the reasons for initiating the action.
2. A plan showing the proposed acquisition and its relationship to the proposed project, including right of way limits.
3. A statement regarding project status.
4. A statement reflecting the displacee's plans for obtaining replacement housing; or, assurance that replacement housing is available within the financial means of the relocatee and relocation will be accomplished in a reasonable and orderly manner.
5. A statement certifying that the acquisition will not influence the environmental considerations of the project, including the no-build alternative.
6. An estimate of the acquisition and relocation (if applicable) costs.
7. For protective acquisition, evidence that it is in the public interest. It should demonstrate prevention of imminent development(s) and increased costs which would tend to limit the choice of highway alternatives.

This information is to be prepared in appropriate form for the Bureau Director's signature, and if appropriate, for transmittal to the FHWA for approval of the advance taking.

\*\*\*

- 6.09 If the proposed taking is a partial taking, it must involve an existing structure, a proposed structure, or affect the entire property in a substantial manner. In this instance, MHD will acquire the entire property with the remainder, after construction, going into the MHD's excess land bank.

\*\*\*

6.10 On Federally aided highway projects, no further action will be taken until FHWA approval or disapproval of a hardship/protective buying case is received by MHD.

\*\*\*

6.11 On Federally aided highway projects, if approval for an advance acquisition is received from the FHWA, acquisition procedures (refer to Chapter 2-General Acquisition Procedure section) will be initiated to acquire the property through the State Projects Section of ROW, with priority given to these acquisitions over remaining acquisitions.

\*\*\*

6.12 If Federal funds are not involved in a highway project, the MHD's Chief Engineer, in consultation with MHD personnel, will approve or disapprove all recommendations for advance acquisitions.

\*\*\*

6.13 MHD may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. MHD may undertake early acquisition for corridor preservation, access management, or other purposes.

Eligible costs. Acquisition costs incurred by MHD prior to executing a project agreement with FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards MHD's share of a Federal-aid project if the following conditions are met:

The property was lawfully obtained by the State;

The property was not parkland described in 23 U.S.C. 138;

The property was acquired in accordance with the provisions of 49 CFR Part 24;

The requirements of title VI of the Civil Rights Act of 1964 had been complied with;

MHD determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including;

- 17 The decision on need to construct the project;
- 27 The consideration of alternatives; and
- 37 The selection of the design or location; and

The property will be incorporated into a Federal-aid project; and

The original project agreement covering the project was executed on or after June 9, 1998.

Reimbursement. In addition to meeting all provisions in the "Eligible Costs" paragraph (a) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires MHD to demonstrate that:

- I. Prior to acquisition, MHD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and
- II. MHD obtained concurrence from the Environmental Protection Agency in the findings made under the Environmental assessment portion of the "Eligible Costs" paragraph regarding the NEPA process.

\* \* \*

## CHAPTER 7

### FUNCTIONAL REPLACEMENT PROCEDURES

#### INDEX

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FUNCTIONAL REPLACEMENT

7.01 Functional replacement is the replacement of real property, land and/or buildings, acquired as a result of a highway project, with land and/or buildings of equivalent utility in lieu of paying the fair market value for the real property.

\*\*\*

7.02 The Functional Replacement Program is the responsibility of the Projects Administrator and/ or the Relocation Administrator.

\*\*\*

7.03 To be eligible for functional replacement, the following criteria must be met:

1. The property to be replaced must be in public ownership;
2. The functional replacement must be in the public interest;
3. The approval for functional replacement on Federal-aid projects must be given by FHWA in accordance with the FHWA/MHD Project Oversight Agreement (Refer to Chap. 20, Federal Highway Administration) or authorized by the General Court or Highway Administrator for non-Federal-aid projects;
4. The proposed replacement site(s) and/or construction are in compliance with existing local/state codes, law, and zoning regulations;
5. The replacement facility will be in public ownership and will continue the public use function of the acquired facility;
6. The state 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; and
7. The real property is not owned by a utility or railroad.

\*\*\*

7.04 During the early stages of highway project development, Bureau personnel meet with representatives of the public agency that owns the property (the owning agency) to discuss the effects of a possible acquisition and the potential application of functional replacement procedures. The results of these discussions and eventual decisions are to be included in the Environmental document.

\*\*\*

7.05 If an owning agency desires functional replacement, it is advised to initiate a formal request to MHD, fully explaining why it would be in the public interest to do so.

\*\*\*

7.06 On Federal-aid projects (subject to the FHWA/MHD Project Oversight Agreement in Chapter 20), if MHD agrees that functional replacement is

necessary and in the public interest, MHD submits a specific request for FHWA concurrence. This request should include:

- a. cost estimate data relative to the contemplated replacement (Refer to Exhibit #7-1);
- b. agreements reached at meetings between MHD and the owning agency, and
- c. an explanation of the basis for the request.

The request shall include a statement that replacement property will be acquired in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and applicable FHWA directives.

\*\*\*

- 7.07 After FHWA concurrence for Federal-aid projects or General Court or Highway Administrator authorization for non-federal aid projects, the property is appraised and an amount for just compensation is established. The owning agency has the option of accepting the amount of compensation derived by the appraisal process, or accepting functional replacement.

\*\*\*

- 7.08 After concurrence by FHWA that functional replacement is in the public interest, MHD requests FHWA authorization to proceed with the acquisition of the substitute site and to proceed with the physical construction of minor structures. In the case of major improvements, authorization to proceed with development of detailed plans, specifications and estimates will be requested.

\*\*\*

- 7.09 The completed plans, specifications, and estimates are 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 MHD and FHWA. The specifications where applicable, should include provisions for MHD inspection during construction of the replacement facility.

\*\*\*

- 7.10 Prior to concurrence in the award for actual construction, an agreement is drafted setting forth the rights, obligations, and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The proposed agreement should also set forth how the costs of the new facility are to be shared between the parties. The proposed agreement will be approved by FHWA prior to execution with the owning agency.

\*\*\*

- 7.11 If the owning agency wishes to be reimbursed for costs of engaging a consultant for planning or architectural services, it must receive prior approval from MHD and FHWA.

- a. Prior to construction, MHD may require the owning agency to engage a Clerk of the Works, the cost of which is to be reimbursed by MHD as part of the total cost of the project. The Clerk in this instance represents the City and/or Town.
- b. MHD may choose to assign a Project Liaison Engineer to represent MHD during the construction period.

\*\*\*

7.12 On Federal-aid projects a request for final payment will be prepared for submittal to FHWA after the replacement facility has been completed and accepted by the owning agency. This request will include:

- a. A signed statement by an appropriate official of both the owning agency and MHD, certifying that the cost of the replacement facility has actually been incurred, in accordance with the provisions of the executed agreement; and
- b. The statement certifying that a final inspection of the facility was made by MHD and the owning agency, and that MHD is released from any further responsibility.

\*\*\*

CHAPTER 8  
LOCAL PUBLIC AGENCY PROCEDURES  
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LOCAL PUBLIC AGENCY PROCEDURES

The purpose of this chapter is to identify and clarify the responsibilities of any political subdivision of the Commonwealth of Massachusetts that is undertaking a highway infrastructure project that will utilize Federal-aid in **any** phase of the project. This chapter will also outline the proper procedures required in order to assure compliance with property owner rights defined under the Uniform Relocation Assistance and Real Property Acts of 1970, as amended.

\*\*\*

- 8.01 The MHD is responsible for any highway project undertaken with the assistance of Federal-aid funds, including those undertaken by political subdivisions or local public agencies. Accordingly, on any Federal-aid highway project where real property acquisition or relocation assistance activities are conducted by local public agencies (LPA), the MHD Right of Way Bureau is responsible for compliance by the agency with provisions of law and applicable regulations.

The Bureau is required to monitor through its Community Compliance Section, all real property acquisition and relocation assistance activities conducted by LPAs, to the extent necessary to assure compliance with applicable Federal and State law requirements and regulations.

Note: When there is Federal participation in any phase, including construction of a project, LPAs must comply with the provisions of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)(PL-91-646) as amended,(refer to Exhibit # 20-3, State law, and implementing regulations).

\*\*\*

- 8.02 The Bureau's Community Compliance Administrator (CCA) is notified of the project by receipt of the 25% ROW Plan submission which may be sent via Interoffice Memo from any of the MHD Project Development Sections including; Accelerated Bridge Section, Planning Section, Bridge Preservation Section, Highway Design Section or District Project Development . The CCA then assigns a ROW Community Compliance Officer (CCO) to the project and municipality. The CCO prepares a letter (refer to Exhibit #8-1) under the signature of the Bureau Director, to be sent to the appropriate LPA. The letter is sent to the highest elected official and copied to appropriate municipal boards, CCA, District Highway Director, Director of Project Management, MHD Project Manager and Director of the appropriate MassDOT Project Development Section. The CCO is subsequently kept informed of the status of any approved project(s) by the MHD's Highway Design Section, Accelerated Bridge Section, Bridge Preservation Section or the Planning Section. The CCO has to give permission prior to the scheduling of a Design Public Hearing that the ROW Plans that were distributed and reviewed by the CCO adhere to the 2006 MHD Project Development and Design Guide. The CCO is formally notified by letter of any scheduled meetings or notice of public hearing.

\*\*\*

8.03 LPAs are responsible for the right of way acquisition on Local Systems projects. Usually, the LPA acquires the right of way on small projects which do not require any relocation. The LPA is empowered to make acquisition(s) according to the provisions of Chapter 121B, Sections 11 and 26, and Chapter 79 of the Massachusetts General Laws.

\*\*\*

8.04 In the event that land damages and/or relocation costs are determined to be excessive or budgetary burdensome to a LPA, it may request in writing that the MHD acquire the right of way and/or handle the relocation on their behalf, as provided for under M.G.L., Ch. 81, Sec. 29A, and Sec. 7J, as amended.

\*\*\*

8.05 The CCO is responsible for monitoring LPA acquisition procedures for Uniform Act Title III compliance. The MHD's Relocation Section is responsible for monitoring LPA relocation assistance and payment activities for Uniform Act Title II compliance. The Relocation Section Administrator will be responsible for assigning a ROW Agent from the Relocation Section to the project. Said ROW Agent will review the LPA's relocation records for compliance with applicable laws and regulations regarding relocation assistance, payments and required reports, and report the findings, if any, to the CCO.

Where LPA relocation activities are carried out under another Federal agency other than FHWA, e.g. HUD, a letter similar to FHWA's will serve as evidence and certification of Uniform Act Title II compliance.

\*\*\*

8.06 The CCO is also notified of public hearings by MHD's Project Manager/Expeditor and/or the MHD's District Project Development Engineer for the area involved in that district. The CCO or designee will attend all public hearings for the local project in that City or Town. At the public hearing, the CCO will explain both the responsibilities of the LPA and the rights of the affected owners, with regard to the ROW acquisition and relocation process (refer to Exhibit #8-2).

\*\*\*

8.07 The CCO is generally informed by the MHD Project Manager/Expeditor as to which local official has been designated by the LPA to serve as the liaison officer. The CCO may contact other local officials, as needed, such as an Assessor, Highway Engineer, City Solicitor or Town Counsel. These contacts may be by phone, letter or personal contact and records of same should be maintained.

\*\*\*

8.08 At the 25% design hearing, or immediately thereafter, the LPA informational package is delivered to the designated local liaison with a copy to the highest elected official. The package should include the MHD Municipal Guidelines for Eminent Domain on Federal and State Projects. (refer to Exhibit #8-6)

\*\*\*

8.09 The CCO will determine as the project progresses whether layout plans will be required. The CCO will monitor the design submittals to make certain that the proposed work shown on the highway/construction plans,

bridge plans, landscape and environmental plans match what is proposed and shown for work on the ROW Plans. The CCO will review and provide written responses to every design submittal received. When a Design Consultant states that "No ROW is necessary" for a project, the Design Consultant must submit a letter on company letter head stating that "The design has been prepared according to MassDOT Standard Specification for Highways and that all of the proposed work can be done within the existing roadway layout within the project limits as shown on the construction plan". The CCO will coordinate with the District Utilities Constructability Engineer (DUCE) to verify.

\*\*\*

- 8.10 The CCO will monitor the 100% PS&E Plans to make certain that all paperwork signed by property owners has the accurate square footage of what is shown in the 100% PS&E Plans. The CCO will review the square footages on the appraisal to the 100% PS&E Plans along with the term of the easement to make certain that there is consistency between the Order of Taking and appraisal.

\*\*\*

- 8.11 A Right of Entry (ROE) (refer to Exhibit #8-7) may be obtained by the LPA in lieu of acquiring temporary easement rights, provided the owner understands they are waiving their right to appraisals and just compensation. For projects that utilize a significant amount of ROE's in order to secure the necessary right of way, the CCA may request the CCO to perform an audit in order to determine whether coercion was used in order to obtain the ROE.

\*\*\*

- 8.12 ROE's for construction purposes, other than for temporary occupancies, may be obtained prior to compensation payments being made available only in exceptional circumstances with prior approval of the property owner.

\*\*\*

- 8.13 Appraisal reports are prepared by qualified appraisers, hired locally by the LPA or from the MHD's list of approved appraisers. In cases where only minor (\$1,000.00 or less) acquisitions are anticipated, the appraisal(s) may be completed by the local assessor which are required to complete a written report and an appraisal affidavit (refer to Exhibit #8.5).

Completed appraisal reports are either mailed or hand delivered to the CCO for review, prior to the local municipal vote for approval and the recording of the Order of Taking, by the LPA. Appraisals in excess of \$300,000.00 require two appraisals which shall be forwarded to MHD's Appraisal Review Section for review and compliance.

Acquisitions including ROE's cannot be secured until the NEPA process has been approved. In very rare circumstances, and with MHD ROW and FHWA permission, advance acquisition can occur prior to NEPA approval.

\*\*\*

- 8.14 Property owners may decide to donate some or all of their property in any combination that they decide to the LPA. The LPA cannot coerce or compel the owner to donate their property. The property owner must be made aware of their rights to an appraisal and just compensation. If the property owner decides to donate they must execute a Donation Form

(refer to Exhibit #8.8). If the subject parcel(s) is/are owned by a corporation, estate, trust, etc., then an appropriate document, authorizing the donation must be attached to the document.

\*\*\*

- 8.15 LPA's are required to identify and offer to acquire from a tenant, any tenant owned improvements which are considered to be a part of the real property to be acquired, and in which the fee owner disclaims any interest.

\*\*\*

- 8.16 Upon recording of takings or donations, the appropriate local official will need to complete and sign affidavits of compliance for acquisition (refer to Exhibits #8.9). The signature on the affidavit form can vary depending on the municipality, e.g. in a City, the affidavit may be signed by the Mayor, City Solicitor, City Engineer, or Superintendent of Public Works. In a Town, the affidavit may be signed by a Selectman, Town Counsel, Public Works Superintendent or City Engineer. If relocation is involved, except as provided for in the HUD-CDBG, a separate affidavit is required for the relocated property owner.

\*\*\*

- 8.17 The CCO maintains files on incomplete projects and makes certain that any information pertaining to a particular project, e.g. agency(s) correspondence, records, data, is placed in that file. This will include, but is not limited to, copies of: recorded Orders of Taking, plans, instruments, deed grants, permits, licenses, donation forms, ROE's, appraisal affidavits, municipal affidavits, Property Owner Contact Log/Negotiations Log (refer to Exhibit #8.12), Notice to Property Owner, appraisals, appraisal reviews as well as any written contact between MHD and the LPA.

\*\*\*

- 8.18 Only when all Title II and Title III provisions of the Uniform Act have been complied with, including completion of the necessary affidavits, will the CCO recommend the issuance of a Right of Way Certificate (refer to Exhibit #8.10). Upon receipt of the CCA's written recommendation for issuance of the certificate (refer to Exhibit 8-11), the ROW Bureau Director executes the ROW Certificate and sends it to the FHWA MA Division Office and the MHD Director of Project Management or Director of Accelerated Bridge who in turn forwards it to the Federal Aid Planning Office (FAPO), prior to advertising the project for construction bids.

\*\*\*

- 8.19 A right of way may be acquired by the MHD for a Federal-aid highway project in coordination or cooperation with other Federal Agency assisted programs. MHD and the Federal Agency involved will set forth in an Agreement or Memorandum of Understanding the responsibilities of each in the acquisition of real property and the basis for cost sharing. Said agreement should be executed during the early stages of project development.

When there is another Federal Agency project already underway in the area of a proposed highway project, the LPA may be designated to act as lead agency and coordinate all acquisition, relocation and demolition.

MHD will pay its pro rata share for the right of way in accordance with the signed agreement.

\*\*\*

- 8.20 MHD must make certain the LPA involved adheres to a process consistent with applicable Massachusetts law and Federal requirements in the area of appeals relative to an owner's eligibility for, and the amount of, a payment for incidental expenses incurred in the transfer of title to the LPA and certain litigation expenses involved in contested or inverse taking procedures.

## CHAPTER 9

### APPRAISAL SECTION

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## CHAPTER 9

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APPRAISAL SECTION

- 9.01 Staff appraisers are assigned and supervised by the Appraisal Administrator who is in charge of both appraisers and review appraisers.

\*\*\*

- 9.02 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 MHD.

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.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the MHD 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.

- 9.03 The MHD, acting on behalf of MassDOT, acquires most highway right-of-ways through the power of Eminent Domain. In exercising this power granted under Chapter 79 of the Massachusetts General Laws, the Administrator must adopt an Order of Taking and at the same time award damages, as required by M.G.L. Ch..79, Sec. 6, to every person whose property is impacted by reason of such taking and/or construction.

\*\*\*

- 9.04 Under the requirements of Sec. 7A of said Chapter 79, at least one written appraisal for damages must be made before any award of damages can be authorized by the Administrator. A minimum of two (2) appraisals, generally one (1) staff and one (1) fee appraisal or two (2) fee appraisals, must be obtained where the damages are estimated to exceed \$300,000.00, or where the appraisal is involved, complicated, or highly controversial.

\*\*\*

- 9.05 M.G.L. Ch.79 requires that damages for property taken shall be fixed at the time immediately prior to the recording of the Order of Taking, and in cases where only part of a parcel of land is taken, damages for overall injury to the part not taken shall be included.

\*\*\*

- 9.06 In the event of a partial taking, damages will be appraised on a "before and after" basis. That is, the fair market value of the property before the taking as well as after the taking is to be estimated. The resulting difference in value will be the amount of the damages.

\*\*\*

9.07 Special benefits accruing to a remaining portion of land shall be considered in mitigation of damages, unless it is stated in the Order of Taking that benefits were not to be assessed.

\*\*\*

9.08 The appraiser is specifically directed by the Appraisal Administrator, referencing the instructions set forth in the Attorney General's " Manual on Massachusetts Eminent Domain Appraisal Law", that changes in value arising from knowledge or anticipation of the public improvement for which the taking is being made, may not be considered in the award of compensation.

\*\*\*

9.09 Fair market value has been described by the Massachusetts Courts as "the highest price which a hypothetical willing buyer would pay a hypothetical willing seller in an assumed free and open market, neither party being under any obligation to buy or sell".

\*\*\*

9.10 MHD Bureau staff appraisers are required to have the following qualifications:

1. Considerable knowledge of the laws, methods, procedures and practices relating to the appraisal of real property.
2. Considerable knowledge of current property values, valuation factors and condemnation appraisal practices.
3. Ability to collect and analyze real estate sales and related data to be used when making evaluations of property values.
4. Ability to prepare appraisal reports, according to MHD/ROW Bureau's standard operating procedures that are clear, concise, and informative.
5. Ability to read complex highway and bridge construction plans.
6. Ability to represent the Commonwealth as an expert witness in land damage hearings and/or trials.
7. Ability to establish and maintain effective working relationships with associates, property owners, the general public.

\*\*\*

9.11 The Appraisal Administrator in charge of the Appraisal Section will carry out a continuous program of evaluation as to qualifications and performances of each staff appraiser and will ensure that each appraiser's qualifications match the scope of work being assigned. The form and content of all staff appraisers' work should be checked and deficiencies brought to staff's attention. Where necessary, recommendations will be made for individual study and problem resolution where and when necessary.

\*\*\*

9.12 The Staff Appraiser will be furnished with a scope of work statement (refer to Exhibit # 9-7) which will include the following information and materials provided by the MHD's Bureau Project Section:

1. Names of owners, lessees, tenants;
2. Parcel number(s) and, where applicable, Federal-aid project number; Project Info.
3. Title abstracts and list of encumbrances, if any;
4. Utilities available and locus of underground services;
5. Type of interest e.g. easement, partial/total taking, to be acquired;
6. A plan or sketch of the entire property, showing the location of improvements or other significant features as well as boundary dimensions;
7. Area to be acquired;
8. Construction and layout plans showing cross-sections of construction features, grades, slopes;
9. Where it is a partial taking, a plan or sketch showing the area to be acquired as well as the area remaining and the relation of the taking area to the improvements;
10. Right of way plans prepared in accordance with FHWA's Right-of-Way Project Development Guide, should be provided to the appraiser on all Federal-aid projects;
11. Property assessments and zoning.
12. A contaminated property report if one has been prepared (refer to Exhibit # 9-1, MHD's Divisional Policy Directive #2 dated 11-2-94 entitled "Hazardous Waste Policy for Division Projects - Valuation of Contaminated Property").
13. A real and personal property report.

\*\*\*

9.13 The property owner or a representative is advised by the field agent who conducts the preliminary interview, of their right to accompany the appraiser on the property inspection. The appraiser will make every effort to contact the property owner or representative to schedule the property viewing. The appraiser will include in the body of the appraisal a signed statement confirming the date, time, purpose and person(s) involved in the property viewing.

\*\*\*

9.14 In the event that buildings or structures are owned by some other person(s) than the owner of the land, the staff or fee appraiser assigned will place a value on the building or structure to the extent that it enhances the value of the real property, using the recognized approaches to determining value. (Reference is made to the interpretation of law, as expressed by the Attorney General in the manual titled "Massachusetts Eminent Domain Appraisal Law").

\*\*\*

9.15 Each property will be appraised and its fair market value established by a review appraiser prior to its acquisition.

\*\*\*

9.16 All appraisals produced and submitted to the Bureau must comply with the MHD's/ROW Bureau instructions and requirements applicable to the preparation of appraisal reports (refer to Exhibit # 9-2, Terms, Conditions and Requirements for Expert Real Estate Appraisal Service Contracts - 2000 Edition). In addition, appraisals prepared for Federal-aid projects will comply with the provisions of the "Uniform Appraisal Standards for Federal Land Acquisitions".

\*\*\*

9.17 Appraisals are produced utilizing standard forms supplied by the Bureau or, in a narrative appraisal, forms conforming to MHD instructions and requirements.

\*\*\*

9.18 In general, the detail of the appraisal report will vary according to the amount and type of damage caused by the taking for the highway improvement.

\*\*\*

9.19 When the amount of the estimated damage is \$500.00 or less, a payment up to \$500.00 may be made.

\*\*\*

9.20 Appraisal reports for each acquisition must contain or make reference to all items that are essential by explaining, substantiating and thereby documenting the estimate of just compensation. All unit values must be supported.

\*\*\*

9.21 Where the appraisal assignment involves only a minimum value estimate of damages, for a partial taking, the appraiser may use the Nominal Appraisal Report, but its use is restricted to a maximum of \$2,500.00 for all damages (refer to Exhibit # 9-3).

\*\*\*

9.22 Where the appraisal assignment involves a total taking; a simple partial acquisition where damages are in excess of \$2,500.00 or the cost to cure type; an uncomplicated acquisition (whole or partial) where only one approach (usually the market) is applicable and adequate data exists; and where an appraisal of the whole property (using a before and after basis) is unnecessary, the Abbreviated Appraisal Report (short form) will be used (refer to Exhibit # 9-4).

\*\*\*

9.23 A full before and after appraisal requires complete documentation in accordance with MHD instructions and requirements (refer to Exhibit # 9-2). It also requires an affidavit of the appraiser (refer to Exhibit # 9-5).

\*\*\*

9.24 The full appraisal report will include, where and if appropriate, all three (3) approaches to value i.e. Market, Cost, and Income. These approaches will be correlated into a final estimate of value.

\*\*\*

9.25 The Market Data Approach is generally considered to be an essential part of any appraisal in determining the value of real property. It consists of a comparison of the property taken, or being impacted by highway construction, with similar property examined by the appraiser. Adjustments between the subject (impacted) property and the comparable (sale) property are usually made with consideration of the following:

1. Sale price
2. Improvements made following the recorded sale
3. Land area and lot characteristics
4. Location and landscaping
5. Area of building(s)
6. Number of rooms
7. Visual appeal
8. Heating (HVAC where applicable)
9. Kitchen and number of bath/lavatory units
10. Plumbing and electricity
11. Overall property condition and time
12. Any other pertinent comparability factors

The latter adjustments will be made either on a dollar or percentage basis and will result in an indicated value.

\*\*\*

9.26 The Cost Approach is generally used in the valuation of special purpose or institutional type property. It is usually utilized where the structure located on a property taken or affected by highway construction is fifteen (15) years old or less.

It is accomplished by estimating the reproduction cost of the improvements, deducting the accrued depreciation from all sources and adding the value of the land as derived by the Market or Income Approach. Either of several methods e.g. square foot, cubic foot, or unit cost in place may be used. Any of the numerous construction cost index services may be used for arriving at a reproduction cost, but such figures must be fully documented in the appraisal by referencing the particular index used.

When the Cost Approach is the only process by which value is established, particularly when Market and Income figures are neither available or applicable, an architect's or building contractor's estimate of the reproduction cost will be used and must accompany the appraiser's cost figures.

Where two (2) appraisals are required, the staff appraisers may use the same architect's or contractor's cost estimate in each appraisal, providing that each of the appraisers checks the estimate for reliability and accuracy and makes independent estimate of depreciation and develops support and documentation for land value.

On acquisitions where damages are estimated to exceed \$300,000, two (2) cost estimates will be required, except where the cost for a second estimate would be prohibitive.

\*\*\*

- 9.27 In all appraisals utilizing the reproduction cost approach, the depreciation factors involved will be carefully set forth in detail and supported by the appraiser.

\*\*\*

- 9.28 For purposes of this manual, depreciation is defined as a loss from the upper limit of value. It is characterized in three (3) ways:

1. Physical wear or deterioration;
2. Functional obsolescence;
3. Economic obsolescence.

\*\*\*

- 9.29 Physical wear or deterioration is evidenced by wear and tear, decay, dry rot, cracks and/or structural defects.

\*\*\*

- 9.30 Functional obsolescence is evidenced by poor floor plan, mechanical and/or functional inadequacy or over adequacy due to size, style, age, or technological advances.

\*\*\*

- 9.31 Economic obsolescence is evidenced by changes external to the property such as neighborhood infiltration of inharmonious property uses, etc..

\*\*\*

- 9.32 The Income Approach is utilized when establishing value of income producing property such as apartments, motels, commercial buildings in general. This approach is not required for apartment houses containing three (3) or less units. The value is arrived at by reducing the gross rental income to a net income value and then capitalizing one year's income into a present value.

\*\*\*

- 9.33 All appraisals require the appraiser to list and delineate between items considered real or personal property. The distinction between "real" and "personal" has been defined by the Attorney General (AG) in the Manual of Massachusetts Eminent Domain Appraisal Law, (refer to Exhibit # 9-6) for a detailed definition. In instances where the appraiser has difficulty in differentiating between real or personal property he/she should refer to the real and personal property report prepared by the review appraiser for the relocation section, a copy of which is also provided to the appraiser. Also, a special interpretation can be requested from the AG's office.

\*\*\*

9.34 Each appraisal, when it includes a rental unit improvement that has been taken, will include a documented fair rental rate for each unit, based on the date of the planned rental (refer to Chapter 19, Property Management, Section 19.35-19.36).

\*\*\*

9.35 The appraisal procedures are to be applied uniformly throughout the Commonwealth, though the detail of documented support may vary according to the amount and type of damage caused by the taking for a highway improvement. The appraisal procedure should not vary because of location or type of property involved.

\*\*\*

9.36 All appraisals upon completion will be logged in and transmitted to the Appraisal Administrator who will assign them to a review appraiser.

\*\*\*

## CHAPTER 10

### FEE APPRAISAL ASSIGNMENT & CONTROL FUNCTION

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FEE APPRAISAL ASSIGNMENT & CONTROL FUNCTION

10.01 The Appraisal Review Administrator (ARA) and/or the Appraisal Supervisor has the responsibility of obtaining all fee (contract) appraisals, refer to Section 10.08 of this manual). The ARA's duties include: screening applicants; securing approval of fee appraisers(FA); recommending FAs for use on a project; obtaining fees for contract appraisal work; preparation of "blanket rate agreement" contracts for FA services, and furnishing data to selected appraisers for use in their assignments.

\*\*\*

10.02 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 MHD. 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.

10.03 The Bureau has adopted a set of qualifications which appraisers must possess (refer to Sec.10.04 & 10.05 for detail) if they are to be placed on the MHD's list of approved FAs. The Bureau's primary purpose for utilizing FAs is to assist in establishing the fair market value of damages for real property and/or interests taken in the construction of highway improvements.

\*\*\*

10.04 FAs used by the Bureau are classified into two (2) groups, i.e., Real Estate Appraisers (REA) and Real Estate Appraisal Specialists (REAS), contractors, cost experts, and engineers, in order to best serve the needs of the Bureau in various fields of appraising.

\*\*\*

10.05 A REA must have the following qualifications and make the required submissions for review, to be approved by the FAC.

1. Have a minimum of five (5) years experience, either as self employed or with any agency concerned with the appraisal or acquisition of real estate, e.g. real estate agency, bank, insurance company, public or private utility.
2. Be a member in good standing of a local real estate board/association or appraisal organization.
3. Present evidence of ability to qualify as an expert real estate appraiser in the Massachusetts Superior Court.
4. Presently be devoting at least 50% of a normal working day's time to the real estate field.
5. Submit the names and addresses of at least three (3) references who have personal knowledge of the applicant's character and qualifications. One reference should be a full member in good standing of a recognized national appraisal organization.

6. Submit at least three (3) recent appraisals for review by the Bureau, with a minimum of one (1) each of three (3) different types of property, specifically: industrial, commercial and improved residential. Note: FREDDIE MAC and FANNIE MAE forms are not acceptable.
7. Satisfy the Bureau as to one's character, integrity, and ability to serve the best interests of the Commonwealth.
8. Be certified and licensed in accordance with Title XI of the FIRREA.

\*\*\*

10.06 A REAS must have the following qualifications and make the required submissions for review to be approved by the FAC

1. Have a minimum of five (5) years experience in a specialized field, either as self employed or with a firm or agency in that field.
2. Present evidence of ability to qualify as an expert in that specialized field in the Massachusetts Superior Court.
3. Presently be devoting at least 50% of a normal working day's time to that specialized field.
4. Submit the names and addresses of at least three (3) references who have personal knowledge of the applicant's character and qualifications.
5. Submit at least three (3) copies of separate work reports performed in that specialized field for review by the ROW Bureau or other appropriate Divisions within the MHD.
6. Satisfy the Bureau as to one's character, integrity, and ability to serve the best interests of the Commonwealth.
7. Be certified and/or licensed (if applicable) within that specialized field.

\*\*\*

10.07 Any of the preceding requirements for REAs and REASs may be waived by the MHD when it is considered to be in the best interest of the Commonwealth.

\*\*\*

10.08 REAs and REASs who desire to be considered for inclusion on the ROW Bureau's approved list of FAs must send in a written request to the Director of the Bureau. Interested REAs and REASs may also access the Commonwealth of Massachusetts' web site for information on contracting requirements. The electronic address is <http://www.Comm.PASS.com> (refer to Exhibit # 10-1). Said request is referred to the ARA who in turn sends out a form letter with attachments (refer to Exhibit # 10-2, Request for Response (RFR) Scope - New Contracts for Fee Real Estate Appraisers). The completed RFR will be referred to the Appraisal Section of ROW Bureau for review. If the applicant is determined to be qualified, the Review Appraiser so indicates in writing. The ARA will then send the material and recommendation to the MHD Administrator. Upon the approval of the Administrator, the applicant is so informed and placed on the Approved REA list. This process is also followed for interested REASs

(refer to Exhibit # 10-3, Request for Response (RFR) Scope-Cost Experts, Movers, Business Relocation Consultants and Move Planners).

\*\*\*

- 10.09 The Appraisal Review Administrator's Records of Fee Appraiser performance are kept by the ARA's assigned staff person. The AFA'S list is re-examined from time to time and, where repeated deficiencies by a fee recipient are noted, a recommendation to the Administrator will be made to remove same from the approved list.

\*\*\*

- 10.10 All ROW appraisal work is performed either by staff or fee appraisers, the latter selected from the approved REA/REAS list. There is no fixed percentage for the appraisal workload to be done by staff or fee appraisers on Federal aid projects. The fee appraisal assignments are entirely dependent upon the extent and nature of the workload of staff appraisers.

\*\*\*

- 10.11 Two appraisals must be obtained on all cases where the estimate of damages is expected to exceed \$300,000 or where the nature of the appraisal problem is determined to be complex or necessitates the utilization of a FA having special qualifications.

\*\*\*

- 10.12 When it is necessary to employ a FA, the State Projects Section submits a Fee Appraisal Request and Assignment Sheet (refer to Exhibit # 4-8) with appropriate plans, to the ARA. The ARA will ensure that a visit is made to the project being assigned to check each property for which a fee appraisal request has been made. At the same time, the plan for each property is checked by visual inspection. If an error is noted, both the appraisal request and plan will be returned to the State Projects Section for corrective action before any further processing takes place.

\*\*\*

- 10.13 Once the fee appraisal request has been verified, the ARA will consider the complexity of the assignment as well as the geographic location of the properties in question and contact an appropriate number of FAs with qualifications that match the scope of work statement to determine their availability and interest.

\*\*\*

- 10.14 The ARA will then review the names of those appraisers who have indicated an interest in being considered. Each property case is reviewed, with particular emphasis on environmental concerns, if applicable. The ARA will approve the appraisers whose names were taken from the MHD's approved list of FAs on a rotating basis.

\*\*\*

- 10.15 The Appraisal Review Section will contact the selected Fas, provide them with a scope of work statement (refer to Exhibit # 10-4A), and request them to inspect the property being impacted by MHD. They are requested to submit in writing to the ROW Bureau, a "bid" fee for each property plan or package of properties they will have been furnished. The FA's will be provided a property plan, title information and a copy of the

deed. Their written submission to the ROW Bureau should include the parcel(s) location, identification number and related data required in submitting a bid report.

\*\*\*

- 10.16 Bid proposals received are submitted to the ARA for his/her recommendation of assignment. Acceptance is usually based on the lowest responsible bid.

\*\*\*

- 10.17 The assigned ARA staff person will contact the successful FA regarding the award of assignment. The fee amount is not negotiable unless otherwise instructed by the ARA.

\*\*\*

- 10.18 Upon the FA's acceptance, MHD will issue a "Letter of Assignment" detailing the contract specifics of the award, (refer to Exhibit # 10-4).

\*\*\*

- 10.19 The following information and materials are furnished to the FA at the time of contractual agreement:

1. Property plans showing the entire property or group of properties with the proposed takings super-imposed thereon.
2. Title information and other data indicated on page 1 and 2 of the MHD/ROW appraisal form.
3. Real and Personal Property Report, where applicable.
4. Copies of any REAS reports on construction costs or corollary valuations made at the request of MHD.
5. MHD/ROW Appraisal Forms.
6. A contaminated property report if one has been prepared (refer to MHD's Divisional Policy Directive #2 - Exhibit # 9-1).
7. Other items specifically listed in the contract.

\*\*\*

- 10.20 Upon completion of a FA's assignment, the fee appraisal reports are logged in by the assigned ARA staff person and transmitted to the ARA for disposition by a staff review appraiser.

\*\*\*

- 10.21 The approved list of FAs is re-examined from time to time by the ARA. At this time, the quality of the work submitted by the fee appraisers is considered and, where repeated deficiencies are noted, a recommendation will be made to remove that particular appraiser from the FAs approved list. To facilitate this evaluation, a performance record of FAs should be prepared and maintained by the Appraisal Section.

\*\*\*

CHAPTER 11  
APPRAISAL REVIEW SECTION

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## CHAPTER 11

### APPRAISAL REVIEW SECTION (Cont.)

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APPRAISAL REVIEW SECTION

11.01 The function of the Review Appraiser (RA) is to determine the fair market value of real property, or damages to same, taken for or affected by the construction of a highway improvement. The amount determined will govern negotiations and settlements by MHD in land damage cases.

\*\*\*

11.02 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 MHD.

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.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the MHD 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.

11.03 RAs are selected from senior staff appraisers of the Bureau, who have by years of practice and experience demonstrated ability to: analyze appraisal problems, determine property values, and evaluate the effect of partial takings, easements, and construction on various property values. They have formal appraisal training and, in most instances, court experience.

\*\*\*

11.04 The RA position is one of important responsibility and public trust. The individual must be a person possessing good judgment, tact and integrity.

\*\*\*

11.05 The RAs are selected, with the latter qualifications in mind, by the Director of the Bureau.

\*\*\*

11.06 The RA has the responsibility to determine:

1. Whether or not the appraisals reflect the fair market value of the property and a reasonable estimate of just compensation.
2. If the appraisal reports are prepared in accordance with acceptable standards and guidelines.
3. Whether the appraisals have been made in accordance with accepted appraisal techniques and whether each applicable "approach" has been utilized.
4. Whether the appraiser has correlated the appropriate "approaches" and arrived at a reasonable estimate of value.

5. That the appraiser has not included, in the estimate of fair market value and just compensation, any allowance for items of personal property or other factors that are non-compensable, under the laws of the Commonwealth.
6. Whether or not the appraisal reports contain sufficient documentation to substantiate the opinions/conclusions in the report.

\*\*\*

11.07 After an appraisal is received and logged in at the Appraisal Section of the Bureau, it is transmitted by the Appraisal Review Administrator (ARA) to one of the RAs for a "desk review".

The "desk reviewer" shall examine all appraisals submitted to same, for errors in: arithmetic, area, name(s), or other basic data. If more than one appraisal has been made on a particular property, a comparison of the reports for consistency, conflicting data, opinions, errors and/or omissions will be made.

\*\*\*

11.08 The ARA, after a sufficient number of appraisal reports have been submitted on a particular project enabling a comparison of values, parcel by parcel for overall consistency, will assign the appraisals to the same RA, if possible, who is familiar with the project and/or area. It is important to have a number of appraisals on a project available for review at the same time, especially where properties of similar character and same range of value are involved.

\*\*\*

11.09 On receipt of an assignment, the RA will log in each case on the Reviewing Appraiser's Progress Chart (refer to Exhibit # 11-1). This chart is kept updated by each RA and a copy is submitted once a month to the ARA.

\*\*\*

11.10 The RA, along with the project leader, will then "field view" the project, its neighborhood, and the sales listed. The main purpose of this viewing is for orientation. While on the project, the RA will question the project leader on the thoroughness of the staff's examination of the immediate affected area; probability of zoning changes; titles as relates to possible private restrictions on usage, arguments and agreements; question of whether any work is to be done by MHD in lieu of damages and if the estimated cost of such work is included in each report.

\*\*\*

11.11 The detailed field view of the specific project, its neighborhood, sales data, etc., will be repeated by the RA, alone, when reviewing the individual appraisal reports. At that time, a detailed study of location, neighborhood, and an exhaustive examination of comparable sales will be made.

\*\*\*

11.12 The RA will field review all appraisals. If the field review is not made, the reasons for not doing so will be stated.

\*\*\*

11.13 The RA will completely analyze the appraisal report and utilizing the RA's Check List will ensure that the appraisal includes all the revised information and documentation necessary to conform to Bureau requirements (refer to Exhibit # 11-2).

\*\*\*

11.14 The RA in utilizing the form in Exhibit 11-2, will indicate the acceptability of the appraisal, the determination of damages, and will date and sign the form.

\*\*\*

11.15 Upon completion of the review of each appraisal, the RA will complete the form entitled "Statement of the Review Appraiser" Form ROW-737, and attach it to the appraisal (refer to Exhibit # 11-3).

\*\*\*

11.16 If the appraisal report has omissions of any elements required in the specifications, contains improper and/or insufficient support data, unacceptable analysis of a problem, or errors in reflecting values, the appraiser will be requested to resubmit that portion of the report which requires correction.

\*\*\*

11.17 The basis for any such resubmission request should be brief, to the point, as stated on form "Reviewing Appraiser's Request for Corrections and/or Additions", (Refer to Exhibit # 11.4), and should be submitted in duplicate. The original form is forwarded to the appraiser of record and the copy placed in the case file with the appraisal report. Appropriate notations should be made on the RA's Checklist (refer to Exhibit # 11-2).

\*\*\*

11.18 The RA, upon receipt of the corrections, will examine them to insure that the revised comments are satisfactory. Corrected pages will be marked "revised" and placed in the appraisal report in proper sequence. Pages removed will be stamped "superseded" and will be retained in the case file.

\*\*\*

11.19 If the RA does not agree with the appraiser's estimate of fair market value and/or damages and it is determined by MHD that it is not practical to obtain an additional appraisal, the RA may prepare his/her own documented estimate of value and/or damages using the Review Appraiser's Comments and Estimate form, ROW-688 (refer to Exhibit # 11-5).

\*\*\*

11.20 No appraisal report will be submitted to the Real Estate Appraisal Review Board (REARB) for its action unless same is over \$300,000. and meets all the requirements, and is fully acceptable to the RA. However, if any corrections are deemed minor in nature and do not affect the estimates of value and/or damages, the report may be corrected in ink, initialed by the RA and forwarded to the REARB for their consideration in order to avoid unnecessary delay in a taking.

\*\*\*

- 11.21 The RA may consult with the REARB for the purpose of obtaining any information which will assist the RA in establishing fair market value and/or the extent of damages.

\*\*\*

- 11.22 The RA will appear before the REARB, at any time they so request, to assist them in their deliberations.

\*\*\*

- 11.23 Any determination of just compensation or fair market value involving an uncertain legal premise may be referred, in writing, to the Attorney General's Office (AGO) by the Director of the Bureau. In such instance his/her opinion will be incorporated in the case file. If the RA requests a revision in an appraisal because of the AGO's opinion, the appraiser of record must be given a copy of same.

\*\*\*

- 11.24 When the REARB establishes an estimate of value different from that of the RA, the REARB will fully document the reasons for the change in the amount previously approved.

\*\*\*

- 11.25 Upon completion of the RA's assignment in establishing a fair market value and/or damages, the case will be forwarded for processing, computation of taxes and interest.

\*\*\*

- 11.26 The RA will, upon request through the Director of the ROW Bureau, assist the AGO in the preparation and presentation of court cases resulting from eminent domain takings. The RA will also be prepared to testify as an expert witness for the Commonwealth, in any land damage case that the RA has reviewed and established the value.

\*\*\*

- 11.27 RAs perform reviews of sample appraisal reports submitted by fee appraisers who are seeking contract work from the Bureau. Recommendations following such reviews are submitted to the ARA, who submits them to the Bureau's Fee Appraisal Committee for final action.

\*\*\*

- 11.28 The RA also recommends the economic market rental charge (use and occupancy) for occupied property acquired by MHD. These rental figures will be made available for use by the Bureau's Relocation and Property Management Sections.

\*\*\*

- 11.29 The RA may reconsider his estimates of value, pertaining to any case, providing that new data for review is presented by the property owner, AGO, or other party of interest.

\*\*\*

11.30 At the request of the Trial Division of the AGO, through the Director of the Bureau, the RA will review the acceptability of appraisals obtained for litigation purposes.

\* \* \*

## CHAPTER 12

### REAL ESTATE APPRAISAL REVIEW SECTION

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## CHAPTER 12

### REAL ESTATE APPRAISAL REVIEW BOARD

12.01 The Real Estate Appraisal Review Board (REARB) was established and codified in Section 43(a) of Chapter 6C of the Massachusetts General Laws. The REARB is mandated to review real property appraisals made by or for the MHD, and determine the maximum amount to be paid by MassDOT in connection with any land acquisition meeting and exceeding the threshold amount for its jurisdiction. Section 43(a) states as follows:

**SECTION 43.** (a) There shall be within the division a real estate appraisal review board. The board shall consist of not less than 3 nor more than 5 members to be appointed by the governor, 2 of whom shall be certified general real estate appraisers licensed by the board of real estate appraisers pursuant to section 92 of chapter 13. Members of the board shall be appointed for terms of 3 years or until a successor is appointed. Members shall be eligible to be reappointed and may be compensated at a rate to be determined by the division. Members of the board shall be state employees for the purposes of chapter 268A. A chairman of the board shall be elected annually from the membership. The department shall provide administrative support to the council as requested. In the event of a vacancy on the board, the governor shall appoint a new member consistent with this section to fulfill the remainder of the unexpired term.

(b) The division shall not purchase or acquire by eminent domain any real property or any interest in real property with a value in excess of \$300,000 without the written approval of the board.

(c) The board shall meet periodically, but not less than twice each year. The board shall keep a public record of all meetings, votes and other business.

(d) The board shall submit an annual report of its activities during the preceding fiscal year not later than September 1 to the governor, the secretary of the Massachusetts Department of Transportation, the administrator, the chairs of the joint committee on transportation and the chairs of the house and senate committees on ways and means.

\*\*\*

12.02 The REARB must act on all takings for which an appraisal of damages has been made in excess of \$300,000. No out of court settlement in excess of \$300,000 shall be made, for damages recoverable under M.G.L. Ch. 79, in excess of the amount recommended by the REARB.

\*\*\*

12.03 Where public (city, town or other public agency) lands are taken for highway improvements and because same are precluded by law from bringing any court action for assessment of damages, the MHD may pay a mutually agreed upon dollar amount for said damages. In the event that the parties concerned are unable to mutually agree upon the amount to be compensated, the matter shall be referred to the REARB, which shall determine the amount to be paid. The REARB's decision shall be final.

\*\*\*

12.04 The REARB meets when necessary but at least twice a year, as notified by the Bureau, for the purpose of carrying out its responsibilities. The Appraisal Review Administrator (ARA), Appraisal Administrator or the Appraisal Supervisor schedules the work agenda for said Board by completing the "Docket of Department Real Estate Appraisal Review Board", Form ROW-134 (refer to Exhibit # 12-3).

\*\*\*

12.05 The Bureau will furnish the REARB with all the necessary data, pertinent plans, photographs and any other material, which has been compiled by the MHD and would be of value to the REARB's review. The MHD will also supply engineering services, research information and additional appraisals required to assist the REARB in its decisions.

\*\*\*

12.06 The REARB will consult with the Review Appraiser (RA) in those cases in which it is deemed to be helpful to the REARB in determining value or damages. The RA will be made available for such a conference/ meeting.

\*\*\*

12.07 At least one(1)member of the REARB shall make a field inspection, if appropriate, of each property involving possible damages of \$300,000 or more.

\*\*\*

12.08 The REARB will furnish (in duplicate) to the MHD its determination of the maximum amount to be paid, as damages, for real property taken or injured due to construction of a highway improvement. This value is to be prepared by any member of the Board, as may be determined by the REARB, but each statement of value must be signed by not less than three (3) members on Form ROW-691, Real Estate Appraisal Review Board Recommendation (refer to Exhibit # 12-4).

\*\*\*

12.09 In the event that the REARB's recommendation, with respect to the value for any parcel of land taken by the MHD, differs from the amount fixed by the RA, the written statement accompanying the recommendation will set forth in full and complete detail the reasons for such difference.

\*\*\*

12.10 The REARB may direct comments and recommendations to the Bureau with respect to the quality of appraisals that are submitted for review.

\*\*\*

## CHAPTER 13

### NEGOTIATION PROCEDURES SECTION

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NEGOTIATION PROCEDURES SECTION

13.01 All negotiations effecting the settlement of land damages are conducted under the supervision of the Bureau's Negotiations Section, with the exception of right of way issues involving local public agencies (refer to Ch. 8 of this manual). These negotiations are exclusive of the legal settlements and court awards that are conducted through the Office of the Attorney General.

\*\*\*

13.02 In order to maintain compliance with the Federal Highway Administration's requirements (refer to Exhibit # 20-16, 49 CFR 24.102), the following guidelines will be followed:

- a. No assignment will be given to an agent, to appraise or negotiate a settlement for damages, who has any interest (direct or indirect) in the real property being acquired.
- b. An appraiser, review appraiser or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by MHD to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation **only in those cases** where the offer to acquire the property is \$10,000 or less.
- c. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, unless the Federal funding agency waives this requirement due to a hardship that would be created for MHD.

\*\*\*

13.03 The Bureau's Negotiations Administrator shall make the assignments for all cases after assuring that the agent being assigned has had no involvement in the appraisal of the property impacted and that there is no conflict of interest under the provisions of Chapter 268A of the Massachusetts General Laws, as amended, as it applies to employees of the Commonwealth.

\*\*\*

13.04 A ROW Agent assigned to the Negotiations Section is required to have a sound working knowledge of real property values, including the appraisal process and real property rights. An agent must be able to interpret layout plans as well as construction plans, which include cross-sections and profiles. The agent must be capable of explaining to property owners the detailed effect the proposed highway improvement will have on their property.

\*\*\*

13.05 A negotiator must also have knowledge of property rights, appraisal practices and standards that will enable the agent to explain the facts considered in arriving at the value of the property.

\*\*\*

13.06 Subsequent to the MHD Administrator's approval of the award of land damages and prior to the recording of the taking, (refer to Ch. 2 of this manual), contact is made with the property owners for the purpose of informing them of the amount of the award and presenting them with a written offer (refer to Exhibit # 13-1, Just Compensation Summary Report,

ROW Form-360) with the expectation of reaching a satisfactory settlement agreement. The "offer" is confirmed by a Notice of Taking, (refer to Exhibit # 17-21) sent by certified mail, officially notifying the parties of interest of the taking, effective date, the award amount and a plan of the area which delineates the extent of the taking. Agents assigned to the Negotiations Section should never discuss value or price with parties of interest until after the fair market value has been established by the Review Appraiser and, where required by law, the Real Estate Appraisal Review Board (REARB), and the land damage award has been approved by the MHD Administrator.

\*\*\*

13.07 The offer made to the parties of interest, is the amount of the award approved by the Administrator. Personal contacts by the Negotiator, whenever possible, should be made on the site of the property to be acquired. Within reasonable limits such contacts may also be made by traveling to non-resident owners in neighboring states; all other contacts/ notifications with owners of impacted property living out of state, will be by certified mail. A record of all negotiations between the parties of interest, their counsel and the assigned Bureau negotiator, including all actions taken by same, will be prepared and filed in each separate case file immediately after each contact (refer to Exhibit # 13-2, Negotiation Report, ROW Form 360).

\*\*\*

13.08 In the first personal contact, subsequent to the MHD Administrator approving a land damage award, the Negotiator makes the MHD's offer, explains the taking, and gives the owner a "Just Compensation Summary Report" (refer to Exhibit # 13-1) and the Eminent Domain Procedures brochure (refer to Exhibit # 5-4). The Negotiator also requests the owner fill out and sign a W-9, Tax Reporting Information Form, explaining the necessity for generating payment. This contact date is considered the beginning of the negotiations process.

\*\*\*

13.09 If personal contact cannot be made with the owner/party of interest or their legal representative, primarily due to out of state residence, a disability, or refusal on the part of same, the materials noted in the above paragraphs will be sent by certified mail.

\*\*\*

13.10 The offer made to the parties of interest is to be paid within sixty (60) days of the filing date unless there are extenuating circumstances brought upon by the property owners, at a time and place established by the Bureau that will be convenient to those affected by said taking.

\*\*\*

13.11 The owner(s) has the option of accepting the award in full payment of damages, or accepting the award pro tanto therein reserving the right to institute court proceedings for a final determination of damages. Court proceedings may be instituted by filing a claim petition within three (3) years following the date the taking is recorded. It is in the Commonwealth's best interest to settle each case through full payment releases, rather than to have the parties of interest resort to a pro tanto award of damages which could result in subsequent court proceedings. Therefore, the negotiator should make every effort to

explain to the parties of interest the fairness of the Commonwealth's award.

\*\*\*

- 13.12 In the event of a partial taking, the negotiator shall carefully explain to the parties of interest all agreements, concessions and conditions in the agreement forms, paying special attention to changes in grade, sloping, or other construction factors that impact the property.

\*\*\*

- 13.13 In the event that the property owner presents to the negotiator any additional information and/or material relative to the award of damages the negotiator will explain the available remedies. The negotiator will complete the Owner's Review Request form (refer to Exhibit # 13-3) and submit same to Bureau for review. The property owner will be notified of the result of the review by letter signed by the Director of the Bureau.

\*\*\*

TITLES, CONVEYANCING, & PAYMENTS SECTION

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TITLES, CONVEYANCING AND PAYMENTS SECTION

14.01 The Conveyancing Section of the Bureau has the responsibility for all the legal work involved in the abstracting of titles and conveyancing, relative to the acquisition of all interests and rights in properties for highway purposes. This includes the actual payments for the aforementioned rights, titles, or interest in all impacted properties, as well as the payment of special damages.

\*\*\*

14.02 Parcels are taken in fee simple, temporary easement or permanent easement for purposes such as: sloping of grade, drainage, removal, access and highway construction.

\*\*\*

14.03 Advance title examination requests for parcels affected by a proposed highway improvement are submitted by the project leader to the Bureau's Conveyancing Section as early as possible (refer to Exhibit # 14-1, Advance Title Examination Request). In cases where there is no question of ownership, irregularity in the title, acquisition of improvements, or need to accurately determine location of property lines, "abbreviated titles" may be used based on the value of the acquisition. For temporary or permanent easements ownership information can be determined through assessment records and verified through examination of the last deed of record (refer to Exhibit # 14-2-A, Abbreviated Title Information Form). For minor, nominal, or low value partial acquisitions (such as strip takings), with values of \$5,000 or less, the same form can be used by an agency attorney or contract title examiner to issue a "Certificate of Title" after conducting a search of the last owner of record. When the value is \$5,000 - \$10,000 a certificate can be issued after a limited search of at least five (5) years. Liability will be borne by the agency.

\*\*\*

14.04 The Advance Title Examination Request form will contain the name of the supposed owner, the location of the property impacted and the available title or probate reference. The ROW Agent assigned to the project can obtain title or probate references from the parcel owners, Registry of Deeds, Registry of Probate, or the Assessor's Office in the City/Town where the property is located.

\*\*\*

14.05 Fee Title Examiners/Conveyancers are retained by the Bureau to perform title exams on a contractual basis. A Fee Title Examiner must be an Attorney-at-law, a member in good standing of the Massachusetts Bar, proven conveyancing experience.

\*\*\*

14.06 The Conveyancing Section Supervisor recommends title examination assignments to Fee Conveyancers, who are on the approved list maintained in the Bureau, on the basis of the county wherein the Fee Conveyancer works or resides. Such recommendations are subject to the approval of the Director and Deputy Director of the ROW Bureau.

\*\*\*

14.07 The assignment to the approved Fee Conveyancer is in the form of a "Letter of Assignment" (refer to Exhibit # 14-2), which contains all necessary and available title information for the examination. In the event of an involved problematic title, the Conveyancing Supervisor (CS) will select the Fee Conveyancer best qualified to do that type of work. The CS may authorize additional billable hours for complex title exams and is responsible for approving bills for payment after reviewing the title work.

\*\*\*

14.08 As a rule, title examination requests and assignments are made at least three months prior to the adoption of the Order of Taking. Fee Conveyancers are instructed to complete the assigned work and return it to the Bureau within 30 days. Additional time, if needed to complete an assignment, must be approved by the CS.

\*\*\*

14.09 The Fee Conveyancer supplies the abstract of title in duplicate. The original copy is reviewed by staff conveyancer for completeness and to ascertain what instruments and corrective measures may be necessary before payment to the proper parties can be processed. The staff conveyancer will complete the Office Conveyancer's Report on Review of Abstract (refer to Exhibit # 14-2A, B and C). This information is also used, at this time, in the preparation of the Vendor Update (VU) Form (refer to Exhibit # 14-2D). The other copy is transmitted to the Projects Administrator for verification of the locus and placement in the case folder.

\*\*\*

14.10 Staff conveyancers are occasionally assigned to abstract or run down a title. Generally, this occurs when time is of the essence, e.g. direct purchase rather than a taking or where additional properties are impacted by a scheduled taking.

\*\*\*

14.11 Based on the project acquisition costs as determined by the Review Appraiser, the Bureau's Finance Section prepares encumbrance documentation.

Funds are encumbered at the beginning of each new fiscal year and the determination of the amounts to be encumbered is predicated on the projected right of way cost for approved projects for the said fiscal year. Funds are encumbered for the following categories:

- 1) Land Taking (non-federal aid)
- 2) Land Taking (federal aid)
- 3) Land Taking Bridge (non-federal aid)
- 4) Land Taking Bridge (federal aid)
- 5) Court Judgment (non-federal aid)
- 6) Court Judgment (federal aid)

Encumbrance package for each of the above consists of the following documentation.

- 1) Request for Allocation of Bond Funds Prior to Encumbrance - FIN Form 681 (refer to Exhibit #14-2F)
- 2) Commonwealth of Massachusetts Office of the Comptroller Contract Commodity Encumbrance Form. (Refer to Exhibit #14-2G)

- 3) Office of the Comptroller CT with event Type PR51 Request for Approval Form. (Refer to Exhibit #14-2H)
- 4) Sample of Administrator Approval memo from previous year's taking. (Refer to Exhibit #14-2E)
- 5) Layout Schedule in support of item #4 (Refer to Exhibit # 4-9)
- 6) Order of Taking from previous year.

The original encumbrance package, as referenced above, and two (2)copies are sent to the MassDOT Office of the Chief Financial Officer (the Finance Office). The Finance Office inputs the funds needed for the proposed takings, by authorized signatures on the Form FIN-681 and then forwards the encumbrance documentation to MHD Fiscal Management for processing and entry into the state MMARS system. Fiscal Management then forwards the documentation to the State Comptroller's Office for final approval.

\*\*\*

14.12 Once the financing process has been completed, the Bureau sets the dates for:

1. an agenda item for the approval of the Highway Administrator;
2. recording of the taking; and
3. the scheduled payment

The Deputy Director receives the case folders on every impacted property from the Appraisal Section. The Deputy Director ensures the completion of the Payment and Computation Schedule form (refer to Exhibit #14-8C). This form is completed using information contained in the appraisal as well as the scheduled recording and payment dates. Information in the computation sheet is used for preparation of the Acquisition Memorandum to the Highway Administrator(refer to Exhibit #14-2E).

\*\*\*

14.13 The MHD Layout Section or an outside engineering consultant prepares the plans and prepares the Order of Taking. The Highway Administrator signs the Order of Taking and the attestation is obtained from the Office of the Secretary of the Commonwealth. A staff conveyancer then records the Order of Taking in the Registry of Deeds, the Registered Land Division, or both, for the county in which the land is located. State statute dictates that the Order of Taking be recorded within thirty days (30) of the date of signing (when land is being taken): normally it is recorded within twenty-two (22) days.

\*\*\*

14.14 Copies of the Layout Plan and Order of Taking, or alterations thereof, are filed simultaneously in the Office of the County Administrators and the Office of the City/Town Clerk in which the layout is located. In those areas where no County governmental body exists, the Commonwealth's Office of the Secretary of State will receive the layout plan and the Order of Taking.

\*\*\*

14.15 Immediately following the recording of the Order of Taking, the staff conveyancer will run-down the title from the date of its original

compilation, or the last run-down, through the recording date of the Order of Taking. Any changes in the title are abstracted and requisite Administrator approvals are prepared. Additional liens are noted and the former owner is advised of documents required to clear the title (refer to Exhibits # 14-2B & 14-2C). The Vendor Update (VU) Form (refer to Exhibit # 14-2D) is prepared by the conveyancing attorney and given to the Finance Manager, who then logs the info on a spreadsheet for tracking purposes. The Bureau Finance section enters (VU) information, which contains the correct names of the payees as listed in the deed of record and the correct social security or Federal tax identification number as listed in the owner's signed W-9 IRS form (refer to Exhibit 17-37) and is entered into the Massachusetts Management Accounting Record System (MMARS). The Finance section takes all information from the approved Acquisition Memorandum to the MHD Administrator (refer to Exhibit #14-2E) listing all takings and enters pertain information into an access database for the purpose of asserting that all takings were properly accounted for as having been monetarily compensated.

\*\*\*

14.16 M.G.L., Ch.79, Sec.44A, provides in part that the municipal collector of taxes can claim taxes by written notice, prior to payment of the award. The Division's statutory obligation is to make a taking payment within 60 days: therefore, it is essential that the tax information be obtained as soon as possible. Prior to recording an Order of Taking, MHD will send the collector of taxes a form letter seeking such information (refer to Exhibit # 14-3). Upon receipt of the required tax information from the Tax Collector, the amounts claimed are entered into the respective taking(s) files and said amount is then deducted from the total award on the Payment Commodity Form (PRC)(refer to Exhibit #14-8A).

\*\*\*

14.17 The staff conveyancers are responsible for the following documents: When it is a total or "substantial" taking of property, the lending institution holding the mortgage is requested to prepare a Discharge of Mortgage and forward it to the Conveyancing Section. These instruments, though executed, are held in escrow until payment is made to the damaged parties; upon payment they are recorded in the respective Registries. Release of Mortgage for awards under \$5,000 are not required.

\*\*\*

14.18 A "Notice of Taking" (refer to Exhibit #14-7), is mailed via certified mail to all parties of interest on the day of recording of the taking. The staff conveyancers insure that all necessary documents are executed and obtained and all documentation completed before authorizing the delivery of payment checks to the awardees. These payment checks can be hand delivered, mailed via certified mail, or picked up at MHD's Boston office.

\*\*\*

14.19 The Bureau's Finance Section prepares the Payment Commodity Form (PRC)(refer to Exhibit #14-8A), for processing payment of all awards as approved by the MHD Highway Administrator in accordance with the pertinent Recommendation of Award form (refer to Exhibit # 14-8B) with provisions for payment of the outstanding real estate taxes as requested by the Tax Collector of the City/Town involved, in accordance with said Section 44A. The Payment Commodity Form is prepared by the

Finance Section through the database called ProjectInfo which when entered into the Massachusetts Management Accounting Reporting System (MMARS) will generate a payment check in accordance with the Vendor Update (VU) form information (refer to Exhibit #14-2D). The form information contains the owner(s) name, as well as mortgagees and/or other parties of interest, all ascertained from the title work conducted at the Registry of Deeds. If there are any real estate taxes claimed by the Town, the Conveyancing Section prepares a VU listing the owner or the Town as payees. A PRC is prepared by the Finance Section in the amount of the taxes claimed, and mailed to the City/Town. The customary instruments that accompany the PRC are:

- a. Recommendation of Award (refer to Exhibit #14-8B)
- b. Payment and Computation Schedule (refer to Exhibit #14-8C)
- c. Real Estate Appraisal Review Board letter in the event that the damage amount exceeds \$300,000 as required under the current bond issue (refer to Exhibit #14-8D).

The Payment Commodity Form (PRC) is delivered to MHD's Fiscal Management Office where, after entry into the MMARS System, the PRC form is forwarded to the State Comptroller's Office.

\*\*\*

14.20 The Comptroller's Office prepares and submits a Governor's Warrant for approval to the Governor's Council. After approval, the warrant is sent to the State Treasurer for the preparation of the payment checks. The payment checks are delivered to MHD Fiscal Management, where they are copied, logged and forwarded to the Bureau. They are then entered into the ROW Payment Log (refer to Exhibit # 14-8E) and remain in the custody of the Finance Section or are deposited into the Eminent Domain Trust Fund at the Treasurer's Office, until they can be paid to the parties so entitled.

\*\*\*

14.21 If the property subject to the taking is encumbered by any liens, attachments, or other flaws in title, it is a condition precedent that all such defects be cleared by the owner before payment of the award can occur to insure the Commonwealth against any further claim for damages.

\*\*\*

14.22 Where a lease to property is involved, the Conveyancing Section will require a Release of Lease-Corporation/Individual forms (refer to Exhibit #'s 14-9A and 14-9B) from the lessee unless the lease contains an eminent domain clause allowing the lessor to terminate the lease in the event of such a taking. The owner/lessor must supply a copy of the termination notice, a return receipt of the mailing of the notice and an affidavit stating that the owner/lessor has complied with the terms of the lease.

\*\*\*

14.23 When a taking is made that involves registered land, in addition to a release, the owner will be requested to sign a deed and surrender his certificate of title. The instruments are submitted to the Massachusetts Land Court for approval. After approval, the deed and any other pertinent document is recorded in the appropriate registered land

division of the Registry of Deeds; the Certificate of Title is cancelled and a new Certificate of Title is issued in the name of the Commonwealth.

\*\*\*

14.24 If the payment check is refused or if the person entitled thereto is under legal disability preventing receipt thereof, or if the check is unclaimed for thirty days after the payment date, the check is deposited into the Eminent Domain Trust Fund under the jurisdiction of the Abandoned Property Division of the Treasurer of the Commonwealth (Chapter 759, acts of 1970). Only after requested by the owner and all legal disabilities are met is the award ready for retrieval. The amount of interest earned on the award is furnished by the Treasurer's Office, after receipt of a letter of request from the Finance Section (refer to Exhibit #14-10A) An Eminent Domain Trust Fund Account retrieval form is prepared by a conveyancing attorney (refer to Exhibit # 14-10B).

\*\*\*

14.25 Where there has been a Petition for Assessment of Damages, the Legal Liaison Section at MHD's Bureau ascertains if there is a claim pending for a replacement housing payment and/or rent due; determines if there are any title defects to land involved in the petition case after examination of the title abstract; prepares necessary corrective instruments, i.e. indemnity agreements, etc.; and verifies all pro tanto receipts and/or tenders with the Office of the Attorney General.

\*\*\*

14.26 When a Certificate of Judgment from the Superior Court is received by the Legal Liaison, he verifies the correctness of the parties thereto and the method of settlement as outlined below:

Agreement for Judgment - legal settlement reached by opposing attorneys

Order for Judgment - court approval of a legal settlement

Finding of the Court - court award of damages determined by judge

Jury Verdict - court award of damages determined by jury

\*\*\*

14.27 Non-Employee Settlement/Judgments related to an active MassDOT Highway Division contract:

The Managing Attorney should send settlement/judgment package consisting of the following to the Accounting and Financial Reporting office:

- Original settlement/judgment
- Completed Commonwealth of Massachusetts - Office of the Comptroller Non-Tort Settlement/Judgment Payment Authorization Form with original signatures and dates - (refer to Exhibit # 14-12)
- Complete CT encumbrance modification document with original signatures and dates (The CT modification document should modify the current contract on MMARS by adding a separate

- commodity line with a description of settlement/judgment.  
The accounting line object code field should be left blank.)
- Completed budget approval form with original signatures and dates from requesting unit only. (681A for capital funds-budget approval form for operating funds)
  - Miscellaneous Item form (Administrator Approval form) with original signatures and dates of the head of the originating division, Chief engineer, and Chief Counsel
  - Completed PRC payment document with original signatures and dates

Accounting and Financial Reporting Section will obtain the CFO's signature on the Commonwealth of Massachusetts - Office of the Comptroller Non-tort Settlement/Judgment Payment Authorization Form and fax a copy of the form to the Comptroller's legal counsel for review and instructions of which object code to use for payment.

The Comptroller's legal counsel will instruct the Accounting and financial Reporting section of the object code to encumber and make payment against.

The Accounting and Financial Reporting Section will ensure that the CT encumbrance document, budget approval form, and payment document list the proper object code and forward all documents in the settlement/judgment package except for the PRC payment document to the proper budget office (CEPO or Operating Budget office). The PRC payment document will be sent to the Contract Payment section and held until the Accounting unit notifies them to process the document.

The Budget Office will process the budget and send the package to the Division Secretary's office.

The Division Secretary's office will prepare the package for the weekly Administrator's approval meeting, obtain approval signatures at the meeting, and forward a copy of the completed package back to the Accounting and Financial Reporting Section.

The Accounting and Financial Reporting Section will process the CT encumbrance modification document to a final status and send a copy to the ROW Finance Section.

The ROW Finance Section will process the PRC payment document upon receipt of a copy of the CT encumbrance modification document from the Accounting and Financial Reporting Section.

Calculated interest is verified and availability of funds is checked, and if needed, an order for funds is processed. Necessary Payment Vouchers are prepared to conform to the Certificate of Judgment, deducting a replacement housing award and rent due, when so specified, and when funds are in the Eminent Domain Trust Fund, they are retrieved.

The PRC and necessary attachments are processed through MHD's Fiscal Management Office, then sent to the Office of the Comptroller for further verification and placement on the Governor's Council Warrant. Checks are then drawn by the Office of the Treasurer, forwarded to MHD Fiscal Management and picked up by staff assigned to the ROW Conveyancing Section.

A letter of transmittal (refer to Exhibit #14-11) is then prepared for the ROW Bureau Director's signature; the checks are delivered to the Office of the Attorney General, which prepares a receipt for the payment check. The Office of the Attorney General mails said instruments to the Petitioner's Attorney of Record and upon receipt of the executed instruments by the Attorney General's Office, delivers the payment check to the Attorney of Record, who delivers them to the Petitioners.

\*\*\*

## CHAPTER 15

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LEGAL SECTION

15.01 When the MHD determines that public necessity and convenience require that land or an interest in land is required for a highway purpose, it may acquire same by adopting an Order of Taking. This order is approved by the MHD's Administrator and must be recorded within thirty (30) days of the adoption, in the Registry of Deeds of every county in which the property so taken is located. Upon recording, title to land, or the interest acquired, vests with the MassDOT.

\*\*\*

15.02 Within sixty (60) days of the recording of the Order of Taking with the appropriate Registry of Deeds, MHD is required to offer in writing, to every person entitled to damages on account of a taking, the full amount established as just and reasonable compensation. Presuming the owner has resolved any title problems with respect to the property, a check is then issued for payment of such damages. The pro tanto payment shall be without prejudice to, or waiver, or surrender of, any right to claim a greater sum by filing a legal action in the Superior Court where the land is located.

\*\*\*

15.03 A person dissatisfied with an award of damages, may petition for an assessment of such damages to the Superior Court of the county in which the property taken is situated, within three (3) years after the Order of Taking has been recorded with the appropriate Registry of Deeds.

\*\*\*

15.04 A copy of the Petition, filed with the Superior Court, must be served by a Deputy Sheriff upon the MHD as well as the Office of the Attorney General (AGO), within thirty (30) days of being filed in Superior Court. The AGO is statutorily authorized to represent MHD in any action brought against it.

\*\*\*

15.05 The Petition served upon MHD is forwarded to the Right of Way Bureau and transmitted to the Legal Section. On Federal-aid projects a copy of the petition is forwarded to FHWA.

\*\*\*

15.06 The AGO, by letter to the Director of the Bureau, requests the MHD case file.

\*\*\*

15.07 The Legal Section prepares the case file and maintains a list of pending cases.

\*\*\*

15.08 The Legal Section makes copies of all pertinent documents in the case file, prepares a Land Damage Petition Report Form, ROW-608 (refer to Exhibit # 15-1) for transmitting the copies of the case file, and delivers same to the AGO. A signed receipt of Form ROW-608 is returned to the ROW Bureau. The original case file is kept within the Legal Section at the Bureau.

\*\*\*

15.09 The AGO assigns an Assistant or Special Assistant Attorney General to represent MassDOT.

\*\*\*

15.10 The assigned Attorney checks with the Bureau for unpaid rent that may affect any settlement or judgment. Also information is sought regarding relocation assistance, the pro tanto payment, engineering documents, environmental reports and any other information which may be relevant to the case.

\*\*\*

15.11 The assigned Attorney prepares an Answer to the Complaint or Petition together with a Counterclaim, if any, and prepares Interrogatories, to be answered by the Plaintiff/Petitioner, and files them with the appropriate Superior Court. Plaintiff's "Interrogatories To The Division" and the "Answers" thereto are coordinated with the Legal Section of the Bureau, reviewed, and the signature of the MHD's authorized signatory is secured.

\*\*\*

15.12 If prior to trial an additional appraisal is needed by the AGO, a request for approval of the additional appraisal is processed through the Bureau. The Director of the Bureau will arrange for a review of the revised/new appraisal, if needed. If settlement negotiations or mediation sessions are undertaken the Legal Section will work closely with the AGO during this process.

\*\*\*

15.13 If the assigned Attorney, after a detailed review, determines that settlement of the case without trial is in the best interest of the Commonwealth, said Attorney shall prepare a written statement, in triplicate, recommending settlement. This recommendation is presented to the Supervising Attorney for approval. If approved by the Supervisor, a settlement report is forwarded to the Director of the Bureau for written comments, all prior to final settlement. The comments of the Bureau Director are prepared in consultation with Bureau staff and forwarded to the AGO.

\*\*\*

15.14 In preparing settlement reports, the assigned Attorney will provide written documentation setting out the rationale for the settlement, for which the Director of the Bureau will also comment upon prior to settlement (refer to Section 15.18 and Exhibit # 15-2).

\*\*\*

15.15 When an actual date for the trial of a case is assigned by the Court, the assigned Attorney contacts the Legal Section of the Bureau, to coordinate the availability of all witnesses and to secure pertinent photographs of the taken locus, either in enlarged form or aerial; the latter representing the locus either prior to or during construction,

or upon completion of same. When requested, the Legal Section staff person will assist the assigned Attorney during the trial of any case.

\*\*\*

15.16 As soon as possible after trial, the assigned Attorney completes the Case Analysis reviewing the trial, the conduct of witnesses for both sides, and determines whether an appeal should be filed (refer to Exhibit # 15-2).

\*\*\*

15.17 Upon completion of trial or settlement and payment, the entire file is "closed" by the assigned Attorney and forwarded to the Legal Section of the Bureau. The returned file is reviewed to ensure that all documents originally forwarded to the AGO, as well as all documents set out in Sections 15.08 through 15.16, are contained in the returned file, making certain to unite both the original and copies of same into one cohesive whole. Upon receiving the complete file, the Legal Section signs a receipt therefore and returns the file to the Bureau's central file.

The Legal Section monitors the payment of eminent domain court judgments, including the calculation of post judgment interest (refer to Exhibit # 15-5).

\*\*\*

15.18 The "Pending Eminent Domain Cases" report is prepared on a quarterly basis by the Legal Section and transmitted to the Bureau Director and, if the project is federally funded, to the FHWA (refer to Exhibit # 15-3).

\*\*\*

15.19 The AGO's Trial Division will issue an annual status report, showing those cases still awaiting assignment of a trial date, to the Bureau Director. A copy of this status report will be forwarded to the FHWA (refer to Exhibit # 15-4).

\*\*\*

15.20 In addition to the above responsibilities, the Legal Section performs other legal duties assigned to it by the Director of the Bureau, which include but are not limited to the following:

1. The preparation of proposed legislation, of interest to the Bureau and the MHD's activities, for filing with each legislative session. Once legislative committees commence their public hearings on legislative proposals, the Legal Section is required to prepare written reports setting forth the MHD's positions, favoring or opposing, specific legislative bills. Further, the Legal Section is required to appear before legislative committees to present verbal testimony, favoring or opposing, specific legislative bills and to answer Legislators' questions thereon.
2. The Legal Section is also responsible for the preparation of requests for opinions by the AGO, in those areas where such legal opinion is required, for official interpretation of statutes as such apply to the MHD and the Bureau.
4. The Legal Section is required to furnish legal opinions, upon the request of the Bureau Director, on all statutes, regulations, case

decisions, administration orders - both State and Federal, that affect the administrative and legal activities of the Bureau. In effect, the Legal Section serves as the Staff Attorney for the Bureau.

\*\*\*

- 15.21 The Legal Section represents the MHD and Bureau in administrative hearings before the MHD's Administrative Law Judge, securing witnesses, evidence, documentation and data, in support of MHD and/or Bureau position(s). Also, the Legal Section continues to be involved with the resolution process for MHD property rental arrearages and evictions.

\*\*\*

## CHAPTER 16

### RELOCATION PLANNING

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RELOCATION PLANNING

16.01 Relocation planning is the responsibility of the Relocation Section. This function includes the coordination of Right of Way Bureau relocation input to Environmental Impact Statements (EIS); preparation of Conceptual Stage Relocation Program Plans prior to corridor public hearings; preparation of ROW Stage Project Relocation Plans necessary for acquisition approval, and Bureau presentations at corridor and design public hearings.

\*\*\*

16.02 Relocation planning begins in the early stages of project development. When a Location and/or Environmental Impact Study is to be prepared by a consultant, a copy of the proposed consultant's contract is forwarded to the Deputy Chief Engineer for Highway Design or the District Highway Director for review to assure that the consultant's hours and budget reasonably reflect requirements of the "Guidelines for Consultant Work in Preparing Relocation Plan and Submission of Relocation Data", which is incorporated into said contract (refer to Exhibit # 16-1). Consultant proposals are transmitted to the Deputy Chief Engineer. On projects which have reached the design stage, or further, but for which an EIS is necessary, contracts may be coordinated through the Deputy Chief Engineer for Highway Design. On projects which are developed within MHD and/or District offices, contracts are coordinated through the District Highway Director.

\*\*\*

16.03 In subsequent phases of project development studies, MHD advises the consultant on its detailed work program and monitors the progress and quality of technical work; technical assistance is provided as necessary. In accordance with provisions of the "Guidelines for Consultant Work in Preparing Relocation Plan and Submission of Relocation Data", it is the responsibility of the consultant to maintain continuing contact with MHD and to advise on progress of the project and any difficulties encountered. One objective of relocation planning is to assure that the location and design engineering alternatives being considered are sensitive to potential right of way problems.

\*\*\*

16.04 During the course of project development studies, a public information meeting is held with persons potentially displaced by the right of way alternatives under consideration. Under provision of the "Guidelines for Consultant Work in Preparing Relocation Plan and Submission of Relocation Data", the consultant is responsible for notifying potential relocatees, by mail and public notice, of time and place of the special meeting. The public information meeting is directed by personnel of MHD/consultant who respond to questions and discuss the ROW acquisition and relocation process. The consultant is required to present a description of project alternatives and findings, of the relocation analysis to date, and to respond to pertinent questions.

\*\*\*

16.05 Following the public information meeting and prior to the corridor public hearings, the consultant submits a draft "Preliminary Report on Relocation Needs and Resources", for review by MHD. The consultant may be instructed to perform additional work as required.

\*\*\*

16.06 When the consultant's "Preliminary Report on Relocation Needs and Resources" is sufficiently complete, MHD prepares a "Summary Findings" of said report. The Summary Findings are included in the Environmental Assessment, Negative Declaration, or Draft Environmental Impact Statement (EIS), for the project and serve as the analysis of impacts due to displacement, required in such documents.

\*\*\*

16.07 Copies of the Preliminary Draft EIS, Draft EIS and Final EIS, are transmitted to the Bureau by the Deputy Chief Engineer or the responsible District Highway Director. The documents are reviewed by Bureau's Relocation and State Projects Section. The Projects Administrator coordinates Bureau staff contacts and transmits comments to the appropriate environmental personnel.

\*\*\*

16.08 Copies of the Conceptual Stage Relocation Program Plan are circulated through the Relocation Section to appropriate personnel. The plan serves as a basis for further field work and as orientation to potential problems that might arise at the corridor public hearing or thereafter.

\*\*\*

16.09 The Relocation Administrator, or the State Projects Section Administrator if no relocation is needed, is responsible for coordinating ROW personnel who will be attending public hearings. When no relocation need is involved, the State Projects Section Administrator is advised to assign a person(s) to deliver the ROW presentation and be prepared to address questions from attending property owners. When a relocation situation is involved, a staff person(s) from the Relocation Section will attend the public hearing and deliver the ROW presentation. Depending on the size of the project, additional personnel from the Bureau may be assigned. The Relocation Administrator receives a written report from each ROW Bureau person who attends public hearings or meetings.

\*\*\*

16.10 When preliminary engineering is sufficiently complete to identify affected properties and subsequent to location approval of the right of way, interviews will be conducted with each household and business to be displaced. The Relocation Administrator and/or the Relocation Supervisor, will assign personnel from their respective sections to conduct the interviews, or similarly direct staff of local public agencies under contract to the MHD. Whenever practicable, Projects and Relocation personnel should team up when making residential and business contacts.

\*\*\*

- 16.11 The residential relocation interview process obtains information on family composition, employment income, housing and neighborhood characteristics, relocation-housing preferences and any special circumstances affecting relocation (refer to Exhibit # 17-4) "Preliminary Survey of Housing Needs and Preferences". Refer to Section 17.11 of this manual for a more detailed description of residential relocation considerations.

\*\*\*

- 16.12 The business relocation interview process obtains information on business type, employment characteristics, license/permit and zoning requirements, operating and tenure costs, space/structure/location needs and/or requirements, business relocation preferences and any special circumstances affecting relocation (refer to Exhibit # 17-5) "Commercial Site Occupant Record". In order to minimize the potential economic harm to a displaced business as well as maximize the likelihood of their remaining within the affected community, the assigned relocation agent, consults with the local government and the business being impacted, on all reasonable alternatives under consideration. The consultation process is initiated at the earliest practical time, preferably concurrently with the initiation of the environmental studies for the various alternatives and continues throughout the planning and acquisition phases of the project. The assigned relocation agent explores all possible sources of funding and/or other resources which may be available to a business. Refer to Section 17.11 of this manual for a more detailed description of business relocation considerations.

Sources to be considered are: state and local entities; Division of Housing and Urban Development (HUD); Economic Development Administration (EDA); Farmers Home Administration (FmHA); Small Business Administration (SBA), and other federal agencies. The results of early consultations with impacted businesses, as well as planning for incentive packaging and assistance which has been or will be furnished, are documented in the Conceptual Relocation Plan and, as appropriate, in the final EIS. Advance acquisition of business properties is encouraged where appropriate hardship circumstances are documented, such as loss of patronage or increased operating costs due to lengthy project planning cycles.

\*\*\*

- 16.13 An analysis of relocation needs is prepared from information obtained in the interviews. This analysis is the basis for an inventory of comparable replacement housing. Trends analysis is performed, based upon past, present and potential future resources, in order to estimate the number of comparable replacement dwellings that will be available for displaced persons. Anticipated resources are correlated with relocation needs, lead-time is estimated for completion of relocation activities, and requirements of the relocation assistance program identified. These components are incurred in the ROW Stage Relocation Plan.

\*\*\*

- 16.14 The ROW Stage Relocation Plan is a blueprint of relocation needs and anticipated problems, and is intended to be a basis for relocation assistance efforts. Therefore, copies of the ROW Stage Relocation Plan are circulated to field personnel responsible for further casework within the Relocation Section.

\*\*\*

16.15 When the Conceptual Stage Relocation Program Plan, Right of Way Stage Relocation Plan, or later casework, indicates that available relocation resources may not be adequate to provide comparable replacement dwellings for each household to be displaced, last resort housing procedures are implemented to resolve the situation.

Note: Last Resort Housing (LRH) procedures involve individual cases handled by the Relocation Section (refer to Chapter 17, Section 17.23 of this manual for greater detail). Should the LRH procedures become necessary because of many LRH cases on any given project, the following procedures will be utilized:

1. Inventory the needs, desires and intentions of the affected household(s)
2. Inventory available housing stock that addresses the needs of paragraph #1 above
3. Develop proposal, including alternative strategies, for providing comparable replacement dwelling units within the financial means of any displaced household
4. Implement the last resort housing proposal

\*\*\*

16.16 Relocation planning periodically involves MHD research and program development projects, particularly those related to community participation and economic/social impact evaluations.

\*\*\*

RELOCATION SECTION

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## RELOCATION SECTION

### 17.01 GUIDANCE FOR RELOCATION PROGRAM

#### A. Uniform Relocation Act (refer to Exhibit # 20-3)

On January 2, 1970, the "UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970" was enacted. This Act was amended by Title IV of the SURFACE TRANSPORTATION and UNIFORM RELOCATION ASSISTANCE ACT of 1987, and revised again by Final Rule published in the Federal Register on January 4, 2005. This new legislation is a reaffirmation and an expansion of the purpose and the aims of previous relocation laws. The most significant features of the 1970, 1987, and 2005 Acts are the increased benefits and the fact that it is a "Uniform Relocation Law", which goes far beyond highway activity. All public agencies, both Federal and State, are obligated to conform to the requirements of this Act and subsequent amendments and provide uniform and equitable treatment to persons displaced from their homes, businesses or farms, by Federal and Federally-assisted programs; and, further, to establish uniform and equitable land acquisition policies for Federal and Federally-assisted programs.

#### B. Civil Rights - Title VI and Title VIII

The relocation policy and procedures under the administration of the MassDOT Highway Division (MHD), Right of Way Bureau, are based on non-discrimination in accordance with "Title VI of the Civil Rights Act of 1964", and "Title VIII of the Civil Rights Act of 1968" (42 United States Code").

##### 1. Title VI (refer to Exhibit # 20-17)

Sec. 601. "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance".

##### 2. "Fair Housing" (refer to Exhibit # 20-18)

Open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of "Title VIII of the Civil Rights Act of 1968".

#### C. 49 Code of Federal Regulations, Part 24 and Chapter 79A, Massachusetts General Laws of 1973.

It is the policy of the MHD that no person shall be displaced by Federal-assisted construction projects unless and until comparable replacement housing has already been provided for, or is built. All Right of Way Agents are to familiarize themselves with 49 CFR 24 (refer to Exhibit # 20-16) and Chapter 79A of the Massachusetts General Laws. ROW Supervisors and Administrators are to be cognizant of and assure full compliance with fair housing policy. All ROW Agents are to insist upon equitable treatment of all people; that all people are paid the monies due them; that all relocation benefits are fully explained; and that assistance is given in making proper claims, and that advisory assistance is readily given whenever requested.

#### D. InterDivisional Cooperation

The Bureau shall develop cooperative relationships with the Division of Housing and Urban Development and other federal and state agencies, as appropriate, to enable the MHD to provide comparable replacement housing.

#### E. Responsible Agency

The Bureau's Relocation Section is responsible for relocation assistance and payments for highway projects throughout the Commonwealth. Relocation Section personnel work from a central, district or field office.

#### F. Deductions from relocation payments shall apply if advance relocations monies have been paid to the relocatee.

The MHD shall not withhold or deduct any part of a relocation payment to satisfy a displacee's obligation to any other creditor.

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### 17.02 DEFINITIONS

For the purpose of this manual the following terms are defined:

#### A. Person

The term "person" means any individual, family, partnership, corporation, company or association.

#### B. Family

Two or more individuals living together in a single family dwelling unit who:

1. are related by blood, adoption, marriage, or legal guardianship who live together, as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered to be a part of a family unit, or
1. are not related by blood or legal ties but live together by mutual consent, unless the MHD determines that such occupants maintain separate households within the same dwelling.

#### C. Displaced Person

##### 1. General

The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property (this includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act):

- (i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
- (ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

## 2. Persons not displaced

The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

A person who moves before the initiation of negotiations, unless the Agency determines that the person was displaced as a direct result of the program or project; or

A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by MHD in accordance with guidelines outlined in 49 CFR 24.2(a)(9)(ii)D (refer to Exhibit #20-16);

An owner-occupant who moves as a result of an acquisition as described in 49 CFR 24.101(a)(1) and (2) (refer to Exhibit # 20-16) or as a result of the rehabilitation or demolition of the real property. However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part; or

A person whom MHD determines is not displaced as a direct result of a partial acquisition; or

A person who, after receiving of notice a relocation eligibility is notified in writing that he or she will not be displaced for a project. Such a notice shall not be issued unless the person has not moved and MHD agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

An owner-occupant who voluntarily conveys his or her property, as described in 49 CFR 24.101(a)(1) and (2) (refer to Exhibit # 20-16), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, MHD will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

A person who retains the right of use and occupancy of the real property for life following its acquisition by MHD, or

A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the MHD; or

A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law. However, advisory assistance may be provided to unlawful occupants at the option of MHD in order to facilitate a project.

A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 49 CFR 24.208 (refer to Exhibit #20-16).

Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by section 102 of the American Dream Downpayment Act.

#### D. Initiation of Negotiations

The term "initiation of negotiations" means the delivery of the initial written offer of just compensation by the MHD to the owner, or the owner's representative, to purchase real property for the project, unless applicable Federal program regulations specify a different action to serve this purpose.

If the MHD issues a "Notice of Intent to Acquire" (refer to Exhibit #17-2) for the real property and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person actually moves from the real property.

#### E. Eligibility Date

The term "eligibility date" is the date the ROW Agent makes the acquisition offer with the owner of the property, or his representative or the date that an occupant moves from the real property being acquired after issuance of a Notice of Intent to Acquire (refer to Exhibit # 17-2) by the MHD.

#### F. Relocatee

The term "relocatee" means any person who meets the definition of a displaced person.

#### G. Dwelling

The place of permanent or customary and usual residence. It includes a single-family house, a single-family unit in a multi-family building or a multi-purpose property, a unit of a condominium or cooperative housing project, a mobile home, or any other residential unit.

#### H. Dwelling Site

The term "dwelling site" means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

## I. Mobile Home

The term "mobile home" includes manufactured homes and recreational vehicles used as residences.

## J. Comparable Replacement Dwelling

The term "comparable replacement dwelling" means a dwelling which is:

1. Decent, safe, and sanitary as described in Paragraph 17.03 of this chapter.
2. Functionally equivalent to the displacement dwelling with particular attention to the number of rooms and living space and adequate in size to accommodate the occupants. The term "functionally equivalent" means that it performs the same function, **and** provides the same utility.
3. In an area that is not subject to unreasonable, adverse environmental conditions; is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities; and is reasonably accessible to the person's place of employment.
4. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as an outbuilding, swimming pool, or greenhouse.
5. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance, before displacement, may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.
6. Within the financial means of the displaced person:
  - a. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will be paid the full price differential as described in Section 17.14B4(a) of this chapter; all increased mortgage interest costs as described in Section 17.14C of this chapter; all incidental expenses as described in Section 17.14D of this chapter; and any additional amount required to be paid under replacement housing of last resort as described in Section 17.23 of this chapter.
  - b. A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the 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 MHD. (For an owner-occupant, use the fair market rent for the displacement dwelling which should be established within the appraisal for the property. 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 person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria of this section. 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 receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.
- c. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if MHD pays that portion of the monthly housing costs of a replacement dwelling which exceeds the displaced person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under replacement housing of last resort as described in Section 17.23 of this chapter.
  - d. For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

#### K. Household Income

The term "household income" means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age.

#### L. Business

1. The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

- a. for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, or any other personal property;

- b. for the sale of services to the public;
- c. by a non-profit organization that has established its non-profit status under applicable federal or state law,
- d. solely for the purpose of payment for moving and related expenses under this chapter, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of this project.

#### Small Business

The term "small business" means a business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project. Sites occupied by outdoor advertising signs, displays or devices do not qualify as a business.

#### M. Non-Profit Organization

The term "non-profit organization" means an organization that is incorporated under the applicable laws of Massachusetts as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the internal Revenue Code (26 USC501)

#### N. Farm Operation

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 and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. The term "contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other periods as MHD determines to be more equitable, a business or farm operation:

- (i) Had average annual gross receipts of at least \$5,000; or
- (ii) Had average annual net earnings of at least \$1,000; or
- (iii) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources; or
- (iv) If the application of the above criteria creates an inequity or hardship in any given case, the MHD may approve the use of other criteria as determined appropriate.

#### O. Federal Agency

The term "Federal Agency" means any Division, Agency or instrumentality in the executive branch of the Federal Government; any wholly owned government corporation and the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

#### P. State Agency

The term "State Agency" means any Division, agency, or instrumentality of Massachusetts or a political subdivision thereof.

Q. Division

The term "Division" means the MassDOT Highway Division.

R. Federal Financial Assistance

The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

S. Mortgage

The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of Massachusetts, together with the credit instruments, if any, secured thereby.

T. Owner

The term "owner" means an individual (or individuals):

1. Owning, legally or equitably, the fee simple estate, a life estate, a 99-year lease (with 50 years or more to run), an interest in a cooperative housing project which includes the right to occupy a dwelling or other proprietary interest in the property;
2. The contract purchaser of any of the foregoing estates or interests, described in paragraph 1 above, or
3. One who has succeeded to any of the foregoing interest by devise, bequest, inheritance, or operation of law. For the purpose of this manual, in the event of acquisition of ownership by any of the foregoing methods in this sub-paragraph, the tenure of ownership, non-occupancy of the succeeding owner shall include the tenure of the preceding owner.

U. Uniform Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat.1894; 42 U.S.C. 4601 et seq.; Public Law 91-646), and amendments thereto (refer to Exhibit # 20-3).

V. HUD

The local office of the Division of Housing and Urban Development.

W. 180-Day Owner

An initial occupant who has owned and occupied a dwelling, from which he/she is being displaced, for at least 180 consecutive days immediately prior to the initiation of negotiations (refer to Section 17.14 A of this chapter).

X. 90 Day Owner

An initial occupant who has owned and occupied the dwelling from which he/she is being displaced for less than 180 days but not less than 90 consecutive days immediately prior to the initiation of negotiations (refer to Section 17.16 A of this chapter).

Y. Rent Supplement

The amount in addition to present rent which is necessary to enable a displaced person to lease or rent a comparable dwelling (refer to Section 17.18 of this chapter).

Z. Last Resort Housing Project

A project authorized for the construction, purchase and/or rehabilitation of dwellings, as replacement housing units for highway displacees, when comparable replacement housing is not otherwise available.

AA. Displacee

Any person who meets the definition of a displaced person.

BB. Existing Patronage

The term "existing patronage" is the annual average dollar volume of business transacted during the two taxable years immediately preceding the taxable year in which the business is relocated.

CC. Program or Project

The phrase "program or project" means any activity or series of activities undertaken by the MHD with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

DD. Salvage value

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 except on that basis.

EE. Tenant

The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

FF. Unlawful occupancy

A person who occupies without property right, title or payment of rent or a person legally evicted, who has no legal rights to occupy the property under State law. MHD may, at its discretion, consider such person to be in lawful occupancy.

GG. Utilities

1. Utility costs

Utility Costs: The term "utility costs," means expenses for electricity, gas, other heating and cooking fuels, water, and sewer.

2. Utility facility

The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communication system, 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.

3. Utility relocation

The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by MHD. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

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17.03 DECENT, SAFE AND SANITARY STANDARDS

The term "decent, safe and sanitary dwelling" means a dwelling, which meets applicable local housing and occupancy codes. However, if any of the standards are not met by the local code, the following standards shall apply, unless waived for good cause by the Federal agency funding the project (refer to Exhibit # 17-15).

The dwelling shall:

1. Be structurally sound, weather-tight, in good repair and conform to State and/or Local Housing Codes and Ordinances relative to housing and occupancy.
2. Contain a safe electrical wiring system, adequate for lighting and other electrical devices.
3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of MHD. In addition, MHD shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of MHD. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
5. Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second floor or above, with access directly from or through a common corridor, it must have at least two means of egress.
6. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwellings by such displaced person.
7. Be free of lead-based paint and lead-based paint dust.

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#### 17.04 PURPOSE

##### A. General

The purpose of this manual is to insure, to the maximum extent possible, the prompt and equitable relocation and re-establishment of persons, businesses, farms or non-profit organizations, displaced as a result of highway construction. The rules, policies and procedures contained in this manual are intended to establish a means of providing relocation services including the payment of moving costs, replacement housing supplements, and other relocation expenses so that individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

##### B. Implementation

This manual requires the Bureau's Relocation Section to follow the rules, policies and procedures set forth herein, so that every individual to be displaced for a highway program will have obtained or have been offered a comparable decent, safe and sanitary dwelling. It also requires that relocation services be furnished and payments be made for costs incurred for moving, replacement housing and certain other expenses. In addition, it provides for appeal and hearing procedures to encourage amicable resolution of controversies which may arise.

C. No Waiver of Relocation Assistance

MHD 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.

D. Expenditure of Payments

Expenditure of relocation funds by a displacee which were provided under the Uniform Act does not constitute Federal financial assistance.

17.05 AUTHORITY

The procedures outlined in this manual comply with the provisions of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (refer to Exhibit # 20-3) and Chapter 79A of the General Laws of the Commonwealth of Massachusetts, as amended, and 760 Code of Massachusetts Regulations, Section 27.00.

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17.06 EFFECTIVE DATE

A. Payments

The monetary payments prescribed in this manual shall be provided in accordance with assurances given to the Federal Highway Administration, dated August 13, 1971, to all persons eligible therefore on and after January 2, 1971, and further assurance of compliance on March 23, 1989 required by 49 CFR 24.4 (refer to Exhibit # 20-16).

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17.07 ORGANIZATION

A. General

The Relocation Section has one central office, from which all personnel and activities are supervised, using project field offices when required.

B. Responsibility

The Relocation Section of the Bureau is the office which has statewide responsibility for implementing the relocation program. The Director of the Bureau has the overall responsibility for the implementation of

the policies and the Relocation Section Administrator has the responsibility, under the supervision of said Director, to administer the relocation program(s).

## 1. Administration

An organizational chart of the Right of Way Bureau (refer to Exhibit # 1-2) shows the Relocation Section within the Organizational Chart. The administrative process for Relocation is outlined in the Relocation Section flowchart.

## 2. Personnel

The job titles range from ROW Agents I - IV, Business Management Specialists, Management Analysts or other titles deemed to be appropriate by the Director. The Relocation Section Manager is an Administrator.

The duties and responsibilities of the various personnel are as follows:

- a. Manager of Relocation - Administrator  
Responsible for the carrying out of the Relocation Section programs and managing the Supervisor and agents assigned.

- b. Supervisor of Relocation

Is responsible to the Relocation Administrator, having overall responsibility for carrying out the statewide functions of the relocation program for the Right of Way Bureau of MHD, including residential and business claim review, as well as supervising Field Agents.

- c. Relocation Agents, Relocation Field Agents, ROW Agents

Responsible to the Supervisor of the Relocation Section and for all computations necessary for eligible displacees to receive replacement housing payments, rent supplement payments, moving cost payments and mortgage differential payments. The Relocation/ROW Agent must consider the needs and characteristics of households and businesses to be displaced, in order to develop a program to provide decent, safe and sanitary replacement accommodations in a timely, orderly and humane manner, in accordance with Chapters 79A of the General Laws of Massachusetts. The Relocation/ROW Agent must also write ROW Plans for anticipated acquisitions when required.

At an early stage in project development and after FHWA project authorization, the Agent interviews all displacees, residential and business, to ascertain all information necessary to effect their orderly and successful relocation. Information is recorded on the Preliminary Survey of Housing Needs and Preferences form (Exhibit # 17-4) for residential displacees, or the Commercial Site Occupant Record (Exhibit # 17-5) for business displacees. The Agent will also complete a Relocation-General Information Sheet (ROW Form 664, Exhibit # 17-6) or a Business Unit-General Information Sheet (Exhibit # 17-7), and a Subject Property Sheet (Exhibit # 17-8), as appropriate, and leave a copy of the

Residential and/or Business Relocation Brochures (Exhibits 17-9 and 17-10) with each of the displacees, after first explaining the benefits of the relocation program. At this time, the Relocation/ROW Agent will also initiate the Relocation Payment, Procedure for Residential Housing Claims form (refer to Exhibit # 17-67) or the Relocation Payment Procedures for Business Claims form (refer to Exhibit # 17-51) as applicable. These forms will be continually updated as the displacee's residential or business relocation proceeds and, upon completion, will be submitted to the Relocation Supervisor as support for the relocation claim.

Subsequent to the initial contact, the Relocation/ROW Agent will survey the market, newspapers, realtors and multiple listing services to find available comparable properties which are comparable to or better than the displacee's dwelling and within their financial means, recording each of these on separate Relocation Comparable Listing Sheets (Exhibit # 17-11).

When the Agent has accumulated a sufficient number of comparable listings, the Agent will then proceed to compute the replacement housing supplement payments by selecting the three most comparable to each of the residential units being displaced and indicate the comparables on a Determination of Supplemental Rental Housing Payment form (Exhibit 17-12) or Replacement Housing Computation (Purchase) form (Exhibit # 17-13). One listing is selected as the most comparable and the replacement housing payment calculated to establish the computed limit of the price differential payment. In certain instances where only one listing is available, that listing may be utilized with management's approval. The Agent's reason or reasons for selecting the listing used in the computation is stated on the form, dated, signed and submitted to the Supervisor for review and approval.

Responsible to the Supervisor and Administrator and serves as the liaison representative for MHD when relocation assistance services contracts are entered into with private citizens (residential or business, local and/or public agencies. Duties are: to insure all relocatees, business and residential, have been contacted and apprised of their rights; complete ROW Form 700 (refer to Exhibit # 17-14) submissions for Supervisor's and Administrator's review and maintain a site office during regular work hours and evenings, when required. In general, be responsible for compliance and performance of the contract terms to the satisfaction of the Division and in compliance with State and Federal guidelines.

d. Business Relocation Claims Advisory Committee

This Committee consists of the Bureau's Director, Deputy Director and Finance Manager and may include others as deemed appropriate. The Relocation Section Manager presents cases to the Committee for review, compliance with regulations and procedures, and approval of all business claims.

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- A. Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. Within seven (7) days of this occurrence, the MHD shall notify all occupants in writing of their eligibility for applicable relocation assistance including tenants that occupy property that may be acquired amicably (refer to Exhibits # 17-16, 17-17, 17-18, 17-19 and 17-20). This notice will be provided along with the applicable relocation brochure (refer to Exhibits # 17-9 and 17-10).
- B. When it is determined that it is in the public interest to establish eligibility for relocation benefits prior to the initiation of negotiations for acquisition of a parcel, the MHD will issue to the owner and tenants a "Notice of Intent to Acquire" (refer to Exhibit # 17-2). On Federal-aid projects, this notice will only be issued after FHWA authorizes the initiation of negotiations on a project or authorizes acquisition of individual parcels solely for protective buying or because of hardship or as an advance acquisition.
- C. The above notices shall be served in person or sent by certified mail, return receipt requested and so documented in MHD files. Each notice shall be written in plain, understandable English. Persons who are unable to read and understand the notice must be provided with appropriate translation and/or counseling. Each notice shall indicate the name and telephone number of a MHD representative who may be contacted for answers to questions or other related matters.

D. Notice to Vacate

Where real property is acquired and/or displacements required no person lawfully occupying the acquired property shall be required to move from his dwelling, business or farm unless he or she has received at least 120 days advance written notice of the earliest date by which he or she may be required to move. This notice is sent by Certified Mail to the relocatee (refer to Exhibits # 17-21 and 17-22). In the case of unimproved property, the displacee will be given a 30-day notice to vacate (refer to Exhibit # 17-23).

E. Eviction for Cause

Eviction for cause must conform to applicable state and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable dwelling is made available, whichever is later.

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17.09 RELOCATION CONTRACT PROCEDURES

A. Relocation Functions Performed by Another Agency

In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of public programs, the MHD may enter into contracts with any individual, firm, association, or corporation, for services in connection with such programs, or may carry out its function under these procedures through any Federal or State Agency having an established organization for

conducting relocation assistance programs. Any such agency may be used only if it is adequately staffed, equipped and organized to provide such services and/or payments.

#### B. Agencies Providing Relocation Assistance

The MHD will furnish to the Federal Highway Administration the following information concerning the agency, if other than the MHD, which will provide the relocation assistance required by these procedures:

1. Name: the name, location by address and telephone of the agency;
2. Qualifications: an analysis of the agency's present workload and its ability to perform the requirements of this manual;
3. Personnel: The estimated number and job titles of personnel who will provide the relocation assistance services for the project.

#### C. Contracting Procedures

If the MHD elects to have required relocation services administered by another Federal, State, local government, or private agency having an established organization, it will contact the local agencies to discuss the scope of work e.g. number of families, businesses, non-profit organizations, etc., that are to be displaced by eminent domain to determine if they are adequately staffed to perform the duties in conjunction with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (refer to Exhibit # 20-3) and, in accordance with the requirements of Title VI of the Civil Rights Act of 1964, and Executive Order 11246. If the agency is adequately staffed to provide the services, a written proposal is sent to the MHD outlining the duties to be performed and the cost of same. The contract or agreement must have prior approval by the Federal Highway Administration. The contract is then recommended by the Deputy Director and Director of the Bureau, and then presented to the Administrator for his/her approval.

#### D. Contract Provisions

1. Obligation of the Agency: to perform the relocation assistance advisory services, under the contract, in accordance with provisions and procedures of the State.
2. Retention of Records: provide that the records required will be retained by the agency administering the relocation program or be turned over to the MHD. The records will be retained for a period of not less than three (3) years after payment of the final voucher on each project.
3. Available for Inspection: the records will be available for inspection by representatives of the Federal Highway Administration at any reasonable hour.
4. Financial Responsibilities Specified: Where the contract is with a public agency administering another Federal grant program, the

contract will specify the financial responsibilities of each to finance the relocation program required by State procedures.

5. Administrative Costs: only those costs directly chargeable to the highway project will be eligible for Federal participation.
6. Civil Rights: contain the clauses set forth in Appendix "A" of the Civil Rights Assurances (refer to Exhibit # 20-15) and the requirements of 49 CFR Part 24 (refer to Exhibit # 20-16).
7. Changes: provisions that would permit the negotiations 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, and agreements or contracts in existence with Federal, State, local governmental or private agencies on the effective date of this contract, must be revised or amended to include the additional requirements set forth herein and to provide for all the services and payments required by existing regulations. If the terms of the existing agreement or contract do not permit such revisions or amendments, supplementary contracts shall be executed to provide such requirements.

#### E. Technical Guidance

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 contracted agency, to administer an acceptable relocation assistance program, Federal funds may participate in the costs of such project activity.

#### F. Real Property Acquired in Connection with Other Federal or Federally-Assisted Programs.

##### 1. Land Acquired and Displacements Made Prior to Location of Highway

Where real property is acquired and all displacements are made by another public agency for a program or project, other than one in which Federal funds administered by FHWA are or will be utilized, prior to receipt of written advice from the Bureau Director, concerning the location of a proposed highway or project or a request for reservation or conveyance for such purposes:

- a. the provisions of this chapter will not apply, and
- b. there shall be no Federal or State participation in the relocation costs.

##### 2. Real Property Acquired and/or Displacement Made Subsequent to Location of Highway

Where real property is acquired and/or displacements are made subsequent to written advice from MHD giving the location of a proposed highway, or other project in which Federal funds administered by the Federal Highway Administration will be utilized, or a request is made for reservation or conveyance for such purposes:

- a. the applicable provisions of this chapter will apply, and

- b. the costs to the MHD for the relocation payments and services required by Federal regulations will be in the same manner and to the same extent as other project costs.

The MHD and the displacing agency will enter into an agreement or memorandum of understanding setting forth the responsibilities of each for any relocations involved and the basis for the sharing of costs. Such agreement should be executed during the early stages of project development and should not jeopardize future Federal participation in costs to the MHD for relocation payments and services, if the agreement should be in effect when a request for authorization to acquire is submitted to the Federal Highway Administration.

#### G. Surveillance

The Relocation Supervisor and/or Administrator shall monitor relocation assistance activities conducted by any state agency, individual, firm, association, or corporation to the extent necessary to ascertain compliance with State and Federal guidelines. This includes keeping reports, checking on activities of personnel, submitting weekly reports to the Central Office on progress of work performed, spot checking of claimants, checking comparables, reviewing rental and replacement housing supplements and generally overseeing the relocation process.

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#### 17.10 RELOCATION PROGRAM AT RIGHT-OF-WAY STAGE

At the ROW Acquisition stage, the following events take place:

- A. The Highway Administrator approves the Order of Taking, the Award, the Use and Occupancy Rent, and the amount of the Replacement Housing Offer.
- B. A Relocation Agent makes personal contact and makes an offer of relocation benefits and records interview on a Relocation Assistance Contact Report, ROW Form 700 (refer to Exhibit #17-14). If a personal contact cannot be made, the Relocation Agent will document the record to show that reasonable efforts were made to achieve the personal contact. The Relocation Agent ensures that claimant has a relocation brochure and notes this fact on the appropriate Relocation Assistance Contact Report form. At this time, the Relocation Agent will have the displacee complete and sign the Certificate of Legal Residence in the United States form (refer to Exhibit # 17-68).
- C. The Order of Taking is recorded within thirty (30) days of the Highway Administrators approval.
- D. The Notice of Taking (refer to Exhibit # 17-21) is mailed certified mail, return receipt requested, by the Administrative Section, to the owner of the property and includes the Fair Market Value determined and voted, and informs the owner of his/her right of four (4) months occupancy. A notice to vacate (refer to Exhibits # 17-22 and 17-23) will be mailed to all tenants by certified mail return receipt requested.

E. The Relocation Agent also makes personal contact with the owner and/or tenant occupants within seven (7) days of the date of notice and verbally explains all of the relocation benefits and options available to the claimants, including the rental or replacement housing offer and what moving option would be most beneficial to each claimant. This and every contact will be duly recorded on a ROW 700 Form (Exhibit # 17-14). If personal contact cannot be made, the Relocation Agent will document the record to show that reasonable efforts were made to achieve said contact and a follow-up meeting will be held with claimants at their convenience.

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#### 17.11 RELOCATION ASSISTANCE ADVISORY SERVICES

##### A. GENERAL

The MHD carries out its Relocation Assistance Advisory Services program so that displaced persons will receive uniform and consistent services and payments regardless of race, color, religion, sex or national origin. The services shall be provided by personal contact. In those cases where personal contact cannot be made, the Relocation Agent will then document the file to show that reasonable efforts were made to achieve the personal contact.

##### B. Eligibility

Relocation assistance advisory services will be offered to:

1. all persons occupying property which has been acquired;
2. all persons occupying property immediately adjacent to the real property acquired when the MHD determines that such person or persons are caused substantial economic injury because of the acquisition;
3. all persons who, because of the acquisition of real property used for a business or farm operation, move from other real property used for a dwelling, or move their personal property from such other real property.

##### C. Minimum Advisory Services Requirements

The MHD, through its Relocation Section of the ROW Bureau, will provide the following Relocation Assistance Advisory Service program which will include, at a minimum, such measures, facilities, or services as may be necessary or appropriate 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 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. An identification and resolution of personality/realty issues. Every effort must be made to identify and resolve realty/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 MHD's legal capacity to provide them.
2. Discuss and explain the services available in relation to relocation payments and the eligibility requirements therefore, and assist in completing any applications or forms required;
  3. Determine the need, if any, of displaced persons, for replacement housing assistance and to make referral to the appropriate City, State or Federal Agency which will furnish the required assistance for health, welfare, social, medical, financial and other required assistance;
  4. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable decent, safe and sanitary residential housing; and of comparable commercial properties and locations for displaced businesses (this information shall be maintained with the relocation file);
  5. As soon as feasible, the MHD 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 computed replacement housing supplement and the basis for the determination, so that the person is aware of the maximum computed replacement housing supplement for which he or she may qualify (refer to Exhibits # 17-12 and 17-13);
  6. Advise any displaced person that may be eligible for government housing assistance at the replacement dwelling of any requirements of such government housing assistance program that would limit the size of the replacement dwelling as well as of the long term nature of such rent subsidy, and the limited (42 months) duration of the relocation rental assistance payment;
  7. Supply information and make referrals concerning Federal, State or Local housing programs, disaster loan programs and other programs offering assistance to displaced persons and provide technical help to persons applying for such assistance;

8. Advise displaced persons that no payments received under the Uniform Act shall be considered as income for the purpose of the Internal Revenue Code of 1954 which has been re-designated as the Internal Revenue Code of 1986 or for the purposes of determining the eligibility of any person for assistance under the Social Security Act or any other Federal law except for any Federal law providing low income housing assistance;
9. Provide other advisory services to displaced persons, in order to minimize hardships to such persons in adjusting to a new location; and
10. Offer all persons transportation to inspect housing to which they are referred.

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#### 17.12 RESIDENTIAL MOVING EXPENSES

##### A. General

The term "moving expenses" shall include costs for:

- a. dismantling, disconnecting, crating, packing, loading, transporting, unloading, placing, reinstalling and reconnecting items of personal property to be moved;
- b. temporary storage of personal property, approved by the MHD, not to exceed a twelve (12) month period, unless the Division determines that a longer period is necessary;
- c. transporting families and/or individuals to a new location not to exceed present MHD mileage reimbursement rates. This is only for those electing the actual cost method;
- d. temporary lodging, approved by the Division, because of unforeseen circumstances or practical necessities of the move;
- e. connections and modifications to the personal property, to adapt it to the utilities available nearby and modification to the personal property necessary to adapt it to the replacement structure;
- f. insurance for the replacement value of the personal property in connection with the move and necessary storage;
- g. 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;
- h. professional services necessary for the planning, moving, and installing of personal property at the replacement location; and
- i. other moving related expenses as MHD determines to be reasonable and necessary.

B. Ineligible moving expenses include:

- a. additional expenses because of living in a new location;
- b. cost of moving structures;
- c. improvements to the new location unless the Division determines it to be necessary for installation of the personal property;
- d. interest on loans to cover moving expenses;
- e. modification of personal property to adapt it to replacement realty, unless it has been determined that it is necessary;
- f. losses due to negligence of relocatee, his agent or employee, and
- g. payment for search cost in connection with locating a replacement dwelling.

Any individual or family displaced by a Federal-aid highway project, is eligible to receive a payment for fair, reasonable and necessary moving expenses as described in this manual, if he/she meets the eligibility requirements of this manual. Costs of a move, up to a limit of fifty (50) miles unless MHD determines that relocation beyond 50 miles is justified, are reimbursable.

C. Moving Expenses to Individuals and Families

Every residential relocatee is entitled to receive either actual reasonable moving expenses, or an amount based upon a room count, plus other storage areas containing sufficient personality to constitute an additional room in accordance with the Fixed Residential Moving Cost Schedule ("Fixed Schedule") (refer to Exhibit # 17-24, Residential Moving Options (Fixed or Actual) form).

1. Multiple Occupancy

- a. Two or more families occupying the same dwelling unit, who must relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or on a fixed schedule move. Two or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may also elect to be reimbursed either on an actual cost basis or on a fixed schedule move. A fixed schedule move payment will be based on the number of rooms actually occupied by each family, plus any community rooms shared with others.
- b. Two or More Individuals, not a family, who occupy the same dwelling unit, are considered to be a single family unless the MHD determines that such occupants maintain separate households within the same unit.

2. Owner Retention

When an owner retains his dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving the personal property. However, if one chooses to use a dwelling as a place of moving the personal property, the cost of moving personal property may be considered eligible for relocation benefits. Payment in these cases will be on a fixed schedule move basis.

### 3. 49 CFR Part 24.301(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. 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. (Described in § 24.302.)
  - (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.

### 4. Hardship

At the time the Relocation Agent personally contacts the residential relocatee, the displacee will be given the Residential Moving Options (Fixed or Actual) form (refer to Exhibit # 17-24) and his/her rights to select one of the options is explained. The claim for either option will be processed for payment as soon as the relocatee has moved and filed the appropriate claim form. In case of financial hardship, the displacee may request consideration for an advanced moving payment or assignment of funds by contacting the Relocation Agent.

### 5. Time for Filing Claims

All claims for a relocation payment shall be filed with MHD within 18 months after:

- a. for tenants, the date of displacement;
- b. for owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period may be waived by MHD for good cause

D. Eligibility for Moving Expenses

1. Any individual or family is eligible to receive payment for the reasonable expense of moving personal property when:
  - a. they meet the eligibility requirements set out in Section 17.08 of this chapter, and
  - b. they move from the real property, or move personal property from the real property, subsequent to the earliest date established in paragraph 17.12D(1)(a) above, and
2. Relocation payments are generally limited to one move of a displaced person, however, where it is in the public interest and FHWA has given prior approval on Federal-aid projects, the MHD may participate in the costs of more than one move.

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17.13 REPLACEMENT HOUSING PAYMENTS - GENERAL

A. General Provisions

1. In addition to other payments authorized by these procedures, individuals and families displaced from a dwelling, including condominium or cooperative apartments, acquired for a Federally-aided highway project, are eligible for a replacement housing payment in accordance with the following paragraphs:
  - a. the displaced individual, or family, is not required to relocate to the same occupancy (owner or tenant) status, but has other options according to ownership status and tenure of occupancy, and
  - b. the MHD will not pay more than one replacement housing payment for each dwelling unit, unless it has been determined that occupants maintain separate households within the unit.

B. Requirements to Receive Payments

1. In addition to the tenure of occupancy provisions, the displaced person is otherwise eligible for the appropriate payments when he/she relocates and occupies a decent, safe and sanitary dwelling within a one-year period beginning on the later of the following dates:
  - a. the date on which the owner received from the MHD final payment or pro-tanto for all costs associated with the acquired dwelling, or
  - b. the date on which the displacee is required to move by the Division's written notice to vacate, or
  - c. the date on which same does, in fact, move, if prior to (b) above.

2. When the Relocation Agent makes his first contact with the displaced occupant, the Agent will secure the relocation general information as required on the "Relocation General Information Sheet" (refer to Exhibit # 17-6). This form permits the MHD to make specific determination as to the housing needs for relocation of the claimant and furnishes the necessary preliminary information required for the computation of the replacement housing or rent supplement payment.
3. A displaced occupant who has entered into a contract for the construction or rehabilitation of a replacement dwelling and for reasons beyond his/her reasonable control, cannot occupy the replacement dwelling within the time period shown above in subparagraphs a, b, or c, will be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payments under these conditions will not be processed for payment until actual occupancy is accomplished. In a hardship situation, a displaced occupant who has actually contracted to purchase a home and has an agreement to that effect, shall be considered as having "purchased and occupied" the replacement dwelling, in order to receive his/her replacement housing payment, at the time of closing.

#### C. Inspection for Decent, Safe and Sanitary

Before processing any replacement housing or rent supplement payment to a displaced occupant, the Relocation Agent must inspect the replacement dwelling and determine that it meets the standards for decent, safe and sanitary housing, as defined in Section 17.03 of this chapter. When the displaced occupant moves into his/her replacement housing, or at the request of the displaced occupant prior to the time he/she purchases or rents the replacement housing, the assigned Relocation Agent will complete the form entitled "Decent, Safe, and Sanitary Inspection" (refer to Exhibit # 17-15). The Relocation Agent will also complete the Relocation Assistance Contact Report, ROW Form 700 (refer to Exhibit # 17-14), and the Replacement Property form (refer to Exhibit # 17-25). The MHD may utilize the services of any public agency ordinarily engaged in housing inspection to make the decent, safe and sanitary inspection.

#### D. Statement of Eligibility to Lending Agency

When a qualified displacee has found but not yet purchased or occupied a suitable replacement dwelling that meets decent, safe and sanitary standards, he/she may request that the Relocation Agent advise any lending agencies of the eligible replacement housing payment provided he/she purchases and occupies the inspected dwelling within the time limits specified in Section 17.13B of this chapter.

#### E. Application for Replacement Housing Payments

##### 1. General Requirements

Application for a replacement housing payment will be made on a form entitled "Payment Claim" (refer to Exhibit # 17-26). The application will be filed no later than six (6) months after final adjudication where a petition for assessments of damages is filed.

This form is approved by the Relocation Agent and reviewed and signed by the Relocation Supervisor. Upon occupancy of decent, safe and sanitary replacement housing, displacee will sign the payment claim form to initiate the replacement housing payment process.

2. To Whom Payment is Made

The payments described in this paragraph will be made directly to the relocated individual or family. Upon receipt of a signed "Assignment of Relocation Payment" form (refer to Exhibit # Ex. 17-27) from the relocated individual or family, the payment may be made directly to the landlord for rent; to the seller for use towards the purchase of a decent, safe and sanitary dwelling; or to a lender or lending institution, for the displacee's purchase of decent, safe and sanitary replacement housing. Upon a qualified applicant's written request, the MHD may deposit the replacement housing payment into escrow pending the displacee's move.

F. Advance Replacement Housing Payments

No relocatee will be deprived of the earliest possible payment of the replacement housing amounts to which he/she is rightfully due.

1. Upon a qualified applicant's written request, the MHD may deposit the replacement housing payment into escrow pending the displacee's move. The Relocation Agent shall inform the displacee of this provision in the process of providing relocation assistance.
2. Where an owner-occupant is otherwise entitled to a replacement housing payment but contests the acquisition payment (files a court petition), an advanced replacement housing payment will be computed and paid contingent upon an agreement between the displacee and the MHD that:
  - a. upon finalization of the "eminent domain" proceeding, the replacement housing payment will be re-computed, revising the acquisition price to the amount determined by administrative settlement or judicial award of damages, and
  - b. if the administrative settlement or judicial award of damages exceeds that amount accepted by the owner-occupant as pro-tanto award, he/she will refund to the State the amount of the excess replacement housing payment. However, in no event will the displacee be required to refund more than the amount of the replacement housing payment provisionally paid.

The above procedure will be explained to the displacee by the Relocation Agent who will present a "Waiver of Excess Payment over Court Judgment" form (refer to Exhibit # 17-28) for execution by the displacee before the claim is processed.

G. Ownership of Replacement Dwelling Prior to Displacement

Any person who has obtained legal ownership of a replacement dwelling any time before or after the initiation of negotiations on the project and occupies the replacement dwelling after being

displaced, but within the time limit specified in paragraph 17.13B1, is eligible for a replacement housing payment, if the replacement dwelling meets decent, safe and sanitary requirements (refer to Exhibit # 17-15). For this purpose, the date of initiation of negotiations for the project means the date the MHD makes the first personal contact with the owner (or designated representative) of any property, to deliver a written offer of just compensation, except where such contact is made for protective buying or hardship situations. The date established as the initiation of negotiations shall be documented in the project file.

H. Partial Taking

If the acquired dwelling is located on a land parcel typical in size for residential use in that area, the maximum replacement housing payment is the selling price of a comparable, replacement dwelling on a parcel typical in size for the area, less the acquisition price of the acquired dwelling and the land on which it is located. Where a dwelling is located on a parcel larger than normal for residential use in the area, the maximum replacement housing payment will be determined by carving out the value of the excess land at the present location and computing a replacement supplement based on the allocable portion of the dwelling and lot, and available comparable dwelling typical in size for residential use in the area.

I. Dwelling on Land with Higher and Better Use

Where the acquired dwelling is located on a tract of land where the fair market value is established on a use higher and better than residential, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a parcel typical in size for residential use in the area, less the acquisition price of the acquired dwelling, and that portion of the acquired land which represents a parcel typical for residential use in the area.

J. Multiple Occupancy of Same Dwelling Unit

1. Families: If two or more eligible families occupy the same single family dwelling unit, each family will be eligible for a replacement housing or rent supplement payment based on housing which is comparable to the quarters occupied by each family. For owner-occupants, the acquisition price to be utilized as the basis for a replacement housing computation is that amount that each owner received from the Fair Market Value of the property acquired. For tenant-occupants, the supplement will be based on each displacee's share of the rent for the space they occupy and the cost of a replacement unit.
2. Individuals: If two or more eligible individuals, with no identifiable head of the household, occupy the same single family dwelling unit, they will be considered as one "family" for replacement housing payment or rent supplement purposes, unless the MHD determines that such occupants maintain separate households within the same dwelling. When all individuals do not relocate to decent, safe and sanitary housing, the MHD will pay a pro rata share of the computed replacement housing payment, that would have been received if all individuals had relocated together into the same ownership or rental status as they had at the time of their eligibility date for relocation benefits.

#### K. Joint Residential and Business Use

3. Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm, or nonprofit organization, such individuals or families are separate displaced persons from the businesses for purposes of determining entitlement to relocation payments.
4. The procedure for computing replacement housing payment amounts to owners of multi-family dwellings who occupy one unit is as follows:
  - a. Comparability

The comparable replacement dwelling should be the same as that acquired, i.e. if the acquired property is a triplex, then the comparable should be a triplex. If comparables are not available, then structures of the next lowest density must be used. If there are not any comparable multi-family structures to be found, then the comparison of the owner's living unit would be to a single-family residence. A higher density structure, greater than the acquired property, should not be used as a comparable.

- b. Payment Determination

The value of the owner's unit is to be used as the base for determining the replacement housing payment, not the entire fair market value of the subject property. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable property. If the comparable is a triplex, the replacement housing payment is based on the value of only one of the three units; if a duplex, the payment is based on one of the two units; if a single family dwelling, the payment is based on the entire value of the dwelling. The other living units of a multi-family dwelling cannot be included in the value of a comparable, because these are considered as income producing property and not part of the owner's personal living area.

#### L. Delivery of Payment Checks

The person(s) who approves the upper limit of a replacement housing payment will not present the eligible amount of the computed payment to the relocatee. This is done by a ROW Agent or by certified mail return receipt requested. This requirement is also applicable to situations where such payments and services are being administered by another Federal, State, or Local Agency under authority of a contract or agreement.

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#### 17.14 REPLACEMENT HOUSING PAYMENTS FOR 180-DAY OWNER-OCCUPANT WHO PURCHASES

##### A. General

1. A displaced owner-occupant of a dwelling may receive a replacement housing payment not to exceed \$22,500 for costs necessary to purchase replacement housing; compensate the owner for the loss of favorable financing on the existing mortgage when financing replacement housing; reimburse the owner for expenses incidental to the purchase of replacement housing, when such costs are incurred as outlined in paragraph 17.14A.2 below.
2. The owner-occupant is eligible for such payments when:
  - a. he/she is in occupancy at the "eligibility date" (initiation of negotiations) for the acquisition of the real property, in whole or in part, or
  - b. he/she is in occupancy at the time one is given a written notice by the MHD that indicates the State's intent to acquire the property by a given date, and
  - c. such ownership and occupancy has been for at least 180 consecutive days immediately prior to the "eligibility date," and
  - d. the property was acquired by MHD or the MHD issued an order to vacate even though the property is not yet acquired
  - e. he/she purchases and occupies a decent, safe and sanitary dwelling within the time period specified in Section 17-13 B.1 of this chapter
  - f. for the purposes of paragraph 17-14A 2e, above, a displaced person "purchases" a dwelling when he/she:
    1. acquires an existing dwelling;
    2. purchases a life estate in a retirement home (the actual cost will be the entrance fee plus any other monetary commitments except periodic service charges. The replacement housing payment is limited to the reasonable cost of purchasing a comparable replacement dwelling, less the acquisition cost of the acquired dwelling);
    3. relocates and/or rehabilitates a dwelling which he/she owns or acquires. When the replacement dwelling selected by the displacee has decent, safe and sanitary deficiencies, the cost to correct such deficiencies is eligible to the extent that the purchase price, cost of the replacement dwelling and the cost of correcting the deficiencies, does not exceed the maximum replacement housing payment, based on comparable replacement properties; or
    4. constructs or contracts for the construction of a new, decent, safe and sanitary dwelling on a site which he/she owns or acquires. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling comparable to the one taken. The cost of adding new features, simply to bring the cost up to the maximum replacement housing payment, is not eligible for reimbursement.

B. Method to Determine Payment for Replacement Housing

1. Three Comparable Methods

The Relocation agent will select three (3) comparable listings which are available on the open market and in a neighborhood not generally less desirable than the location of the displacee's dwelling. When three (3) listings are not available, less than three (3) may be utilized. Selection of the comparables and computation of the payment will be done by the Relocation Agent assigned to the case and reviewed and approved by the Relocation Supervisor.

2. Comparable Replacement Dwelling

The available comparable listing utilized in computing the replacement housing supplement must be representative of and equal to, or better than, the displacement dwelling and in a neighborhood not generally less desirable. When the available comparable listing used in computing the replacement housing supplement is similar, but lacks a major attribute such as a garage, outbuilding, swimming pool, etc., the value of said attribute shall be deducted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

3. Revisions to Replacement Housing Amount

If the relocatee requests assistance in finding replacement housing, he/she will be provided information on housing which is comparable and available for purchase within the offered amount. When such housing is no longer available, the Relocation Agent will recompute the new replacement housing amount, based on available housing which is equal to or better, meets the other comparable criteria, and is approved by the Relocation Supervisor.

4. Replacement Housing Payments

1. Amount of Payment

a. The replacement housing payment is the amount, if any, which, when added to the amount for which the State acquired the displacement dwelling, equals the actual cost that the owner is required to pay for a decent, safe and sanitary dwelling, or the amount determined by the State as necessary to purchase a comparable dwelling; whichever is less. However, when the claimant actually moves into decent, safe and sanitary housing, the replacement housing supplement will be re-computed to establish that the claimant has actually "spent to get" the originally computed amount. To this amount will be added incidental expenses and a mortgage interest differential if applicable. The replacement housing supplement will be revised accordingly and approved by the Relocation Supervisor, and the new amount approved by the Highway Administrator for payment to the claimant. If the claimant has not utilized the full amount of the original computed replacement housing supplement, he/she has one year from the date he/she moved in which to purchase another home to be eligible for the difference in the amount "spent" and the remaining balance of the replacement supplement applicable to the purchase of the subsequent home. However,

the amount cannot exceed the amount voted in the original computation. It is also noted that the incidental expenses and mortgage differential are not reimbursable on the purchase of the subsequent home.

- b. This procedure also applies to tenants who elect to become owners, except that they would not be eligible for a mortgage interest differential payment. The "down payment" benefit, including related incidental expenses, cannot exceed \$5,250, unless the rental replacement housing supplement exceeds \$5,250, in which case they would be eligible for a "down payment" under the Last Resort Housing provisions of the Uniform Act. It is MHD's responsibility to locate a comparable replacement dwelling unit and relocate the displaced person to his/her original ownership status, if desired. If the alternate tenancy status is desired by the displacee, the State will be expected to make a reasonable effort to address this preference. If the preferred housing is available, the rent supplement, if any, will be based on the preferred option and computed in accordance with Section 17.15 of this chapter.

2. Amount of Payment to Occupant with a Partial Ownership

- a. When a single family dwelling is owned by several persons, and occupied by only some of the owners, the replacement housing payment will be the lesser of:
  1. the difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling, or
  2. the difference between the total acquisition cost of the acquired dwelling and the amount determined by MHD as necessary to purchase a comparable dwelling.
- b. if the displaced owner-occupants do not purchase and occupy a decent, safe and sanitary dwelling, they will be entitled to receive a rent supplement payment if they rent and occupy a decent, safe and sanitary rental unit, in accordance with the provisions of Section 17.15 of this chapter.
- c. if the application of this procedure, because of unusual circumstances, creates an undue "hardship" on the occupant(s) with a partial ownership, the Relocation Supervisor will present the full facts and recommended solution to the ROW Bureau Management for approval. On Federal-aid projects the full facts along with a recommended solution should be submitted to the FHWA.

C. Increased Interest Payments

1. General

As outlined in Paragraph A of this Section, the displaced owner/occupant is entitled to increased interest payments for increased costs he/she is required to pay for financing a

replacement dwelling. This increased interest payment will be allowed only when both of the following conditions are met:

- a. the dwelling acquired was encumbered by a bona-fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the established eligibility under the provisions of Paragraph A,
  - b. the mortgage on the replacement dwelling bears a higher rate of interest than the mortgage interest rate on the acquired dwelling.
2. 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 mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental cost 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. The following paragraphs 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.
- a. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown termination, the payment will be pro-rated and reduced accordingly. 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.
  - b. 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.
  - c. 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.
  - d. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
    - (1) they are not paid as incidental expenses;
    - (2) they do not exceed rates normal to similar real estate transactions in the area;
    - (3) the agency determines them to be necessary; and
    - (4) 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 such mortgage balance under this section.
  - e. 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.

NOTE: The Relocation Agent assigned to the claim will ascertain the increased mortgage interest cost figures with the concurrence of the Relocation Supervisor and will compute the payment on the form entitled "Format for Computation of Interest Payments" (refer to Exhibit # 17-29).

### 3. Truth in lending

When the lending agency imposes debt service charges, as an incident to the extension of credit and such charges are normal to the market, the annual percentage rate shown in the "Truth in Lending Statement" shall be used in lieu of the mortgage interest rate, in computing the monthly principal and interest payments. A Truth in Lending Statement must be provided the mortgagor by lending agencies under the "Truth in Lending Act, Title I, Public Law 90-321 and Regulation 2, issued pursuant thereto by the Board of governors of the Federal Reserve System.

### 4. To Whom Payment Made

The payment for increased interest cost may be made to the relocated individual, or family, or upon written instruction from the relocated individual, or family, directly to the mortgagee of the replacement dwelling. In "hardship" cases where an applicant otherwise qualified for an interest payment and upon his/her specific request in writing to MHD, the MHD may make an advance payment prior to the relocatee's moving.

### 5. Partial Acquisition and Increased Interest Cost

Where the dwelling is located on a tract normal for residential use, in accordance with zoning requirements, the interest payment will be reduced to the percentage ratio that the acquisition price bears, to the "before" value; except, the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition, and it is necessary to refinance. Where a dwelling is located on a larger tract than normal for residential use, the interest payment will be reduced to the percentage ratio that the value of the residential portion bears to the "before" value. The reduction will apply whether or not it is required that the entire mortgage balance be paid.

#### Multi-use Properties and Increased Interest Cost

The interest payment on multi-use properties will be reduced, to the percentage ratio that the residential value of the multi-use property bears, to the before value.

#### Other Highest and Best Use and Increased Interest Cost

If a dwelling is located on a tract where the fair market value is established on a higher or better than residential use, and if the

mortgage is based on residential value, the interest payment will be computed as provided in the appropriate paragraphs above. If the mortgage is deemed by MHD to be based on the higher use, however, the interest payment will be reduced, to the percentage ratio that the estimated residential value of the parcel has, to the before value.

#### D. Incidental Expenses

The incidental expenses payment is the actual reasonable amount necessary to reimburse the homeowner for the actual costs incurred by him/her, incidental to the purchase of the replacement dwelling, but not for prepaid expenses. The incidental expense items will be listed on a form entitled "Incidental Expenses" (refer to Exhibit # 17-30). This form will be filled in by the Relocation Agent assigned to the claim and reviewed/approved by the Relocation Supervisor. Each of the items included on the "Incidental Expenses" form should be documented by the homeowner, with appropriate data to support his/her claim for reimbursement. Such costs may include the following items:

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 pre-paid interest.
4. Professional home inspection, certification of structural soundness, and termite inspections.
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 MHD determines to be incidental to the purchase.
10. No fee, cost, charge, or expense is reimbursable as incidental expenses, which is determined to be a part of the debt service, or finance charge.

#### E. Combined Payments not to Exceed \$22,500

If an owner-occupant is otherwise qualified for a payment under Section 17.15 of this chapter and has previously received a payment under this section, the amount of such payment received will be deducted from the amount to which one is entitled. In no event may the combined payments exceed \$22,500.

#### F. Owner Retention

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:

- (i) the cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
- (ii) the cost of making the unit a decent, safe, and sanitary replacement dwelling; and
- (iii) the current fair market value for residential use of the replacement site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (iv) the retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

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#### 17.15 RENTAL REPLACEMENT HOUSING PAYMENT TO 180-DAY OWNER-OCCUPANT, WHO RENTS

##### A. General

An owner-occupant eligible for a replacement housing payment under Section 17.14, Paragraph A of this chapter, who elects to rent a replacement dwelling, is eligible for a rental replacement housing payment.

##### B. Computation of 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 the provisions of Section 17.18 of this chapter, except that the limit of \$5,250 does not apply.

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#### 17.16 REPLACEMENT HOUSING PAYMENT TO OWNER-OCCUPANT, FOR LESS THAN 180 DAYS BUT NOT LESS THAN 90 DAYS, WHO PURCHASES

##### A. General

A displaced owner-occupant, otherwise eligible under Section 17-13, Paragraph A of this chapter, except that he/she has owned and occupied the dwelling for less than 180 days, but not less than 90 days, may receive an amount not to exceed \$5,250, including incidental expenses, to enable him/her to make a downpayment on the purchase of a replacement dwelling. Relocatee is not eligible for a mortgage interest differential payment under this provision.

##### B. Computation of Downpayment and Incidental Expenses

The amount of the downpayment shall be determined by the Relocation Agent and shall be:

- a. The amount the displaced person would receive under 49 CFR 24.402(b) if the person rented a comparable replacement dwelling. At MHD's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under 49 CFR 24.401(b) if he or she met the 180-day occupancy requirement. If MHD elects to provide the maximum payment of \$5,250 as a downpayment, MHD shall apply this discretion 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 180-day owner-occupant is not eligible for this payment.
- b. To the amount above shall be added the amount required to be paid by the purchaser as points and/or origination, or loan fees, if such fees are normal to real estate transactions in the area on the comparable dwelling, or the replacement dwelling, whichever is the lesser.
- c. Incidental expenses as provided for in Section 17.14, D of this chapter.
- d. Upon purchase and occupancy of a decent, safe and sanitary dwelling by the displacee within the time limits specified in Section 17.13C of this chapter, the relocatee may be reimbursed the full amount of the downpayment determined in Paragraph B, (1), (a) above and the eligible incidental expense, up to \$5,250.
- e. The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs claimed must be shown in the closing statement.

C. Owner Retention of Dwelling

The owner may retain his/her dwelling and the replacement housing payment, if any, will be determined in accordance with the provisions of Section 17.14 F of this chapter, but in no event will such payment exceed \$5,250.

D. Combined Payments not to exceed \$5,250.

If an owner-occupant is otherwise qualified under this Section but has previously received a payment under Section 17.15 of this chapter, the amount of such payment made will be deducted from the amount to which he/she is entitled under this Section. In no event may the combined payments exceed \$5,250 (refer to Exhibit # 17-12).

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17.17 RENTAL REPLACEMENT HOUSING PAYMENT TO OWNER-OCCUPANT, FOR LESS THAN 180 DAYS BUT NOT LESS THAN 90 DAYS, WHO RENTS

A. General

A displaced owner-occupant otherwise eligible under Section 17.14, Paragraph A of this chapter, except that he/she has owned and occupied for less than 180 days, but not less than 90 days, and elects to rent a replacement dwelling, is eligible for a rental replacement housing payment not to exceed \$5,250.

B. Computation and Disbursement of Payment

The payment will be computed and disbursed in accordance with the provisions of Section 17.18 of this chapter, except that the present rental rate shall be the rent as determined by the market data.

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17.18 RENTAL REPLACEMENT HOUSING PAYMENT TO A 90-DAY TENANT-OCCUPANT, WHO RENTS

A. General

A displaced tenant is eligible for a rental replacement housing payment not to exceed \$5,250, when:

1. he/she is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part; or
2. he/she is in occupancy at the time one is given a written notice by MHD that it is their intent to acquire the property by a given date; and
3. such occupancy has been for at least 90 consecutive days immediately prior to the date of vacate or "eligibility date", whichever is earlier; and
4. the property was subsequently acquired; and
5. he/she rented and occupied a decent, safe, and sanitary dwelling within the time period specified in Section 17.13, Paragraph B, of this chapter; and
6. If otherwise eligible, the tenant may receive this payment, if MHD issues an order to vacate, even though the property is not acquired.

B. Computation of Payment

1. The 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 costs of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.
2. Base monthly rental for displacement dwelling is the lesser of:

- a. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by MHD. (For owner-occupant, use the fair market rent for the displacement dwelling which should be determined in the appraisal of the property. For a tenant who paid less than FMV 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
- b. Thirty (30) percent of the displaced person's average gross household income if the amount is classified as "low income" by the U. S. Division of Housing and Urban Development's Annual Survey of Income Limits for the public Housing and Section 8 Programs. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in the above paragraph (base monthly rental #1) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or
- c. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

C. MHD's Determination of Amount Necessary to Rent

The MHD may determine the rental rates of comparable housing by using the "Three Comparable Method", or an approved alternate, in accordance with the principles set forth in Section 17.14, Paragraph B of this chapter.

D. Disbursement of Rental Replacement Housing Payments

A rental assistance payment may, at MHD's discretion, be disbursed in either a lump sum or in installments. However, except as limited by the provisions applicable to deceased persons (refer to 49CFR 24.403(f)-Exhibit # 20-16), 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.

E. Change of Occupancy

If the tenant, after moving to a decent, safe and sanitary dwelling, relocates within the one year period specified, to a higher cost rental unit, he/she may present another claim for the amount in excess of what was originally claimed, but not to exceed the total rent supplement computed by MHD.

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17.19 REPLACEMENT HOUSING PAYMENT TO A 90-DAY TENANT OCCUPANT, WHO PURCHASES

A. General

A displaced tenant eligible for a rental replacement housing payment under Section 17.18 of this chapter, who elects to purchase a replacement dwelling, is eligible to receive an amount, not to exceed \$5,250, so as to enable him/her to make a down payment on the purchase of a replacement dwelling, including the expenses incident to such purchase.

B. Computation of Payment

The payment shall be computed in accordance with the provisions in Section 17.16, Paragraph B, of this chapter (refer to Exhibit #17-12, Determination of Supplemental Rental Housing Payment form).

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17.20 REPLACEMENT HOUSING PAYMENT, TO A 90-DAY TENANT OF A SLEEPING ROOM

A. General

A displaced tenant of a sleeping room who is eligible for a replacement housing payment under Section 17.18, Paragraph A, of this chapter, may receive an amount, not to exceed \$5,250, as a rental replacement housing payment or to enable him/her to make a down payment on a replacement dwelling, in accordance with the following paragraphs.

B. Rental Replacement Housing Payment

- a. The payment, not to exceed \$5,250, will be determined by subtracting from the amount necessary to rent a comparable sleeping room for the next 42 months, the following amount:
  1. forty-two (42) times the average monthly rental paid by the displaced tenant during the last three (3) months, or
  2. if such average monthly rental is less than market rentals for similar sleeping rooms, the market rent as established by the MHD.
- b. The MHD's determination of the amount necessary to rent and the disbursement of the rental replacement housing payments will be provided in Section 17.18, C and D of this chapter.

C. Down payment

The down payment amount, including the expenses incident to the purchase of the replacement dwelling, is to be computed in accordance with the provisions of section 17.15, Paragraph B, of this chapter.

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17.21 SUBSEQUENT OCCUPANTS

A. General

Subsequent occupants are entitled to relocation assistance advisory services in assisting them to locate comparable replacement housing, and are also entitled to Moving Expenses ONLY, if it has been determined by MHD that said occupant(s) cannot afford to move.

B. Rent Supplement Payments

1. When comparable housing is available to the subsequent occupant(s), he/she will be so informed and will not be eligible for a rent supplement.
2. When comparable replacement housing is not available, the Agent will compute a rental replacement housing supplement, in accordance with Section 206(a), "Last Resort Housing" of the Uniform Act, (refer to Exhibit # 20-3).

C. 120-Day Notice

The provisions as outlined in Section 17.8 D of this chapter are applicable to subsequent occupants (refer to Exhibit # 17-21).

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17.22 MOBILE HOMES

A. General

This section describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this section. Except as modified by this section, such a displaced person is entitled to a moving expense payment and a replacement housing payment to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

B. Moving and Related Expenses - Mobile Homes

1. A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement. However, if the mobile home is not acquired, and the homeowner-occupant obtains a replacement housing payment, the owner 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.
2. The following rules apply to payments for actual moving expenses,
  - (i) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

- (ii) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the MHD determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.
- (iii) A non-returnable mobile home park entrance fee is reimbursable 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 MHD determines that payment of the fee is necessary to effect relocation.

C. Replacement Housing Payment for 180-day Mobile Homeowner-Occupant

- 1. A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500 if:
  - (i) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;
  - (ii) The person meets the other basic eligibility requirements; and
  - (iii) The MHD acquires the mobile home and/or mobile home site, or the mobile home is not acquired by MHD but the owner is displaced from the mobile home because the MHD determines that the mobile home:
    - (a) is not and cannot economically be made decent, safe, and sanitary; or
    - (b) cannot be relocated without substantial damage or unreasonable cost; or
    - (c) cannot be relocated because there is no available comparable replacement site; or
    - (d) cannot be relocated because it does not meet mobile home park entrance requirements.
- 2. If the mobile home is not acquired, and the MHD determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, shall include the salvage value or trade in value of the mobile home, whichever is higher.

D. Replacement Housing Payment for 90-Day Mobile Home Occupants

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, if:

- 1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- 2. The person meets the other basic eligibility requirements, and
- 3. The MHD acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the MHD but the owner or tenant is displaced from the mobile home because of one of the circumstances described in Section 17.22C1 (iii) of this chapter.

E. Additional Rules Governing Relocation Payments to Mobile Home Occupants

1. Replacement housing payment based on dwelling and site.

Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section. However, the total replacement housing payment shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling.

2. Cost of comparable replacement dwelling

- (i) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.
- (ii) If MHD determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the MHD may determine that, for purposes of computing the price differential, the cost of a comparable replacement dwelling is the sum of:
  - (a) the value of the mobile home,
  - (b) the cost of necessary repairs or modifications, and
  - (c) the estimated cost of moving the mobile home to a replacement site.

3. Initiations of negotiations

If the mobile home is not acquired, but the occupant is considered displaced under this section, 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 under this section.

4. 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.

5. 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 operation of the park. If the MHD determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant

shall be considered a displaced person who is entitled to relocation payments and other assistance.

6. Owner occupant not displaced from mobile home

If MHD 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 and any replacement housing payment for the purchase or rental of a comparable site.

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17.23 LAST RESORT HOUSING

A. Purpose

This section describes the provisions and procedures in providing replacement housing as a last resort, when it is determined that comparable replacement sale or rental housing is not available within the monetary limits for owners or tenants and cannot otherwise be made available. It is also the purpose of this section to allow broad latitude in methods of implementation of this provision.

B. Basic Rights of Persons to be Displaced

The provisions of this section do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The MHD shall not require any displaced person, without the person's written consent, to accept a dwelling secured by the MHD, under the procedures in this Sub-part, in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

C. Consequential Displacement

Any person displaced because of the acquisition of real property, for a last resort housing case, under the power of or agreement under threat of eminent domain, is entitled to all benefits for which he/she is eligible under the relocation assistance provisions. However, this is not applicable to owner-occupants who voluntarily sell property to the State for last resort housing and so certify in a statement which is maintained in the Bureau's Relocation Section files.

D. Applicability

1. General

A person cannot be required to move from his/her dwelling unless at least one comparable replacement dwelling is made available. When a replacement housing payment, under Sections 17.14, 17.18, 17.19, 17.20, 17.21 and 17.22 of this chapter is not sufficient to provide such housing, additional measures may be needed.

The MHD is authorized to take additional measures, when it determines that there is a reasonable likelihood that the project will not be able to proceed to completion in a timely manner because no comparable replacement dwelling will be available on a

timely basis to a person to be displaced. The MHD's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified either:

- a) On a case-by-case basis, for good cause, which means the appropriate consideration has been given to:
  - (i) the availability of comparable replacement housing in the program or project area; and
  - (ii) the resources available to provide comparable replacement housing; and
  - (iii) the individual circumstances of the displaced person; or
- b) By a determination that:
  - (i) 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
  - (ii) a program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
  - (iii) the method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs.
- c) Basic rights of a person to be displaced:

Notwithstanding any provision of this section, 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 (refer to Exhibit # 20-3). The MHD shall not require any displaced person to accept a dwelling provided by MHD under these procedures (unless MHD and the displaced person have entered into an agreement to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

## 2. Methods of Providing Last Resort Housing

The MHD shall have broad latitude in implementing this section, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

- a. A replacement housing payment in excess of the limits set forth in sections 17.14, 17.18, 17.19, 17.20, 17.21 and 17.22. A rental assistance subsidy under this section may be provided in installments or in a lump sum at MHD'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 payment. 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 MHD and subsequent sale or lease to, or exchange with a displaced person.
- g. The removal of barriers to the handicapped.
- h. The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment. However, if the computed Replacement Housing Supplement for an owner-occupant is less than \$5,250, the rental supplement cannot exceed \$5,250.

#### E. Cooperative Agreements

The MHD may enter into cooperative agreements with other Federal, State, or local agencies, or contract with individuals, firms, associations, or corporations for services in connection with these activities. The State, when practicable, will utilize the services of Federal, other State, or local agencies having experience in similar housing activities.

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### 17.24 MOVING PAYMENTS TO BUSINESSES

#### A. General

Any business which qualifies as a displaced person is eligible for the appropriate moving payments as follows:

- a. The actual reasonable expenses incurred in moving the business or other personal property as provided in section 17.25A of this chapter.
- b. The actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business as provided in section 17.25B of this chapter.
- c. The purchase of substitute personal property as provided in section 17.25C of this chapter.
- d. The actual reasonable expenses incurred in searching for a replacement property as outlined in section 17.25D of this chapter.

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### 17.25 ACTUAL AND REASONABLE EXPENSES

#### A. Moving Expenses

Any business operation which qualifies as a displaced person is entitled to payment for such actual moving and related expenses, as the MHD determines to be reasonable and necessary, including expenses for:

1. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless MHD 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 machinery, equipment, and other personal property, including substitute personal property. This includes connection to utilities available nearby. It also includes modifications to the personal property 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 MHD determines that a longer period is necessary;
5. Insurance for the replacement value of the personal property in connection with the move and necessary storage;
6. Any license, permit, 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 or certification;
7. 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;
8. Professional services necessary for:
  - (i) Planning the move of the personal property,
  - (ii) Moving the personal property, and
  - (iii) Installing the relocated personal property at the replacement location, and
  - (iv) Soil testing, feasibility and marketing studies to determine site suitability;
9. Re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move;
10. Impact fees and one-time assessments; and
11. Other moving-related expenses MHD determines to be reasonable and necessary that are not identified in the following listing of ineligible items:

- (a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership.
- (b) Interest on a loan to cover moving expenses.
- (c) Loss of goodwill.
- (d) Loss of profits.
- (e) Loss of trained employees.
- (f) Any additional operating expenses of a business operation incurred because of operating in a new location.
- (g) Personal injury.
- (h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before MHD.
- (i) Physical changes to the real property at the replacement location of a business operation except as provided in sections 17.25A.3 and 17.37 of this chapter.
- (j) Costs for storage of personal property on real property already owned or leased by the displaced person.
- (k) Refundable security and utility deposits.

B. Actual Direct Loss of Tangible Personal Property

When a business is displaced, in whole or in part, and is entitled to relocate its personal property but elects not to do so, it is entitled to receive an actual direct loss of tangible personal property payment for those items not relocated. The payment shall consist of the lesser of:

- (i) The fair market value in place of the item as is 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 MHD 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 cost of the goods to the business, (not the potential selling price); or
- (ii) The estimated cost of moving the item, but with no allowance for storage or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (If the business operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

The reasonable cost incurred in attempting to sell an item (auction, newspaper advertising, etc.) that is not to be relocated is also eligible for reimbursement.

C. 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 promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced business is entitled to payment of the lesser of:

- (i) 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
- (ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At MHD's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

**D. Searching for Replacement Property**

A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the MHD 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 hourly wage rate of the person(s) conducting the search;
- (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 site;
- (v) Time spent in obtaining permits and attending zoning hearings; and
- (vi) Time spent negotiating the purchase of a replacement site based on reasonable hourly wage rate of the person(s) involved in the negotiations.

**E. Low Value/High Bulk**

When the personal property (such as stockpiled sand, gravel, minerals, metals, and other similar items) 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 MHD, the allowable moving cost payment shall not exceed the lesser of:

- (a) the amount which would be received if the property were sold at the site, or
- (b) the replacement cost of a comparable quantity delivered to the new business location.

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## 17.26 MOVE PROCESS

The Relocation Agent will interview each displacee and explains all relocation benefits and required applicable documentation to complete a claim as outlined below:

### A. Commercial Moves

#### 1. General Information

The Business Unit - General Information sheet (refer to Exhibit # 17-7), and the Commercial Site Occupant Record (refer to Exhibit # 17-5) gives a general idea of what type of business and personal property is to be moved; name of authorized representative for the move, and indicates that all benefits have been explained.

#### 2. Inventory

A complete inventory of all personal property must be prepared by the Relocation Agent and/or the displacee and must be dated and signed by both parties. Said inventory of personal property must be reviewed and certified as to real/personal property by the Review Appraiser and the Supervisor of the Review Appraisal Section (refer to the Inventory Certification Request, Exhibit # 17-40, and the Review Appraiser's Certification, Exhibit # 17-41). In the event that there are changes in the classification of the inventory, the displacee is to be notified.

#### 3. Specifications

Should clearly describe total scope of work to be performed by mover and/or contractor. Where applicable, specifications must be subdivided to reflect specific responsibilities of each tradesman that will perform a separate category of services in the move, e.g. carpentry, plumbing, electrical, etc. The specifications should also include a breakdown indicating the sequence of events which are anticipated, i.e. disconnect, load, transport, unload, remove, reset and reconnect, including personal property in connection with the move and/or storage; any license, permit or certification required at the replacement site, (not to exceed the remaining useful life of same at the acquired premises); the replacement value of items lost, stolen or damaged where insurance is not available, and professional services for planning, moving and installing relocated personal property and relettering signs. Specifications may be prepared by the Relocation Agent or displacee. The MHD, depending on the size and complexity of the move, may hire a consultant for the purpose of providing performance specifications, which would be supplied to MHD's consultants/estimators to insure that all bids are based and submitted on an equal basis, thereby assuring the MHD and displacee of fair and equitable bids for moving and related expenses. A copy of the performance specifications will also be supplied to the displacee, to insure that only one set of MHD approved specifications are used for all bids and no payment will be made to a Move Planner or General Contractor for preparation of alternative specifications.

NOTE: The above specifications and inventory should include items falling into the category of leased equipment, such as telephones, burglar and fire alarm systems and similar items of personal property which are

removable. Re-installation costs are limited to the costs necessary to install a similar system with no increase in capacity or utilization.

#### 4. Bids

After the above items have been properly prepared and accepted by the Right of Way Bureau, the MHD will engage two commercial movers to make independent estimates of moving expenses prior to the actual move. If the business move is determined to be complex, the Relocation Administrator may recommend a third consultant. For small, uncomplicated moves the MHD may utilize one commercial mover.

NOTE: The commercial mover will tour the displacement site, as a group, along with the performance specification preparer.

#### 5. Authorization to Move

If the above bids for each category of work are found acceptable by the Business Relocation Claim Advisory Committee (BRCAC) (refer to Exhibit # 17-42, BRCAC Authorization to Move form), the displacee is forwarded a letter of authorization to move, based on the lowest acceptable bid (Refer to Exhibit # 17-43, Authorization to Move). If the displacee wishes to assign any portion of his/her business relocation payment to a mover/tradesman, such request must be approved by the Business Relocation Claim Advisory Committee (BRCAC). Upon receipt of BRCAC approval, the Relocation Agent will have the displacee and commercial mover execute the assignment of relocation payment form (refer to section 17.26.9e of this chapter).

#### 6. Pre-Move Inspection

When the diplacee is ready to commence the move, he/she will notify the Relocation Agent and complete the Intent to Vacate form (refer to Exhibit # 17-44). At this time the Relocation Agent will perform a pre-move inspection (refer to Exhibit # 17-45, Certification of Pre-Move Inspection) to certify that the items, as contained on the inventory, were observed on the premises at the time of inspection.

#### 7. Monitoring of Move

At the commencement of the move, the Relocation Agent shall monitor same, commensurate with the size of the move and expected expenditures involved and submit reports (refer to the Relocation Assistance Contact Report, Exhibit # 17-14) indicating the number of workers observed on the job; number of hours worked; number of truckloads moved, and a rate per hour for laborers, supervisors, etc. All work must be in conjunction with performance specifications, as submitted to the displacee/General Contractor, in order to verify and support reasonableness of the move claim.

#### 8. Post-Move Inspection

After completion of the move, the Relocation Agent will perform a post-move inspection, in order to insure that all items, as contained on the inventory, are in fact moved and are located and installed on the new premises. Also, in regard to contractual work, the Relocation Agent must check all electrical, plumbing, carpentry, etc., work to insure it is the same as required in the approved specifications and does not constitute an improvement to the real property, which would be an ineligible relocation moving expense (unless MHD determines it

to be necessary) (refer to Exhibit # 17-46, Certification of Post-Move Inspection).

#### 9. Business Relocation Payment Claim Form

At the completion of the move, claimant is required to submit a Business Relocation Payment Claim form showing the total amount requested for reimbursement along with required documentation as outlined below (refer to Exhibit # 17-47, Business Relocation Payment Claim form).

##### a. Received Bills and Cancelled Checks

Copies of bills and a breakdown of all moving costs and all other properly received bills must be submitted by the claimant. Properly received bills must be signed and dated by the person receiving payment; un-received bills accompanied by copies of both sides of the cancelled checks will be accepted. Bills must show type of work performed; location; rates per hour; material costs and will be checked for mathematical accuracy by the Relocation Agent.

##### b. Letter of Satisfactory Work

Claimant is required to submit to the MHD a letter stating satisfaction with all categories of work performed in connection with the move.

##### c. Penalty for False/Fraudulent Statements

Claimant must also sign a statement indicating that the claim is true and correct to the best of his/her knowledge and that he/she understands the penalties for any falsifications (refer to Penalty for False or Fraudulent Statement form, Exhibit # 17-48).

##### d. Searching Fees

The actual reasonable cost, not to exceed \$2,500, to search for a replacement site, is compensable. MHD requires the claimant to submit a statement giving the name of the person or persons conducting the search (including realtors): sites visited; total number of hours spent searching and applicable hourly wage rates. This statement (refer to Exhibit # 17-49, Incidental Searching Expense Certification form) must be certified and signed by the claimant or authorized representative. Other costs which may be claimed in connection with searching fees are: expenses for food, lodging, transportation, etc. (refer to Section 17.25D of this chapter). Said items must be documented with received bills or, if there are no received bills, with copies of both sides of cancelled checks.

##### e. Assignment of Funds

If the claimant so desires and can make arrangements with the mover/tradesman, MHD may approve an "Assignment of Relocation Payment" (refer to Exhibit # 17-27), whereby the assignee agrees to accept direct payment from MHD at the completion and acceptance of the claim. In this instance, received bills and/or cancelled checks are not required but other documentation

such as bills showing work performed, number of hours, rates per hour and cost of material must be provided.

10. Claim Status

Relocation Agent prepares a breakdown of claim showing name and amount of each estimate for each category of work, amount billed by claimant for all work performed in connection with the relocation, and the agent's recommendation as to amount of payment which should be approved (refer to Business Claim Status Report, Exhibit # 17-50).

11. Summary of Claim

At this point the Relocation Agent completes the entire claim in accordance with "Relocation Payment Procedures For Business Claims" (refer to Exhibit # 17-51) and prepares a Business Claim Recommendation Memo summarizing the claim from its initiation to its completion.

12. Review of Business Claim

The claim is then submitted to the Relocation Supervisor who checks for accuracy, proper detail, completeness of documentation, required compliance with ROW Bureau procedures. Based on this review, the Relocation Supervisor will indicate his/her concurrence with the agent's claim recommendation by signing and dating the concurrence block on the Business Claim Recommendation Memo. The claim is then submitted to the Business Relocation Claim Advisory Committee for review and approval.

13. Business Relocation Claim Advisory Committee (BRCAC)

The BRCAC is comprised of up to five MHD/ROW Bureau managers (currently, ROW Bureau Director, Deputy Director and Finance Manager), who meet on an as needed basis to review, approve, or disapprove, all business claims. Copies of the Relocation Agent's summary and supervisor's recommendation of each claim are given to each BRCAC member, prior to the meeting, for advance review. When BRCAC approves a claim, they sign a BRCAC Business Claim Review Form (refer to Exhibit # 17-53) and each claim is then submitted to the Highway Administrator for his/her approval (refer to Exhibit 17-52). If BRCAC denies a claim, the claimant is notified of his/her right of appeal to the MHD-Administrative Law Judge.

14. Business Relocation Claim Form

After the Administrator approves a claim, the Business Relocation Payment Claim is processed by filing a Payment Voucher Input Form (refer to Exhibit # 17-38) for payment.

15. Appeal

If BRCAC and/or the Highway Administrator deny any portion of, or the entire claim, the claimant is forwarded a letter advising him/her of the reasons for the denial and of his/her rights to appeal.

NOTE: refer to Section 17.38 of this chapter.

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#### 17.27 SELF-MOVES - ESTIMATES

In the case of a self-move that cannot be negotiated for whatever reason, steps #1 through #8 of Commercial Moves (refer to Section 17.26A of this chapter) are still required. However, the authorization to move for a self-move will indicate that the maximum allowable amount may not exceed the authorized amount which is based on low bids as shown on the Authorization to Move letter (refer to Exhibit # 17-43) less overhead and profit. At the completion of the move, the claimant is required to submit a Business Relocation Payment Claim form (refer to Exhibit # 17-47a, together with a Self-Move Documentation Checklist (refer to Exhibit # 17-55) and a Self-Move Breakdown of Charges (refer to Exhibit # 17-56). As previously stated for commercial moves, the Relocation Agent must perform a post-move inspection at which time Agent will certify (refer to Exhibit # 17-46, Certification of Post-Move Inspection) the inventory of items moved. The Self-Move Claim process will then follow steps 10 through 15 of section 17.26A of this chapter for a commercial move.

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#### 17.28 SELF-MOVES - WHEN ESTIMATES CANNOT BE OBTAINED

If estimates cannot be obtained, the MHD will issue a special authorization to move letter and the owner may be paid actual reasonable moving costs supported by receipted bills or other evidence of expenses incurred. Allowable expenses under this provision may include:

1. The amount paid for truck/or equipment hired;
2. A reasonable amount paid to cover gas and oil, if vehicles or equipment owned by a business being moved are used, and the cost of insurance and depreciation directly allocable to hour and/or days the equipment is used for the move;
3. Wages paid for the labor of persons who physically participate in the move, with labor costs to be computed on the basis of actual hours worked at the hourly rate paid, not to exceed the hourly rate paid by commercial movers or contractors in the locality for each profession or craft involved;
4. The amount of wages, for working foremen or group leaders regularly employed by the business, covering time spent in actual supervision of the move. With the exception of the bids, the above claim will be handled by the Relocation Agent the same as a self-move.

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#### 17.29 NEGOTIATED SELF-MOVE

##### A. General

This type of claim will be utilized when MHD obtains up to the three (3) moving bids, from qualified moving firms, commercial movers or specialists, based on the certified inventory listing and performance specifications. These bids will include removal and re-installation charges, if applicable. Upon receipt of an Authorization To Move

letter (refer to Exhibit # 17-43), the claimant may, by bids or letter (refer to Exhibit # 17-57, Negotiated Self-Move Agreement Letter) submitted to the MHD, request a negotiated self-move for an amount that is equal to the low bid, less overhead and profit. If BRCAC agrees to said amount, the MHD will inform the claimant by letter (refer to Exhibit # 17-58, Authorization for Negotiated Self-Move). To properly process the above type of claim, the following documentation must be available to support same.

1. Business Unit-General Information Sheet and Commercial Site Occupant Record

These forms (refer to Exhibits # 17-5 and 17-7) give a general idea of the type of business and description of personal property to be moved; name of authorized representative for the move, if applicable, and indicate that all benefits have been explained.

2. Performance Specifications

Specifications should be prepared which describe the complexity of the move as well as total scope of work to be performed by mover and/or contractor. Where applicable, specifications must be subdivided to reflect specific responsibilities of each tradesman that will perform a separate category of service in the move; e.g. carpenters, plumbers, electricians. The specifications should include a breakdown, indicating the sequences of events which are anticipated, i.e. disconnect, load, transport, unload, remove, reset and reconnect. Performance specifications on minor or complex moves can be prepared by a Division consultant and/or claimant and distributed by the Division to qualified moving specialists, and the displacee, in order to insure that work is done in a professional manner, using only one set of MHD approved specifications (refer to Section 17.26A.3 of this chapter).

3. Inventory

A complete inventory of all personal property must be prepared by the Relocation Agent and/or the claimant and must be dated and signed by both parties. Said inventory of personal property must be reviewed and certified, as to personal property, by the Review Appraiser and Supervisor of the Review Appraisal Section (refer to Exhibit # 17-40, Inventory Certification Request). In the event that there are any changes in the classification of the inventory, the claimant is to be so notified.

4. Bids

The Division will obtain up to three (3) bids for moving, based on approved specifications and inventory. After bids have been obtained, the Relocation Agent would negotiate with claimant to determine how much claimant deems it will cost him/her to perform such a move. If claimant's proposed figure is no more than the amount of the low bid less overhead and profit, the Relocation Agent would then have claimant sign a "Negotiated Self-Move Agreement Letter" (refer to Exhibit # 17-57), stating that same agrees to a stipulated amount, along with other provisions outlined

in the letter. If, according to specifications, removal and re-installation charges are necessary, such amount must be included in the bids at this time. This amount should be included in the Negotiated Agreement figure as well as the Authorization To Move agreed figure.

#### 5. Authorization to Move

In accordance with the amount claimant agreed to in "Negotiated Self-Move Agreement Letter", the ROW Bureau will then authorize claimant to move, upon review and approval by the Business Relocation Claim advisory Committee (refer to Exhibits # 17-57 and 17-58).

#### 6. Pre-Move Inspection

When the claimant is ready to commence the move, he/she must contact the Relocation Agent, within seven (7) days prior to the move, in order to allow the Relocation Agent to perform a pre-move inspection (refer to Exhibit # 17-44, Intent to Vacate form) and certify (refer to Exhibit # 17-45, Certification of Pre-Move Inspection) that all personal property, as contained in the inventory is on site. If the claimant does not contact the Relocation Agent, reimbursement of the claim may be jeopardized.

#### 7. Completion of Move - Including Removal and Re-installation Charges

Upon completion of the move, the claimant, must submit a Business Relocation Payment Claim form (refer to Exhibit # 17-47a) and a "Penalty for False or Fraudulent Statement" form (refer to Exhibit # 17-48).

#### 8. Searching Fees

The claimant is also entitled to searching fees, food, lodging and transportation, if incurred during a self move, but not to exceed \$2,500. If claimant is including searching fees, he/she must show same on the Incidental Searching Expense Certification form (refer to Exhibit # 17-49) and must attach received bills and cancelled checks (if available). Any commissions paid to a Real Estate Broker/Agent, to locate a replacement site, exclusive of any fees related to the purchase of such site, are also included.

#### 9. Additional Moving Expenses (Extenuating Circumstances)

If, because of extenuating circumstances, the final moving expenses exceed the amount agreed to in the Negotiated Authorization to Move Letter (refer to Exhibit # 17-58), claimant may include reimbursement for additional expenses, provided proper back-up documentation is submitted and attached to the Business Relocation Payment Claim form (refer to Exhibit # 17-47a), for MHD review and approval.

#### 10. Post-Move Inspection

The Relocation Agent must perform a post-move inspection (refer to Exhibit # 17-46, Certification of Post-Move Inspection) at which time the Agent must certify that all personal property, as listed on the inventory of items to be moved, is actually moved and located at the new premises.

11. Summary of Claim

The Relocation Agent must then put the claim in order, in accordance with Relocation Payment Procedures for Business Claims (refer to Exhibit # 17-51) and also prepare a brief summary of the entire claim (refer to Exhibit # 17-52, Business Claim Recommendation Memo).

12. Review of Business Claim

The claim is then submitted to the Relocation Supervisor, to be checked for accuracy, detail, documentation and compliance with Division procedures. The Reviewer will sign the concurrence block on Exhibit # 17-52. If Reviewer does not concur, he/she should prepare a memo stating the reasons.

13. Business Relocation Claim Advisory Committee (BRCAC)

After the Reviewer has checked the claim, it is submitted to the BRCAC for its review and approval. If BRCAC recommends payment of the claim, it signs a Business Claim Review Form (refer to Exhibit # 17-53) and submits same to the Highway Administrator for approval (refer to Exhibit #17-52).

14. Business Relocation Claim Form

After the Highway Administrator approves a claim, the business relocation payment is processed by filing Payment Voucher Input Form (refer to Exhibit # 17-38).

15. Appeal

If BRCAC and/or the Highway Administrator deny the entire claim, or any portion thereof, the claimant is sent an explanatory letter advising of same and their right to appeal said denial of reimbursement (refer to Section 17.38 of this chapter). After all of the above documentation has been obtained and the claim approved, payment is processed through usual MHD procedures.

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17.30 MOVING EXPENSE FINDING - CLAIMS NOT EXCEEDING \$2,500

On small uncomplicated moves, a qualified Bureau employee other than the Relocation Agent handling the claim may make a moving expense finding in an amount not to exceed \$2,500. To properly process the above type of claim, the following documentation must be submitted to support same:

1. Business Unit-General Information and Commercial Site Occupant Record

General information forms (refer to Exhibits # 17-5 and 17-7) are prepared describing the type of business involved, general description of personal property to be moved, name of authorized representative for the move and certifying that all benefits have been explained.

2. Real/Personal Property Reports

The Relocation Section of the Bureau submits a copy of the real/personal property report on each property being acquired. This report is made a part of the relocation file and serves as a guide when preparing the personal property inventory.

3. Inventory

A complete inventory of all personal property must be prepared by the Relocation Agent and/or the displacee and must be dated and signed by both parties.

4. Review Appraiser's Certification

The inventory of personal property must be reviewed and certified, as to being real or personal, by the Review Appraiser and the Supervisor of the Review Appraisal Section (refer to Exhibit # 17-40, Inventory Certification Request and Exhibit # 17-41, Review Appraiser's Certification). In the event there are any changes in the classification of such inventory, the claimant is to be so notified.

5. Specifications

Specifications, if appropriate, are prepared by the Relocation Agent and/or the claimant and must clearly describe the total scope of work to be performed (refer to Section 17.26A.3 of this chapter).

6. Moving Expense Finding

A qualified ROW Bureau employee, other than the Relocation Agent handling the claim, will view the personal property to be moved and will make a Moving Expense Finding, if in their opinion the move can be accomplished for an amount not to exceed \$2,500.00. This finding must be in writing and on the ROW Bureau's form entitled "Business Relocation Claim Moving Expense Finding" (refer to Exhibit # 17-59). This form must be signed, dated, and a breakdown of required hours and rates attached by the ROW Bureau making the finding.

7. Acceptance of Moving Expense Finding

After the finding referenced in paragraph 6 above has been prepared and submitted to the Relocation Section, the Relocation Agent handling the claim visits the claimant and advises same of the amount determined by the ROW Bureau to be fair and reasonable for the move. If displacee agrees with the amount, he/she signs a form entitled

"Acceptance of Moving Expense Finding Not to Exceed \$2,500", which states said displacee agrees to accept the Moving Expense Finding (refer to Exhibit # 17-60).

#### 8. Authorization to Move - (Moving Expense Finding)

The BRCAC recommends and approves an authorization to move, for an amount not to exceed \$2,500, based on the agreed amount of the moving expense finding. A letter of authorization to move is then sent to the displacee (refer to Exhibit # 17-61).

#### 9. Certification of Pre-Move Inspection

Prior to commencement of the move, the Relocation Agent makes a pre-move inspection, in order to certify that all items of personal property as contained on the inventory are on site (refer to Exhibit # 17-45).

#### 10. Post-Move Inspection

After the move is completed, the Relocation Agent makes a post-move inspection, to insure that all items of personality have been relocated and completes the Certification of Post-Move Inspection form (refer to Exhibit # 17-46).

#### 11. Searching Fees

In addition to the agreed amount of the moving expense finding, the claimant is eligible for searching fees in accordance with the same procedures and limitations as those stated for commercial moves (refer to Section 17.26.9d of this chapter).

#### 12. Claim Status

The Relocation Agent prepares a breakdown (refer to Exhibit # 17-50, Business Claim Status Report) showing the name of the State employee and amount of the moving expense finding; searching fees, if any; amount Relocation Agent recommended, and then the claim is ready for approval by the BRCAC.

#### 13. Business Claim Review

The Relocation Agent puts the claim in order, in accordance with the Relocation Payment Procedures for Business Claims (refer to Exhibit # 17-51). The Relocation Agent then submits the claim to the Relocation Supervisor, to be checked for accuracy and proper documentation.

#### 14. Business Relocation Claim Advisory Committee (BRCAC)

After the review, as referenced in paragraph 13 above, each claim is submitted to the BRCAC for review and approval for the amount agreed upon in the moving expense finding. If approved, the BRCAC members will sign a BRCAC Business Claim Review form (Exhibit # 17-53) and

submits same to the Highway Administrator for his/her approval (refer to Exhibit #17-52).

15. Business Relocation Payment Claim

After the Highway Administrator approves a claim, the business relocation payment is processed by filing Payment Voucher Input Form (refer to Exhibit # 17-38).

16. Appeal

If the BRCAC and/or Highway Administrator should deny any part of, or the entire claim, claimant is sent an explanatory letter (refer to Section 17.38 of this chapter), advising same of their right of appeal.

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17.31 ACTUAL DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY

When a person is displaced from their business, in whole or in part, and is entitled to relocate their personal property, but elects not to do so, they are entitled to receive an actual direct loss of tangible personal property payment for those items not relocated. In order to receive such payment, displacee must first make a bonafide effort to sell the items involved by advertising the sale in the newspaper(s). Costs associated with advertising and conducting the sale are reimbursable. The actual direct loss of tangible personal property may be determined as follows:

If a business is to be discontinued and the item is not to be replaced, the payment will be the lesser of the difference between the "fair market value" of the item for continued use at the replacement site less the net proceeds of the sale, or the estimated cost of moving the item at a distance not to exceed 50 miles.

If a sale is not effected because no offer is received and the personal property is abandoned, the owner of the business is entitled to the reasonable expenses of the sale plus the lesser of the estimated cost of moving the item 50 miles, or the fair market value of the item for continued use at the acquired site prior to displacement.

If a displacee abandons personal property without attempting to conduct a sale, a payment for moving expenses or losses for the items involved will not be made unless MHD determines that such sale effort is not necessary.

In order to process a payment for actual direct loss of tangible personal property, the following steps must be completed:

1. Business Unit General Information Sheet and Commercial Site Occupant Record

These forms (refer to Exhibits # 17-5 and 17-7) describe the type of business involved, personal property to be moved, name of authorized representative for the move and certification that all benefits have been explained.

2. Inventory

A complete inventory of all personal property must be prepared by the Relocation Agent and claimant, and must be dated and signed by both parties as required for a commercial move (refer to Section 17.26A, paragraph 2 of this chapter). Displacee must indicate those items for which he/she desires to claim actual direct loss of tangible personal property.

3. Performance Specifications

Specifications must be prepared, clearly describing total scope of work to be performed by mover and/or contractor, where applicable, and must be broken down as required for a commercial move (refer to Section 17.26A, paragraph 3 of this chapter).

4. Review Appraiser's Certification

Personal property inventory must be certified by the Review Appraiser and the Supervisor of the Review Appraisal Section as required for commercial moves (refer to Section 17.26A, paragraph 2 of this chapter).

5. Pre-Move Inspection

The Relocation Agent performs a pre-move inspection to certify that all items of personal property are accountable as contained on the inventory (refer to Section 17.26A, paragraph 6 of this chapter).

6. Estimates

After the inventory has been properly prepared and accepted by the ROW Bureau's, Relocation Section, displacee secures three (3) bids from commercial movers and/or contractors, based on the specifications and inventory for each category of work to be performed. The bidders are required to provide a breakdown based on time for the cost of moving each item of personal property. This breakdown will enable MHD to determine the move cost for those items abandoned and eligible for reimbursement as an actual direct loss of tangible personal property. When bids cannot be obtained by the displacee, MHD will hire a commercial mover, consultant or estimator to determine moving and related expenses and to establish the fair market value of the item for continued use at the displacement site.

7. Authorization to Move

If the displaced business is moving some of the personal property but intends to abandon certain items and claim actual direct loss of tangible personal property, a letter of authorization to move is forwarded to displacee based on the lowest moving estimates (refer to Exhibit # 17-43).

#### 8. Advertisement and Actual Sale

The displaced business must advertise in at least one newspaper its intentions to conduct a sale or auction of all items which it intends to abandon. After the sale, the displacee must submit a list reflecting each item sold and the amount of money received for same, in order to determine net proceeds of sale, for payment purposes.

#### 9. Monitoring of Move

If the displaced business is moving some of its personal property, the Relocation Agent will monitor the move and complete reports on same as required for commercial moves (refer to Section 17.26A, paragraph 7 of this chapter).

#### 10. Commercial Move - Claim Form (Claimant's Use Only)

At the completion of the move, if some items were moved and/or any contractual work performed, claimant is required to follow the claim procedures required for a commercial move (refer to Section 17.26A, paragraph 9 of this chapter).

#### 11. Actual Direct Loss of Tangible Personal Property Determination

The Relocation Agent must verify the list of personal property items submitted by the displacee that he/she chose not to relocate. The Relocation Agent will complete the Actual Direct Loss of Tangible Personal Property Determination form (refer to Exhibit # 17-62) to determine the eligible amount of the direct loss payment.

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#### 17.32 PURCHASE OF SUBSTITUTE PERSONAL PROPERTY

If a displaced business is relocated and an item of personal property is not moved but replaced with a substitute item that performs a comparable function at the new location, the reimbursement will be the lesser of:

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

the estimated cost of moving and re-installing the item, a distance not to exceed 50 miles unless MHD determines that relocation beyond 50 miles is justified.

In order to process a payment for the purchase of substitute personal

property, the following steps must be completed:

1. Business Unit-General Information Sheet and Commercial Site Occupant Record

These forms (refer to Exhibits # 17-5 and 17-7) describe the type of business involved, personal property to be moved, name of authorized representative for the move and certification that all benefits have been explained.

2. Inventory

A complete inventory of all personal property must be prepared by the Relocation Agent and claimant, and must be dated and signed by both parties as required for a commercial move (refer to Section 17.26A, paragraph 2 of this chapter). Displacee must indicate those items for which he/she intends to claim as substitute personal property.

3. Performance Specifications

Specifications must be prepared, clearly describing total scope of work to be performed by mover and/or contractor, where applicable, and must be broken down as required for a commercial move (refer to Section 17.26A, paragraph 3 of this chapter).

4. Review Appraiser's Certification

Personal property inventory must be certified by the Review Appraiser and the Supervisor of the Review Appraisal Section as required for commercial moves (refer to Section 17.26A, paragraph 2 of this chapter).

5. Pre-Move Inspection

The Relocation Agent performs a pre-move inspection to certify that all items of personal property are accountable as contained on the inventory (refer to Section 17.26A, paragraph 6 of this chapter).

6. Estimates

After the inventory has been properly prepared and accepted by the Right of Way Bureau's, Relocation Section, displacee secures three (3) bids from commercial movers and/or contractors, based on the specifications and inventory for each category of work to be performed. The bidders are required to provide a breakdown based on time for the cost of moving each item of personal property. This breakdown will enable MHD to determine the move cost for those items substituted and eligible for reimbursement as substitute personal property. When bids cannot be obtained by the displacee, MHD will hire a commercial mover, consultant, or estimator to determine moving and related expenses.

## 7. Authorization to Move

If the displaced business is moving some of the personal property but intends to substitute certain items and claim a substitute personal property benefit, a letter of authorization to move is forwarded to displacee based on the lowest moving estimates (refer to Exhibit # 17-43).

## 8. Monitoring of Move

If the displaced business is moving some of its personal property, the Relocation Agent will monitor the move and complete reports on same as required for commercial moves (refer to Section 17.26A, paragraph 7 of this chapter).

## 9. Commercial Move - Claim Form (Claimant's Use Only)

At the completion of the move, if some items were moved and/or any contractual work performed, claimant is required to follow the claim procedures required for a commercial move (refer to Section 17.26A, paragraph 9 of this chapter).

## 10. Purchase of Substitute Personal Property Determination

The Relocation Agent must verify the list of substituted personal property items submitted by the displacee. The Relocation Agent will complete the Purchase of Substitute Personal Property Determination form (refer to Exhibit # 17-63) to determine the amount of the substitute personal property payment.

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## 17.33 IN LIEU OF ACTUAL MOVING EXPENSES

### 1. Business

Any displaced businesses (other than outdoor advertising/ display business or a non-profit organization) are eligible for a fixed payment, in lieu of a payment for actual moving and related expenses, in an amount equal to its average annual net earnings, but not less than \$1,000 nor more than \$20,000, providing MHD determines that:

- 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.
- the business cannot be relocated without a substantial loss of its existing patronage (clientele or new earnings). A business is assumed to meet this test unless or until MHD demonstrates that same will not suffer a substantial loss of its existing patronage, and

- the business is not part of a commercial enterprise having more than three other establishments which are not being acquired by MHD, and which are under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, if anyone of the three business establishments did not contribute materially to the income of the displaced person, during the two taxable years prior to displacement, it shall not be considered "another establishment"), and
- the business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others
- the business is not operated at the displacement site solely for the purpose of renting the site to others
- the business contributed materially to the income of the displaced person during the two taxable years prior to displacement, however, MHD may waive this test for good cause.

## 2. Determining the Number of Businesses

In determining whether two or more displaced legal entities constitute a single business which are/is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- a. the same premises and equipment are shared;
- b. substantially identical or interrelated business functions are carried out and/or business and financial affairs are co-mingled;
- c. the entities are held out to the public, and to those customarily dealing with them, as one business;
- d. the same person, or closely related persons own, control, or manage the affairs of the entities.

## 3. Determining Loss of Existing Patronage

Factors which must be considered when determining loss of existing patronage are:

- a. The type of business conducted by the displaced person.
- b. The nature of the clientele of the displaced person.
- c. The relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement site.

The latter factors would become particularly important when the displaced owner is elderly, ill, or handicapped. Also, in older neighborhoods, when the owner of a business lives next door or within the same building as the business and cannot find a suitable replacement

that meets these personal conditions, such might create a hardship in travel distance.

Some situations which may create a substantial loss of existing patronage are as follows:

- a. Replacement sites, to accommodate the displaced business whether for sale or lease, all far exceed the financial capabilities of the claimant.
- b. Additional expenses for the move which are not compensable such as: downtime during move; need to borrow additional capital; inability of claimant to secure additional financing, and other related costs of this nature.
- c. If a business is a small low-volume business, it must relocate into a low rental area, in order to compete fairly with its larger competitors. If this business is required to relocate to a high rental area, it could suffer a loss of customers due to increased prices made necessary to meet increased operating costs.

#### 4. Payment Determination

The term "average annual net earnings" means one-half of any net earnings of the business before Federal, State or local income taxes, during the two taxable years immediately preceding the taxable year in which the business is displaced.

NOTE: If, because of the impending acquisition, the two taxable years immediately preceding the taxable year in which the owner of a business is displaced do not, in the opinion of the owner, properly represent his/her annual net earnings, the owner may request that two other representative years be used to make a payment determination.

#### 5. In Business Less Than Two Years

If the business has been operating for less than two years, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement projected to an annual rate provided the business meets all other requirements as stated above. Payment for this type of claim is computed by dividing the net earnings by the number of months the business was operated and multiplying by 12.

#### 6. Owner Must Provide Information

As early as possible, the owner should notify MHD of his/her intent to file for an in lieu of payment (refer to Exhibit # 17-64). To qualify, the owner of the business must provide information to substantiate net earnings. Federal and State income tax returns, for the taxable years in question, are the best source for this information and are acceptable by this Bureau, as evidence of earnings. Other acceptable methods are a certified financial statement, or an affidavit from the owner of the business providing it grants MHD the right to review records and accounts for the business. If the amount claimed exceeds the minimum of \$1,000, the owner's statement alone will not be sufficient.

## 7. Claim Procedures

To process an in lieu of (fixed) payment, the following steps must be completed:

- a. A claimant must submit his/her income tax returns (Form 1040, Schedule C- Profit or Loss from Business or Profession) for the two taxable years immediately proceeding the taxable year in which the business is relocated or discontinued. The information obtained from these income tax returns is entered on a form entitled Business Option - In Lieu of Actual Cost (ROW Form-044, Exhibit # 17-65), e.g., the average annual net earnings and the maximum payment of claim are determined on this form, in accordance with the previously stated procedures.
- b. The Relocation Agent must sign the Business Option (In Lieu of Actual Cost) form, (refer to Exhibit # 17-65) certifying that the claim includes all required tax forms, is complete and accurate and reflects the amount to which the claimant is entitled.
- c. Based on the eligible amount as determined by the income tax returns, claimant must sign and submit a Business Relocation Payment Claim form (refer to ROW Form-045, Exhibit # 17-47a).
- d. The Relocation Agent must prepare a Claim Status Report (refer to section 17.26A, paragraph 10 of this chapter) justifying that claimant is eligible for an "in lieu of moving payment".
- e. The Relocation Agent must organize the claim package and prepare a recommendation to the BRCAC (refer to section 17.26A, paragraph 11 of this chapter).
- f. The claim is then submitted to the BRCAC and the Highway Administrator in the same manner as a claim for a commercial move (refer to section 17.26A, paragraphs 13 and 14 of this chapter).
- g. If the BRCAC and/or the Highway Administrator deny any portion of, or the entire claim, claimant is sent a letter advising of same and the right of appeal.

After all of the above documentation has been obtained and the claim approved, payment is processed through the standard MHD/ROW procedures.

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### 17.34 MOVING PAYMENTS TO FARM OPERATIONS

General

The owner of a displaced farm operation is entitled to receive payments for actual reasonable moving and related re-establishment expenses, and actual reasonable expenses incurred in searching for a replacement farm.

#### Payment In lieu of Actual Moving Expenses

In lieu of actual moving and related expenses, any owner of a displaced farm operation is eligible to receive a payment equal to the average annual net earnings of the farm operation, except that such payment shall not be less than \$1,000, nor more than \$20,000, and providing the following requirements are met:

a. The farm operator has discontinued his entire farm operation at the present location or has relocated the entire farm operation.

b. In the case of a partial acquisition, the operator will be considered to have been displaced from a farm operation if:

the property remaining after the acquisition is no longer an economic unit for the same type farm operation as determined by MHD during its appraisal process, or

the taking caused the operator to be displaced from the farm operation on the remaining land, or

the taking caused a substantial change in the nature of the farm operation.

c. Payment Determination - Same as for business operations (refer to section 17.33, paragraph 4 of this chapter).

d. In operation less than two years - Same as for business operations (refer to section 17.33, paragraph 5 of this chapter).

e. Owner Must Provide Information - Same as for business operations (refer to section 17.33, paragraph 6 of this chapter).

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#### 17.35 MOVING PAYMENTS TO NON-PROFIT ORGANIZATIONS

1. A displaced non-profit organization is eligible to receive payments for actual reasonable moving expenses and related re-establishment expenses and actual reasonable expenses incurred in searching for a replacement site.

2. In lieu of actual moving and related expenses, the non-profit organization may choose a fixed payment of \$1,000 to \$20,000 if MHD determines that:

a. the non-profit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing

"patronage", as used in connection with non-profit organizations, includes the persons, community, or clientele serviced or affected by the activities of the non-profit organization, or

the non-profit organization is not part of a commercial enterprise having more than three other entities not being acquired which are under the same ownership and engaged in the same, or similar activity.

3. 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.

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17.36 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 Section 17.12 (a), (b), (c), (e), (f), (g) and Section 17.25E.

\*\*\*

17.37 ADVERTISING SIGNS

A. General

The owner of a displaced advertising sign is eligible to receive a payment for actual reasonable moving and related expenses which include:

1. Actual reasonable expenses, as referenced above for businesses and farms, in moving advertising sign(s).
2. Actual direct loss of tangible personal property when claimant is entitled to relocate the sign but does not do so. The amount of such loss will be the lesser of:
  - (a) the depreciated reproduction cost of the sign as determined by MHD less the proceeds from its sale, or
  - (b) the estimated cost of moving the sign but with no allowance for storage
3. The owner of a displaced advertising sign may be reimbursed for his actual reasonable expense in searching for a replacement sign

site, not to exceed \$1,000. Such expenses may include transportation expenses, meals, and lodging away from home, and the reasonable value of time actually spent in the search, including fees paid real estate agents or brokers to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

- (a) All expenses claimed, except value of time actually spent in search, must be supported by receipted bills.
  - (b) Payment for time actually spent in a search shall be based on the actual hourly wage rate for the person(s) conducting the search. A certified rate(s) must accompany the claim.
4. An advertising sign that is otherwise eligible for a moving payment, will not be eligible when it is moved to a site in violation of State, Federal or local regulations.
  5. The provisions of this paragraph do not apply to an advertising sign owned by and located on the business or farm being displaced. Such signs are to be considered personal property of the business or farm and included under the provisions of moving payments to businesses.

#### B. Procedures, Claim Forms and Required Information

Prior to the taking the Projects Section will provide the Relocation Section with a Sign Inventory Report (refer to Exhibit # 4-15) for each advertising sign categorized as personal property. A Relocation Agent will then contact the displacee and fill out a Business Unit-General Information sheet (refer to Exhibit # 17-7). The Relocation Agent will then provide the displacee with a Business Relocation Brochure (refer to Exhibit # 17-10) and explain all relocation benefits and entitlements for a move to a new location.

MHD and/or displacee will secure two to three bids for removal of the sign. The displacee, upon concurrence of these bids by the BRCAC, will then receive a letter authorizing a move not to exceed the lowest of the three moving bids (refer to Exhibit # 17-43). The displacee, upon receipt of an authorization to move, will then forward a letter to the Relocation Section stating the type of move (commercial, self-move or combination of both) and will then indicate the date of intention to commence the move to a new location. The Relocation Agent will then complete a pre-move inspection of the acquired premises (refer to Exhibit # 17-45). The Relocation Agent should also monitor the move and upon completion, conduct a post-move inspection, stating that all signs were moved (refer to Exhibit # 17-46). The displacee is to fully document and substantiate all of the moving charges incurred in the move.

#### C. Commercial Move

The claimant is to provide cancelled checks, invoices or bills marked "paid in full", dated, and signed (not initialed) by the payee.

#### D. Self-Move

The claimant is to submit a copy of the payroll for the period of the move. The displacee will submit, in writing, the number of workers,

dates and hours worked, wages per hour, total renumeration, and social security numbers, for those employees who physically participated in the move. Each employee is required to sign that he/she received the earned amount from the displacee and that these wages were actually related to the move. Wages paid for the labor of persons who physically participate in the move, computed on the basis of actual hours worked times the hourly rate paid, are not to exceed the hourly rate paid by commercial movers or contractors in the locality, for each profession or craft involved, including the amount of wages for working foremen or group leaders regularly employed by the business, covering time spent in actual supervision of the move.

#### E. Commercial or Self-Move

The displacee shall sign a Penalty for False or Fraudulent Statement form (refer to Exhibit # 17-48); a letter of satisfactory work acceptance, and an Incidental Searching Expense Certification form (refer to Exhibit # 17-49), if applicable. The displacee shall sign a Business Relocation Payment Claim form (refer to Exhibit # 17-47), which must be approved by the BRCAC. If applicable, an Assignment of Relocation Payment form (refer to Exhibit # 17-27) shall be completed, dated, and signed by the two (2) responsible parties and forwarded to MHD for its approval. If the owner of a sign cannot or does not want to move it, the Relocation Agent will complete an Owners Election Not to Relocate Sign form (refer to Exhibit # 17-66) and have the owner sign his/her claim for reimbursement, under this option.

#### F. Claim for Payment

A displacee must file a written claim form entitled Business Relocation Payment Claim form (refer to Exhibit # 17-47a), within eighteen (18) months after the later of the following dates:

1. Date he/she moves from the real property or moves his/her personal property from the real property, or
2. date of final payment for the acquisition of the real property.

#### G. Business Relocation Claim Advisory Committee (BRCAC)

This committee, upon submission of the displacee's claim, will review and recommend a payment to be rendered as reimbursement for a business move. The BRCAC is responsible for the review of all moving claims, as to authenticity and inclusion of all pertinent documents within the file, to support such claims. If sufficient documentation is not included in the claimant's folder, the BRCAC may deny all or part of such claims, and shall notify the claimant, in writing, of the needed documentation. The BRCAC, upon evaluating a claim file, will prepare a BRCAC Business Claim Review form (refer to Exhibit # 17-53), which will be signed by all or a quorum of its members.

#### H. Approval of Payment

The MHD will forward a letter to the displacee, stating an approved business relocation reimbursement amount. This letter will explain the procedure for an appeal in the event that the displacee is

dissatisfied with the approved relocation amount (refer to Section 17.38 of this chapter).

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17.38 BUSINESS RE-ESTABLISHMENT BENEFIT (BRB) PAYMENT

- A. In addition to other payments authorized by these procedures, a small business, farm, or nonprofit organization, is eligible to receive a BRB payment, not to exceed \$10,000, when their eligibility for relocation benefits has been established as outlined in section 17.08 of this chapter.

If otherwise eligible, the claimant may receive this payment, if MHD issues an order to vacate, even though the property is not acquired.

B. Computation of Payment

1. The payment, not to exceed \$10,000, may include (but is not limited to) the following eligible reestablishment expenses, when determined to be reasonable and necessary by MHD:
  - a. Repairs or improvements to the replacement real property as required by Federal, State or local law, code, or ordinance.
  - b. Modifications to the replacement property to accommodate the business operation, or make replacement structures suitable for conducting the business.
  - c. Construction and installation costs for exterior signing, to advertise the business.
  - d. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
  - e. Licenses, fees and permits, when not paid as part of moving expenses.
  - f. Advertisement of replacement location.
- g. Estimated increased costs of operation, during the first 2 years at the replacement site, for such items as:
  - (i) Lease or rental charges,
  - (ii) Personal or real property taxes,
  - (iii) Insurance premiums, and
  - (iv) Utility charges, excluding impact fees.

- h. Other items that MHD considers essential to the re-establishment of the business.
2. 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) Interior or exterior refurbishment at the replacement site, which are for aesthetic purposes, except as provided in paragraph b-d of this section.
  - (4) Interest on money borrowed to make the move or purchase the replacement property.
  - (5) Payment to a part-time business, in the home, which does not contribute materially to the household income.

#### C. MHD's Determination of Amount Necessary to Rent

1. The MHD may determine the square foot rental rates of available, comparable listings utilizing the three comparable method, or an approved alternate.
2. If utilities are included in the monthly rent of an acquired site, the available comparable listings should also include utilities. However, if the available comparable listings do not include utilities, then an appropriate amount, as determined by MHD, shall be added. If the rent being paid in the acquired site does not include utilities, then an appropriate amount shall be added to the rent of the acquired site. If both the acquired site and the available comparable listing include or exclude utilities, then the computation will be made with no adjustment to either.

#### D. Amount and Breakdown of the Business Re-establishment Benefit (BRB)

The amount and breakdown of the BRB payment will be included in the Business Claim Recommendation Memo (refer to Exhibit # 17-52).

\*\*\*

#### 17.39 APPEALS

- A. The MHD has established procedures for appeals, consistent with applicable Massachusetts law and Federal requirements. The appeal procedure provides for notification of claimant's right to appeal.

Information of the appeal procedure is provided through brochures and related form letters. Also, upon notice from the Chief Administrative Law Judge of a written request for an appeal, a review of the applicant's file is made by a representative of the MHD who is designated by the Supervisor of Relocation (refer to Exhibit # 17-31). Pertinent file material is then forwarded to the Office of the Administrative Law Judge. A notification of the time and place for a hearing, usually in MHD's Boston office, will be sent to the claimant (refer to Exhibit # 17-32, Notice of Hearing form). Claimant can make a special request for a hearing to be held in a location other than Boston. MHD will be represented at all hearings by the Right of Way Bureau's Legal Counsel. Upon hearing the claimant's case, the Chief Administrative Law Judge shall make a determination and submit a recommendation to the MHD Administrator for approval (refer to Exhibit # 17-33, Relocation Appeals Recommendation form). The claimant shall then receive any adjustment determined by the Chief Administrative Law Judge and approved by the Highway Administrator (refer to Exhibit # 17-34, MHD Administrator Approval of Relocation Appeals Recommendation).

1. Each request for appeal shall be promptly reviewed by the Relocation Section designee.
2. Any person making an appeal will be given full opportunity to be heard, with or without Counsel. Legal representation, if elected, will be at the claimant's expense.
3. Claimants will be permitted to inspect and copy all materials pertinent to his/her appeal, except materials which are classified as confidential by MHD.
4. A decision will be reached promptly on the basis of evidence submitted and the relocatee notified of such decision by letter (refer to Exhibit # 17-34, MHD Administrator Approval of Relocation Appeals Recommendation). If dissatisfied, claimant is advised of his/her right to appeal to the Division of Housing and Community Development
5. Appeals may be requested anytime within 18 months after the date of displacement or, not less than 60 days after the State acts on a final claim, whichever is later.

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#### 17.40 ANNUAL REPORT

The annual statistical report covering all relocation and real property acquisition activities will be submitted for the Federal fiscal year (October 1 through September 30). The report shall be forwarded to the Federal Highway Administration, Massachusetts Division Office, for the verification of the accuracy and completeness of the report.

- A. The statistical report will be prepared on Form OMB # 2105-0508, Uniform Relocation Assistance and Real Property Acquisition Statistical Report Form as outlined in 49 CFR, Part 24, App.B. (refer to Exhibit # 17-35 and 20-16).

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#### 17.41 RECORDS

1. Taxation Reporting Information (refer to Exhibit # 17-37) for entry into the (MMARS) system. When an approved Highway Administrator vote on a relocation payment is received by the Relocation Section, same forwards a copy to the ROW-Finance Section where a Payment Voucher Input Form (refer to Exhibit # 17-38) is prepared and the information is entered into MMARS. A Relocation Payment Record (refer to Exhibit # 17-39) is maintained.
2. For commercial relocations, the Relocation Agents fill out on a continual basis as events occur the detailed summarization of all benefits paid to business displacees on the Business Claim Database (refer to Exhibit # 17-54). The Relocation Section provides the ROW Finance Section with a W-9 form, Request for Verification of Taxation Reporting Information (refer to Exhibit # 17-37) for entry into MMARS System. When an approved Highway Administrator vote on a relocation payment is received by the Relocation Section, same forwards a copy to the ROW Finance Section where a Payment Voucher Input Form (refer to Exhibit # 17-38) is prepared and the information is entered in the MMARS System. A Relocation Payment Record (refer to Exhibit # 17-39) is maintained.  
The above, as well as all other relocation documents, will be filed in case folders in MHD's Central Office.

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## CHAPTER 18

### HIGHWAY BEAUTIFICATION PROCEDURES

#### A. JUNKYARD CONTROL SECTION

##### INDEX

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HIGHWAY BEAUTIFICATION PROCEDURES

A. JUNKYARD CONTROL

- 18.01a The purpose of the junkyard control program is to effect control of junkyards in order to protect public investment in highways; promote safety and recreational values; preserve natural beauty in areas adjacent to the National Highway System (NHS) and the Federal-Aid Primary System in existence on June 1, 1991 and encourage the recycling of scrap metal and junk.

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- 18.02a Definitions:

- . . Junk: old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles and parts thereof, iron, steel, or other old or scrap ferrous/nonferrous materials;
- . . Automobile Graveyard: any establishment or place of business which is maintained, used, operated for storing, keeping, buying and/or selling wrecked, scrapped, ruined or dismantled motor vehicles or major vehicle parts. Ten or more such motor vehicles or the major parts of ten or more such vehicles, consisting of a chassis and allied parts, shall be considered sufficient material to constitute an automobile graveyard;
- . . Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling of junk, or for the maintenance or operation of an automobile graveyard; the term shall include garbage dumps and sanitary land-fills. The definition does not include litter, trash and other debris scattered along or upon the highway, or temporary operations or outdoor storage of limited duration;
- . . Illegal Junkyard: one which was established or is maintained in violation of state law;
- . . Nonconforming Junkyard: one which was lawfully established, but does not comply with the provisions of state law or regulations that were passed at a later date or which fails to conform with state regulations due to changed conditions;
- . . Industrial Zone: land use district established by local zoning authorities as appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation, is not considered to be an industrial zone.
- . . Unzoned Industrial Area: an area where there is no zoning in effect and which is used primarily for industrial purposes, as determined by the state and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

\*\*\*

- 18.03a In order to provide effective control of junkyards located within 1,000 feet of a NHS and/or Federal-Aid Primary Highway (as specified in paragraph 18.01a above), the State, operating through the MHD in accordance with the provisions of 23 CFR Part 751, will:
- a. Require such junkyards, located outside of zoned and unzoned industrial areas, to be screened or located so as not to be visible from the main traveled, or to be removed from sight;
  - b. Require the screening or removal of non-conforming junkyards within a reasonable period of time, but no later than five (5) years after the date the junkyard becomes nonconforming, unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal, as provided in Title 23, U.S.C., 136(j) (refer to Exhibit # 20-5);
  - c. Prohibit the establishment of new junkyards, unless they comply with the requirements of Chapter 140B of the Massachusetts General Laws (MGL) (refer to Exhibit # 18-2), and
  - d. Require junkyards that are illegally established, or maintained, to conform to the requirements of item (a) above or M.G.L. Ch. 140B, whichever is more stringent or restrictive.

\*\*\*

- 18.04a A sanitary landfill, as described below, need not be screened to satisfy the requirements of Title 23, U.S.C., but landscaping will be required when the fill(ing) has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes.

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- 18.05a A sanitary landfill, for the purposes of this section, is a method for disposing of refuse on land (without creating a nuisance or hazards to the public's health or safety) by utilizing the principles of engineering to confine the refuse to the smallest possible area in order to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

\*\*\*

- 18.06a A nonconforming junkyard may be maintained and continued, provided that:

- a. The junkyard must have been in existence at the time the State law or regulations became effective, as differentiated from a contemplated use, except where a permit or similar State government action allowed for the establishment of a junkyard prior to the effective date (December 7, 1967) of the State law or regulations,

and the junkyard owner acted in good faith, expending monies in reliance thereon;

- b. There must be existing property rights in the junk and/or junkyard affected by the State law or regulations. Abandoned junk and/or junkyards (worthless junk and the like) are not similarly protected;
- c. If the location of a nonconforming junkyard is changed as a result of a right-of-way taking, or for any other reason, it will cease to be a nonconforming junkyard and shall be treated as a new junkyard at a new location;
- d. The nonconforming junkyard must have been lawful on the effective date of the State law and must continue to be lawfully maintained;
- e. The nonconforming junkyard may continue as long as it is not extended (the use of a land area abutting the nonconforming yard not formerly covered by existing permits or acquired subsequent to the issuance of a permit) or enlarged (any increase in the area or volume of a junkyard beyond that originally licensed and shall be considered as the adding on of an additional process or use to that permitted or licensed, such as adding a scrap metal processing unit to a used auto parts business); or changed in use (a major change in the type of business being conducted on the property, which constitutes a different operation but leaves sufficient material to constitute a junkyard).

Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen (becomes visible) shall be considered both an extension and enlargement. It shall be treated the same as the establishment of a new junkyard and conformity will be required:

- f. A nonconforming junkyard may continue as long as it is not abandoned or voluntarily discontinued resulting in a cessation of operations on a business basis at the junkyard locus for the period of one year or such time as established under local zoning ordinances, whichever is shorter; or destroyed resulting in a cessation of operations on a business basis at the junkyard locus, caused by fire, flood, or other natural disaster for the period of one year or such time as established under local zoning ordinances, whichever is shorter.

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18.07a The Right of Way Bureau of MHD shall be responsible for maintaining the inventory of junkyards within the control area established by M.G.L. Ch. 140B.

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18.08a The inventory shall be compiled by the ROW Bureau personnel associated with the sign control program and done in concert with the inventorying

of signs located within the control area as set forth in Chapter 18-B of this manual.

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18.09a Records of the junkyard(s) inventory will be kept by the Bureau and be available for inspection by the FHWA.

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18.10a Junkyard inventories will be compiled on a selected route basis within each MHD District. Each junkyard will be listed by city/town and route within each District. The Junkyard Data form (Refer to ROW Form-JC-1, Exhibit # 18-3) will also contain the following information:

- a. Locus, property owner, junkyard owner or lessee;
- b. Principal type of business being conducted i.e. class & license number;
- c. Date, zoning classification, extent of land use;
- d. Remarks.

\*\*\*

18.11a Each junkyard inventoried will be recorded on a separate Junkyard Inventory form (refer to ROW Form-JC-2, Exhibit # 18-4). This form shall contain the following information:

- a. City/Town, route number, District & date;
- b. Locus, property owner, junkyard owner or lessee;
- c. Principal type of business being conducted;
- d. Extent of land use, zoning legality;
- e. Type of license, permit numbers, photograph(s)

\*\*\*

18.12a Nonconforming junkyards will be reported on an individual basis to the Bureau for a determination regarding feasibility of a screening project.

\*\*\*

18.13a Upon the determination that a screening project is feasible, the Bureau shall acquire any rights or easements required for the completion of the project, according to standard right of way procedures.

\*\*\*

18.14a Every effort shall be made to screen a junkyard that is to continue as an ongoing business. This means that no item of junk or portion thereof located within a junkyard shall be visible to the traveling public from any NHS or Federal-Aid Primary Highway (as specified in paragraph 18.01a above).

- a. Junkyards shall be screened so that no junk or portion thereof may be seen by the travelling public.
- b. Screening shall be a fence type, constructed of wood, metal, brick, stone, earthen berm, plantings, or any combination thereof, or by any other effective method. All fences, at a minimum, must be sufficiently high enough to effectively screen all junk within the junkyard. If a junkyard is located so that it is impractical to erect a fence high enough to effectively screen the junk, a series of fences, berms, or plantings may be erected to accomplish same.
- c. A wooden fence shall be constructed of sound material, at least six (6") inches wide (if made of pre-built cedar stockade material); the bottom shall be no more than six (6") above the ground level. The fence shall be stained (or painted) a single color, treated with a preservative if new, or left untreated if cedar.
- d. A metal fence shall be constructed of sound material and be at least six (6") in width; the bottom shall be no more than six (6") inches above ground level. The fence shall not be more than two (2) colors, whether painted or baked enamel. No portion of a metal fence shall be allowed to remain rusty for more than six (6) months.
- e. An earthen berm may be constructed of any noncontaminating material; the slopes shall be graded smooth and covered with a highway standard seeding formula or four (4") inches of wood chips. Plantings may be used on berms. (Refer to following paragraph "f").
- f. Plantings shall consist of trees, shrubs and/or bushes of local deciduous/nondeciduous varieties, in sufficient quantities to effectively screen the junkyard during all seasons of the year.
- g. The standards for design and location shall be construed in a liberal manner. Natural objects, landscape plantings, fences, berms, may be used along side or in combination with one another. Appropriate consideration shall also be given to relocating the on-site (junk) inventory, in order to effect optimum screening from the main traveled way on a year round basis, which is at the same time compatible with the surroundings.

\*\*\*

18.15a Upon the determination that a screening project is not feasible, the Bureau shall develop an estimate of costs for either relocating or taking the subject junkyard in accordance with standard ROW

procedures. Such estimate of costs to relocate or take the subject junkyard shall take into consideration all possible benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended (refer to Exhibit # 20-3), and as outlined in 49 CFR Part 24 (refer to Exhibit # 20-16). As an alternative to payment of expenses under the actual direct loss of tangible personal property provision, a payment for removal of personal property to a disposal site or recycling center may be made. Where the primary objective would be salvage resale rather than the physical disposal or recycling of the (junk) scrap, the standard actual direct loss of tangible personal property procedure shall apply.

\*\*\*

18.16a Relocation data and/or relocation costs will be submitted to the Relocation Section for a final determination as to the method to be utilized in eliminating or relocating the nonconforming junkyard.

\*\*\*

18.17a Upon determination that relocation or elimination of the nonconforming junkyard is required, the process will be completed utilizing standard Bureau procedures upon certification of the project by FHWA.

\*\*\*

18.18a Authorization to proceed with a junkyard control project may be given when MHD submits a written request to FHWA which includes the following:

- (1) The zoning and validation of the legal status of each junkyard on the project;
- (2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;
- (3) The real property interest to be acquired in order to implement the control measures;
- (4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and
- (5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

\*\*\*

18.19a MHD records concerning each junkyard involved in a beautification project shall include, as a minimum, the following data:

- a. Satisfactory evidence of ownership of the junkyard or junk, or both;
- b. Documentation of value or cost, including separate interest if applicable, as well as proof of obligation or payment of funds;
- c. Evidence that necessary property interests have passed to the State and that the junk has either been screened, relocated, or disposed of;
- d. If a dwelling has been acquired by the condemnation process, evidence that the costs involved are not included in the State's claim for Federal participation.

\*\*\*

18.20a Appropriate authorities in cities and towns are to be notified, on a continuing basis by ROW Bureau personnel, of the existence and effects of the Highway Beautification Act and M.G.L., Ch. 140B. This will be done in conjunction with MHD's continuing inventory efforts. Applicable reference material shall be left with the appropriate city and/or town official.

\*\*\*

18.21a Any junkyard which does not conform to the requirements of M.G.L., Ch. 140B, shall be deemed a nuisance. The MHD, through the Attorney General's Office, shall make application to the Superior Court in the County in which the junkyard is located for any injunction to abate the nuisance.

\*\*\*

18.22a The MHD shall give a thirty (30) day notice by certified mail, to the owner of a junkyard and the junkyard business owner or lessee, if different, citing the violation of said Chapter 140B and requiring conformance with the law prior to requesting action through the Attorney General. (refer to ROW Form-JC-3, Exhibit # 18-5).

\*\*\*

18.23a Where possible, any screening shall be located upon the property owned or controlled by the owner or operator of the junkyard. Once constructed, the screening is to become the property of the owner or operator of the junkyard, pursuant to an agreement between the owner and MHD. The duty to maintain any screening shall be vested in the owner or operator of the junkyard. Failure to maintain the screening shall be the basis of a recommendation from the MHD to the Attorney General for prosecution as a nuisance.

\*\*\*

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#### B. SIGN CONTROL

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#### B. SIGN CONTROL

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HIGHWAY BEAUTIFICATION PROCEDURES

B. SIGN CONTROL

18.01b The purpose of the sign control program is to effectively control the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the National Highway System (NHS) and the Federal-Aid Primary System in existence on June 1, 1991 in order to protect the public investment in such highways as well as promote the safety and recreational value of public travel and preserve the state of natural beauty.

\*\*\*

18.02b The laws under which this program is governed are: Highway Beautification Act of 1965, as amended, and as outlined in 23 CFR Part 750 [refer to Exhibit # 20-13(A-G2)]; M.G.L. Ch. 93; M.G.L. Ch. 93D; and the Federal/State Outdoor Advertising Control Agreement of 12/31/71 as amended in 1980 (refer to Exhibit # 18-6).

\*\*\*

18.03b This program will be controlled and implemented by the MHD; in the first instance through the Bureau, with the cooperation of the Office of Outdoor Advertising (OOA) as prescribed in the provisions of M.G.L. Ch. 93, and secondly, with the assistance of the MHD's District Highway Directors and Survey and Maintenance personnel. The Bureau Director shall have the immediate responsibility for managing and implementing the provisions of the Highway Beautification Act and associated policies and procedures, as well as enforcing the State Act and Federal/State Agreement Criteria (refer to Exhibit # 18-7). Right of Way Bureau personnel, acting under the supervision of the Bureau Director, shall carry out and regulate the standard operations required.

\*\*\*

18.04b Effective control means that outdoor advertising signs, displays or devices adjacent to the NHS and Federal-aid Primary Highway (as specified in paragraph 18.01b above) which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

- a. Directional and other official signs and notice which shall conform to national standards promulgated in subpart B, part 750, chapter I, 23 CFR, National Standards for Directional and Official Signs [refer to Exhibit # 20-13(A-G2)];
- b. Signs, displays and devices that advertise the sale or lease of property upon which they are located;

- c. Signs, displays and devices, including those which may be changed at reasonable intervals by electronic process or by remote control and advertising activities conducted on the property upon which they are located;
- d. Signs, displays and devices erected in areas zoned industrial or commercial under local zoning authority and which have permits duly issued. These signs must comply with size, lighting and spacing requirements determined by Federal/State Agreement (refer to Exhibit # 18-7);
- e. Signs, displays and devices erected in unzoned industrial or commercial areas, which areas are determined by actual land use and have permits duly issued. These signs must comply with size, lighting and spacing requirements determined by Federal/State Agreement (refer to Exhibit # 18-7);
- f. Signs lawfully in existence on October 22, 1965, as determined by the Commonwealth, with the approval of the Secretary of the U.S. Division of Transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of the Highway Beautification Act, and which have permits duly issued.
- g. Signs, displays and devices advertising the distribution by nonprofit organizations of free coffee to individuals travelling on a NHS or Federal-aid Primary Highway (as specified in paragraph 18.01b above). For the purpose of this section, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

\*\*\*

18.05b Definitions:

"Interstate System", is that portion of the national system of interstate and defense highways located within the Commonwealth, as officially designated or as may hereafter be so designated by the MHD and approved by the U.S. Secretary of Transportation pursuant to 23 U.S.C. 103(e).

"Primary System", is that portion of connected main highway located within the Commonwealth of Massachusetts which was on the Federal-aid Primary System as of June 1, 1991;

"Outdoor Advertising", is any outdoor sign, display, light, device, figure, painting, message, plaque, poster, billboard, or other item which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of a NHS or Federal-aid Primary Highway whether a permanent or portable installation;

"Safety Rest Area", is an area established and maintained within or adjacent to the right-of-way and under public supervision or control for the convenience of the travelling public;

"Information Center", is a site or area established and maintained at safety rest areas, for the purpose of informing the public on places of interest within the State as well as providing such other information as the MHD may consider desirable;

"Directional & Official Sign(s)", is any sign, except a guide sign, as defined in the Manual of Uniform Traffic Control Devices (MUTCD) and authorized by 23 USC, Sec.109 (b) & (d) and Sec.402 (a) as well as 23 CFR Sec.1204.4 containing directional information about public places owned or operated by Federal, State, or local governments and/or their agencies; publicly or privately owned national phenomena, historic, cultural, scientific, educational and religious sites; and an area of national scenic beauty or being naturally suited for outdoor recreation and deemed to be in the interest of the travelling public.

The following criteria apply only to directional and official signs as regulated by M.G.L. Ch. 93D (refer to Exhibit # 18-7) and that which is consistent with the National Standards for Directional and Official signs contained in 23 CFR 750.151 (refer to Exhibit # 20-13).

A. General - The following signs are prohibited:

1. Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of said signs or activities;
2. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or devise, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic;
3. Signs which are erected or maintained upon trees, or painted or drawn upon rocks or other natural features;
4. Obsolete signs;
5. Signs which move or have any animated or moving parts;
6. Signs located in rest areas, parklands, or scenic areas.
7. Signs which are structurally unsafe or in disrepair

B. Size - No directional or official sign(s) shall exceed the following limits:

1. maximum area 150 sq.ft
2. maximum height 20 feet
3. maximum length 20 feet

Note: All the above dimensions include border and trim, but exclude supports.

C. Lighting - Signs may be illuminated, subject to the following:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light(s), are prohibited;
2. Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of a NHS or Federal-aid Primary highway (as specified in paragraph 18.01b) above, or signs which are of such intensity or brilliance so as to cause glare or impair the vision of the driver of a motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle, are prohibited;
3. No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

**D. Spacing**

1. Each location of a directional sign must be approved by the MHD.
2. No directional sign may be located within 2,000 ft. of an interchange or intersection, at grade, along the Interstate System or other freeway(s), as measured from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.
3. No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.
4. Other criteria
  - a. No two directional signs facing in the same direction of travel shall be spaced less than one mile apart.
  - b. Not more than three directional signs pertaining to the same activity and facing in the same direction of travel, may be erected along a single route approaching the activity.
  - c. Signs located adjacent to the Interstate System shall be within 75 air miles of the activity.
  - d. Signs located adjacent to the Primary System as specified in paragraph 18.01(b) above shall be within 50 air miles of the activity.

**E. Message Content**

The message on directional signs shall be limited to the identification of the attraction or activity as well as directional

information for locating same such as mileage, route or exit numbers. Descriptive words or phrases, or pictorial/photographic representations of the activity and environs are prohibited.

F. Selection Method and Criteria

1. Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.
2. To be eligible, privately owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public.
3. The following requirements must be met in order for a sign to be classified as a directional sign:
  - a. No private directional signs will be permitted in protected areas;
  - b. Public directional signs shall be limited to those erected by or under authorization of the MHD to a public office, Division or agency;
  - c. Public directional signs will be permitted only if such sign conveys information in conformance with Federal requirements for same;
  - d. All directional signs must be of a nature, so as to provide necessary information to the traveling public, referencing goods and services available;
  - e. A directional sign and the information contained thereon must be functionally and aesthetically compatible with its surroundings.

"On Premise Sign", is a sign that consists solely of the name of the establishment which in turn identifies its principal or accessory products or services offered on the property. The following criteria must be applied in determining if the sign is "on premise" and exempt from control:

- a. It must be located on the same premises as the establishment's product(s) or services offered. The "premises test" to be applied is best referenced in the case of the Attorney General vs. J.P.Cox Advertising Agency, 298 Mass. Reports p.383, 1937. This test does not allow for an intervening use between the sign and the establishment;
- b. The sole purpose of the sign must be the identification of the activity located on the property or its products or services;

- c. If a sign consists principally of brand or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to a property owner, it shall be considered the business of Outdoor Advertising and not an on premise sign;
- d. A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or the selling or leasing of the land upon which the sign is located, shall not be considered an on premise sign;
- e. Any sign located on a narrow strip of land, acquired or retained and contiguous to an advertised activity, where such strip is an obvious unnatural extension of the subject premises, shall be considered an attempt to circumvent 23 USC, Sec. 131 (refer to Exhibit # 20-4), and shall not be considered an on premise sign.

"Sale or Lease", is any sign which indicates the offering of the property for sale or lease upon which it is located. If in addition it advertises any product or service not conducted upon, nor is unrelated to the business or the selling or leasing of said property on which the sign is located, it is not an exempt sign.

"Urban Area", means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State; or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials subject to approval of the Secretary of MassDOT. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

\*\*\*

18.06b A continuing survey of signs on the NHS and Federal-aid Primary Highway as specified in paragraph 18.01(b) above will be prepared by and under the direction of the Bureau; such survey will keep the inventory current and will be accomplished on a project basis e.g. on a designated route, commencing and ending at certain delineated points.

\*\*\*

18.07b The survey will include all signs covered by the State Act and Federal/State Agreement Criteria (refer to Exhibit # 18-7) except the following:

- a. Directional and other official signs and notices;
- b. On premise signs;
- c. Sale or lease signs.

\*\*\*

18.08b All illegal and legal signs as well as advertising devices should be included in the survey. The ROW agent will complete form ROW-OA-2, Sign Data Outdoor Advertising, for each sign (refer to Exhibit # 18-8).

\*\*\*

18.09b An inventory of outdoor advertising signs will include, as a minimum, the following information:

- a. Sign locus, land owner and address, sign owner and address (if different);
- b. Permit number, zoning, status-legal, illegal, and nonconforming;
- c. Sign size, height above ground;
- d. City/Town, District, Route number;
- e. Date of inventory;
- f. Signature of ROW agent

\*\*\*

18.10b The status of all signs will be checked for legality and existing valid sign permits, through current sign permit lists supplied by the OOA. Any questionable permit number will be checked directly with the OOA.

\*\*\*

18.11b Signs determined to be illegally within the limits of the State Highway Layout will be immediately referred to the District Highway Director for removal. The District Highway Director shall have the option allowed under the M.G.L.Ch.81, Sec.22, of: giving notice to the owner of the sign by certified mail (Form ROW-OA-3, refer to Exhibit # 18-10); by serving the notice of removal in hand; having the notice at place of residence or business, or removing the sign without notice. The practicality of the form of notice shall be left to the discretion of the District. Nothing in the foregoing shall be construed to restrict or abrogate the right of the Bureau to give notice to the owner of the sign, ordering its removal. (refer to Form ROW-OA-4, Exhibit # 18-11).

\*\*\*

18.12b If the Bureau gives notice of removal to an owner of a sign located within the limits of a State Highway Layout, it shall after the fifteen (15) day removal period has expired, prepare a letter for the Chief Engineer's signature requiring the District Highway Director to immediately remove said sign (refer to Exhibit # 18-12).

\*\*\*

18.13b Owners of illegal signs as well as owners of the site of an illegal sign, will be notified of the violation of M.G.L. Ch. 93D, as provided

for in M.G.L. Ch. 111, Sec. 123-125 inclusive, and be given fifteen (15) days to comply with the order of removal. This order to remove will be given immediately upon the inventorying of the illegal sign. Notice to the owner of the sign, as well as the site owner, will be given on Form ROW-OA-4 (refer to Exhibit # 18-11).

\*\*\*

18.14b After the notice period has expired, all signs not removed by the owner(s) of the sign or site will be removed by the District Highway Director by order of the Chief Engineer through a letter prepared by the Bureau (refer to Exhibit # 18-12).

\*\*\*

18.15b The Bureau is to be informed by the District of the removal of the illegal sign along with information regarding the date of the removal and present location of the sign. The District should store the removed sign at the nearest MHD maintenance area for possible reclamation by the owner.

\*\*\*

18.16b If the removal action becomes confrontational by either owners of the sign or site, MHD personnel should immediately stop the removal action and report same to the Bureau. Further removal action will be instituted by the Bureau under police protection or other methods as provided by MGL Ch.111, Sec. 123-125 inclusive.

\*\*\*

18.17b In reference to a disputed removal, the District Highway Director may obtain the services of the State or local police.

\*\*\*

18.18b The District Highway Director and the OOA staff are responsible to carry on a continuing route surveillance for illegal signs located within the limits of the State highway layout. The maintenance foreman shall, when inspecting his assigned section on a daily basis, report all such illegal signs and the District Highway Director shall immediately take such steps to effect their removal.

\*\*\*

18.19b The District Highway Director shall inform the Bureau, at the end of each calendar month, of the number of illegal signs removed from the State Highway Layout; also the number of signs removed from locations outside the State Highway Layout having been requested by the Bureau. This report will be limited to those signs located within the control areas of the NHS and Federal-aid Primary Highway System (as specified in paragraph 18.01b above).

\*\*\*

18.20b The Bureau, through personnel assigned to the sign control program, shall maintain continuing route reviews of all areas located within the control zones of the NHS and Federal-aid Primary Highway System (as specified in paragraph 18.01b above), in order to locate, catalogue and remove all newly placed illegal signs located outside the limits of the State Highway Layout.

\*\*\*

18.21b The OOA shall transmit all sign permit applications to the Bureau for review and comment when necessary.

\*\*\*

18.22b Sign permit applications received from the OAD shall be reviewed by Bureau personnel in the field in all instances so as to establish:

- a. If the proposed sign is within the control areas;
- b. The zoning of the proposed locus;
- c. Conformity with local zoning;
- d. The conformity with or the violation of the Federal/State Agreement Criteria, as incorporated into M.G.L. Ch. 93D (refer to Exhibit # 18-7).

\*\*\*

18.23b After said review by the Bureau, the OOA will be notified that:

- a. The issuance of the permit will not violate M.G.L. Ch. 93D, or the Federal/State Agreement Criteria, or
- b. the issuance of the permit will violate the law, with the reason(s) therefore, or
- c. the issuance of the permit will violate the Federal/State Agreement Criteria, with the reason(s) therefore, or
- d. the permit application is for a locus not within the control area.

\*\*\*

18.24b In no instance will the OOA issue a permit for a sign which will violate M.G.L. Ch. 93D, or the Federal/State Agreement Criteria. No permit

issued, either in violation, error, or misinterpretation of the law, will create a valid/legal sign.

\*\*\*

18.25b A complete record of all permit applications, the permit or a copy of same, and the action(s) of the ROW Bureau, shall be maintained in the ROW Bureau's files.

\*\*\*

18.26b In no instance shall any transmittal by the ROW Bureau with respect to a sign application be considered as either an approval of or recommendation for the issuance of a sign permit by the OAD.

\*\*\*

18.27b The OOA shall inform the ROW Bureau, on a continuing basis, of all actions taken and resulting in the granting or refusal of a sign permit where the locus has been determined to be within the control area as set forth by the statute.

\*\*\*

18.28b The ROW Bureau personnel assigned to the sign control program, may be required to appear at meetings, conferences or appellate hearings, to discuss, inform, or testify to the physical and legal facts at their disposal, at the request of the OOA.

\*\*\*

18.29b In considering which signs have been erected with the purpose of the message being read from the main traveled way in rural areas and thus prohibited under Sec. 18.04, the following criteria shall be utilized:

- a. Traffic counts, sign angle and size, message content, physical obstructions, all affecting the economic credibility of placing the sign shall be enumerated and considered, as well as;
- b. The distance from the controlled highway in relation to the size of the sign;
- c. The exposure time to motorists passing at a speed normally to be expected on the controlled highway;
- d. The existence of an intervening roadway between the questionable sign and the controlled highway;

- e. The existence of any sizeable audience towards which the advertising could be directed lying between the questionable sign and the controlled highway.

If an analysis of the above points conclusively indicates that the purpose of the sign is to be read from the main traveled way of a controlled highway, then:

- a. If the subject sign is in existence at the time of the passage of the 1976 amendment to M.G.L. Chapter 93D, it will be removed;
- b. No permit shall be issued for any new sign from the OOA.

\*\*\*

18.30b Normal sign maintenance shall be construed as and limited to the following:

- a. A change of message, either by painting or posting;
- b. Replacement or repair of any existing framework, posts, catwalls, or foundation;
- c. Replacement or repair of any existing electrical wiring, tubing or bulbs;
- d. Modification, if such is allowed under permit by the OOA, provided that the subject sign is not a nonconforming "grandfathered" sign.

\*\*\*

18.31b Modification shall be construed as the following:

- a. Raising or lowering of an existing sign;
- b. Changing the location of an existing sign, or
- c. The enlargement or addition of extensions in the form of cutouts exceeding ten square feet in area, or to an existing sign;
- d. The addition of lighting to an existing sign without the prior approval of the OOA.

\*\*\*

18.32b Destruction of a sign will be considered to be effected by:

- a. A natural phenomenon such as windstorm or flood;

- b. Deterioration by reason of neglect or rot.

These occurrences must result in the reduction of the sign to a condition that requires major replacement or reconstruction to make the sign an effective component, approximately 60 per cent of its original condition.

\*\*\*

18.33b Abandonment or discontinuance will be considered to be effected by:

- a. Neglect or refusal to renew a formerly valid existing permit issued by the OOA;
- b. Abandonment or destruction of the structures or business involved in an on-premise business situation, leaving a former on-premise sign as the only valid structure on the property for a period of sixty days;
- c. A sixty day (60) period during which the sign contains obsolete advertising matter, or is without advertising matter (blank). A message offering the sign space for sale, rent or lease shall not be construed to be advertising matter;
- d. A need for substantial repair, approximating a sixty percent renewal, of the sign structure for a period of (60) sixty days;
- e. A sign whose message has been partially obliterated by the owner so as not to identify a particular product, service or facility is to be considered a blank sign and deemed abandoned.

\*\*\*

18.34b The following order of priorities shall be followed in the control program and signs shall be removed where possible in the descending order as follows:

- a. Illegal and abandoned signs;
- b. Hardship situations;
- c. Nominal value signs;
- d. Signs in areas which have been designated scenic under authority of State Law, or designated as sign free corridors by order of the Outdoor Advertising Board;

e. Product advertising on:

1. Rural Interstate Highway
2. Rural Primary-Aid Highway (as specified in paragraph 18.01b above)
3. Urban Areas;

f. Non-tourist oriented directional advertising;

g. Tourist oriented directional advertising.

\*\*\*

18.35b Removal of nonconforming signs is expected to be performed on a route and district program in order that personnel, time, and funds, be most expeditiously expended and that the maximum visual effect of the program be immediately observed by the travelling public. Early concentration of routing will be directed to rural and scenic areas of the State.

\*\*\*

18.36b Programming will be carried out through constant coordination with the Bureau's State Projects Section. The programming of project funds will be the responsibility of the MassDOT Office of the Finance Officer (Finance Office) and will require federal approval. The Finance Office will also maintain a record of all expenditures.

\*\*\*

18.37b All official records of actions of the sign control section will be kept in the Bureau office files. They will include documentation supporting payments made to owners of signs and/or owners of a sign site. A file on each case will be maintained. The records will be available for inspection by the FHWA.

\*\*\*

18.38b The MassDOT is authorized and directed to acquire by purchase, gift, or otherwise, or take by eminent domain upon payment of just compensation, all rights, title, leasehold and interest of the owner in the following signs, displays and devices and to so acquire from the owner of the real property on which the sign, displays and devices thereon: "Any sign, device or display lawfully erected under State law and lawfully maintained thereafter but which does not comply with the provisions of said Chapter 93D".

\*\*\*

18.39b The MassDOT, acting through its MHD, shall not acquire any sign, display or device without receiving prior assurance from the appropriate Federal

authorities that the appropriate pro-rata Federal share of the cost of said acquisition is available for reimbursement to the Commonwealth.

\*\*\*

18.40b The MHD shall make an earnest effort to acquire a nonconforming sign by purchase or gift prior to instituting any taking procedures under M.G.L. Ch. 79. In this purchase attempt, all appraisals, documentation and title searches will be completed and Federal participation assured, prior to negotiations with the owner of the sign and/or sign site owner.

\*\*\*

18.41b In the instance of a purchase, the owner of the sign site will be required to agree to and sign such legal documents, licenses, or easements that will allow entry for the removal of the subject sign and restrict the placing of any new signs in a restricted or nonconforming area or location. Such restriction on placing of any new signs in a restricted or nonconforming area or location may not be eligible for Federal participation in the cost of such restriction.

\*\*\*

18.42b In those cases involving a payment of \$2,500 or less for the acquisition of a landowner's right to erect and maintain a sign or signs, the MHD shall provide verification of ownership, conducted by qualified MHD personnel to the extent necessary to assure the payment to the proper person. Evidence of the ownership will be retained in each case folder, signed by the person responsible for the verification.

\*\*\*

18.43b In those cases involving a payment of more than \$2,500 for the acquisition of a landowner's right to erect and maintain a sign or signs, the MHD shall have a title search made by a qualified fee title examiner.

\*\*\*

18.44b In any case involving a qualified fee title examiner, standard MHD procedures will be followed in the retention and payment for such services (refer to Chapter 14 of this manual).

\*\*\*

18.45b All payments to a sign owner or to a sign site owner shall be established and supported by an appraisal of value in accordance with Chapters 9 and 11 of this manual.

\*\*\*

18.46b All severance damage cases must be submitted to FHWA for prior concurrence.

\*\*\*

18.47b All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to the initiation of negotiations or takings. This review shall be made by the Bureau's Appraisal Review Section.

\*\*\*

18.48b Salvage value will not generally be considered in most acquisitions and the sign may be released to the sign owner, site owner, contractor hired for the removal, or individual, as all or a part of the consideration for its removal, without any project credits.

\*\*\*

18.49b Takings required in the removal process and the implementation of the Act will follow the procedures outlined in the ROW Manual for highway takings and will normally include:

- a. All rights, title and interest in the sign
- b. All rights to erect and maintain such signs
- c. A removal easement.

\*\*\*

## CHAPTER 18

### HIGHWAY BEAUTIFICATION PROCEDURES

#### C. SCENIC ENHANCEMENT

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HIGHWAY BEAUTIFICATION PROCEDURES

C. SCENIC ENHANCEMENT

18.01c The purpose of the scenic enhancement program is to preserve, restore, and enhance the natural beauty and scenic views, while maintaining safety, rest, and recreational areas as well as scenic overlooks along National Highway System (NHS) and Federal-aid Primary System in existence on June 1, 1991. This is accomplished by the acquisition of land or rights in land located outside the limits of the State highway layout. Also, the purpose is to preserve and enhance the natural beauty of these areas and those located within the limits of the State layout by plantings, clearing or other enhancing landscape projects.

\*\*\*

18.02c The primary responsibility for the designation and preparation of a scenic enhancement project lies with the MHD, Highway Engineering Division.

\*\*\*

18.03c Authority for the acquisition of land or rights in land for this purpose is given to the MassDOT by M.G.L. Ch. 81, Sec. 13B, the amendment entitled, "An Act providing for the restoration, preservation, and enhancement of scenic beauty and historic sites, within or adjacent to Federal Aid Highways of the Commonwealth."

\*\*\*

18.04c After basic design studies for specific projects are completed by the MHD Highway Engineering Division, they will request the Bureau to acquire the necessary interests acting on behalf of MassDOT.

\*\*\*

18.05c The request for such acquisition will be accompanied by completed plans indicating the easement lines as well as the proposed interest to be acquired.

\*\*\*

18.06c Any acquisitions required will be accomplished using standard Bureau procedures. If a dwelling and/or its related structures are necessary for the project, the property must be acquired through a negotiated purchase.

\*\*\*

## CHAPTER 19

### PROPERTY MANAGEMENT

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## CHAPTER 19

### PROPERTY MANAGEMENT SECTION (Cont.)

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PROPERTY MANAGEMENT SECTION

19.01 The Property Management Section has the following responsibilities for managing and disposing of real property acquired by the Bureau on behalf of the MHD for highway purposes. These responsibilities include:

1. Clearing the right-of-way of all structures and, where eviction is warranted, all occupants;
2. Maintaining occupied real property;
3. Canvassing the appropriate Divisions and Offices of MassDOT for the sale of excess land, structures, or the transfer of excess land to agencies of the Commonwealth;
4. Reviewing access controls and recommending changes in access;
5. Reviewing and revising access control information for the benefit of cities and/or towns;
6. Reviewing all contracts for Property Management repairs or supplies, to allow wherever possible the hiring of those businesses listed with the Office of Civil Rights and the State Office of Minority Business Assistance;
7. Canvassing the appropriate Divisions and Offices of MassDOT to process requests for easements, or the release of same, over MassDOT land;
8. Investigating encroachments and violations to state owned land.

\*\*\*

19.02 In order to clear the right-of-way of all structures as soon as possible the following steps will be taken:

1. The Area Supervisor and/or Administrator of Projects (within each MHD District Office) will submit as soon as it is available, a copy of the Structure and Occupancy Report, Form ROW-735 (refer to Ch. 4, Exhibit # 4-11), which lists all of the structures within the layout and a Property Interview Record, Form ROW-617 (refer to Ch. 5, Exhibit # 5-1), to the Bureau's Property Management Administrator. The Relocation Section will forward a copy of the Relocation Interview i.e. Preliminary Survey of Housing Needs and Preferences, Form ROW-626 (refer to Ch.17, Exhibit # 17-4) and/or the Commercial Site Occupant Record, Form ROW-108 (refer to Ch. 17, Exhibit # 17-5), to the Property Management Administrator. All reports are to be maintained in each individual structure folder.
2. An agent assigned to the Property Management Section will make an on-site inspection, following the filing of the Order of Taking, to determine the correctness and completeness of the Structure and Occupancy Report; any occupancy changes will be noted thereon. Where there are substantial numbers of structures, an agent will determine whether pest control measures are required. Upon the on-site inspection, the tenants are advised that they must contact the agent

as soon as they are aware of the time/date of their moving and at the time of relocation, they must turn over the keys to the agent or, where there is no key, indicate in writing that they are turning over possession of the property to the MHD, in order to terminate any rent liability.

3. The agent will prepare an Individual Structure Record, Form ROW-324 (refer to Exhibit # 19-1), filling in all applicable items for each structure on the project. On this form the agent will recommend whether the structure should be considered for sale to the former owner, for sale by sealed bid, or for demolition. The agent will state whether rodent control measures are necessary; list the tenant name(s); apartment number(s); rent amount(s), and submit the record to the Property Management Administrator.
4. The agent will prepare a master spread sheet for the project, completing the first four (4) columns with the heading "Master Structure Spread Sheet" (refer to Exhibit # 19-2).
5. The Bureau's Relocation Section will notify Property Management (PM) of all anticipated move dates in order that a PM agent will be on site to conduct an inspection when the former occupant surrenders possession to the State. At this time the PM agent will accomplish the following:
  - a. Obtain the key from the former occupant;
  - b. Certify that all real property acquired by the State has been surrendered by the former occupant. The Certification of Post Move Inspection form (refer to Exhibit # 17-46), signed by the agent and former occupant, should be filed in the Individual Structure Folder. In the event the inspection reveals that items of real property are missing or have been destroyed, the agent will prepare a report listing the specific items missing or damaged and submit same to the PM Administrator. Upon receipt of said report, the PM Administrator will take immediate action by forwarding the report to the Office of the Attorney General (AGO) for appropriate action, if required.
  - c. Determine whether and/or what type of structure protection e.g. boarding up, winterizing, may be necessary. The date of any request for protection, the type of protection, and the date of completion of such protection, shall be recorded in the Structure Record under the heading "Building Protection".
  - d. Determine if the (former) owner has disconnected all utilities. If not the agent assigned will provide for all utility disconnection's and will note the actions taken and date of same under "Remarks" in the Structure Records form.
  - e. Inspect the vacant structure from basement to loft spaces to determine whether or not hazardous conditions exist and note such inspection under "Remarks" in the Structure Records form.

6. If a structure, which has been recommended for demolition or been included in a demolition contract, is sold in the interim, the Deputy Director of the Bureau will send a letter to the Construction Engineer as well as the District Highway Director withdrawing the structure from the demolition plan. The letter will include the name of the structures' former owner, the location, parcel number, and description of the property.
7. All structures not sold are to be recommended for demolition at the time the agent informs the PM Administrator that same are vacant (refer to Exhibit # 19-3).
8. If an open house is planned so that potential demolition contract bidders have an opportunity to inspect the premises for hazardous materials, the agent assigned will be responsible for scheduling the open house, opening the structure, and in turn securing same thereafter.
9. After a structure becomes vacant, the Deputy Director of the Bureau will inform the Construction Engineer of the availability of same for demolition and an agent will deliver a "Release of Structure(s) for Demolition" (refer to Exhibit # 19-3A) to the District Highway Director.
10. The agent assigned will inform the PM Administrator, in writing, of all sites that have been properly cleared of structures, using the Property Management Report (refer to Exhibit # 19-4).
11. To insure that all critical property management activities are properly documented, the PM office will continually update the individual structure record as each activity is completed. In addition, when property management activities are terminated on each property, the PM agent assigned will make a final review of the case folder to verify that all critical activities are documented on the Individual Structure Record, Form ROW -324 (refer to Exhibit # 19-1) before filing the property management folder.

\*\*\*

- 19.03 In order to clear the right-of-way of occupants when deemed necessary, i.e. when they are unreasonably and/or willfully delaying the highway project by continuing to occupy areas needed for construction, MHD may issue Eviction Warrants under the provisions of M.G.L. Ch.79, Sec.3, or Ch. 427 of the Acts of 1966, as well as the applicable provisions of the Code of Massachusetts Regulations (CMR) and guidelines issued by the Division of Housing and Community Development.

\*\*\*

- 19.04 The MHD views the use of an Eviction Warrant as being an extremely serious matter. The Eviction Warrant under provisions of M.G.L Ch.79, Sec. 3, is used only after all relocation efforts have proved to be

unavailing and only after justifications for such procedure has been documented in detail.

\*\*\*

19.05 No former owner, tenant or lessee who has had possession of real property, or any portion thereof which has been acquired by the MassDOT, shall be required to vacate any portion of such property which is being used by same as a dwelling place or place of business at the time the acquisition was made, until four (4) months after the notice of such acquisition has been given in writing.

\*\*\*

19.06 The MHD may terminate any occupancy, by giving an occupant thirty (30) days notice, in writing and by certified mail, of its intention to terminate said occupancy, providing the four (4) months grace period for which an occupant received notice of taking, has expired.

\*\*\*

19.07 When in the opinion of the PM Administrator, it appears that an Eviction Warrant is necessary, a request for a detailed written report on the subject property will be requested from the Bureau's Relocation Administrator.

\*\*\*

19.08 Upon receipt of the written report, which shall also show a final effort to relocate the occupant, and after an analysis of the entire case history demonstrates that there is no possibility of relocating said occupant, the PM Administrator will as a last resort and only after decent, safe, sanitary housing has been offered to the occupant, recommend in writing to the Deputy Director that an Eviction Warrant be issued.

\*\*\*

19.09 If the Deputy Director agrees with the recommendation, said manager will initial the report and forward it to the Director of the Bureau. If the Director concurs with the recommendation, he/she will sign it and forward same to the Highway Administrator. If the Highway Administrator approves of the issuance of the Eviction Warrant, the Highway Administrator will sign three (3) copies of the Eviction Warrant.

\*\*\*

19.10 Provided that the grace period of four (4) months has expired and the thirty (30) day notice to terminate the occupancy has been sent as prescribed under Item 19.06, the MHD may thereafter issue a warrant via the Sheriff of the County in which the property is situated, directing the Sheriff to make entry on the property and to take possession thereof on behalf of MassDOT, as prescribed in Chapter 427 of the Acts of 1966.

\*\*\*

19.11 When in the opinion of the PM Administrator, it appears necessary that an Eviction Warrant should be issued under the provisions of Chapter 427 of the Acts of 1966, for leased or rented land under M.G.L. Ch. 81, Sec. 7E, the PM Administrator shall apply the procedures outlined in Items 19.07 through 19.10.

\*\*\*

19.12 When the MHD acquires property which is occupied, or will use acquired property for the housing of persons who are being moved from one acquired property to another, then such property shall be maintained as required by law and/or MHD contract. (Refer to Chapter 427 of the Acts of 1966, "State Sanitary Code, Minimum Standard of Fitness for Human Habitation"; opinion of the Attorney General, dated 12/29/69) (refer to Chapter 17, Section 17.02 of this manual).

\*\*\*

19.13 The maintenance and repair functions of the Property Management Section may be carried out by other MHD employees, or by contract with independent contractors or consulting firms. In the latter case, consideration is given, where possible, to the hiring of those businesses listed with the MassDOT Office of Civil Rights.

\*\*\*

19.14 The maintenance and repair services, to MassDOT-owned buildings acquired for right of way purposes, are for basic necessities depending on whether same are occupied, to be saved, sold or leased, including repairs for interruption or failure of heating, lighting, water and electric services, snow removal, repairs to common stairways or passageways, and to the extent applicable under the laws and opinions cited in Section # 19.12 of this Manual or other pertinent laws, may also include painting, plastering, wallpapering or other similar repairs. The PM Section's record-keeping system will reflect maintenance and repair expenses, which should be placed in each individual property file. Invoices will identify the appropriate project and parcel number(s), and be filed by ROW accountants until the Project is completed, whereupon said invoices shall be put into their respective Taking folders and placed in the Division's main parcel files.

\*\*\*

19.15 When a MassDOT-owned structure requires repair, the ROW Agent will consult with the PM Administrator as to agreement on a repair contract, making certain to follow MHD's Fiscal Management procedures for securing goods and services. If the cost to repair exceeds \$ 1,000.00, the ROW Agent shall obtain at least three (3) bid proposals (in writing) and the bid offering the best value will be accepted. The ROW Agent shall prepare the Service Contract Input Form requiring the signature of the successful bidder (refer to Exhibit # 19-5). The contract is forwarded via the PM Administrator and the Bureau's Finance Manager to the Office of the Chief Financial Officer (Finance Office). The Finance Office secures approval from the State Comptroller's Office and, if required, the Highway Administrator's Office. Once all applicable approvals have been obtained,

the ROW Agent notifies the successful bidder to proceed with the repair work.

\*\*\*

- 19.16 In case of an emergency, where an occupant's health or safety is impaired, the requirement of securing three (3) bid proposals may be waived so that the repairs will be done as soon as possible. In such instances, service contracts will be forwarded to the Finance Office and MHD Fiscal Management for approval, subsequent to the repair work being completed. When the repair cost is \$1,000.00 or less, the ROW Agent will secure a verbal service contract, providing same is obtained via telephone contact for three (3) separate (verbal) bids. Emergencies do not require prior approval. At all times, the ROW Agent shall require prior approval of the PM Administrator before committing to the purchase of materials, equipment, or service commodities. In the absence of the PM Administrator, approval is required from the Finance Manager or the Deputy Director of the Bureau.

\*\*\*

- 19.17 The ROW Agent will make certain to investigate and sign all bills submitted for the maintenance work and/or repair of MassDOT-owned structures by contractors, vendors and/or consultants who performed such PM functions, prior to filing the bill with the Bureau for payment. The agent signing said billing statement will also submit a report detailing the circumstances which necessitated the maintenance or repair work done.

\*\*\*

- 19.18 When a commodity such as lumber, fuel oil or repair tools is on a State Purchasing Office vendor price agreement list, the agent shall secure such commodity from said state approved vendor who is located within reasonable distance of the state property needing service. If the required commodity is not on said price agreement list, the agent is to follow the purchasing rules as stated in Sections 19.15 and 19.16 of this manual, and/or the procedures in the current Expenditures Classification Handbook issued by the Comptroller's Office (refer to the Finance Office), relative to repair costs that are greater or lesser than \$1,000.00.

\*\*\*

- 19.19 MassDOT may dispose of land it has acquired, provided it is deemed no longer necessary for State highway purposes, in accordance with M.G.L. Ch. 81, Sections 7C and 7E, and the applicable provisions of M.G.L. Ch. 6C.

\*\*\*

- 19.20 Upon receipt of a request to acquire land owned by MassDOT that may be considered "excess" or "surplus" to the needs of the Highway Division, the Bureau's Property Management Section (PM) will evaluate the request in consultation with the District Highway Director in order to prepare a recommendation that, either further action should be initiated, or in the alternative, to deny the request without further action.

In the case of a denial, the PM Administrator will prepare a reply, to be sent the requester under the Director's signature, with the approval of the District Highway Director.

\*\*\*

19.21 If the request to acquire MassDOT excess land is recommended for further action, the PM Section will initiate such action as:

1. Send to the requester an acknowledgment letter(refer to Exhibit #19-6) which in turn should be signed and returned to the PM Section along with a \$500.00 "good faith" deposit check. Note: if the requester is not the successful bidder, or the parcel is not sold, the deposit will be returned to said requester.
2. Obtain prints and construction plans of the appropriate layout, or other evidence of parcel ownership i.e. deed and plot plan. Also, identify the following information on the case folder before processing any request to purchase MassDOT-owned land.
  - a. The correct Federal-aid project number or "NFA" designation.
  - b. Parcel number.
  - c. Status of Federal-aid participation in the original acquisition of the land to be sold.
  - d. The cost code to be assigned.
  - e. The National Highway System (NHS) designation.
3. Make an on-site inspection of the subject land.
4. Prepare the canvass inquiries that request the various MassDOT sections (including, but not limited to, Traffic, BTP&D, Highway Engineering, Environmental, Highway Operations and the District) to advise the Bureau's PM Section by a specific deadline as to whether there is any present or future need of the subject land for highway purposes. The Environmental Section's response should include an evaluation of the environmental effects of the proposed disposition action as provided in 23 CFR Part 771 (refer to Exhibit # 20-14).
5. The PM Administrator will enter each case assigned onto the agent's work progress chart; each active case to be continually monitored, pending activities such as canvassing, Highway Administrator's action, FHWA approvals, and appraisal requests through the Bureau's Appraisal section, if appropriate.
6. A PM agent will be responsible for documenting on a progress chart, by date and notation, all important actions taken, pertaining to each case, to ensure expeditious follow-up to all recommended requests.

\*\*\*

- 19.22 If the other MassDOT sections, via the ROW canvass, agree with the request, or present an alternative that is reasonable, legitimate and timely with respect to the future use of the subject property, and which is acceptable to the requester, said request inclusive of the canvass comments and Bureau recommendation, will be placed on the Highway Administrator's Agenda for his/her approval.

\*\*\*

- 19.23 The Bureau's recommendation to the Highway Administrator shall request that the Highway Administrator: declare the requested land no longer needed for highway purposes, where said parcel is not already declared excess;

authorize such disposition at a price to be determined by appraisal subject to FHWA approval as outlined in the Right-of-Way Oversight Agreement (refer to Exhibit # 20-2);

authorize the preparation of a highway layout alteration where necessary; and

approve any other conditions or restrictions which may be recommended.

MassDOT shall charge current fair market value for the disposition of real property interests if those interests were obtained with Title 23 U.S.C. funding. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

- (1)With FHWA approval, when MassDOT clearly shows that an exception is in the overall public interest for social environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation (refer to Exhibit # 20-6). MassDOT shall submit requests for such exceptions to the FHWA in writing.
- (2)Use by public utilities in accordance with 23 CFR part 645 (refer to Exhibit # 20-8).
- (3)Use by railroads in accordance with 23 CFR part 646 (refer to Exhibit # 20-9).
- (4)Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652 (refer to Exhibit # 20-10).
- (5)Use for transportation projects eligible for assistance under title 23 of the United States Code.

\*\*\*

- 19.24 If the Highway Administrator approves the recommended disposition, the PM Section (when FHWA approval is required) will prepare a submission addressed to the FHWA Division Administrator that will include the following:

1. A letter signed by Bureau Director requesting FHWA review and approval.
2. Information identifying whether the real property being disposed of was acquired with Federal assistance made available from the Highway Trust Fund (the Federal-aid project number and year of acquisition should be provided).
3. Copy of the Highway Administrator's approval.
4. Copy of the Bureau's canvassing request to the various MHD sections along with all responses.
5. Pertinent correspondence from the petitioner, public agencies or other interested individuals.
6. Copies of the appropriate layout and construction plan with the affected parcel(s) clearly outlined.
7. Photographs of the area.

Other property management procedures and processes entail:

1. A letter, including the Highway Administrator's approval and a copy of the plan with explanation of the proposed land disposition, shall be transmitted to the Director of the MassDOT Office of Real Estate and Asset Development (OREAD) for disposition in accordance with the OREAD Land Disposition Policy and subject to the final approval of the MassDOT Secretary and Chief Executive Officer.

\*\*\*

19.25 Structures located on acquired land may be sold "as is", in order to reduce the overall cost of acquisition and demolition. They may be sold by:

1. Accepting an "Offer to Purchase" (refer to Exhibit # 19-9) from a former owner who wishes to re-purchase their former structure, or
2. Sealed bids, subsequent to advertising in local (major) newspapers, as well as a list of newspapers eligible as submitted by the MassDOT Office of Civil Rights (refer to Section 19.28-1 for detail).

\*\*\*

19.26 Structures are to be sold only in their entirety and may not be sold by individual components. The Division may take components for its own use,

but must account for the removal and value of such items in the Master Structure Spreadsheet (refer to Exhibit # 19-2).

\*\*\*

19.27 The sale of a structure by means of an "Offer to Purchase" from a former owner, procedurally is as follows:

1. The agent will recommend on the "Individual Structure Record" Form ROW 324 (refer to exhibit # 19-1) whether the structure should be considered for sale to the former owner, for sale by sealed bid, or for demolition (refer to Exhibit # 19-3). The agent will also record the sale or demolition onto the master spreadsheet for the project (refer to Exhibit # 19-2).
2. Except in areas where the relocation of buildings would not be consistent with planned urban development, the owner of improvements or appurtenances on lands being acquired as right-of-way for Federal-aid projects, shall be allowed the option of retaining such improvements or appurtenances, at a retention value predetermined by PM personnel through the comparative process of sales at public auction. The Bureau's Relocation Section will be notified so as to explain to the owner the effect, if any, of such a repurchase on relocation benefits.
3. The PM Administrator will submit a completed "Sale Price Of Structure To Be Removed" form ROW 724 to the Deputy Director for approval. The suggested selling price, for the repurchase and removal of each structure, will be documented by means of stating the sealed bid selling prices of similar structures (refer to Exhibit # 19-10).
4. The PM agent will discuss the repurchase price with the interested former owner, fully explaining the procedures required before the MHD may formally accept the offer; will assist the former owner in completing the "Offer To Purchase" (refer to Exhibit # 19-9) and "Movement of Structures-Preliminary Requirements" form ROW 610 (refer to Exhibit # 19-11); will ascertain that the proposed relocation site meets all zoning requirements as well as being accessible, and will have made certain the Relocation Section agent has fully explained the effect, if any, of a repurchase towards any entitlement benefits.
5. When the PM Administrator receives the completed forms, i.e., Exhibits 19-9 and 19-11 as well as a check or money order made out to MassDOT in the amount of 10% of the agreed upon repurchase price, he/she will prepare and forward a recommendation to the Finance Manager. If acceptable, the Finance Manager will initial same and forward it to the Deputy Director. Subject to the Deputy Director's concurrence and with the Bureau Director's approval, the recommendation will be forwarded to the Highway Administrator (refer to Exhibit # 19-12).
6. If the Highway Administrator approves the recommendation, the PM Section shall prepare a Notice of Acceptance, Form ROW 720, to be sent to the former property owner (refer to Exhibit # 19-13).

7. In accordance with the terms of the agreement, the purchaser is required, within one week of receipt of the Highway Administrator's acceptance notice of the repurchase, to forward to the PM Section a treasurer's check or money order, made payable to MassDOT, in the amount of 90% of the repurchase price or the balance outstanding (i.e. repurchase price less the 10% up front binder payment), and transmit same to the Finance Office accompanied by Form ROW-692 (refer to Exhibit # 19-8).
8. A separate treasurer's check or money order is required of the purchaser in the amount of \$ 3,000.00, made out in the names of "Massachusetts Department of Transportation" or and the name(s) of the repurchaser, as surety of performance that the following will be done:
  - a. The repurchased structure will be removed from within the highway layout on or before the agreed date.
  - b. The cellar floor and foundation will be demolished and back-filled in accordance with local and/or state building codes, inclusive of capping all utility lines (water, sewer, gas) entering said structure.
  - c. All materials, particularly including combustible debris, are removed from the site.

The PM Administrator is responsible for keeping all surety of performance deposits.

9. The PM agent, in writing, will inform the PM Administrator of the repurchaser's fulfillment of all the terms of the agreement and will indicate by request when the surety check is to be returned by certified mail return receipt requested (refer to Exhibit # 19-14).

\*\*\*

19.28 The sale of a structure(s) by means of a "Sealed Bid" process is to be conducted as follows:

1. The agent will recommend to the PM Administrator those newspapers having the largest circulation and/or best coverage of the area in which the structure is located, to be used for advertising the sale (by sealed bid) of property, in order to insure a maximum number of prospective bidders. Note - in accordance with Section 601 of Title VI, Civil Rights Act of 1964 "advertising will also be in Minority Newspapers" (refer to Exhibit # 20-17).
2. Upon request, the PM Section will have delivered to each qualified bidder, a set of required bid submission forms i.e. "Procedural Form for Submitting Sealed Bids for Purchase and Removal of Structures", Form ROW 612, (refer to Exhibit # 19-15); the "Sealed Bid Form", Form ROW 042 (refer to Exhibit # 19-16); an "Asbestos/Lead Paint Notification Form" (refer to Exhibit # 19-17), and the "Movement of Structures Preliminary Requirements" form (refer to Exhibit # 19-11).

A qualified bidder is one who has appropriately filled out all of the above noted forms and submitted same in a timely manner, inclusive of the performance criteria in item # 3, below.

3. A treasurer's check or money order, payable to MassDOT in the amount of \$100.00 or 10% of the bid (whichever is greater), or the total amount of the bid if less than \$100.00, must accompany the bid.
4. The PM Administrator will publicly open the sealed bids and notify the Director as to the results. The PM agent assigned will check the plan for accuracy in conformance to the proposed new location, as shown on the reverse side of the "Movement of Structure" form. The PM Administrator will prepare a memo recommending that the highest responsible bidder be accepted and transmit same to the Finance Manager. If the recommendation is acceptable, the Finance Manager will initial and forward it to the Deputy Director. If the Deputy Director, with the Director's concurrence, agrees with the recommendation, same will be placed on the Administrator's agenda recommending that the highest responsible bidder be accepted.
5. The PM Administrator, upon notice of the Highway Administrator's approval, will notify the successful bidder of such acceptance and the procedures for purchase and removal of the structure.

\*\*\*

19.29 MassDOT, through its OREAD, may sell or transfer the control of land to other State or public agencies, when such sale or transfer will result in serving the best interest of the general public so long as same is no longer necessary for State highway purposes. Reference M.G.L. Ch. 81, Sec. 7B; M.G.L. Ch. 30, Secs. 61 and 62; and M.G.L. Ch. 6C, Sec. 20.

\*\*\*

19.30 All requests to the Bureau or to the OREAD from other State or public agencies, for the sale or transfer of MHD excess land, must specify the reason for the request and detail why such a transfer would serve the best interest of the general public.

\*\*\*

19.31 A sale or transfer of control of MHD land shall be accomplished by following the procedures as outlined in the ROW Manual's Sections 19.19 through 19.24 inclusive, and in accordance with the OREAD Land Disposition Policy. Where real property acquired with federal assistance made available from the Highway Trust Fund is transferred to another public agency at less than fair market value for continued public use, the OREAD will submit the public interest justification to FHWA for approval. For approved cases, the deed of transfer should include a reversionary clause requiring a return of the land to the control of MassDOT should it cease to be used for the intended purpose.

\*\*\*

19.32 When the document or deed is returned to the PM Administrator showing the alteration of the layout, said Administrator will arrange an appointment with the responsible member of the other State or public agency with OREAD to arrange for payment, if any, for the transfer of the subject land. Unless otherwise instructed by the OREAD, the PM Administrator will arrange to file the transfer of control document or deed in the Registry of Deeds for the County in which the property is located.

\*\*\*

19.33 MassDOT may lease land or structures, through its Office of Real Estate and Asset Management under the Accelerated Highway Acts (Bond Issues), at the discretion of the Secretary of MassDOT. Reference Chapter 427 of the Acts of 1966, and M.G.L. Ch. 81, Secs. 7E, 7H, 7L.

\*\*\*

19.34 Property that is intended to be used for highway purposes may be rented through the Bureau by means of a Use and Occupancy agreement, in the interim between acquisition and the time such property is needed for construction, under the provisions of Ch. 427, Acts of 1966, as amended. Property remaining after the highway has been built and which is not currently needed for highway purposes, may be rented under the provisions of said Chapter 81. A potential tenant is required to file a rental application (refer to Exhibit # 19-18) and submit to a credit check.

\*\*\*

19.35 Whenever a property (to be acquired) includes a rentable improvement or unimproved land that can be used for commercial or industrial purposes, the appraisal of the property shall include a documented fair market rental rate for use in factoring a use and occupancy (U&O) charge. U&O agreements will not be processed through the OREAD unless the Bureau is otherwise directed by the Secretary. The Bureau's Review Appraisal Section shall review the proposed charge and forward a recommended rate to the PM Section. The PM Section shall reduce the recommended rate by 20%, to compensate for a short-term occupancy factor. The PM Section shall also compute an amount which is equal to 25% of the gross family income of the occupants, based on income information obtained by the Relocation Section. The PM Section will then establish the charge for use and occupancy as the lesser of either: (a) the recommended rate reduced by 20% for short term occupancy, or (b) 25% of the gross (monthly) family income. The PM Administrator shall submit the proposed rate, via the Finance Manager, to the Deputy Director of the Bureau. If both the Deputy Director and Director of the Bureau concur with the amount being submitted, a recommendation will be forwarded to the Highway Administrator (refer to Exhibit # 19-19).

\*\*\*

19.36 If the Highway Administrator approves the recommendation, the U & O charge for tenants will be effective from the first day of the month following the date of acquisition. The U&O charge for owner occupants will be effective from the date MHD payment for the acquisition is made available. The following provisions apply to occupancies:

6. When the acquisition date falls on the first day of the month, the effective date for a tenant's rental will be on that date.
7. Rental charges to tenants will be payable monthly unless otherwise provided. The last month's rent will be prorated to reflect the number of actual days of occupancy.
8. Rental terms will be given to owner occupants (refer to Exhibit # 19-20) and to tenant occupants (refer to Exhibit # 19-21) either by a personal contact or by mail.
9. Following Highway Administrator approval, notice of each rental or U&O charge, including the rate and date of payment, shall be forwarded promptly to the MassDOT Finance Office (refer to Exhibit # 19-22).
10. All rents will be paid to MassDOT.
11. The Finance Office shall promptly notify the PM Administrator of any delinquency in rental payments.

\*\*\*

19.37 The PM Section, upon receipt of a notice from the Finance Office regarding an occupant's delinquent payment, shall investigate and prepare a written report of the circumstances of the delinquency. The Agent assigned will contact the delinquent tenant to determine the reason(s) for same and follow up on collection efforts. The PM Administrator, after reviewing the delinquency report and consulting with the Relocation Section, will take the following action:

1. If the investigation indicates a change in the financial condition of the occupant since acquisition, or if the physical condition of the rented structure has changed substantially since acquisition, or for such other good cause, the PM Administrator may recommend (in the same manner as the original rental) an adjusted rate based on the financial condition of the occupant, or an adjusted rate based on substantial changes in the physical condition of the structure. If, in the opinion of the PM Administrator, the delinquency is not willful and is deemed uncollectable at that time, same will present a documented report (indicating support of such an opinion) to the Chief Finance Officer and, when applicable, through the Legal Section to the Office of the Attorney General. Without further notice from the Supervisor of Fiscal Management concerning any delinquency, the PM Administrator should make periodic reviews of the tenant's ability to pay rent, as well as schedule personal visits by a PM Agent.
2. If, in the opinion of the PM Administrator, the delinquency is willful and eviction is justified, a documented recommendation shall state the basis for such opinion and be forwarded to the Bureau's Legal Section and the MassDOT Finance Office,, whereupon action will

be taken in accordance with procedures set forth in Sections # 19.08 and # 19.09.

3. The Bureau will close out delinquent use and occupancy rental cases by consolidating these files alphabetically, by delinquent tenant's name, into one filing cabinet within the central file room, thereby providing an efficient and organized filing system.

\*\*\*

19.38 A "notice of eviction" shall be sent to the Chief Finance Officer.

\*\*\*

19.39 When renting property under M.G.L. Ch. 81, Sec. 7-E, through use and occupancy agreements, the PM Administrator will follow, insofar as it may apply to rentals, ROW Manual Sections # 19.19 to # 19.24 inclusive.

\*\*\*

19.40 Upon securing the signature of the renting tenant or owner occupant, the PM Administrator will forward the U&O agreement to the Highway Administrator for his or her signature. Refer to procedures under Section # 19.24.

\*\*\*

19.41 After the completion of the U&O agreement and the affixing of the Highway Administrator's signature, the PM Section will deliver the original copy to the renting tenant or owner occupant. Refer to Sec # 19.24 for procedures.

\*\*\*

19.42 If more than one tenant or occupant is interested in using and occupying the same MHD property, a competitive bid procedure is to be followed.

\*\*\*

19.43 MassDOT, through its OREAD, may, with the approval of the Highway Administrator, lease land adjacent to or over/under a State highway for public parking facility use, provided that the term of any such lease does not exceed five (5) years (refer to M.G.L. Ch. 81, Sec. 7-H.).

\*\*\*

19.44 The PM Section, when the Bureau is directed by MassDOT to investigate the feasibility of utilizing State owned land for a public parking facility (as referenced in # 19.43), will evaluate such in the same manner as if the request were to purchase excess land, evaluating same in accordance with Sections # 19.20 through # 19.24, including requesting the opinions

of the various sections within MHD in a manner similar to the Bureau's standard process of canvassing.

\*\*\*

19.45 After all applicable reported opinions have been received and in the opinion of the PM Administrator the subject parcel of land being considered should be utilized as a public parking facility, the PM Administrator should so inform the Director and the Deputy Director of the Bureau.. If in agreement, the Director will forward a recommendation to the Highway Administrator requesting his/her approval to declare such area or air space "not currently needed for highway related purposes", subject to FHWA approval when applicable and subject to procedures stated in Section # 19.24.

\*\*\*

19.46 If the Highway Administrator approves the temporary excess declaration of the subject area or airspace to be leased as a public parking facility, and where the subject airspace is on the Interstate System, the PM Section will prepare a complete air rights submission (when air rights are involved) for the Director's signature, addressed to the Massachusetts Division Administrator of the Federal Highway Administration. The submission should be prepared in accordance with "FHWA's Airspace Guidelines to 23 CFR 710.405-710.407" dated December 21, 1999 (refer to Exhibit # 20-12) and should contain the following:

1. A formal cover letter requesting the approval of the FHWA to lease the subject area or airspace.
2. A copy of the legal description of the subject area.
3. A copy of the applicable layout and construction plans showing a distinct outline of the proposed public parking facility.
4. A plan showing any proposed physical changes to the subject area, including signage, fencing, driveway access.
5. A copy of the proposed lease, as provided by the OREAD.
6. Applicable correspondence from the petitioner, public agencies and other interested parties.
7. A copy of the Bureau's canvassing comments.
8. A copy of the Highway Administrator's approval.
9. Photographs of the area.

\*\*\*

19.47 If the FHWA approves the subject area or airspace proposed for leasing as a public parking facility, the PM Administrator will follow the procedures outlined in Section # 19.24, and forward such documentation to the OREAD for disposition under the OREAD Land Disposition Policy guidelines.

\*\*\*

19.48 Each interested party will be required to submit with each proposal to the OREAD, a sworn statement (under oath) containing the names and addresses of the corporate officers (in case of a corporation) or the names and addresses of all persons having a financial/beneficial interest in the proposed lease (in case of a partnership or other voluntary association). Each party must submit a certified check in the amount of 10% of the total proposal.

\*\*\*

19.49 MassDOT may lease air rights over State highways as referenced in M.G.L. Ch. 81, Section 7-L.

\*\*\*

19.50 The prospective lessee will be required to state the proposed use of the subject airspace, which shall be in conformance with local ordinances and zoning requirements, and be required to submit a complete set of engineering and/or architectural plans that will show any proposed structure(s) and the location of same, with a copy of the local zoning requirements pertinent thereto. The prospective lessee must also submit a sketch (or plan) showing any proposed physical changes, including signs, fencing, driveways, etc. refer to Section # 19.20 through 19.24 for procedures.

\*\*\*

19.51 The prospective lessee will be required to file a statement (under oath) containing the names and addresses of the officers and directors (in case of a corporation) or the names and addresses of all persons having a financial/beneficial interest in the proposed lease(in case of a partnership or other voluntary association).

\*\*\*

19.52 The PM Section will request the opinion of the various divisions within MHD as to the advisability of leasing the subject air space. The request (in writing) shall include the appropriate plan showing the proposed lease area (outlined in red) and a rendering of any proposed structure that is to be involved in the proposed use. Procedures to be followed are in Section # 19.21 through # 19.24. The assigned PM Agent will carefully review all comments generated from the review process, to insure that all pertinent conditions approved are noted for incorporation into the lease document to be completed by the OREAD staff.

\*\*\*

- 19.53 If the Highway Administrator approves the recommendation of the Director to lease the subject airspace, and where the airspace is on the Interstate System, the PM Section will prepare a submission for the Director's signature, to be addressed to the Massachusetts Division Administrator, FHWA. The submission will contain items # 1 through # 9 of Section # 19.46, inserting the term "airspace" in place of "area" or "public parking facility". The items referenced above should be incorporated in the Airspace Agreement Standard Form as approved by FHWA, May 7, 1980 (refer to Exhibit # 19-23).

\*\*\*

- 19.54 If the FHWA approves of the subject airspace lease, the PM Administrator: shall transmit a memorandum, including the Highway Administrator's approval and a copy of the plan with explanation of the proposed land disposition, to the Director of the MassDOT Office of Real Estate and Asset Development (OREAD) for disposition in accordance with the OREAD Land Disposition Policy and subject to the final approval of the MassDOT Secretary and Chief Executive Officer.

\*\*\*

- 19.55 To avoid having long periods of "tenancies at will" between lease expiration dates and the beginning of newly executed leases at the rental value set by the previous lease, the PM Section will follow the procedures listed below:

1. A lease renewal process in support of the OREAD shall start at least one (1) year prior to the existing lease's expiration date.
2. The standard Bureau canvass shall be sent out and a new appraisal requested simultaneously, following notification by the PM Administrator to begin said process. The Agent assigned will include in the appraisal request packet, copies of the Highway Administrator approval, canvass responses applicable to the current lease, plan of area/parcel(s), and any information that is peculiar to that parcel(s).
3. In the event the new lease cannot be executed on the day following the date of expiration of the current lease, an approval by the Highway Administrator shall be sought to provide for a Use and Occupancy (U&O) under the same conditions of the expiring lease through the OREAD, except that the new appraisal figure shall be the "fair market value rental" amount to be charged until an amount is established by public bids. When a new lease is processed through the OREAD and executed and the successful bidder is the prior lease holder, the new lease shall take effect on the day following the date of expiration of the expired lease.

4. In the event the successful proposer is not the person holding the expired lease or the interim U&O tenancy, the effective date of the new lease will begin at the first weekday following the removal of the holdover tenant or at such other specified time following the date of expulsion of the holdover tenant.
  
5. Once an interim U&O agreement or a new lease becomes effective, a copy of the Highway Administrator approval for the interim U&O agreement, or in the case of a new lease, a copy of the Secretary and CEO approval, shall be sent to the Finance Office with a cover letter indicating that the Federal share of any net income generated by the air rights proposal is to be deposited in a transportation account for reuse on a Title 23 eligible project (refer to Exhibit # 20-11). If the occupancy rental rate is different from the proposed rental rate, a detailed explanation will be provided by the PM section. Leases involving property acquired with Title 23 U.S.C. funding should be governed by the provisions in paragraph 19.23.
  
6. The Highway Administrator approval establishing the U&O charge shall contain a condition, as defined in item # 3 (new appraisal figure), whereby the holdover tenant shall vacate the premises within thirty (30) days following receipt of such a written notice from the Division, in the event the new lessee is not the holdover tenant. Equally, another condition shall require the occupant's agreement to stipulate a Relocation Benefits Exclusion clause.
  
7. Upon establishing a U&O agreement, an explanation of the circumstances along with a copy of the Highway Administrator approval and any other pertinent information relative thereto, shall be sent to the FHWA for those leases subject to FHWA approval (refer to the Right-of-Way Oversight Agreement, Exhibit # 20-2). When available, a copy of the executed lease should be forwarded to FHWA.

\*\*\*

19.56 Where appropriate, based upon the conditions of the surplus property, a five (5) year lease shall contain an "option to renew" for five (5) years, in order to avoid going through the entire renewal process. In such instances, the Bureau shall request that the OREAD follow the procedures listed below:

1. The OREAD is to include an option-to-renew clause, in such five (5) year lease for an additional five (5) year period; the new rental rate to be established by appraisal.
  
2. The lessee shall be required to notify the OREAD, at least two (2) months prior to the end of the fourth (4) year of tenancy, of its intent to exercise the option.
  
3. If the option is exercised by the lessee and receives MHD and MassDOT approval, an appraisal shall be requested forth with (no later than the beginning date of the fifth year) so that the rental rate will have been established in time to take effect on the date the option period begins, which should be the day following the expiration date of the lease.

4. When the option becomes effective, the Finance Office must be notified, as outlined in section 19.55-5 above of the effective date, new rental rate and the disposition of the Federal share of any net income generated. A copy of the new agreement should be forwarded to FHWA, if applicable.

\*\*\*

19.57 In the interest of time and the probability that no other person would be likely to bid on the state property (other than the requester who has the only access to the property), consideration shall be given to establishing a U&O agreement prior to final action, by beginning the in-house process by initiating an internal canvassing process as well as the approval of the Highway Administrator and the completion of an appraisal. Procedures # 5 and # 7 of Section # 19.55 shall be utilized to initiate and establish the U&O (to the extent that they are applicable) as well as be incorporated into the request for the Administrator's approval as conditions for approving the lease.

\*\*\*

19.58 Upon the request of an owner, the PM Section will review access control to determine if it is presently valid. Relief may be given to property owners whose property abuts State highways where, in the determination of the MHD, such change in access will have no effect on the capability, integrity, and utility of the highway, including highway capacity or traffic safety.

\*\*\*

19.59 Where a request for a change in access is made, the PM Section will evaluate the feasibility of such in the same manner that a request to purchase excess land is evaluated. Reference Sections #19.20 and #19.21, including the canvassing of MHD Divisions as to the advisability of the proposed change in access. The acknowledgment letter should clearly require the requester to pay any enhancement value as determined by an appraisal, and have a highway alteration plan done at the requester's expense.

\*\*\*

19.60 After all applicable reports have been received, if in the opinion of the PM Administrator an access change should be recommended, that determination shall be forwarded to the Bureau Director through the Bureau's Finance Manager and Deputy Director. If the Director concurs, the access change recommendation shall be placed on the Highway Administrator's agenda for approval subject to FHWA approval, if required (refer to the Right-of-Way Oversight Agreement, Exhibit # 20-2).

\*\*\*

19.61 If the Highway Administrator approves the recommended access revision,

the PM section (when FHWA approval is required) will prepare a submission addressed to the Massachusetts Division Administrator, FHWA, that will include the following:

1. A letter signed by the Bureau Director requesting FHWA review and approval.
2. Information identifying the Federal-aid project number and whether the requested access revision involves real property rights acquired with Federal assistance made available from the Highway Trust Fund.
3. Copy of the Highway Administrator's approval.
4. Copy of the Bureau's canvassing request to the various MHD subsections along with all responses.
5. Correspondence from the petitioner, public agencies and other interested individuals
6. Photographs of the area.
7. Copies of the appropriate layout and construction plan with the affected property(s) and access points clearly outlined.
8. A plan showing the proposed driveway, traffic control or regulatory sign(s), building(s), etc., pertinent to the request.

\*\*\*

19.62 When the FHWA approves the change in access if required, and when the petitioner agrees (in writing) to pay the enhancement value amount (as determined by appraisal and where applicable), the PM Administrator will request a sample set of plans, regulations and plan specifications from the Layout Section. This set of materials, along with the Highway Administrator's approval and a letter asking the person to have a plan prepared to alter the State highway, shall be sent to the petitioner. Once a plan is returned to the MHD (within 120 days from proposal acceptance), the Bureau's Layout Section will review it for accuracy. The Bureau's Conveyancing Section will be responsible for collecting the enhanced value amount and recording the executed plan at the appropriate Registry of Deeds.

The PM Administrator shall deposit the check with the MHD Fiscal Management Section along with a properly processed Transmittal of Funds form (refer to Exhibit # 19-8) indicating that the Federal share of any net income generated by the access revision will be deposited in a transportation account for re-use on a Title 23 eligible project (refer to Exhibit # 20-11).

\*\*\*

19.63 The Bureau shall assist the OREAD in maintaining a shared inventory of identified excess parcels and to account for parcels disposed by fee or lease. The inventory shall consist of uneconomic remnants (UR parcels), land identified as excess parcels, and remainders of advanced takings which did not go into the highway layout. The inventory shall not contain any parcel or portion thereof that exists within an active highway layout.

\*\*\*

19.64 The Bureau State Projects Section shall provide the PM Section with final ROW Plans as soon as each project involving permanent takings is completed. The ROW Agent assigned to maintain the inventory shall review the Final ROW Plans for UR and X parcels and together with the matching layouts and advanced takings (reference matching FAP's, cost codes, etc.) make a determination, using only the actual taking plans and instruments, whether any UR, excess parcels, or remainders of advanced takings exist. The agent shall record any parcels found in the established inventory as well as handle any FHWA excess property reviews in a similar manner. Once the excess property review parcels are recorded in the inventory, the agent should provide the PM Administrator with a list of those parcels to be acted on for future disposal. There may be times when one or more advanced takings are made and none of those parcels are used in the highway, or a layout is produced and soon thereafter canceled. In such cases, parcels taken in fee shall be placed into the inventory.

\*\*\*

19.65 The agent in charge of the inventory shall make all recordings alphabetically, in columns, first by City/Town accompanied by the Federal-aid Project number (FAP #), NFA status, Cost Code, L.O./Order (number - date), Route/Street number. Another column may contain the parcel number, area, taking date, grantor, book & page, and any other pertinent data deemed appropriate. As parcels are disposed of by various processes (sale, lease, transfer, etc.), a separate column must be set up to record the type of disposition, grantee, lessee, transferee, date of transaction, and book & page if recorded in the Registry of Deeds. The agent must examine the deed/lease/easement/closed case files including records kept by the Layout Section (advanced takings folders and ledgers), to ascertain which parcels have completed the disposition process. Alternative filing methods or procedures may be used so long as all materials are well organized, easily retrieved and/or managed e.g. computer disks or microfiche. All paper materials must be filed in designated cabinets with accompanying plans secured in separate folders.

\*\*\*

19.66 Each agent handling the disposal of land, in concert with the appropriate staff of the OREAD, upon completing the disposition process for a given parcel, shall provide the inventory agent with all pertinent data as stated in Section # 19.65.

\*\*\*

## CHAPTER 20

### FEDERAL HIGHWAY ADMINISTRATION SECTION

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FEDERAL HIGHWAY ADMINISTRATION

20.01 From the federal perspective, oversight of the administration of the right of way program for Federal-aid projects in Massachusetts is primarily the responsibility of FHWA's Massachusetts Division Office.

\*\*\*

20.02 The Massachusetts Division Office is located in the John A. Volpe Transportation Systems Center, 55 Broadway - 10<sup>th</sup> Floor, Cambridge, MA, 02142.

\*\*\*

20.03 Oversight responsibilities are carried out by the Right of Way Program Manager and/or Realty Specialist who reports to the Massachusetts Division Administrator as shown on the Organization Chart for the FHWA Massachusetts Division (refer to Exhibit # 20-1).

\*\*\*

20.04 Right of way project and program oversight responsibilities are outlined in the "Project and Program Oversight Agreement" executed between the MHD and FHWA on January 31, 2001 (refer to Exhibit # 20-2) and the "Federal Aid Highway Program Stewardship and Oversight Agreement, Right of Way Sub-Agreement" executed between MHD and FHWA on October 30, 2009 (refer to Exhibit # 20-19).

\*\*\*

20.05 The use of Federal funds in the right of way and real estate program is governed by various Federal laws and regulations. Among those referred to in this manual are:

- a. 1970 Uniform Relocation Assistance and Real Property Acquisition Policies Act (refer to Exhibit # 20-3)
- b. Title 23, United States Code, Chapter 1, Section 131 (refer to Exhibit # 20-4)
- c. Title 23, United States Code, Chapter 1, Section 136 (refer to Exhibit # 20-5)
- d. Title 23, United States Code, Chapter 1, Section 142(f) (refer to Exhibit # 20-6)
- e. Title 23, United States Code, Chapter 3, Section 323 (refer to Exhibit # 20-7)
- f. Title 23, Code of Federal Regulations, Part 645 (refer to Exhibit # 20-8)
- g. Title 23, Code of Federal Regulations, Part 646 (refer to Exhibit # 20-9)
- h. Title 23, Code of Federal Regulations, Part 652 (refer to Exhibit # 20-10)

- i. Title 23, Code of Federal Regulations, Part 710 [refer to Exhibit # 20-11(A-F)]
- j. FHWA's Airspace Guidelines to 23 CFR 710.405 - 710.407 dated December 21, 1999 (refer to Exhibit # 20-12)
- k. Title 23, Code of Federal Regulations, Part 750 [refer to Exhibit # 20-13(A-G2)]
- l. Title 23, Code of Federal Regulations, Part 771 (refer to Exhibit # 20-14)
- m. Title 49, Code of Federal Regulations, Part 21 (refer to Exhibit # 20-15)
- n. Title 49, Code of Federal Regulations, Part 24 (refer to Exhibit # 20-16)
- o. Title VI, Civil Rights Act of 1964 (refer to Exhibit # 20-17)
- p. Title VIII, Civil Rights Act of 1964 (refer to Exhibit # 20-18)

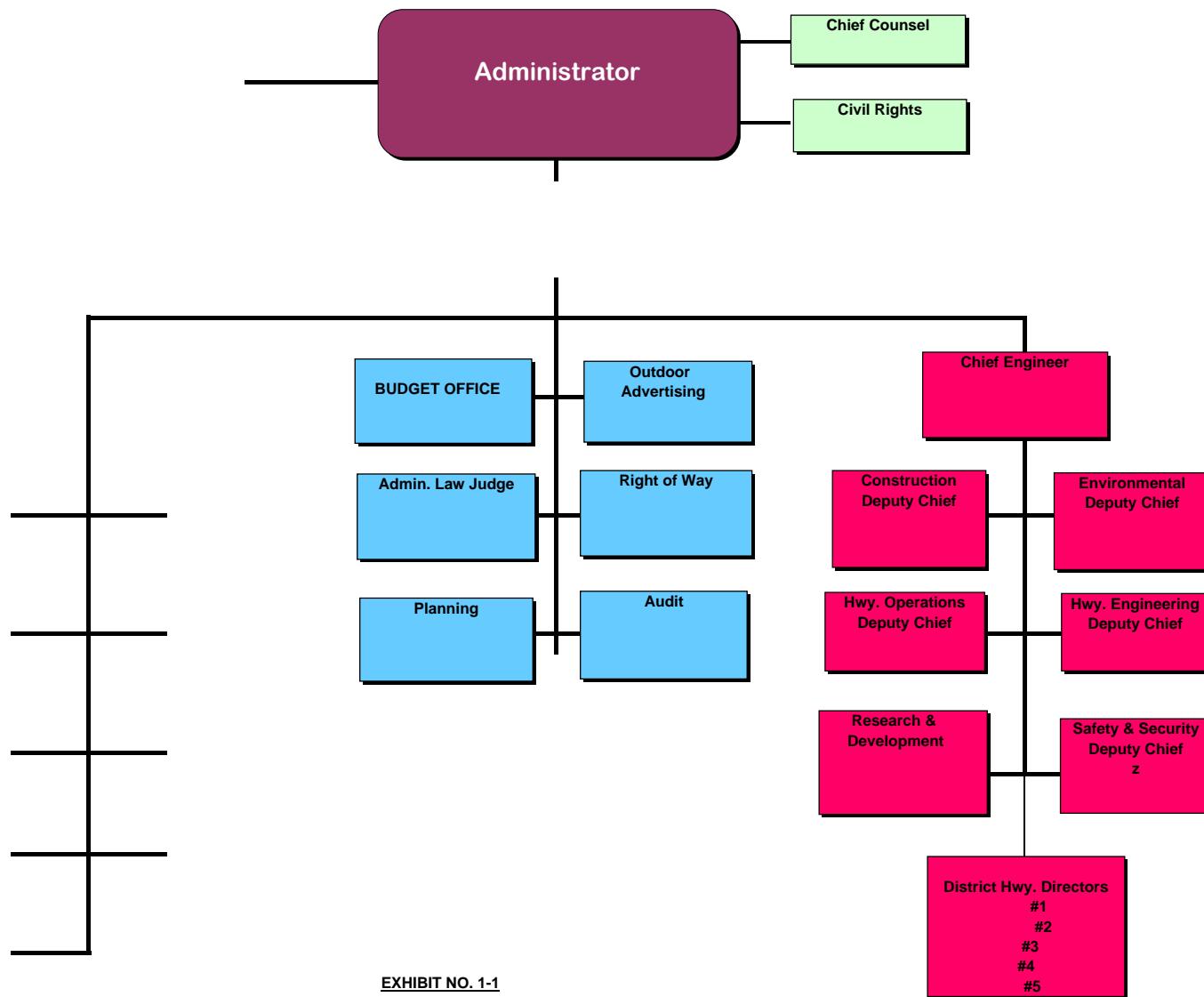
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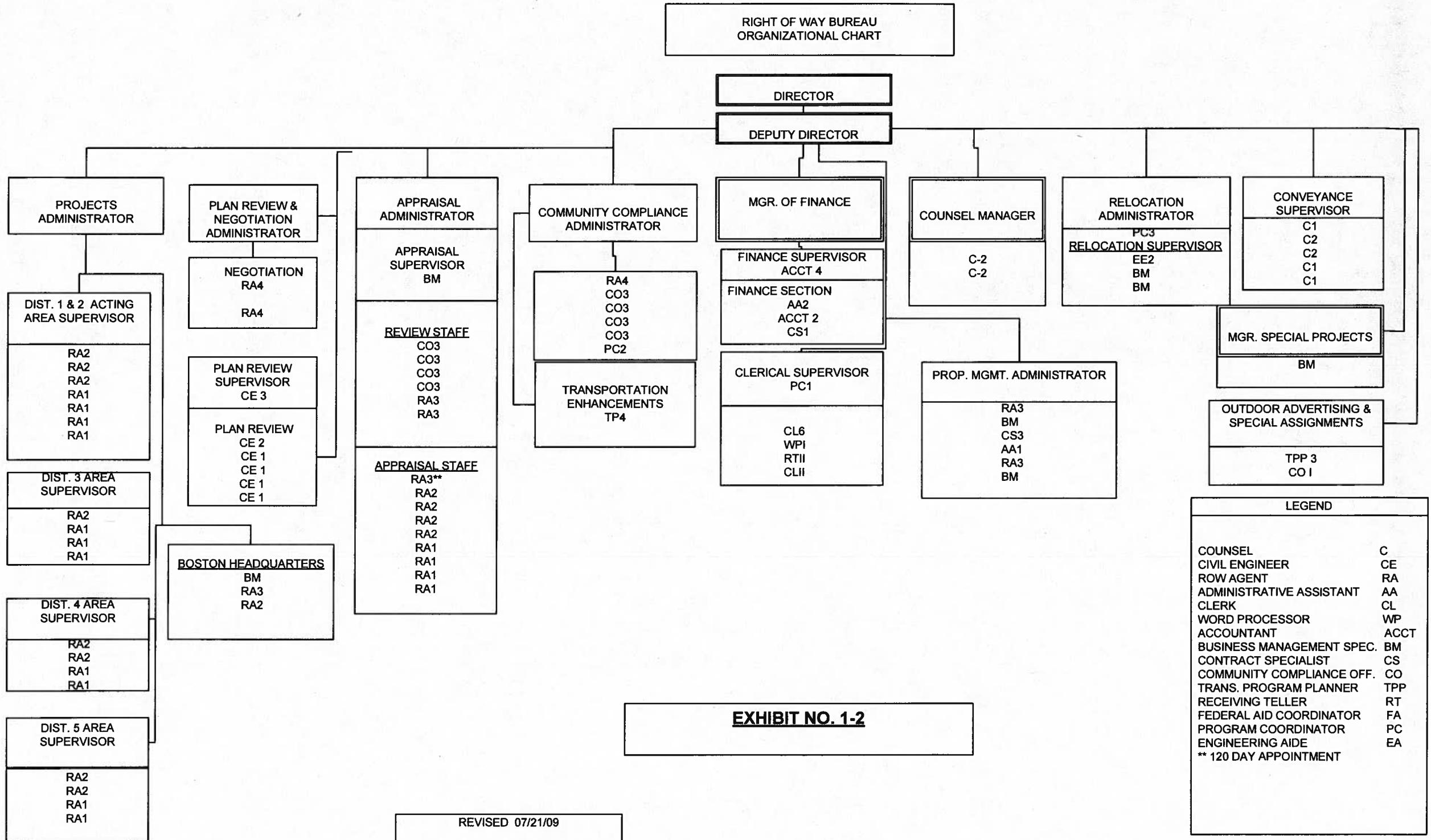
20.06 Additional right of way program guidance can be accessed electronically at the FHWA Real Estate Services website:

<http://www.fhwa.dot.gov/realestate/index.htm>

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# Chapter 1





## Chapter 2



The Commonwealth of Massachusetts  
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION  
HIGHWAY DIVISION  
Right of Way Bureau

LAND DAMAGE AGREEMENT

Standard Form

City/Town: \_\_\_\_\_ Project: \_\_\_\_\_

Owner: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

County: \_\_\_\_\_ Layout/Order No.: \_\_\_\_\_

Parcel No.: \_\_\_\_\_ F.A.P. #: \_\_\_\_\_

This agreement is entered into for full settlement of any and all claims for damage incurred or to be incurred by the Massachusetts Department of Transportation – Highway Division as a result of a taking by eminent domain, construction, and/or alteration relating to the subject property by the Massachusetts Department of Transportation – Highway Division. The land and/or rights in land taken, and limitations of access, if any, are described in an order of taking (together with any related plans) adopted by the Massachusetts Department of Transportation – Highway Division, and on file at the office of said Department and to be recorded at the Registry of Deeds in the above referenced county.

The owner agrees to accept the sum of \$ Zero in full settlement of any and all claims whatsoever to the taken or remaining property of the owner , whether caused by the taking of land and/or rights in land, limitations of access, changes in grade or drainage and/or alteration relating to the subject property; and hereby releases the Massachusetts Department of Transportation – Highway Division, from any and all claims, due to said taking, construction and/or alteration relating to the subject property.

Additions to this agreement are as follows: (if none, write "None")

None

It is understood and agreed that this agreement shall become binding only when signed by the owner and other parties in interest, and formally approved by the Massachusetts Department of Transportation – Highway Division Administrator . It is also understood and agreed that the owners are entitled to damages for the rights being acquired, but have agreed to accept no award of damages. The owner(s) agree(s) to indemnify and hold harmless Massachusetts Department of Transportation – Highway Division with respect to any claims brought by any tenant(s)/sub-tenant(s) in possession of the subject property.

SIGNATURE OF OWNER(S):

DATE:

ASSENTED TO BY MORTGAGEE(S) AND/OR TENANT(S) OF RECORD (REGISTRY OF DEEDS):

APPROVED BY:



The Commonwealth of Massachusetts  
Massachusetts Division of Highways  
Right of Way Bureau  
**RIGHT OF ENTRY (WITHOUT PREJUDICE)**

City/Town: \_\_\_\_\_ Project: \_\_\_\_\_

Owner: \_\_\_\_\_  
\_\_\_\_\_.

Station: \_\_\_\_\_ To Station: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

Permission is hereby given to the Massachusetts Division of Highways, or its duly authorized agents, to Enter upon my property in the city/town of \_\_\_\_\_ in connection with the construction of a state highway as shown on plans in the office of said Department at 10 Park Plaza, Boston, Massachusetts for the purpose of making changes and carrying out the work on my property as outlined below:

This entry to be made without prejudice to my rights in settlement of any claims for damage that may hereafter appear.

**GRANTED BY:**

\_\_\_\_\_  
Signature of Owner

Date: \_\_\_\_\_

**RECOMMENDED BY:**

\_\_\_\_\_  
Deputy Director – Right of Way Bureau

Date: \_\_\_\_\_



The Commonwealth of Massachusetts  
MassDOT HIGHWAY DIVISION  
Right of Way Bureau

## RIGHT OF ENTRY

City/Town: \_\_\_\_\_ Project: \_\_\_\_\_

Owner: \_\_\_\_\_  
\_\_\_\_\_.

Station: \_\_\_\_\_ To Station: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

Permission is hereby given to the Highway Division, or its duly authorized agents, to  
Enter upon my property in the city/town of \_\_\_\_\_ in connection with the  
construction of a state highway as shown on plans in the office of said Division at 10 Park Plaza, Boston,  
Massachusetts for the purpose of making changes and carrying out the work on my property as outlined  
below:

### GRANTED BY:

\_\_\_\_\_  
Signature of Owner

Date: \_\_\_\_\_

### RECOMMENDED BY:

\_\_\_\_\_  
Deputy Director – Right of Way Bureau

Date: \_\_\_\_\_



U.S. Department of Transportation  
Federal Highway Administration

## Federal-Aid Ineligibility Notification

TO:

NOTIFICATION NUMBER: \_\_\_\_\_

- Initial  
 Revised  
 Cancelled }

Use the same notification number  
shown on the initial notification.

PROJECT NUMBER:

*Items identified below or on the attached sheet have been determined to be ineligible for Federal-aid reimbursement for the reasons stated:*

ITEM:

TOTAL COST:

TOTAL INELIGIBLE COST \$ \_\_\_\_\_

FEDERAL SHARE BILLED \$ \_\_\_\_\_

The above items shall not be claimed until corrective action has been taken and approved by FHWA on a Form FHWA-1367. If the costs have been paid by FHWA, credits are due on the next request for reimbursement.

DISTRIBUTION:

SIGNATURE:

TITLE

DATE

## Chapter 3

## CHAPTER 2

### PREPARATION OF PLANS

#### 2.1 CONSTRUCTION PLANS

##### 2.1.1 Base Plans

Base plans show all man-made and natural features located within the proposed project limits. Examples of such details as they would be shown on a plan are indicated in Table 2.1. Base plans also show state, county, city, and town layouts, city/town lines, property lines, owners' names, deed references, and land court numbers. In addition to the plan symbols in Table 2.1, base plans also use numerous abbreviations to convey information. Table 2.2 lists some of the most commonly used abbreviations. Figure 2-1 shows an example base plan with symbols and abbreviations.

###### 2.1.1.1 Survey Data

The MHD Survey Manual provides the Department's criteria and procedures for highway location and survey work, including the requirements for aerial photography, photogrammetry, and geodetic surveys. Following are the basic responsibilities of the design engineer related to surveying: Note that the following is based on "conventional" survey collection methods. When survey is collected with computerized "Total Station" survey equipment, the designer will be furnished digital base plan information for use in CADD systems. The designer should consult with the MHD Survey Section for more information.

1. *Field Notes* - After the field survey is completed, the designer will compute and plot the alignment data, details, bench level notes, and cross section notes. The designer will adjust all baseline data, traverses, and levels by the Department method and to the allowable limits of closure. The designer can use the method of weighted least squares, the compass rule, or the transit rule. However, the method of weighted least squares is the preferred method. All computations for baselines and traverses will be programmed for computer processing. All field notes should be checked. Any discrepancies which cannot be readily adjusted should be checked in the field. All survey books must have a plan number, date plotted, and the initials of the plotter. The initials are noted on a stamp on each page in the survey book.

**Table 2.1**  
**PLAN SYMBOLS**

Roadway edges dash 6 mm long	
Cement concrete walks and drives, solid line	
Walks and drives (bituminous concrete, gravel, dirt, etc.)	
Dash line 3 mm long	
Paved gutter	
Curbing, edging double solid line	
Wood guard rail steel beam guard, wood or steel posts	
Cable guard rail, triangular concrete posts	
Cable guard rail, steel posts	
Concrete guard posts	
Balanced stone wall	
Retaining wall	
Double faced wall	
Pointed wall	
Railroad or street railway tracks	
Fence	
Barbed wire fence	

**Note:** All symbols noted apply to existing details. They are similarly shown on base plans and construction tracings in black ink, unless otherwise noted.

**Table 2.1 (Continued)**

Woods or Brush	
Hedge	
Swamp	
Rock	
Utility pole: telephone, power	No. of pole & Type of Utility (500 mm diameter) Guy (500 mm diameter) (500 mm diameter) (500 mm diameter)
Guy pole	
Light pole	
Trolley pole	
Trees	Diameter & Type (to Scale)
Property line, pencil if approx.	Mark Approx: If Approximate _____
State boundary line	Name of State _____
County Commissioner's line (layout)	Name of State _____
City or town layout line railroad sideline	Co. Comm., City, Town, or R.R. Layout (Date) _____
City, town, or county boundary line	Name of Town, City, or County (Date) _____ Name of Town, City, or County (Date) _____
State hwy. layout line: on mylar roll on construction plan	(Date) (Alteration etc.) _____ (Date) (State Highway Layout) _____
Stone bound	SB <input type="checkbox"/> (500 mm Square) Type of Material
Mass. highway bound	MHB <input checked="" type="checkbox"/> (500 mm Square) Type of Material
County bound	Co. Bd. <input type="checkbox"/> (500 mm Square) Type of Material
Town or city bound	Town or City Bd. <input checked="" type="checkbox"/> (500 mm Square) Type of Material
Mass. triangulation station	Number (Each Leg 500 mm)

**Table 2.1 (Continued)**

Buildings, houses, etc.	 <b>Type (2 Sty. Ho.)</b> <b>Material (wood, brick)</b> <b># 157</b>	
Drainage pipe	<u>Size &amp; Type of Material</u>	<u>                  </u>
Concrete box culvert	<u>Width, Height Conc. Box Culvert</u>	<u>                  </u>
Underground Utilities	<u>Name of Utility (Tel. &amp; Tel. etc.)</u>	<u>                  </u>
Black on prel. and const. plans		
Catch basin & curb inlet	<b>CBCI</b> <input checked="" type="checkbox"/> (500 mm Each Side)	
Manhole	<b>MH</b> <input type="radio"/> (500 mm Diameter)	
Water gate	<b>WG</b> <input type="radio"/> (250 mm Diameter)	
Hydrant	<b>Hyd.</b> <input type="radio"/> (500 mm Diameter)	
Gas gate	<b>GG</b> <input type="radio"/> (250 mm Diameter)	
Catch basin	<b>CB</b> <input checked="" type="checkbox"/> (500 mm Each Side)	
Drop inlet	<b>DI</b> <input type="checkbox"/> (Rectangle 1000 mm x 500 mm)	
Concrete headwall (end) for culverts	<b>Conc. Hdr.</b> 	250 mm x Actual Length
Stone headwall (end) for culverts	<b>Stone Hdr.</b> 	
Wheelchair ramp		

**Table 2.2**  
**ABBREVIATIONS**

AADT	Annual Average Daily Traffic	Exist. (or Ex.)	Existing Federal-Aid Secondary	R.C.
Aban.	Abandon	F.A.S.	Flow Line	Rd.
A.C.	Asphaltic Concrete	F.L.(or F)	Fields	Rdwy.
A.C.C.M.	Pipe Approach	Flshtn.	Stone	Retain.
Appr.	BD.	Car.	Garage	Ret.
Bit. Conc.	Baseline	Gd.	Ground	Retaining Wall
Bldg.	Building	G.G.	Gas Cote	Right-of-Way
B.M.A.	Bituminous Macadam	G.I.	Gutter Inlet	Railroad
B.M.	Bench Mark	G.I.P.	Galvanized Iron Pipe	Right
B.O.	By Others	Grav.	Gravel	Right-of-Way
Br.	Bridge	Gran.	Granite	Stone Bound
C.B.	Catch Basin	Grd.	Guard	South Bound
C.B.C.I.	Catch Basin With Curb Inlet	Hdw.	Headwall	Subdrain
C.C.	Cement Concrete	H.I.	Height of Instrument	Section
C.C.M.	Cement Concrete Masonry	Ho.	House	Sections
CEM.	Cement	Hor.	Horizontal	(End sections for pipes)
C.I.	Curb Inlet	Hyd.	Hydrant	
C.I.P.	Cast Iron Pipe	I.T.	Intersection of Slopes or	Sheet
C.I.	Class (Concrete, Excavation, etc.)	Jct.	Profile Grade Lines	Shoulder
C.	Center Line	L.	Junction	Skew
Const.	Centerline of Construction	L.B.	Length of Curve	Sewer Manhole
C.M.P.	Corrugated Metal Pipe	L.P.	Leaching Basin	Square Meter
C.S.P.	Corrugated Steel Pipe	Lt.	Light Pole	Street
Co.	County	M.B.	Mail Box	Station
Co. Bd.	County Bound	Med.	Median	Stopping Sight Distance
Conc.	Concrete	M.H.	Manhole	Surfacing or Surface
Const.	Construction	M.H.B	Massachusetts Highway Bound	Sidewalk
Cr. Gr.	Crown Grade	N.Bd.	North Bound	Tangent
Cult.	Culvert	N.I.C.	Not In Contract	Temporary Point
CM	Cubic Meter	Povt.	Pavement	Turning Point
D	Delta Angle	P.C.	Point of Curvature	Truck Percentage
	(Central Angle of Horiz. Curve)	P.C.C.	Point of Compound Curvature	Tangent
A	Directional Percentage of DHV (Title Sheet)	P. (or Prop. line)	Point of Intersection	Temp.
D.A.	Drainage Area	P.O.C.	Property Line	Top of Rail
DHV	Design Hourly Volume	P.O.T.	Point On Curve	Traffic Signal Conduit
D.I.	Drop Inlet	P.R.C.	Point On Tangent	Variable Speed (usually Design Speed)
D.I.P.	Ductile Iron Pipe	Proj.	Point of Reverse Curvature	Vitrified Clay Pipe
Dr.	Drive	Prop.	Project	Vertical
E.	External	P.T.	Proposed	Wood
E. Bd.	East Bound	P.V.I.	Point of Tangency	Water Gate
Elev. (or E)	Elevation	P.V.C.	Point of Vertical Curvature	W.I.P.
Emb.	Embankment	P.V.T.	Point of Vertical Tangency	W.M.
Ent.	Entrance	P.W.W.	Paved Waterway	X-Sect.
Exc.	Excavation	R.	Radius of Curvature	

**Table 2.3**  
**RELATION OF DATUM PLANES**  
**NAVD 88**  
**ELEVATION IN METERS**

TOWN OF ORANGE.....	+132.560
TOWN OF NORTH ATTLEBOROUGH.....	+51.962
NEW ENGLAND POWER CO. (WESTBOROUGH).....	+32.051
WESTERN MASS ELECTRIC CO. (GREENFIELD).....	+20.942
CITY OF LOWELL.....	+16.579
LOCKS AND CANALS CORP. (LOWELL).....	+1.339
CITY OF LAWRENCE.....	+1.306
MEAN HIGH WATER*.....	+1.290
TOWN OF FRAMINGHAM.....	+1.006
CITY OF FALL RIVER.....	+0.571
CITY OF TAUNTON.....	+0.541
CITY OF NEW BEDFORD.....	+0.526
CITY OF ATTLEBORO.....	+0.451
CITY OF LEOMINSTER.....	+0.261
CITY OF WORCESTER.....	+0.045
NGVD 88 DATUM	=0.000 METERS
MEAN TIDE LEVEL*	-0.164
	1.290 m
TOWN OF NATICK.....	-0.247
CITY OF CHICOPEE.....	-0.328
CITY OF SPRINGFIELD.....	-0.361
TOWN OF GREENFIELD.....	-0.421
CITY OF HAVERHILL.....	-0.681
CITY OF BROCKTON.....	-0.721
HOLYoke WATER POWER CO.....	-0.984
CITY OF HOLYoke.....	-1.005
CITY OF SALEM.....	-1.576
SOUTH ESSEX SEWAGE DISTRICT (SALEM).....	-1.606
TOWN OF MANCHESTER.....	-1.607
MEAN LOW WATER*.....	-1.621
CITY OF PEABODY.....	-1.715
BOSTON LOW WATER .....	-1.736
LOGAN AIRPORT (WATERWAYS).....	-1.854
CITY OF LYNN.....	-1.857
LOGAN AIRPORT (HIGHWAYS).....	-1.876
CITY OF SOMERVILLE.....	-1.890
TOWN OF WELLESLEY.....	-1.916
CITY OF BEVERLY.....	-1.933
TOWN OF DEDHAM.....	-1.959
BOSTON CITY BASE & WALTHAM CITY BASE.....	-1.968
CITY OF NEWTON.....	-1.990
TOWN OF STOUGHTON.....	-1.996
TOWN OF BROOKLINE.....	-2.011
CITY OF QUINCY.....	-2.020
CITY OF REVERE.....	-2.023
CITY OF EVERETT.....	-2.039
CITY OF CHELSEA.....	-2.072
TOWN OF NORWOOD.....	-2.078
CITY OF CAMBRIDGE.....	-3.553
TOWN OF WALPOLE.....	-7.334
THIRD HARBOR TUNNEL.....	-30.726
U.S. ARMY ENGINEERS (BOSTON).....	-30.833
BOSTON NAVY YARD (BASIC BENCH).....	-32.274
TOWN OF NEEDHAM.....	-32.433
MASS. WATER RESOURCES AUTHORITY & BOSTON TRANSIT COMMISSION.....	-32.439
MASS. BAY TRANSPORTATION AUTHORITY.....	-32.448
MASS. BAY TRANSPORTATION AUTHORITY REDLINE (BOSTON).....	-32.515

\* Tidal Bench Marks located at Appraiser's Stores Building,  
 U.S. Custom House, Purchase and High Streets, Boston.

NOTE: Elevations shown are derived from NGS VERTCON PROGRAM, VERSION 2.0,  
 for NGVD 29 to NAVD 88 conversions. Tests of the predictive capability  
 of the physical model show a 2.0 cm RMS agreement. The VERTCON model  
 can be considered accurate at the 2 cm level nationwide, with better  
 accuracy in the eastern United States.

**Table 2.3A**  
**RELATION OF DATUM PLANES**  
**NGVD 29**  
**ELEVATION IN METERS**

TOWN OF ORANGE.....	+132.747
TOWN OF NORTH ATTLEBOROUGH.....	+52.197
NEW ENGLAND POWER CO. (WESTBOROUGH).....	+32.266
WESTERN MASS ELECTRIC CO. (GREENFIELD).....	+21.110
CITY OF LOWELL.....	+16.825
LOCKS AND CANALS CORP. (LOWELL).....	+1.585
CITY OF LAWRENCE.....	+1.548
MEAN HIGH WATER*.....	+1.536
TOWN OF FRAMINGHAM.....	+1.238
CITY OF FALL RIVER.....	+0.829
CITY OF TAUNTON.....	+0.789
CITY OF NEW BEDFORD.....	+0.777
CITY OF ATTLEBORO.....	+0.689
CITY OF LEOMINSTER.....	+0.494
CITY OF WORCESTER.....	+0.235
MEAN TIDE LEVEL*.....	+0.082
NGVD 29 DATUM**.....	=0.000 METERS
	1.536 m
	0.082 m
TOWN OF NATICK.....	-0.012
CITY OF CHICOPEE.....	-0.110
CITY OF SPRINGFIELD.....	-0.140
TOWN OF GREENFIELD.....	-0.253
CITY OF HAVERHILL.....	-0.436
CITY OF BROCKTON.....	-0.479
HOLYOKE WATER POWER CO.....	-0.771
CITY OF HOLYOKE.....	-0.792
CITY OF SALEM.....	-1.329
SOUTH ESSEX SEWAGE DISTRICT (SALEM).....	-1.359
TOWN OF MANCHESTER.....	-1.362
MEAN LOW WATER*.....	-1.375
CITY OF PEABODY.....	-1.469
BOSTON LOW WATER .....	-1.490
LOGAN AIRPORT DATUM (WATERWAYS).....	-1.609
CITY OF LYNN.....	-1.612
LOGAN AIRPORT DATUM (HIGHWAYS).....	-1.631
CITY OF SOMERVILLE.....	-1.643
TOWN OF WELLESLEY.....	-1.676
CITY OF BEVERLY.....	-1.686
TOWN OF DEDHAM.....	-1.719
BOSTON CITY BASE & WALTHAM CITY BASE.....	-1.722
CITY OF NEWTON.....	-1.743
CITY OF STOUGHTON.....	-1.759
TOWN OF BROOKLINE.....	-1.762
CITY OF QUINCY.....	-1.774
CITY OF REVERE.....	-1.780
CITY OF EVERETT.....	-1.798
CITY OF CHELSEA.....	-1.829
TOWN OF NORWOOD.....	-1.838
CITY OF CAMBRIDGE.....	-3.304
TOWN OF WALPOLE.....	-7.096
THIRD HARBOR TUNNEL.....	-30.480
U.S. ARMY ENGINEERS (BOSTON).....	-30.587
BOSTON NAVY YARD (BASIC BENCH).....	-32.028
MASS. WATER RESOURCES AUTHORITY & BOSTON TRANSIT COMMISSION.....	-32.193
TOWN OF NEEDHAM.....	-32.193
MASS. BAY TRANSPORTATION AUTHORITY.....	-32.202
MASS. BAY TRANSPORTATION AUTHORITY REDLINE (BOSTON).....	-32.269

\* Tidal Bench Marks located at Appraiser's Stores Building,  
 U.S. Custom House, Purchase and High Streets, Boston.

\*\* Formerly referred to as MEAN SEA LEVEL.

- 2. Aerial Surveys* - The photogrammetric aerial surveys are usually supplemented by field surveys. Field surveys supply critical elevations, utility details, surface types, property lines, etc., which are plotted on the photogrammatics.
- 3. Cross Section Field Data* - The designer should check the bench mark datum and transcription used in running a circuit of levels against the originally established references. Table 2.3 illustrates a datum table. A field bench mark should be checked arithmetically. If it is correct, a red ink check mark should be made in the field book. All corrections should be noted with red ink directly above the original.

These instructions also apply to the survey cross section data:

- a. The number of significant figures in the final computation will be determined by the degree of precision used in taking the rod readings.
- b. Check and underline the height of instrument in green ink. When an H.I. is adjusted, show the correction in green ink.
- c. Computed elevations should be shown directly under the rod readings with red ink.
- d. Green ink is used for checking and correcting office computations. A green check mark should be placed at the extreme right end of each line of elevations to indicate that they have been checked and corrected, if needed.
- e. The engineer's name and the date of calculations should be recorded at the end of each set of notes.

### 2.1.1.2 Plotting Base Plan

Base plans will be plotted on paper for review purposes. Figure 2-1 provides an example of a project base plan. The following criteria will apply in plotting the base plan:

1. Plans should not be longer than 3 meters, including 150 millimeters of unused space at both ends. Plans should be no wider than 1.2 meters.
2. Plans require a title.
3. The baseline shall be stationed at 100 meter intervals (100 meters = 1 station) and can break where necessary, but there should be an overlap of 100 meters.

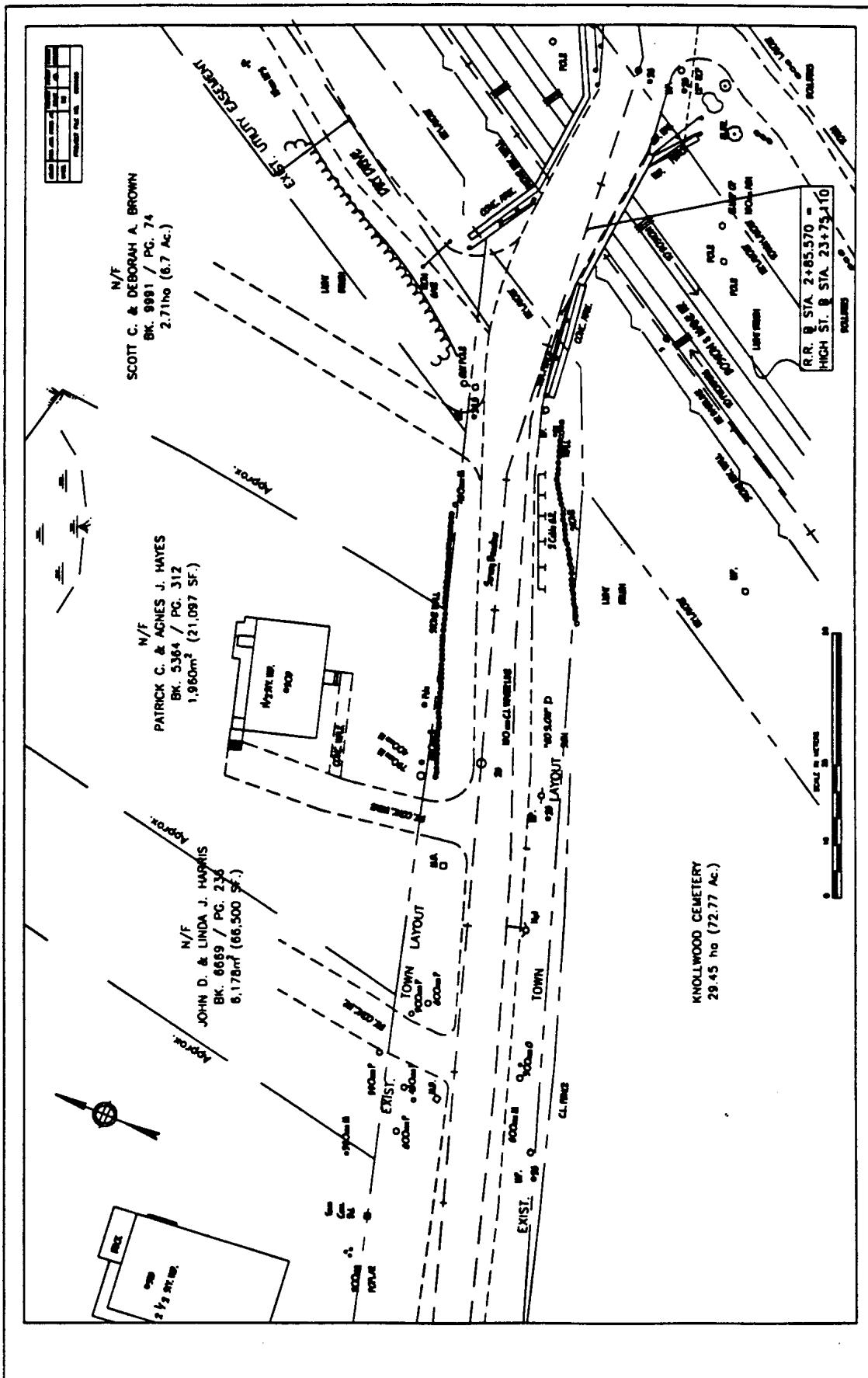
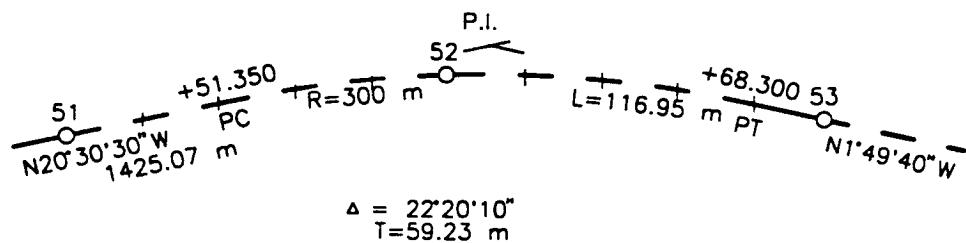


Figure 2-1. BASE PLAN

4. Plans should extend at least 100 meters beyond the anticipated beginning and end of the project.
5. All baselines and center lines are plotted by coordinates on the North American Datum 83 System as follows:

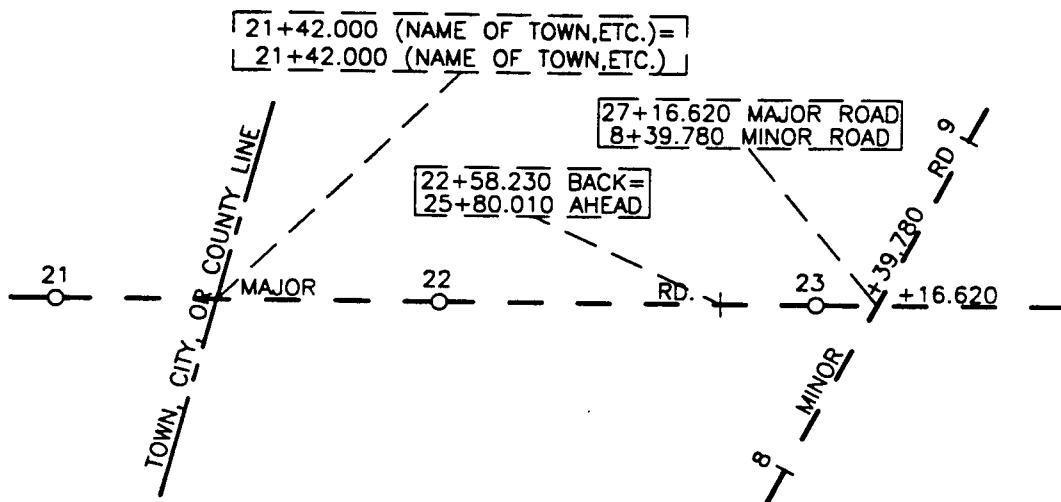
<u>Size of Squares</u>	<u>Scale</u>	<u>Coordinate</u>
	1:250	75 meters
	1:500	150 meters
	1:1250	300 meters

6. Indicate coordinate points by intersecting 50 millimeter lines. Describe these by noting at each point the coordinate values.
7. The baseline or center line is drawn as a dashed line, with the dashes about 15 millimeters long (see below). The 100 meter stations are indicated by small circles of 3 millimeters diameter, and the stations are noted above each circle with numerals 3 millimeters high with 2 millimeter ticks at 20 meter intervals. Points of curvature and tangency and angle points are marked with a short line intersecting the baseline at a right angle. The stations above the baseline or center line and the description of points (P.C., P.T.) below the baseline are 3 millimeters high. Bearings, length of tangents, curve number, and length and radii of curve are shown below the line. The remaining curve data (i.e., delta angle, length of curve tangent) are shown on the concave side of the curve. These data are located a sufficient distance from the baseline so that the curve data will not interfere with other plan details.



Other methods of providing a clear representation of geometric data (as from CADD systems) may be used as approved by the Project Manager.

8. An equation may occur where baselines intersect or at a change in station (see diagram below). This is usually offset from the point to which it refers and is enclosed by a rectangle to the point. If the plan detail requires the equation to be removed from the point, the equation may be placed on the intersection lines.



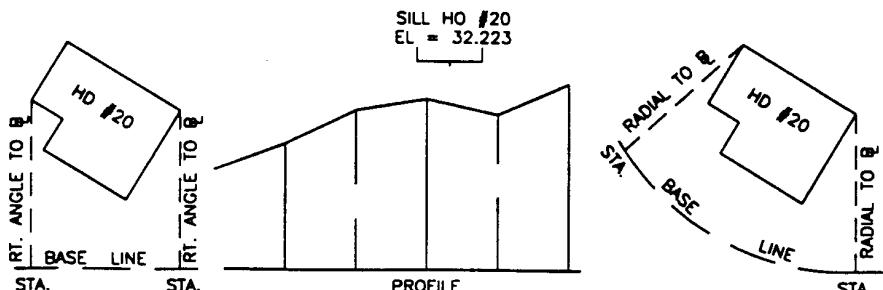
9. Arrange the lettering so it can be read without turning the plan from its normal position (i.e., from bottom to top and from left to right).

#### 2.1.1.3 Plotting Base Profiles

Basic profiles may be plotted on paper for review purposes. The following criteria apply:

1. Scales of 1:500 horizontally and 1:100 vertically are usually used. Scales of 1:250 horizontally and 1:50 vertically may be used, depending upon the project.
2. The stations at the beginning and end of each profile will coincide with those of the corresponding plan. Stations to be at 100 meter intervals.
3. The horizontal profile scale shall be the same as the horizontal base plan scale.
4. The plan and profile may be shown on the same sheet.

5. The base elevation should be in multiples of 2 meters.
6. A minus base value is indicated as "Base = Minus 10" and a zero base is shown "Base Zero."
7. Bench marks with datum noted are described on the profile approximately above the corresponding station on the profile.
8. Equations are noted below the datum line.
9. Broken profiles are permissible, when the ground rises or falls rapidly, to keep the profile within the limits of the sheet. They should be overlapped 100 meters horizontally.
10. Punchings in wetland areas are shown as a dashed dash line at the proper elevations and are designated "Approx. Hard Bottom".
11. Culverts which cross the baseline are shown in section on the profile. The field book usually provides the elevation of the flow line (invert), elevation of the end (header), width and height of a square or rectangular box culvert, and diameter of a pipe. The dimensions describing the square and rectangular structures are the width of opening first and height of opening second.
12. The clearance to the lowest wire of a high tension line will be shown on the profile. Plot the elevation of the lowest wire at the proper station location, and show this point as a heavy black ink dot. The number of wires, voltage, and clearance from the ground to the lowest wire will be indicated. The location of these wires is highlighted by a finger indicator next to it.
13. Water levels are shown as a thin dashed line, and the elevation and date of measurement are noted.
14. Sills of structures are plotted at their respective elevations. A dimension facing the baselines is determined by projecting the extremities of the structure at right angles or radial to the baseline stations (see example below).
15. Drives, walks, side streets, etc. should be shown on base profiles.

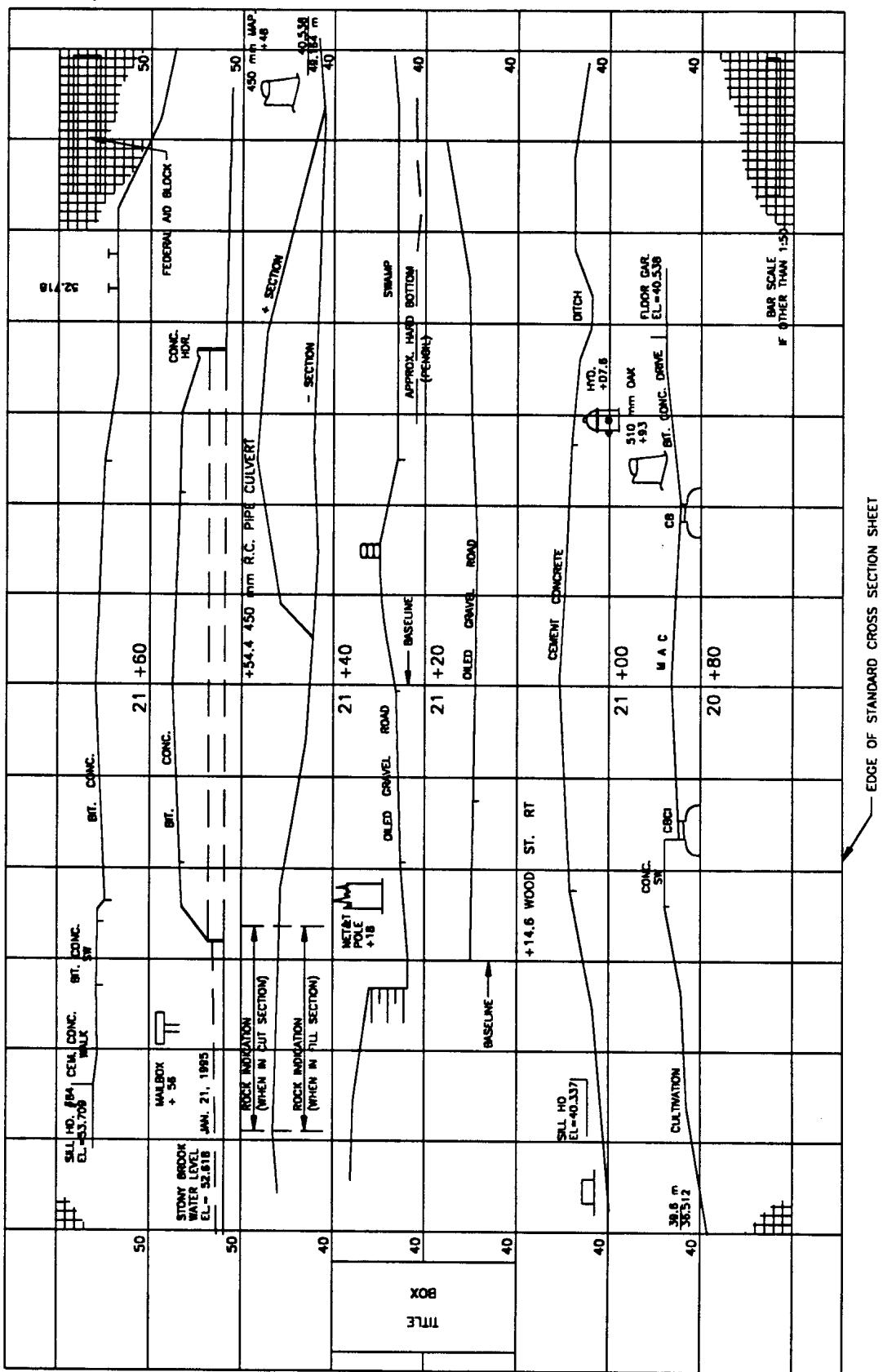


### 2.1.1.4 Cross Sections

All cross sections are drawn on standard cross section sheets. The sample sheet in Figure 2-2 shows the method of plotting existing ground sections and title block. Symbols for cross sections are illustrated in Table 2.4. The data for plotting sections is either obtained from field books, survey data collectors (digital terrain modules) or by interpolating from photogrammetric maps and contour plans. These last two methods are described in Section 2.1.1.1.

The following criteria apply for plotting cross sections:

1. The usual scale for cross sections is 1:50 horizontally and vertically. However, on multi-lane divided highways, a scale of 1:100 is more practical. The selection of the proper scale depends on the width of the cross section.
2. Cross sections shall be plotted at 20 meter intervals (also see below).
3. Cross sections are normally plotted along the length of the cross section sheet with the title on the left. The stations of cross sections increase from the bottom to the top of the sheet. The cross sections of very narrow roads may be plotted across the width of the sheet.
4. Existing ground line should be plotted as a thin line.
5. Sufficient space between cross sections should be provided so that the proposed highway template can be drawn without overlapping the adjoining section. To determine spacing, refer to the tentative grade line furnished by the designer. Additional space allowances may be needed if punchings or soundings are shown.
6. The heavy vertical line nearest the center of the sheet should be used as the baseline, when feasible. Base elevations are commonly chosen in multiples of ten and noted above the base elevation line to the left of the right-hand margin. The cross section station is noted below the base elevation line at the baseline.
7. A complete cross section must be shown on one sheet for estimating and continuity. This practice should be followed even if space is wasted.
8. Equations of stations are shown whether or not a cross section is drawn at that point.



**Figure 2-2. METHOD OF PLOTTING EXISTING GROUND SECTIONS**

CROSS-SECTIONS - _____ PRELIMINARY	
PLOTTED BY _____	DATE _____ 19 _____
CHECKED BY _____	DATE _____ 19 _____
NOTE BOOK NO. _____ PAGE _____	
TEMPLATES	
PLOTTED BY _____	DATE _____ 19 _____
CHECKED BY _____	DATE _____ 19 _____
CALC. BOOK NO. _____ PAGE	

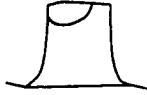
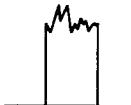
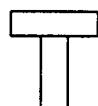
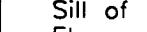
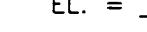
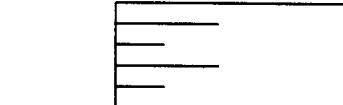
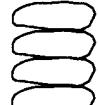
## FEDERAL AID BLOCK

STATE	FED.PROJ. AID NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
MASS.				
PROJECT FILE NO.				

(ACTUAL SIZE)

Figure 2-2. (Continued)

**Table 2.4**  
**SYMBOLS FOR DETAILING SECTIONS**

Tree (200 mm and over)		Diameter & Type Station Offset
Pole		Type of Utility Pole, Number Station
Mail box		Mail Box Station
Well - cesspool		
Hydrant		Hydrant Station
Sill of structure (when plotted)		Sill of (Type of Structure) EL. = _____ HO#
Sill of structure (when beyond limits of sheet)		Offset = _____ Sill of (Type of Structure) EL. = _____ HO#
Retaining wall		
Balanced wall		
Punching		Approx. Hard Bottom

9. Profiles of intersecting streets, drives, roads, etc., are plotted in the sequence of the base or center line stationing. The reference baseline for intersecting streets, drives, walks, and steps may be offset from the regular cross section to allow more room for plotting the profiles. When streets, drives, and roads are indicated by stations along their profile, only the main baseline station is shown rather than an equation.
10. Often, the width of the cross section extends beyond the limits of the sheet. Extensions may be indicated by noting the next offset and elevation near the margin slightly above the cross section.
11. Plus and minus cross sections are plotted as one section. The plus and minus are indicated on the cross section lines. "Minus" always indicates the section back and "Plus" the section ahead.
12. The cross section limit should not be extended beyond the border of the sheet, and the data in the title box must be provided.

The following features should be shown on the preliminary cross sections:

1. Edges of roads, drives, walks, steps, wetlands, lawns, etc., should be plotted.
2. Walls should be plotted.
3. Hydrants, poles, and mailboxes are plotted by station and offset.
4. All trees 200 millimeters and over should be plotted. The diameter and type of tree, station and offset should be noted on the side of the tree away from the baseline or center line.
5. Punchings are shown as a dashed line and labeled "Approx. Hard Bottom."
6. Indicate elevation, station, and description of wells, cesspools and septic systems, and provide a description and elevation for sills of buildings. Plot sill elevation and offset to proper dimension, scaling offset from the plan when not shown in notes. Sills which fall between cross sections are shown by a vertical line at the correct distance from the baseline. The elevations are printed away from the baseline.
7. Culverts are shown as long dashed lines. (Dimensions in a field survey book indicate width first and height second.)
8. Water elevations are shown as a dashed line. The elevation and date recorded are noted.

9. Extremities of rock or rock under ground surface are indicated as shown in Figure 2.3 and labeled "Rock Indication" in pencil. To avoid interference with the proposed roadway cross section, the notation will appear either above or below the section, depending upon the type of earthwork involved.
10. Lines of bridge seats or tops of openings are shown as long dashed lines.
11. Rails are shown as a "T" with the horizontal line representing the elevation of top of rail. Indicate the elevation of the top of rail nearest the baseline for rails which run parallel to the main baseline. The elevation is printed vertically.
12. Roadway edges are indicated by short vertical lines about 3 millimeters long downward from the edge points on the cross section. Descriptions (type of surface, etc.) are shown on the bottom and top cross sections only if the description applies to all cross sections on the sheet. See Figure 2.2.
13. A Federal-aid block including a project file number must be shown.

## 2.1.2 Final Plans

### 2.1.2.1 Drafting Standards for Construction Plans and Cross Sections

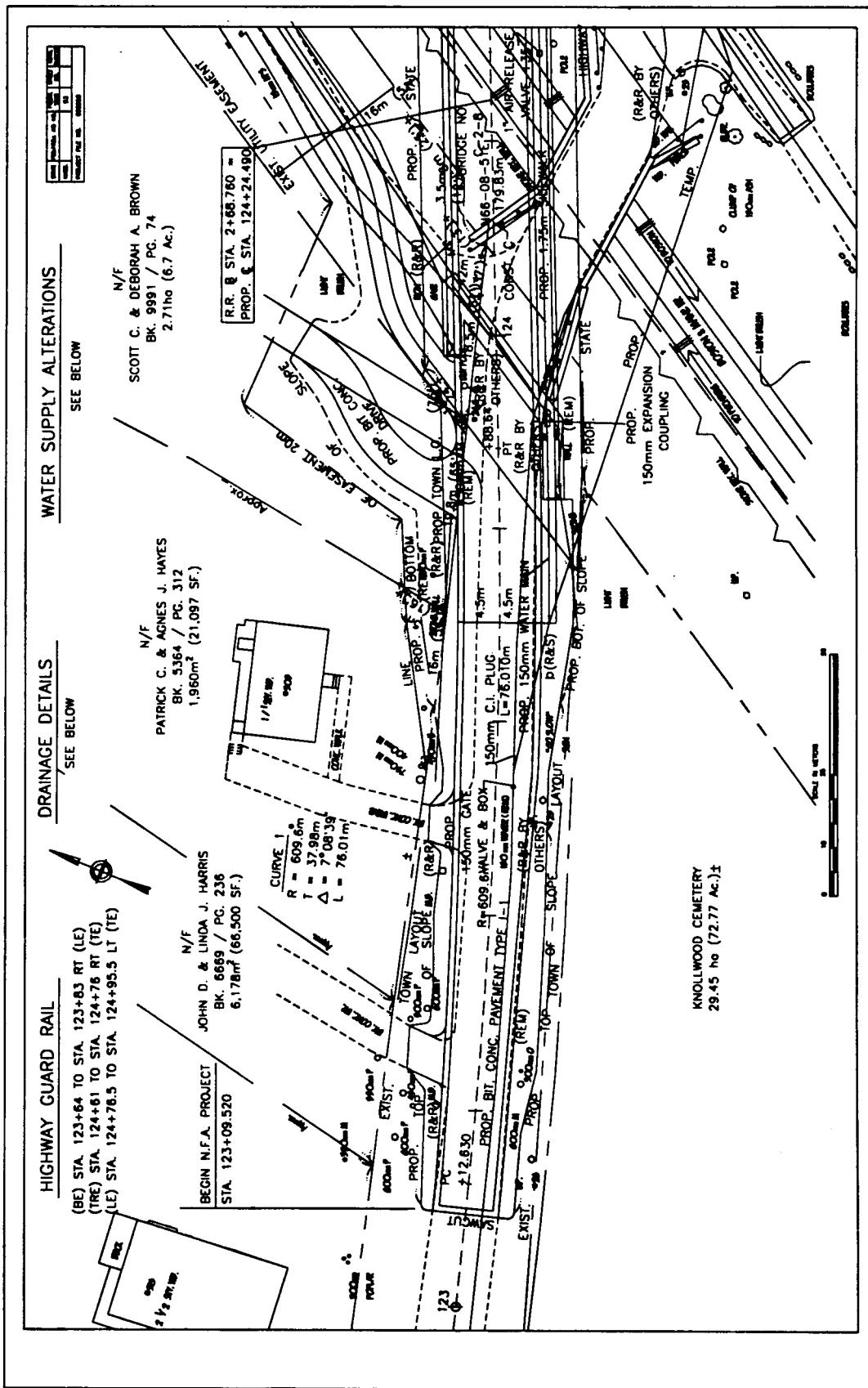
The plans shall include all drawings and data necessary for proper construction of the proposed project. The plans will be plotted on the standard size translucent mylar (0.1 millimeter) matted on at least one side. Minimum height of all lettering is 3 millimeters. The density of screened mylars may be approved on a project-by-project basis.

These drafting procedures will ensure archival original quality drawings which will be suitable for microfilm for the reproduction of good quality prints. It is absolutely necessary to produce drawings with uniform density of line work.

The lettering line thickness shall not be less than 0.35 mm (LeRoy "O" pen).

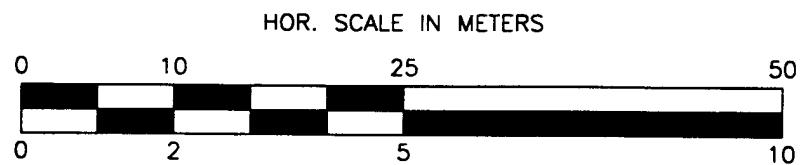
### 2.1.2.2 Construction Plans

Figure 2-3 provides an example of a plan view. Figure 2-4 illustrates the necessary data for construction plans. Design symbols are illustrated in Figure 2-5. These criteria apply to preparing construction plans:



**Figure 2-3. CONSTRUCTION PLAN**

REFERENCE  
 BASELINE NB \_\_\_\_\_  
 DETAIL NB \_\_\_\_\_  
 SECTIONS NB \_\_\_\_\_

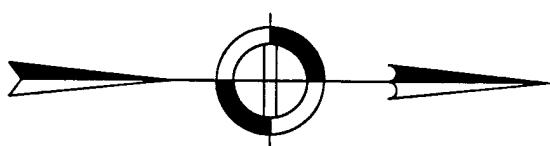


STATE	FED.PROJ. AID NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
MASS.				
PROJ. FILE NO.				

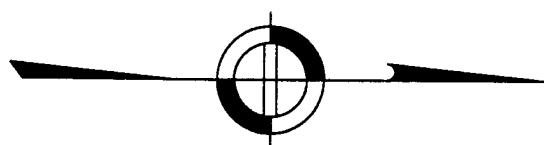
FEDERAL  
AID

(ACTUAL SIZE)

TRUE NORTH OR MASS. CO-ORD SYSTEM



MAG. NORTH OR ASSUMED



**Figure 2-4. DATA FOR CONSTRUCTION PLANS**

PROPOSED DRAINAGE

LENGTH, SIZE & TYPE OF MATERIAL

(SHOW DIRECTION OF FLOW)

PROPOSED WATER MAIN

LENGTH, SIZE & TYPE MATERIAL, WATER MAIN

PROPOSED SEWER MAIN

LENGTH, SIZE & TYPE MATERIAL, SEWER

(SHOW DIRECTION OF FLOW)

TRAFFIC SIGNAL CONDUIT

LENGTH T S C

MANHOLE



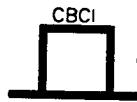
(1.5 m DIAMETER)

CATCH BASIN



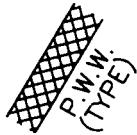
(1.5 m EACH SIDE)

CATCH BASIN & CURB INLET  
SQUARE FRAME



(1.5 m EACH SIDE)

PAVED WATERWAY



STATE HWY. LAYOUT LINE  
CONSTRUCTION PLANS

LAYOUT LINE

"NO ACCESS" (OR ACCESS)

CITY OR TOWN LAYOUT LINE  
CONSTRUCTION PLANS

LAYOUT LINE (CITY) OR (TOWN)

FRAME & COVER

F & C

FRAME & GRATE

F & G

REMOVE & RESET

R & R

REMOVE & STACK

R & S

EASEMENT (TEMP. OR PERM.)

TEMP. OR PERM. (TYPE)

**Note:** STRUCTURES ETC. WHICH HAVE NO STANDARD SYMBOLS OR  
DESIGNATIONS ARE TO BE DESCRIBED AND MARKED PROPOSED.  
ALL SYMBOLS TO BE WITH BLACK INK

**Figure 2-5. SYMBOLS FOR PROPOSED DESIGN**

1. Existing detail information should be screened for clarity.
2. Construction plans are normally drawn at a scale of 1:500. Plans are normally drawn at a scale of 1:500. Plans at a scale of 1:250 may be used for clarity.
3. The corresponding profile is placed below the plan. If there is too much detail, the profile should be placed on a separate sheet.
4. Each succeeding plan is overlapped 25 meters and the plan information will extend 50 meters beyond the beginning and end of the project.
5. P.I.'s of curve tangents are not shown on final plans.
6. Only the proposed center line is shown, stationed at 100 meter intervals.
7. If there is a portion of a curve or tangent at either end of a plan more than 50 meters in length, indicate the curve data or bearing and distance.
8. Show the State Highway, City, Town, or County layout as a solid line. Do not show the radii, ties, etc., of layout lines. Show the beginning and end of the state highway layout, alterations of the layout, and the year recorded.
9. When the plan and profile are on the same sheet, the town, city, county, and State names are shown only on the plan portion. If on separate sheets, this data must be shown on each sheet.
10. Show a north arrow on all plan sheets. The direction of the north arrow can be determined from the coordinates.
11. Plans showing at-grade intersections should be drawn in a manner that provides the greatest amount of continuity and the least amount of repetition.
12. Bar scales will be shown on all construction plans.
13. Construction Plans which show only the roadway drawings must have profile sheet number references in the lower right edge of the sheet (inside the border). When the continuity of streets or ramps is broken, a sheet number reference should be noted at the breaks.
14. Denote the beginning and end of the project and the limit of work. Indicate the project number, associated stations, and coordinates. The beginning of a project is the southerly or westerly end; the end of a project is the northerly or easterly extremity, regardless of the direction of the line stationing and center line.

15. Proposed state highway location lines are drawn as solid lines labeled "Proposed State Highway Location Line." Town, city, or county locations are drawn as solid lines labeled "Proposed Location Line (town, city, or county)".
16. Easement lines are drawn as long dash lines and labeled drainage, slope, or construction easement, as appropriate. Designate whether the easement line is temporary or permanent.
17. Names of property owners are noted in the proper locations.

The following criteria apply to the presentation of the technical content in construction plans:

1. *Sight Distance* - Horizontal sight distances shall be noted on the plans in the vicinity of the horizontal curve.
2. *Roadway Widths* - All proposed roadway edges will be solid lines. The widths are indicated at the beginning and end of each sheet and at all other points where a change in width occurs. The offset from the center line at all of these points should be shown. All curved edges that are not concentric with the center line of construction should have the radius and any other data noted. All points of curvature and the tangency at the edge should be noted with ties to the center line.
3. *Center Line* - A construction center line will be used as the baseline for proposed projects. Previous baselines such as those used to collect survey data should not be shown on the final plans. The proposed center line shall be stationed and labeled with appropriate geometric data. Coordinates in NAD 83 shall be shown at the project limits along with ties to known reference points as appropriate to establish this new line in the field.
4. *Drives, Sidewalks, Walks* - Edges of drives, sidewalks and walks to houses are drawn as solid lines. The radii of drive curb returns are noted; other curve data is not necessary. The type of structure should be noted with the abbreviation "Prop." (proposed) before the description. The width of the sidewalk is also necessary.
5. *Wheel Chair Ramps* - Wheel chair ramps must be drawn as solid lines. Critical dimensions such as ramp length and curb transition length must be shown.
6. *Edging, Curbing, Berms* - The types of edging, curbing, and berms are shown without indicating lengths. Extremities of each type will be defined by arrows or similar notations. The abbreviation "Prop." (proposed) will appear before the description.

**7. Drainage** - The words "Drainage Details" with location reference such as "See Below" or "See Page No. \_\_" will be placed on the upper part of the sheet near the border. The above is noted whether or not drainage is required in the area shown on the sheet. Where there is no proposed drainage required, the word "None" is substituted for the location reference. The proposed drainage details, such as pipe, catch basins, manholes, etc., are shown directly on the roadway plan with heavy solid lines so the proposed detail will be easily distinguished from the existing. Where there is a considerable amount of detail on the plan that may obscure the proposed drainage, a separate plan showing the proposed drainage details is recommended. Any water supply alterations and other underground utility data should also be shown on the separate plan.

The length, size, direction of flow, and type of material will be noted at each pipe. Special drainage structures must be noted; the abbreviation "Prop." is not necessary before the description. The stations of the drainage structures are also noted. Details of all special drainage structures will be shown on a separate sheet. The type of material used for culvert ends will be noted at each end. To indicate which pipes or structures of the existing drainage system will be incorporated in the new system, the proper notations will be made, such as "retain", "adjust", "R&R", "abandon", "remove", etc.

**8. Ditches** - Ditches that are not part of the normal section are shown by two heavy broken lines. Note the appropriate payment item. The distance between the lines represents the width of the bottom of the ditch to scale. The abbreviation "Prop" is part of the description.

**9. Paved Waterways** - The type is identified and the abbreviation "Prop." is required. Paved waterways are drawn as heavy lines and cross-hatched with its description shown.

**10. Sub-Drains** - These are shown as heavy solid lines with their length and diameter of pipe; for example: " 90.4 m - 200 mm subdrain." The abbreviation "Prop" is required. When a grade line is broken, indicate direction of flow.

**11. Relocation of Streams** - The relocation of brooks, rivers, or other waterways is shown as a solid line. The lines defining the new location will be designated by cross-hatching.

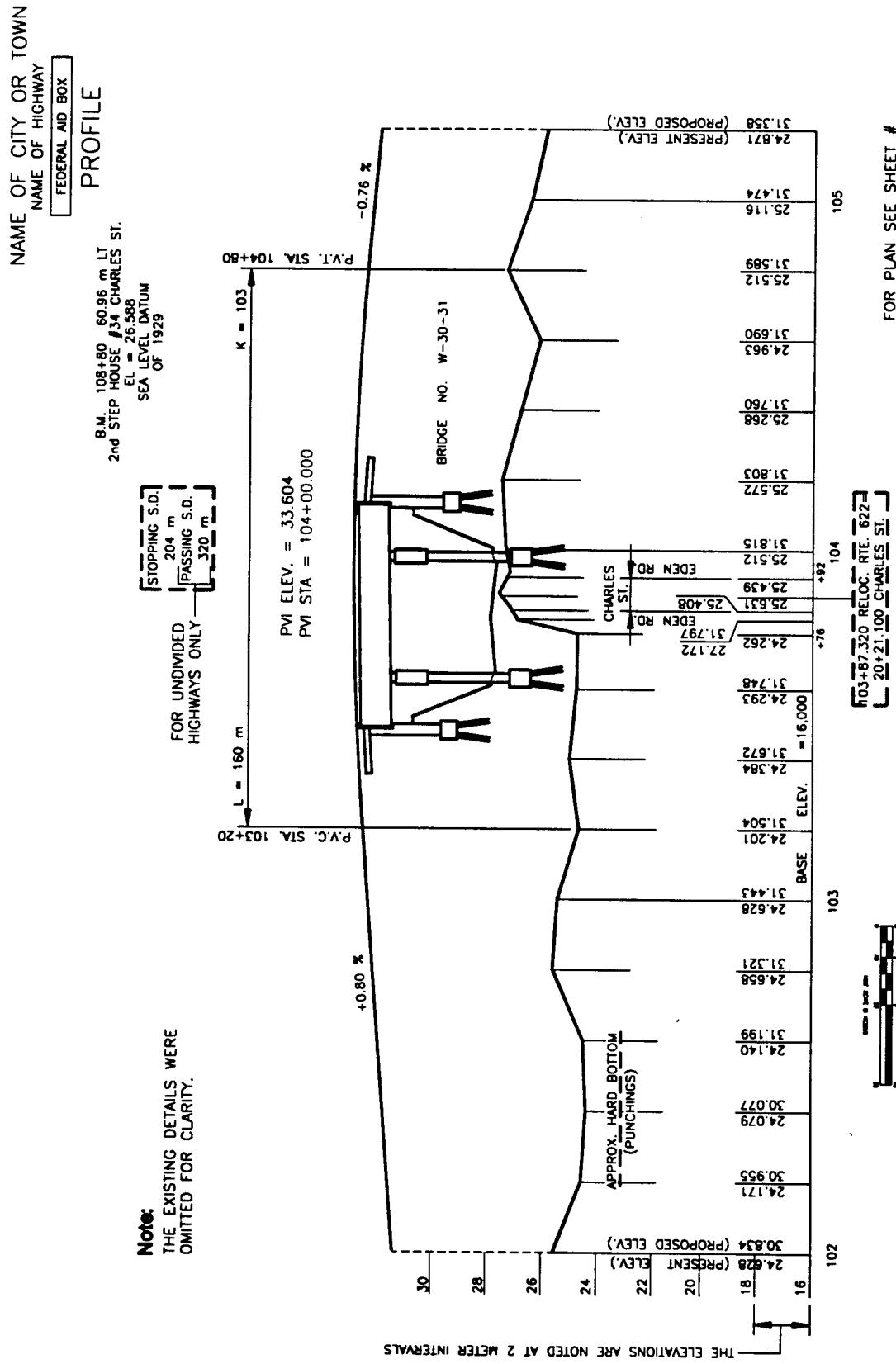
**12. Water Supply** - The words "Water Supply Alterations," with a location reference such as "See Below" will be placed on the upper part of the sheet near the border. This is only noted when water supply changes are required in the area shown on the sheet. Where the proposed water supply system may be obscured by existing detail, a separate plan is recommended. This should be combined with the proposed drainage

details as discussed in #7. Heavy, solid lines designate any proposed water pipe. The length, size, type of material, kind of joints, direction of flow, and bends must be noted. Other details include hydrants, gates, etc. The abbreviation "Prop" is required before the description. The description will include any special materials such as insulation, etc.

13. *Traffic Signal Conduit* - The words "Traffic Signal Conduit," with a location reference such as "See Below," will be placed on the upper part of the sheet near the border. This is only noted when a traffic signal conduit is required in the area shown on the sheet. The conduit is indicated with a short, heavy, dashed line (about 5 millimeters long). The length and abbreviation "T.S.C." are noted on each length of conduit. Complex traffic signal installations should be shown on a separate plan.
14. *Demolition* - Buildings that will be demolished are designated with cross-hatching and marked "Structure No. \_\_\_\_." (Insert number shown on the demolition report or detail sheet).
15. *Bridges* - The outlines of all bridges will be shown on the construction tracings. The bridge number will be placed as close to the bridge as possible.
16. *Special Sloped Paving* - The area where special sloped paving is placed, such as on the slopes at open-end span bridges, should be indicated as "Special Sloped Paving."
17. *Highway Guard* - The type and station locations of guardrail are tabulated in the upper part of the sheet.
18. *Slopes* - Tops and bottoms of slopes are shown as dashed lines and marked "Prop. Top of Slope" or "Prop. Bottom of Slope."
19. *Fences* - Proposed fences are not indicated on the construction plans. They are, however, listed on the "Detail Sheets."
20. *Work by Others* - Work that is not performed by the MHD contractor but which is performed within the project limits either by or for a utility company or for other construction work, shall be clearly labeled " (type of work) by others."

### 2.1.2.3 Construction Profiles

Figure 2-6 provides an example of a construction profile on the sheet. The following criteria shall apply:



1. The method of presenting the data on the profile sheet is similar to that used on base plans. The base elevation (datum) need only be shown once in the middle of the sheet, unless the profile is broken.
2. When the profile is shown on the same sheet as the plan view, the length of the profile should be the same length in stations as the baseline of the plan, regardless of the available room. The datum line is placed 50 millimeters above the border line. When the profile is on a separate sheet, the length shown must be the same as the length of the corresponding plan in stations. An overlap of 50 meters is required for each profile.
3. Horizontal and vertical bar scales will be shown on construction profiles.
4. The proposed profile lines are drawn as heavy solid lines.
5. The proposed elevations are labeled to the right of the respective upright as shown in Figure 2-6.
6. The rates of grade, points of curvature and tangency, and vertical curve data (length of curve, K value, PVI station and elevation, etc.) must be labeled as shown in Figure 2-6.
7. The outline of each bridge and its bridge number is traced from the profile shown on the first sheet of the bridge plans.
8. The calculated lengths of vertical curve sight distances are labeled and described as "(distance in meters) Stopping S.D."
9. Sheets that show only profiles will have their corresponding plan sheet number placed on the lower right edge of the sheet inside the border.
10. The beginning and end of the project will be shown and the project number, stations, and coordinates indicated.
11. Profiles should extend 100 meters beyond the beginning and end of the project.

#### 2.1.2.4     Grading and Tie Plans

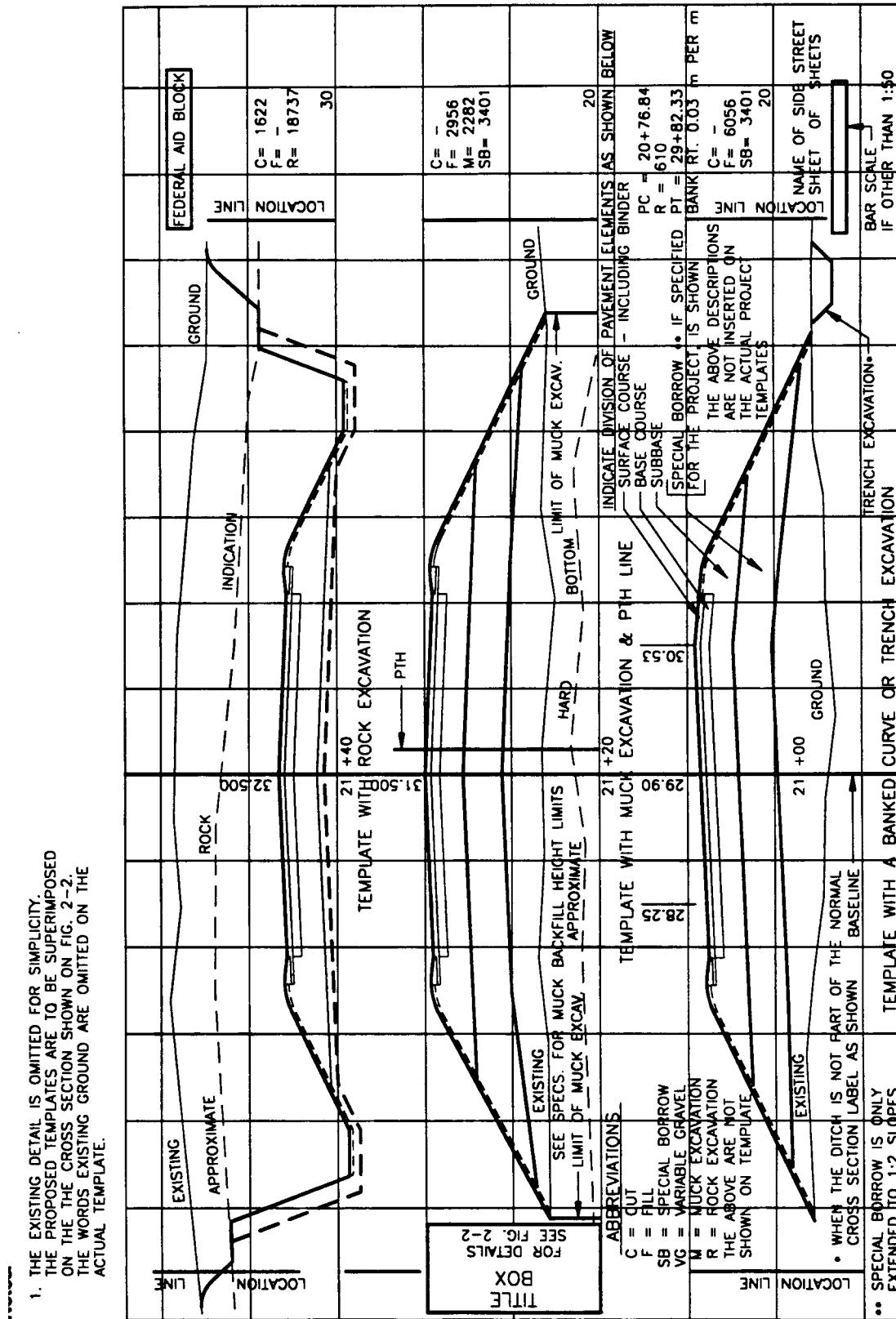
Grading plans and tie plans are required for all ramp and major at-grade intersections. They may also be required to locate wheelchair ramps and drainage ditches. These criteria apply:

1. The elevation will be computed along each roadway edge at 10 meter intervals and at other intermediate points where required. The edge profiles for the grading plan are normally plotted to a scale of 1:500 horizontally and 1:100 vertically.
2. Ties will be computed and shown on the plans (at P.C., P.T., etc.) to properly locate the roadway edge in the field.
3. Contour plans may be required for special grading areas (drainage, landscaping, aesthetics, etc.).

#### **2.1.2.5 Construction Cross Sections**

Figure 2-7 provides an example of the construction cross section. The following criteria applies:

1. The proposed roadway cross sections are on the cross section sheets described in Section 2.1.1.4. The roadway cross section are to be plotted as a thick, dark lines.
2. The proposed profile elevation shall be noted on each roadway cross section. On a banked curve or a curve transition, the theoretical profile elevation is noted on the left side of the profile grade line, and the actual elevation is noted on the right side of the profile grade line (with "actual" noted in parentheses). Show actual edge elevations for banked curves and curve transitions.
3. Rate of bank and the P.C. or P.S. and P.T. stations of the horizontal curve in areas where normal cross slopes do not apply must be shown on each sheet that has any portion of the curve or transition of the curve on it. The above data is placed at a convenient location near the right-hand border of the sheet.
4. The cross section must show the limits of muck excavation, if any, as determined by the standard MHD methods.
5. The depth of existing topsoil to be excavated and stacked will be indicated with a dashed line and marked "Topsoil Stripping." This information is generally obtained from the boring logs or test pits.
6. Show details of rock excavation and special borrow in embankment areas.
7. The type of surface or subbase of the proposed roadway will not be indicated.


**FIGURE 2-7. METHOD OF PLOTTING PROPOSED TEMPLATES**

8. Proposed location lines will be shown on each cross section where the layout falls within the sheet limits. The location lines of the first and last cross section of each sheet shall be marked "Location Line."
9. P.T.H. (Planimeter to Here) lines will be indicated where required. The limits of bridge excavation and gravel backfill should always be indicated for estimating purposes.
10. Show all ditches within the limits of cross section sheets. Indicate the type of excavation for estimating purposes.
11. Record cut and fill (square meters) for each section to the right of the particular proposed roadway cross section so that the areas measured will be clearly defined.
12. The first sheet of the cross section will be labeled in letters about 25 millimeters high: "Estimated Shrinkage = +15%." A legend of terms (abbreviations) should be included on the first sheet.

#### **2.1.2.6 Assembly of Construction Plans**

A complete set of construction plans shall include:

1. *Title Sheet* - A title sheet is required for all projects (See Figure 2-8). The title sheet will show:
  - a. A locus plan reproduced from a topographic map without contours, or similar map or plan. The scale must be large enough to identify project location. The locus plan will show:
    - (1) stations of beginning and end of project and limits of work;
    - (2) coordinates of beginning and end of project;
    - (3) Federal-aid project number and an adjacent Federal-aid project number, if any;
    - (4) Route numbers of all roads in the vicinity of the project;
    - (5) Bridge numbers and stations of the bridges;
  - b. Conventional signs on lower left corner of sheet.

**Figure 2-8. SAMPLE OF TITLE SHEET FOR CONSTRUCTION PLANS**



MASS HIGHWAY	
MASSACHUSETTS HIGHWAY DEPARTMENT	
RECOMMENDED FOR APPROVAL	
CHIEF ENGINEER	Date
APPROVED	
MHD COMMISSIONER	Date
ASSOCIATE COMMISSIONERS	Date
DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	
APPROVED	
DIVISION ADMINISTRATOR	Date

Figure 2-8a. SAMPLE OF SIGNATURE BLOCK (ACTUAL SIZE)

- c. Project length. Project length of roadway is expressed to the nearest 0.001 meter and is the length of roadway measured along the center line of construction considering all equations. The length of divided highways will be the average length of each roadway.
- d. In the lower right corner of the sheet, blocks for the signature of the Chief Engineer and the Commissioners of the Highway Department; in the extreme lower right corner, a block for the signature of the FHWA Division Administrator; above the FHWA block, the P.E. seal and signature for the design consultant as well as the name of firm if applicable.
- e. Federal-aid Block in the upper right corner with project file number.
- f. Directly below the Federal-aid Block, place the following note:

"The (year latest) *Specifications*, the (year latest), *Construction Standards* and the (year latest) "Manual on Uniform Traffic Control Devices for Streets and Highways," and the (year latest) *Standard Drawings for Signs and Supports*, and the (year latest) Edition of the *American Standard Nursery Stock* will govern."

- g. Listing of the Design Designation Data including all traffic data and Functional Classification of roadway(s) .
2. *Index Sheet (optional separate sheet)* - An index is required for all projects. Figure 2-10 provides an example.
  3. *Key Plan* - See Figure 2-11.
  4. *Boring Logs* - See Figure 2-12.
  5. *Typical Sections* - Show typical sections for all roads and ramps. In addition, indicate the following on the typical section sheets:
    - a. Descriptions of pavement and shoulder structures (see Table 2.4a),
    - b. Method of banking,
    - c. Special types of curbing, edging, berms, structures and details which have not been approved as standards.

**Table 2.4**  
**NOTES**  
**PAVEMENT FOR (Name or Rte. No.)**

***Traveled Way and Shoulders***

Surface Course 120 mm Class I Bituminous Concrete Pavement Type I-1 Placed in 3 Layers  
40 mm Top Course Material Over 2 Layers of Binder Course Material, Each  
40 mm.

Base Course 150 mm Class I Bituminous Concrete Pavement Type I-1 Base Course Material  
Placed in 2 Layers, Each 75 mm.

Subbase 100 mm Dense Graded Crushed Stone over 200 mm Gravel.

All roads, ramps, etc., are similarly described on the typical section sheets. The thickness of the layers are only for illustration; they vary for each project, and must be approved by the Pavement Design Engineer. In addition, note other pertinent data such as the application of special borrow.

*6. Plans of Main Road. \**

*7. Plans of Side Roads. \**

*8. Profiles on Main Roads. \**

*9. Profiles of Side Roads. \**

*10. Ramp Profiles.*

*11. Grading and Tie Plans.*

*12. Drainage Details and/or Water Supply Details.*

*13. Sign Plans and Details.*

*14. Traffic Signal Plans*

*15. Pavement Markings.*

*16. Traffic Management Plans*

*17. Lighting Plans and Details.*

18. *Utility Details (if required).*

19. *Landscaping Plans and Details*

20. *Special Details (e.g. pedestrian amenities)*

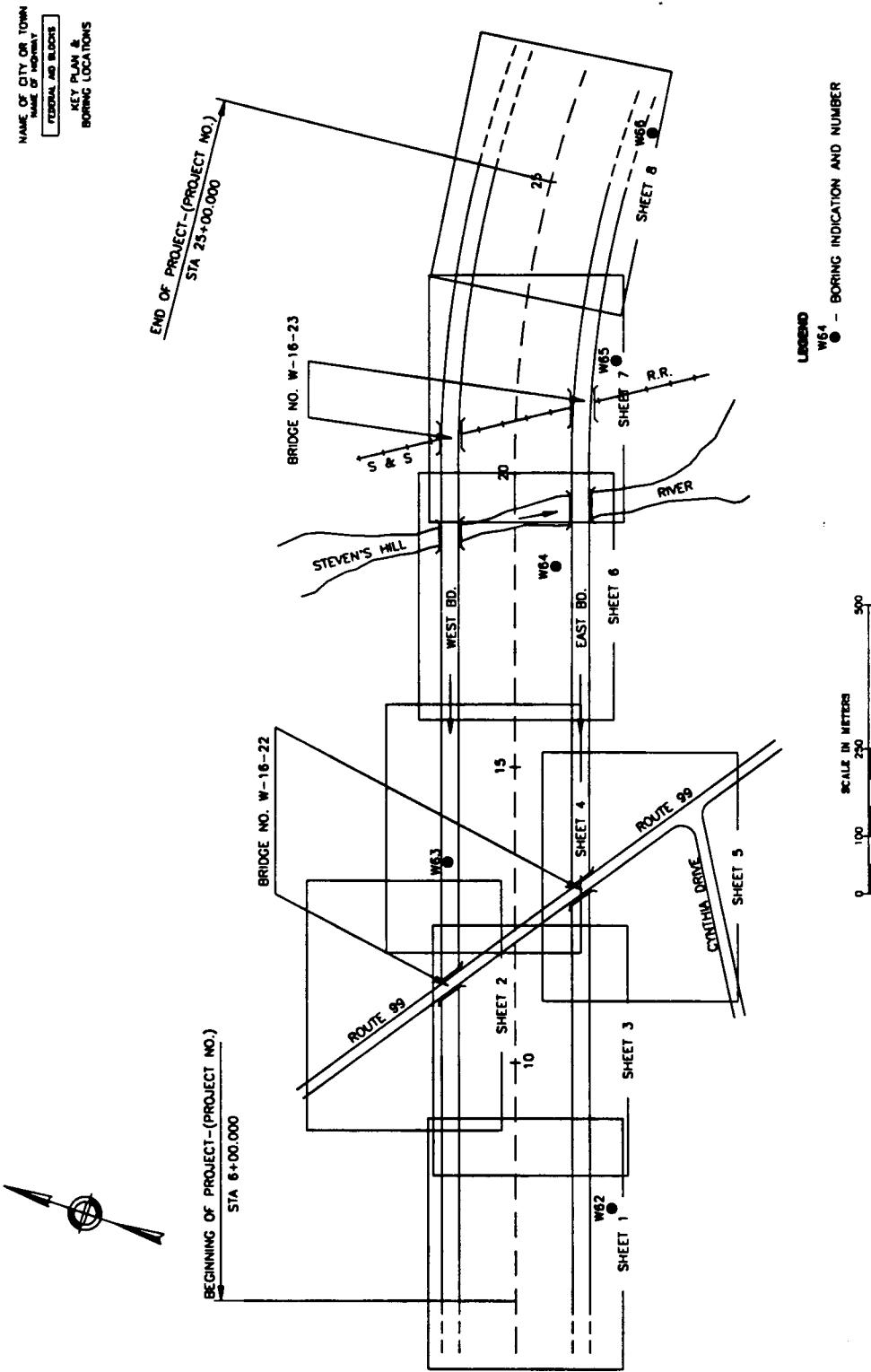
21. *Bridge Plans.*

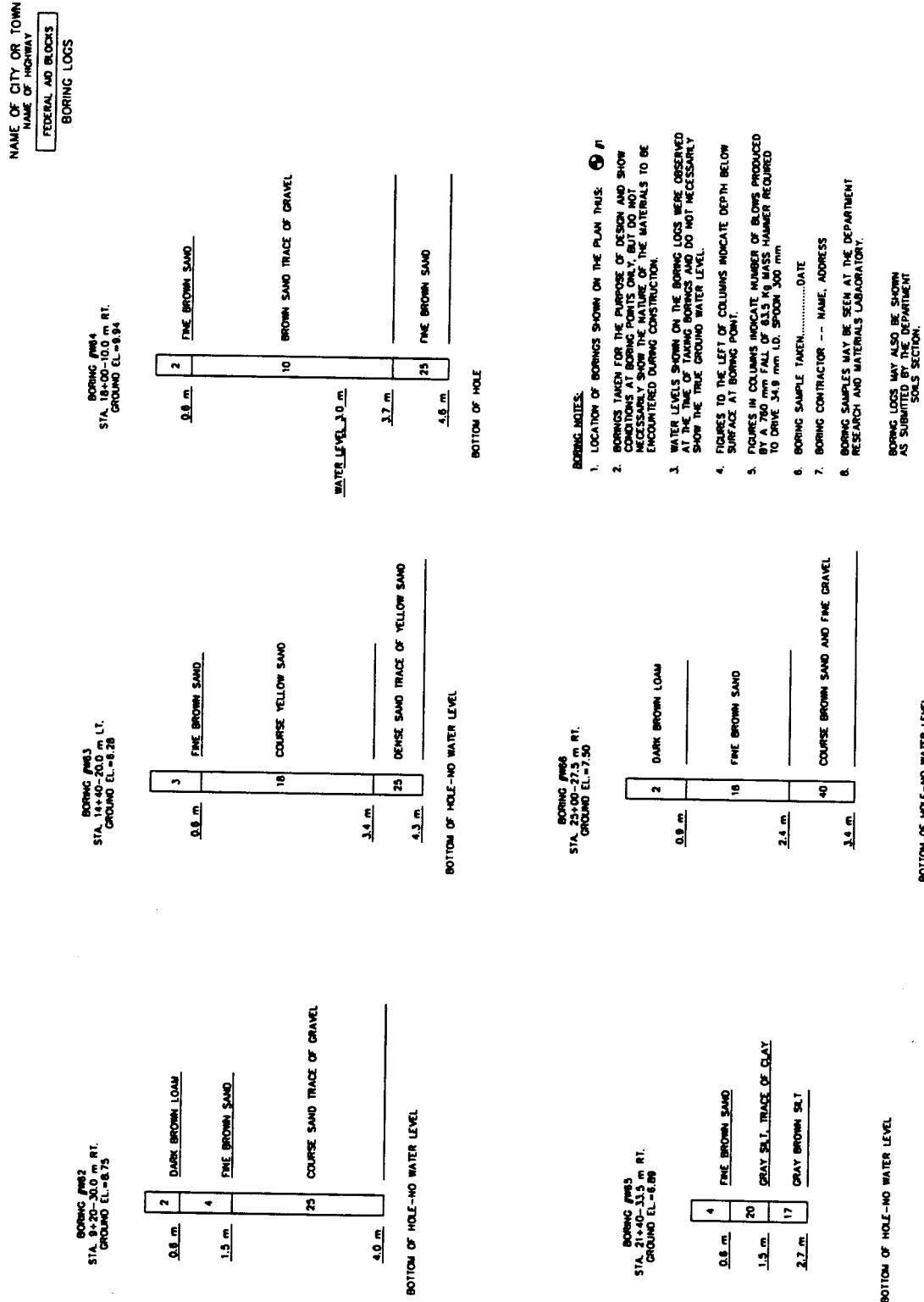
22. *Cross Sections.*

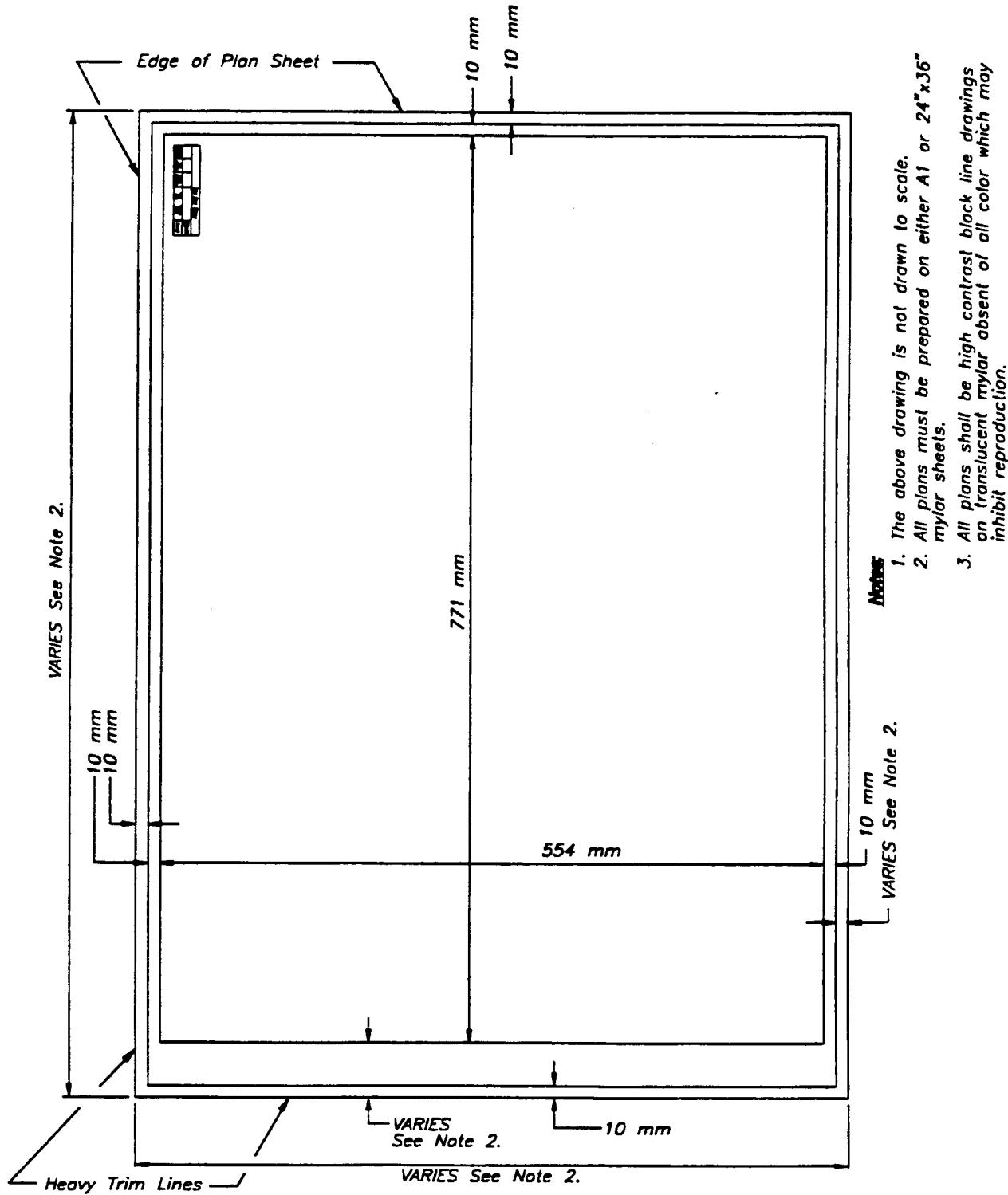
\* Plans and profiles may appear on the same sheet.

SHEET NO.	DESCRIPTION	PLANS	PROFILES
1	TITLE SHEET		
2	INDEX		
3	KEY PLAN AND BORING LOCATION		
4	BORING LOGS		
5-8 INCLUSIVE	Typical Section		
9-50	Plans Route I-99	SUSAN AVE.-----SHEET NO. 51-56,72	SHEET NO. 104-109
51-56	Plans Susan Ave.	WILLIAMS ST.-----SHEET NO. 57-61,83	SHEET NO. 110-116
57-61	Plans Williams St.		
62-103	Profiles Route I-99		
104-109	Profiles Susan Ave.		
110-116	Profiles Williams St.		
117-118	Profiles S.W. Ramp at Williams St.		
119-120	Grading and Tie Plan S.W. Ramp at Williams St.		
121-123	Profiles N.E. Ramp at Williams St.	S.W. RAMPS AT WILLIAMS ST. SHEET NO. 16,17,18,58	SHEET NO. 117-118
124-126	Grading and Tie Plan N.E. Ramp at Williams St.	N.E. RAMPS AT WILLIAMS ST. SHEET NO. 16,18,19,60	SHEET NO. 110-116
127	Drainage Details (Not Shown Elsewhere)		
128	Water Supply Details		
129	Sign Plans and Details		
130	Traffic Lines and Markings		
131	Lighting Details		
132-136	Bridge No. D-5-43, Route I-99 over Susan Ave.	SUSAN AVE.-----SHEET NO. 22,23,53	SHEET NO. 71
137-140	Bridge No. D-5-43, Route I-99 under Williams St.	WILLIAMS ST.-----SHEET NO. 48,60	SHEET NO. 97
141-201	Cross Sections Route I-99		
202-220	Cross Sections Susan Ave.		
221-239	Cross Sections Williams St.		
240-249	Cross Sections S.W. Ramp at Williams St.		
250-261	Cross Sections N.E. Ramp at Williams St.		

**Figure 2-8. SAMPLE OF INDEX FOR CONSTRUCTION PLANS**




**Figure 2-11. METHOD OF PLOTTING BORING LOGS**



**Figure 2-12 SIZES OF STANDARD TRACINGS**

## 2.2 DECREE PLANS

MHD is required to make decree plans when existing railroad crossings are abolished or altered in conjunction with highway work. MHD has jurisdiction for abolitions on all public highways within the state for any alterations on state highways or direct continuations of state highways.

When a new state highway layout crosses a railroad where no crossing previously existed, a decree plan is not required - the layout plans will be sufficient.

A crossing is considered to be altered when:

1. an existing bridge has major structural changes to strengthen or improve it;
2. an existing highway layout at a grade crossing is widened; or
3. the grade crossing is resurfaced or repaired outside the state highway layout (changes to grade crossings within the existing state highway layout are not considered alterations).

Decree plans for alterations must show layouts, takings, major construction and design detail, bridge plans and plans of existing conditions. The plan should extend about 600 feet on either side of the crossing. Decree plans are not a part of the construction plans.

The following data must be shown on decree plans:

1. *Existing Conditions* - All existing detail and proposed edges.
2. *Proposed Surface* - The type of surface on pavements, walks, drives, etc. should be identified as "Proposed (kind) Pavement."

## 2.3 LAYOUT PLANS

Layout plans, descriptions, and orders of taking are required to establish highway right of way for all projects which involve land takings. The proposed layouts may result in changes to existing state highway layouts or to existing county, city, or town layouts, or may revise existing limited access provisions.

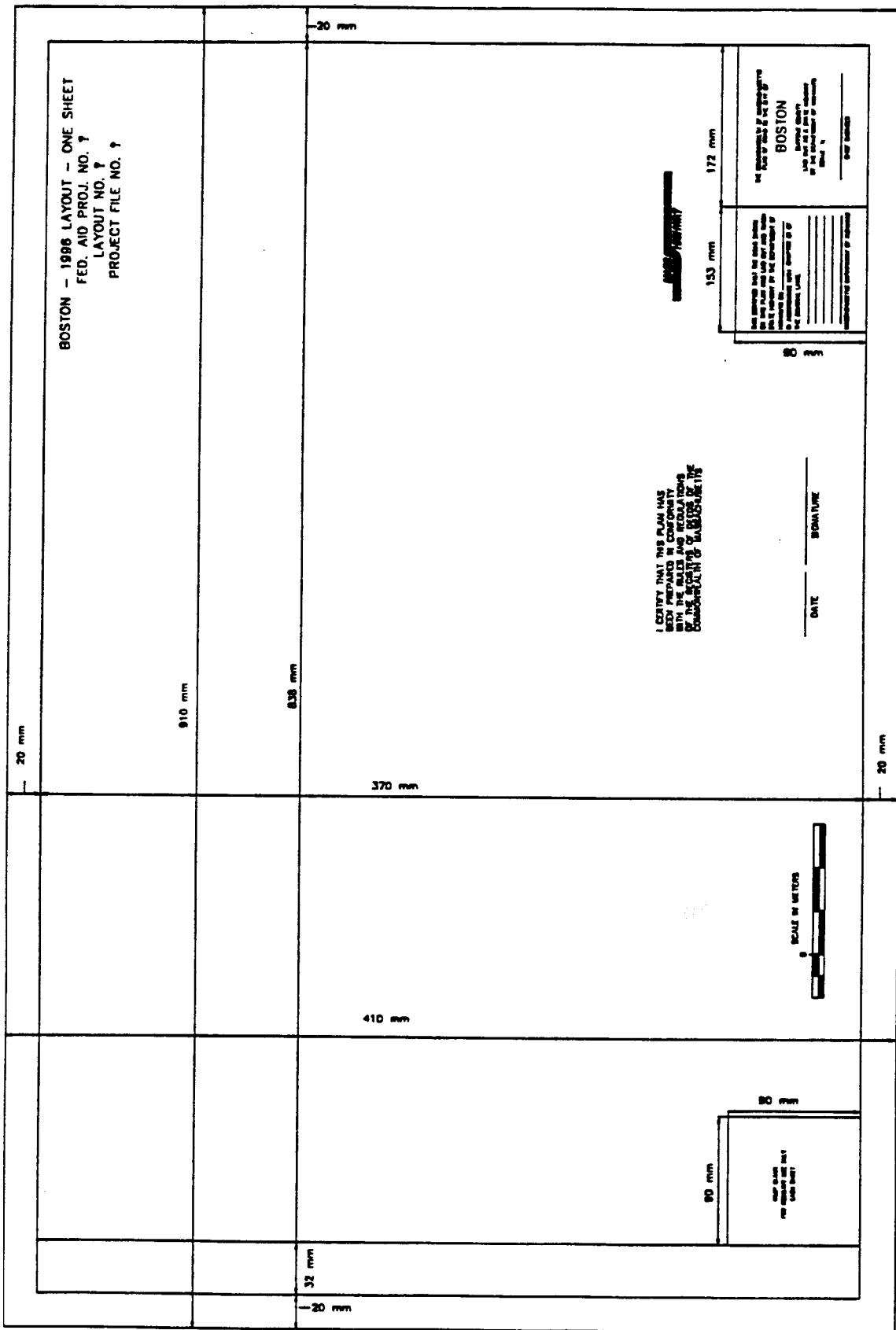
All proposed layouts must be accurately computed. A complete set of original calculations and a check set of calculations must be submitted. Where a project is in more than one municipality, separate layouts are required. Railroad baselines should be tied to the state highway layout.

The procedure and methods outlined below provide a guide for the preparation of layout plans:

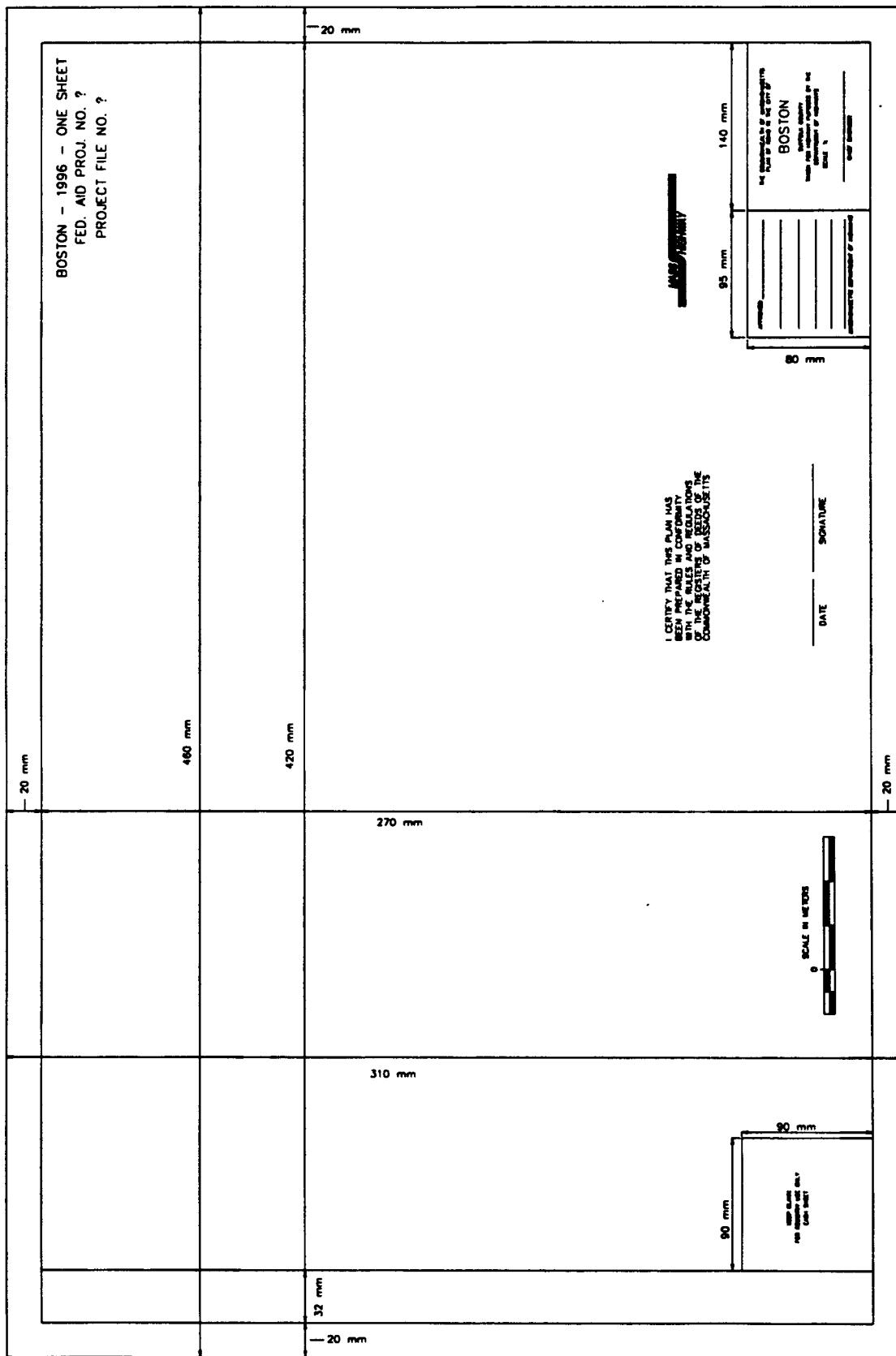
1. On the Right-of-Way Plans, the designer will furnish the tentative location of the layout line.
2. The tentative location is then definitely set and the computations of curves, lengths, bearings, etc., are made. The computed layout data is then shown on the Layout Plans along with Mass. State Plane Coordinates to all angle points, points of curvature, and points of beginning and ending. Deeds, existing state, county, city, and town layouts, survey ties into Mass. Coordinate system, and other sources of information may be needed to complete the above. If the Mass. State Plane Coordinate system is not readily available the MHD should be contacted for further instructions.
3. Layout plans will show proposed layout (location) lines in metric, property lines, corner markers, names of property owners, access and non-access (if limited access highway) points, and the locations of bounds. The plans will indicate existing surface details, such as trees, poles, structures, manholes, curbing, walls, fences, streams, existing streets, etc. All of the above details are shown in black. The proposed details are not shown.
4. The bearings and distances, or radii and lengths of all proposed layout lines are shown in metric, including Mass. State Plane Coordinates to all angle points, points of curvature, and the points of beginning and ending. When a record baseline exists in the area of proposed layout or alteration, it shall be shown on the plan to facilitate in determining locus. (Ties to this baseline are not to be used.)

Data on the layout plans are to be drawn as described below:

1. Layout plans are normally drawn to a scale of either 1:250 or 1:500.
2. Where a record baseline exists and is shown, points of curvature, points of tangency and the applicable description "Main Baseline" or "Auxiliary Baseline" will be shown along each baseline. The 100 meter stations are indicated by small circles with a 3 millimeter diameter. The stations are noted above each circle. Tick marks are shown at 20 meter intervals between the circles. All bearings, distances, and radii are marked below the line.

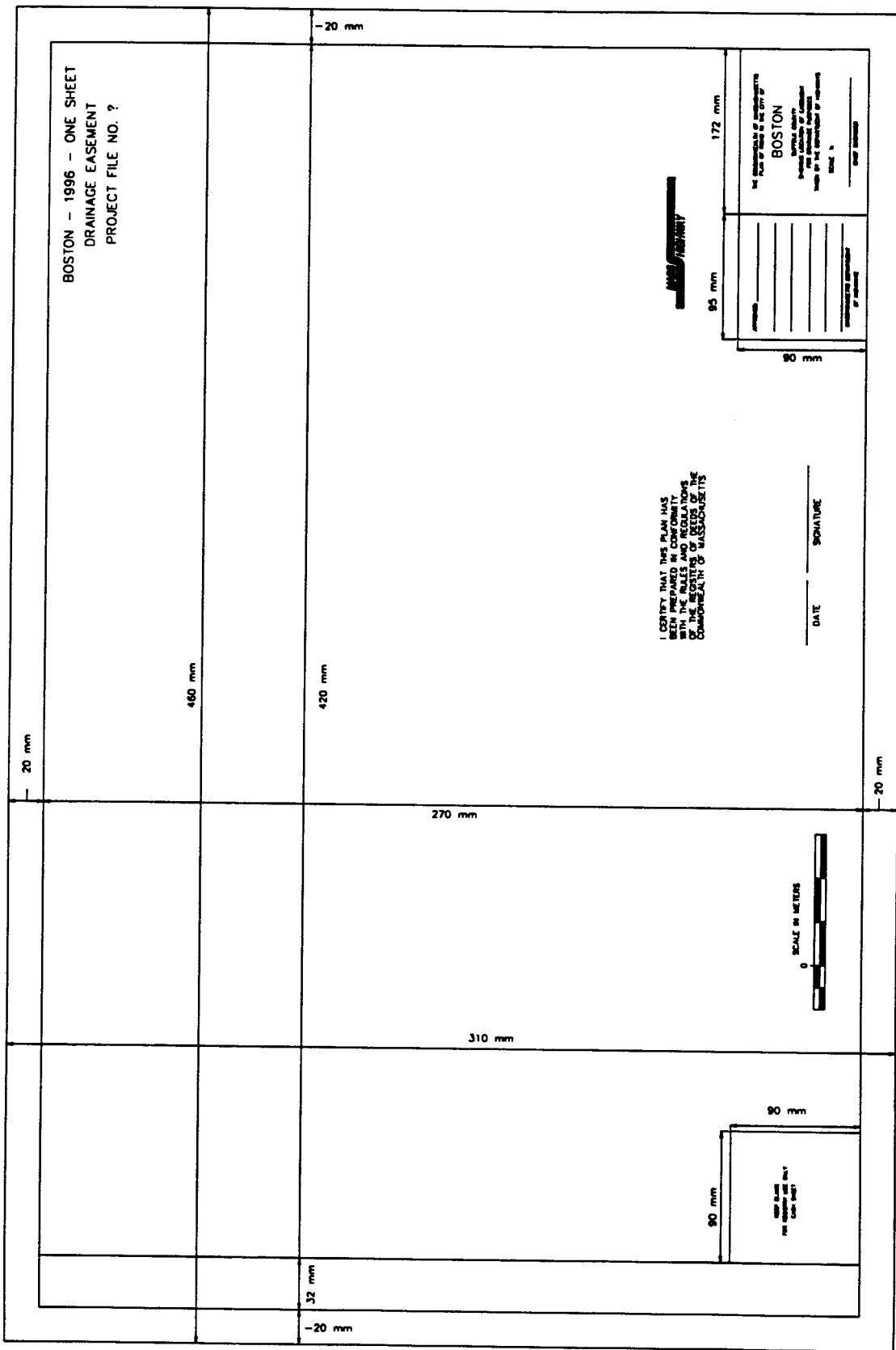


**Figure 2-13. SIZES OF STANDARD TRACINGS**  
**LAYOUT AND ALTERATIONS**



**AYOUT AND ALTERATIONS  
(SMALL SHEETS)**

**Figure 2-13A. SIZES OF STANDARD TRACINGS**



**SPOT TAKINGS AND EASEMENTS  
(LARGE SHEET)**

3. The proposed state highway layout line is a heavy, solid line, with bearing, radius, and length indicated along the outside of the line. Access provisions are shown inside the location line.
4. The old state highway layout line, where superseded by a revised state highway location line, is a broken line.
5. The proposed town or city layout line is a solid line. The bearings, radii, and lengths, are indicated along the outside of the line.
6. The old town or city layout line is a broken line. The date that the existing layout line was made is noted along the line.
7. Property lines are shown as broken lines.
8. Each parcel of land to be taken must have its parcel number, owner's name, area and length of each course ± distances noted. Registered land must show the parcel number, exact name of owner, the words "Registered Land", Land Court case number, Land Court certificate number, book and page number, the area, and the length of each course. Supplementary plans and traverses must be submitted to the Land Court to conform to Land Court Regulations for the land taken and land remaining. Easement locations taken in connection with the layout will be outlined in black, dashed ink lines marked "Line of Easement."
9. Existing state highway location lines shall be identified with the proper notation, as follows: Location Lines of December 20, 1995 State Highway Layout/Alteration (L.O. No. 5678).

In accordance with MHD practice, parcels are numbered in a manner that will indicate permanent or temporary takings and the nature of the rights taken. Locations where rights of access to or egress from existing ways are taken, but no land taking is involved will be designated by parcel numbers AT-1, AT-2, etc.

The written instrument for the Layout and Order of Taking will be prepared according to MHD practice. Four typewritten copies, double-spaced and carefully checked against the layout tracings, must be submitted. Separate plans and written instruments for advance taking and/or additional easements may be required.

All submissions of tracings to the Department shall be comprised of the original tracings and full-size wash mylar reproductions. Electrostatic mylar plots are unacceptable. The reproductions, to be acceptable to the registers of deeds, must meet the most recent Plan Regulations approved by the State Attorney General.

Among the requirements for recording are the following:

1. Plans must be on linen or single matte wash mylar having a thickness of 0.0762 mm. The matte surface and ink must be on the front of the mylar sheet.
2. Ink must be opaque and of archive quality. It is imperative that the ink used on mylar plans be specifically designed for mylar applications to prevent its chipping off.
3. The minimum letter height permitted on plans is 3.175 mm for hand-lettering and 2.54 mm when a machine or template is used.

In addition, the Federal Aid Project No. shall be shown on the upper right-hand corner of the first sheet; the Layout No. shall be shown in the upper right-hand corner of each sheet; and on Limited Access projects the notation "Limited data, parcel nomenclature and existing detail" shall be on one side only on both the original and the reproduction. Also, a key plan is needed for all layouts and alterations where sheets do not follow each other in successive numerical order. No reproductions are needed for key plans.

All layout tracings, supplementary plans and traverse computations for the Land Court will be stamped with the seal of a Massachusetts Registered Land Surveyor. All layout plans will show on the title sheets the words "Plans Prepared By," followed by the name and address of the person or organization responsible. Samples of the supplementary plans and traverses for registered land, general type of layout descriptions, and order of taking may be obtained from the Layout Engineer.

Titles of plans and necessary notes for signature by the Commissioners are shown in Figure 2-16. Table 2.5 provides symbols for layout tracings. Table 2.6 provides abbreviations for Layout Plans. Both of these tables also apply to right-of-way plans.

## 2.4 RIGHT OF WAY PLANS

These procedures for the preparation of "Right of Way" plans are consistent with the *Federal Aid Policy Guide (FAPG)*. Since these instructions are general, the designer must discuss the content requirements for each project with the Right of Way Bureau.

The "Right of Way" plans are not a substitute or replacement for the Department layout plans described in this manual; both are required.

## 2.4.1 General

Preliminary and final ROW plans will be prepared by the designer as specified and as noted in the *Federal Aid Policy Guide (FAPG)*.

Preliminary and final ROW plans will include all pertinent data affecting the cost of ROW such as structures, land service or access roads, improvements, landscaping, drainage, and fences.

**Figure 2-14. DATA FOR LAYOUT PLAN AND TITLE SHEET**

**Table 2.5**  
**SYMBOLS FOR LAYOUT TRACINGS**

Proposed State Highway Layout Line	<u>Bearing &amp; Length or Radius &amp; Length</u>
Existing State Highway Layout Line	No Access  Access
Line of No Transit	Date of Layout
Proposed Town, City, or County Layout Line	<u>Bearing &amp; Length or Radius &amp; Length</u>
Existing Town or City Layout Line	<u>Bearing &amp; Length or Radius &amp; Length</u>
Existing Railroad Sideline	Date of Layout
Existing County Layout Line	R.R S/L
Town or City Boundary Line	Date of Layout
Property Line	Bearing
Approximate Property Line (Cloth Plan Only)	P
Line of Easement	Approximate P
	Line of Easement

**Table 2.6**  
**ABBREVIATIONS FOR LAYOUT AND RIGHT-OF-WAY PLANS**

Abbreviations for Fee Takings	
1	Taken in fee in behalf of the Commonwealth
1-C	Taken in fee in behalf of the City
1-T	Taken in fee in behalf of the Town
1-U	Taken in fee (ordinarily conveyed to utility)
1-RR	Taken in fee in behalf of the Railroad
1-X	Excess Land
M-1	Maintenance Area
D-1-F	Drainage Taking in Fee
C-1-F	Channel Taking in Fee
UR-1	Uneconomic Remainder
VP-1	Vehicular Parking
CVP-1	Commuter Vehicular Parking
FRL-1	Functional Replacement Land
RL-1	Replacement Land
Abbreviations for Easement Takings *	
AT-1	Access Taking
B-1	Bridge
BA-1	Bridge Abutment
C-1	Channel
CD-1	Channel Drainage
CL	Construction Limitation
D-1	Drainage
DS-1	Drainage and Slope
E-1	Highway Easement (Portion of Right-of-Way)
E-RR-1	Easement on behalf of Railroad
FB-1	Footbridge
FS-1	Flight of Steps
GD-1	Gravel Dike
GR-1	Guard Rail
GU-1	General Utility
HS-1	Highway Sign
HL-1	Highway Light
PL-1	Power Line
R-1	Right-of-Way taken in behalf of owner of land whose rights of access thereto and egress therefrom would otherwise be inoperative due to limited access provisions
R-B-1	Road and Bridge
R-B-S-1	Road, Bridge and Slope
RD-1	Drainage in connection for removal of demolition of certain structures
RR-1	Railroad Bypass
R-RR-1	Road and Railroad Bypass
RS-1	Slope in connection with Right-of-Way
RT-1	Temporary easement for removal or demolition of certain structures
S-1	Slope
SRE-1	Temporary Sign Removal
SS-1	Sanitary Sewer
SW-1	Sidewalk
SW-S-1	Sidewalk and Slope
TB-1	Tie Back
TE-1	Temporary Easement for various purposes
TR-1	Temporary Road
U-1	Utility Easement (ordinarily conveyed to a utility company)
W-1	Wall
WM-1	Watermain
WMD-1	Watermain and Drainage
WQM-1	Water Quality Monitoring Station
WS-1	Wall and Slope
Abbreviations for Disposition of State Property	
LL	Land Lease (Portion of State Highway)
LR	Land Lease (Not part of State Highway)
LU	Land Use (Portion of State Highway)
LS	Land Sale (Portion of State Highway)
SR	Land Sale (Not part of State Highway)
LA	Land Acquired by Department (usually by deed)

\*Notes for Easement Takings:

1. Temporary easements are preceded by letter "T". (For example, TD-1, TWM-1, etc.)
2. Easement in behalf of Town, City, Railroad or the M.D.C. are followed by letters: "T", "C", "RR", "MDC" (For example, D-1-T, D-1-C, D-1-RR, D-1-MDC, etc.)
3. EG-1. This symbol is used to delineate an area comprising a portion of State Property in which an easement is to be granted.
4. The symbols listed and described above may be preceded by a number prefix. (For example, 1-1, 1-D-1, 2-1, 2-D-1, etc.)
5. The symbols A, B, C, etc. designate "Spot Takings in Fee." The symbols B-11-1, B-11-2, etc. designate "Block Takings in Fee."

The size, form and arrangement of preliminary and final ROW plans will conform to the general requirements of highway plans. They will contain sufficient dimensional and angular data to permit easy identification of all fee parcels and easement areas that are required by the highway project. The following symbols and/or identification information shown on the construction plans will also be shown on ROW plans:

1. Right of Way Federal-aid project number.
2. Scales to be used.
3. A north arrow for each plan sheet and for each insert plan included on any sheet.
4. Access symbols or any other symbols which may be used.
5. A date on each sheet.
6. A revision block to show any changes.
7. Symbols and abbreviations for Layout Plans (Tables 2.5 and 2.6) also apply to ROW Plans.

## **2.4.2 Preliminary Right of Way Plans**

Preliminary ROW plans will be prepared to produce legible reproductions. Each sheet will be labeled "Preliminary Right of Way."

The preliminary ROW plan for Federal Aid projects will remain in the preliminary stage until FHWA has granted authority to the state to acquire ROW with Federal participation in land damage costs. For state funded projects the ROW plan will remain in the preliminary stage until accepted by the Right of Way Division. ROW acquisition information will be posted on the preliminary ROW plan by the designer when the designer obtains the information.

## **2.4.3 Final Right of Way Plans**

After FHWA has granted authority to the state to acquire ROW with Federal participation and/or the ROW Division accepts the preliminary ROW plan, the preliminary ROW plan will become the final ROW plan. Each sheet of the plan will be labeled "Final Right of Way Plan," and the plan will be subject to any additions and revisions that may be required later. Any additions and revisions with dates will be noted.

## 2.4.4 The Right of Way Plan

The ROW plan shall include the following:

1. *Title Sheet* - The title sheet will include the same information as the title sheet prepared for highway construction drawings. Information noted on the construction plan title sheet which is not germane to the ROW plan should be removed. The following information will be noted on the title sheet of the ROW plan:
  - a. the ROW Federal-aid project number
  - b. project file number
  - c. an index
  - d. the termini baseline stations of the proposed acquisition
  - e. an indication of a preliminary or final ROW plan.
2. *Typical Cross Sections and Critical Profiles* - Typical cross sections with profiles for critical locations will be included in the ROW plan relative to the land damage involved.
3. *Parcel Summary Sheet* - A parcel summary sheet will show the following information:
  - a. all parcel numbers (prefix numbers are supplied by the Department)
  - b. the name of the owner of record
  - c. the areas of each property before taking
  - d. the areas of taking, noting whether the taking is made in fee or as a permanent or temporary easement
  - e. sheet numbers of where a subject property is shown on the location maps and the property plan sheets
  - f. the areas of all portions of an affected property which remain after the takings and the status of access on the remaining portions
  - g. a reference to the book and page where the title is recorded in the appropriate registry of deeds and/or probate court

4. *Location Maps* - A location map will be prepared for projects in which all properties' land damage cannot be entirely shown in baseline sequence on the property plan sheets. When required, a location map will be prepared whether or not a basic ROW plan is available. The location map will be to a scale that will produce legible reproductions, such as 1:2500 in rural areas or 1:1250 or 1:500 in suburban and urban areas. Location maps will be prepared by adding ROW plan information to the basic ROW plan. It will include the following:
  - a. ROW location limits (both existing and proposed), the baseline stations, and the width of the ROW. Any changes in the width should be noted. The type of existing layout should be indicated (State, County, City or Town), and the date of the layout should be indicated.
  - b. Each property affected by land damage resulting from acquisition or construction will be shown. If the entire property cannot be shown on the location map in the property baseline sequence, the entire property will be shown drawn as an insert on a location map sheet at an appropriate scale.
  - c. Every taking from each property will be shown with the parcel number of each taking, its area, the owner's name, the areas and perimeters of all severed parcels, and the remaining access for any severed parcels. A check set of taking computations must be made.
  - d. The areas of the affected parcels are computed.
  - e. All improvements to the property, such as structures, driveways, and fences will be shown.
  - f. Access control lines and approved points of access, where a limitation of access is involved with the acquisition, should be shown.
5. *Property Plan Sheets* - Property Plan Sheets will be prepared as discussed in Section 2.4.2. The following information will be shown for each property on the Property Plan sheets:
  - a. ROW limits and both existing and proposed baseline information with stations, bearings, and distance, and ties to the ROW location and curve data where applicable. The ROW width will be shown and any changes in width will be noted. Information relative to access provisions, if applicable, will be indicated with approved points of access clearly shown.
  - b. Every taking made from each property will be shown with the parcel number of each taking (whether made in fee or as a temporary or permanent easement), its

area and dimensions, and the owner's name. A check set of computations must be made.

- c. The areas of the affected parcels are computed.
- d. All improvements included within any taking, such as structures, driveways, landscaping, and fences will be shown.
- e. The proposed tops and bottoms of slopes will be shown whether within or beyond the limits of the existing or proposed ROW.
- f. New construction features, such as pavements, structures, and drainage.
- g. All work to be performed to mitigate land damage.
- h. All dimensions are to be shown in both the English system and the metric system. Bar scales for both systems shall also be provided.

## Chapter 4

## 2.4.1 General

ROW plans will be prepared by the designer as specified and as noted in the Federal Highway Program Manual. The designer, however, will not be required to show base line ties to property lines as noted in the FHPM.

ROW plans will include all pertinent data affecting the cost of ROW, such as structures, land service or access roads, improvements, landscaping, drainage, fences, ect.

The size, form and arrangement of ROW plans will conform to the general requirements of highway plans. They will contain sufficient dimensional and angular data to permit easy identification of all fee parcels and easement areas that are required by the highway project. The following symbols and/or identification information as shown on the construction plans will also be included on ROW plans:

1. Right-of Way Federal-aid project number.
2. Scales to be used.
3. A north arrow for each plan sheet and for each insert plan included on any sheet.
4. Access symbols or any other symbols which may be used.
5. A date on each sheet.
6. A revision block to show any changes.
7. Symbols and abbreviations for layout plans (Tables 2.5 and 2.6) also apply to ROW Plans.

## 2.4.2 Preliminary Right of Way Plans

Preliminary ROW will be prepared in pencil to produce legible reproductions. They will be prepared on transparent linen cloth (or mylar) reproductions of the basic ROW plan, when available, and the reproductions of the construction plans upon approval of geometrics and sidelines by FHWA. Each sheet will be labeled "Preliminary Right-of -Way."

The preliminary ROW plan will remain in the preliminary stage until FHWA granted authority to the state to acquire ROW federal participation in land damage costs. ROW acquisition information will be posted on the preliminary ROW plan by the designer when the designer obtains the information.

## 2.4.3 Final Right-of-Way Plans

After FHWA has granted authority to the State to acquire ROW with Federal participation, the preliminary ROW plan will become the final ROW plan. All pencil work will be india inked or photocopied on mylar. Each sheet of the plan will be labeled "Final Right-of-Way Plan," and the plan will be subject to any additions and revisions that may be later required. Any additions and revisions and their dates will be noted.

## **2.4.4 The Right-of-Way Plan**

The ROW plan will include the following :

1. Title Sheet- The title sheet will include the same information as the title sheet prepared for highway construction drawings. Information noted on the construction plan title sheet which obviously not germane to the ROW plan should be removed. The following information will be noted on the title sheet of the ROW plan:
  - a. the ROW Federal-aid number.
  - b. an index of the content of the ROW plan.
  - c. The termini base line stations of the proposed acquisition.
  - d. An indication of a preliminary or final ROW plan.
2. Typical Cross Sections and Critical Profiles – Typical cross sections with profiles for locations will be included in the ROW plan where the profile is critical relative to the land damage involved.
3. Parcel Summary Sheet – A parcel summary sheet will show the following information:
  - a. all parcel numbers (prefix #'s are supplied by the Division);
  - b. the name of the owner of record;
  - c. the before area of each property involved;
  - d. the area of taking, noting whether the taking is made in fee or as a permanent or temporary easement;
  - e. sheet numbers where a subject property is shown on the location maps and the property plan sheets;
  - f. the areas of all portions of an affected property which remains after the takings and the status of access on the remaining portions; and
  - g. a reference to the book and page where the title is recorded in the appropriate registry of deeds and/or probate court.
4. Location Maps – A location map will be prepared for projects where all properties suffering land damage cannot be entirely shown in base line sequence on the property plan sheet. When required, a location map will be prepared whether or not a basic ROW plan is available. The location map will be to a scale which will produce legible reproductions, such as 1" = 2==, in rural areas or 1" = 40' in suburban and urban areas. Location maps will be prepared by adding ROW plan information in pencil to the transparent linen cloth reproduction or mylar of the basic ROW plan. It will include the following:
  - a. ROW location limits (both existing and proposed), the base line station, and the width of the ROW. Any changes in the width should be noted. The type of existing layout should be indicated (whether state or town), and the date of the layout should be indicated.
  - b. Each property which suffers land damage by an acquisition or construction will be shown. If the entire property cannot be shown on the location map in the property base line sequence, the entire property will be shown as an insert on the location map sheet at an appropriate scale.
  - c. Every taking from each property will be shown with the parcel number of each taking, its area, the owner's name, the areas and perimeters of all severed areas, and the remaining access for any severed areas. A check set of taking computations must be made.
  - d. The areas of the affected parcels are computed. This is usually by scale rather than Double Meridian Distance (D.M.D.) or other more accurate methods, unless the value of the land is very high.
  - e. All improvements to the property, such as structures, driveways, fences, ect., will be shown.
  - f. Access control lines and approved points of access, where a limitation of access is involved with the acquisition, should be shown.

### **EXHIBIT NO. 4-1**

5. Property Plan Sheets – Property plan sheets will be prepared on transparent linen cloth reproductions (or mylar) of the reproduction drawings as discussed in Section 2.4.2 The following information will be shown for each property on the property plan sheets.:
- a. ROW limits and both existing and proposed base line information with stations, bearings, tangents, ties to the ROW location and curve data where applicable. The ROW width will be shown and noted with any change in width. Information related to access provisions, if applicable, will be indicated with approved points of access clearly shown.
  - b. Every taking from each property will be shown with the parcel number of each taking (whether made in fee or as a temporary or permanent easement), its area and dimensions, and the owner's name. A check set of computations must be made.
  - c. The areas of the affected parcels are computed. This is usually by scale rather than Double Meridian Distance (D.M.D.) or other more accurate methods, unless the value of the land is very high.
  - d. All improvements included within any taking, such as structures, driveways, landscaping, fences, etc., will be shown.
  - e. The top and bottom of slope of the proposed construction will be shown whether within or beyond the limits of the existing or proposed ROW.
  - f. New construction features, such as pavements, structures, drainage, etc.
  - g. All work to be performed to mitigate land damage.

**EXHIBIT NO. 4-1**

Notice of Taking **ABBREVIATIONS FOR LAYOUT AND RIGHT OF WAY PLANS**  
**ARTICLE 16. DEPARTMENT STANDARD SYMBOLS**

1	Taken in Fee in Behalf of the Commonwealth
1-C	Taken in Fee in Behalf of the City
1-T	Taken in Fee in Behalf of the Town
1-U	Taken in Fee (Ordinarily Conveyed to Utility)
1-RR	Taken in Fee in Behalf of the Railroad
1-X	Excess Land
M-1	Maintenance Area
D-1-F	Drainage Taking in Fee
C-1-F	Channel Taking in Fee
UR-1	Uneconomic Remainder
VP-1	Vehicular Parking
CVP-1	Commuter Vehicular Parking
FRL-1	Functional Replacement Land
RL-1	Replacement Land
	<b>ABBREVIATIONS FOR EASEMENT TAKINGS*</b>
AT-1	Access Taking
B-1	Bridge
BA-1	Bridge Abutment
C-1	Channel
CD-1	Channel Drainage
CL	Construction Limitation
D-1	Drainage
DS-1	Drainage and Slope
E-1	Highway Easement (Portion of Right-of Way)
E-RR-1	Easement on Behalf of Railroad
FB-1	Footbridge
FS-2	Flight of Stairs
GD-1	Gravel Dike
GR-1	Guard Rail
GU-1	General Utility
HS-1	Highway Sign
HL-1	Highway Light
PL-1	Power Line
R-1	Right-of-Way Taken in Behalf of Owner of Land Who's Rights of Access thereto and egress therefrom would otherwise be inoperative due to the limited access provisions.
R-B-1	Road and Bridge
R-B-S-1	Road, Bridge and Slope
RD-1	Drainage in Connection with a Right of Way
RR-1	Railroad Bypass
R-RR-1	Road and Railroad Bypass
RS-1	Slope in Connection with a Right of Way
RT-1	Temporary Easement for Removal or Demolition of Certain Structures
S-1	Slope
SRE-1	Temporary Sign Removal
SS-1	Slope
SW-1	Sidewalk
SW-S-1	Sidewalk and Slope
TB-1	Tie Back
TE-1	Temporary Easement for Various Purposes
TR-1	Temporary Road
U-1	Utility Easement (Ordinarily Conveyed to a Utility Company)
W-1	Wall
WM-1	Watermain
WMD-1	Watermain and Drainage
WQM-1	Water Quality Monitoring Station
WS-1	Wall and Slope
	<b>ABBREVIATIONS FOR DISPOSITION OF STATE PROPERTY</b>
LL	Land Lease (Portion of State Highway)
LR	Land Lease (Not Part of State Highway)
LU	Land Use (Portion of State Highway)
LS	Land Sale (Portion of State Highway)
SR	Land Sale (Not Part of State Highway)
LA	Land Acquired By Department (Usually by Deed)

\*Notes for Easement Takings

1. Temporary Easements are preceded by letter "T" (For Example, TD-1, TWM-1,etc.)
2. Easements in Behalf of Town, City, Railroad, or the M.D.C. are followed by Letter: "T", "C", "RR", "MDC", (For example: D- 1-T, D-1-C, D-1-RR, D-1-MDC)
3. EG-1. The Symbol is used to delineate an area comprising a portion of State Property in which an easement is to be granted.
4. The symbols listed and described above may be preceded by a number prefix. (For example, 1-1, 1-D-1, 2-1, 2-D-1, etc.)
5. The symbols A, B, C. etc. designate "Spot Takings in Fee". The symbols B11-1, B11-2, etc. designate "Block Taking in Fee".

**EXHIBIT NO. 4-2**

**RIGHT OF WAY COST ESTIMATE**

CITY/TOWN: \_\_\_\_\_ PREPARED BY: \_\_\_\_\_  
 F.A.PROJECT: \_\_\_\_\_ DATE: \_\_\_\_\_  
 PROJECT: \_\_\_\_\_  
 PROJECT DESCRIPTION: \_\_\_\_\_

**I. PRELIMINARY R.O.W. ACTIVITIES**

ACTIVITY NUMBER	ACTIVITY	TOTAL COST	
		STATE FORCES	OTHER
026	Negotiations	\$	\$
030-24	Projects		
030-28	Appraisals		
030-29	Appraisal Review		
039	Legal Services		
SUBTOTALS		\$	\$
<b>I. TOTAL PRELIMINARY R.O.W. COST</b>		\$	

**II. ACQUISITION AND RELOCATION ACTIVITIES**

ACTIVITY NUMBER	ACTIVITY	TOTAL COST	
		STATE FORCES	OTHER
041-042	Moving Expenses (residential) (2)	\$	\$
043-044	Moving Expenses (business, signs, etc)		
015-046	Replacement Housing Supplements		
047	Contract Payments to LPA's		
048	Relocation Consultants		
049	Other Relocation		
052	Land Damages (No. of Cases) _____		
056	Property Management		
039	Legal Services		
	Demolition		
SUBTOTALS		\$	\$
<b>II. TOTAL ACQUISITION AND RELOCATION COST</b>		\$	

EXHIBIT 4-3**RIGHT OF WAY COST ESTIMATE****III. LEGAL SETTLEMENTS AND COURT AWARDS**

ACTIVITY NUMBER	ACTIVITY	TOTAL COST	
		STATE FORCES	OTHER
030	Appraisals	\$	\$
030	Appraisal Review		
039	Legal Services		
058	Settlement/Court Judgments		
SUBTOTALS		\$	\$
<b>III. TOTAL LEGAL SETTLEMENTS AND COURT AWARDS COST</b>		\$	

**SUMMARY**

I. TOTAL PRELIMINARY R.O.W. COST	\$
II. TOTAL ACQUISITION AND RELOCATION COST	\$
III. TOTAL LEGAL SETTLEMENTS AND COURT AWARDS COST	\$
<b>TOTAL R.O.W. PROJECT COST</b>	\$

**THE COMMONWEALTH OF MASSACHUSETTS**

**MASSDOT HIGHWAY DIVISION  
INTEROFFICE MEMORANDUM**

---

**TO:** , CEPO Director  
**FROM:** , Deputy Director, ROW Bureau  
**DATE:**  
**RE:** City/Town - project & Projis #

---

Federal Aid, Right of Way Coding is hereby requested on the above project.

Preliminary Right of Way Costs are as follows:

No. of cases -  
Acquisition and relocation activities  
Legal settlements and court awards  
Total Right of Way Project cost

Attached hereto is a breakdown of the above costs.

Cc:

**EXHIBIT NO.4-4**

**THE COMMONWEALTH OF MASSACHUSETTS**

**MASSDOT HIGHWAY DIVISION**

**INTEROFFICE MEMORANDUM**

---

**TO:** , CEPO Director

**FROM:** , Deputy Director, ROW Bureau

**DATE:**

**RE:** City/Town-Project & Projis #

---

Federal Highway Administration approval is hereby requested for all remaining Right of Way activities on the above project.

Revised preliminary Right of Way Costs are as follows:

No. of cases - # ±

Land damages including contingencies \$xxxx.

There is no relocation assistance or demolition required.

CC:

**EXHIBIT NO. 4-5**

**THE COMMONWEALTH OF MASSACHUSETTS**

**MASSDOT HIGHWAY DIVISION**

**INTEROFFICE MEMORANDUM**

---

**TO:** , CEPO Director

**FROM:** , Deputy Director, ROW Bureau

**DATE:**

**RE:** City/Town - Project & Projis #

---

Non-Federal Aid, Right of Way Coding is hereby requested on the above project.

Preliminary Right of Way Costs are as follows:

No. of cases - # ±

Land damages including contingencies \$xxxx.

There is no relocation assistance or demolition required.

CC:

**EXHIBIT NO. 4-6**



## Commonwealth of Massachusetts

MassDOT Highway Division

Right of Way Bureau

### INTEROFFICE MEMORANDUM

To: Property Management Administrator

From: Project Supervisor

Date: \_\_\_\_\_

Subject: \_\_\_\_\_

Route: \_\_\_\_\_

Layout No.: \_\_\_\_\_

F.A.P. No.: \_\_\_\_\_

Cost Code: \_\_\_\_\_

Parcel No: \_\_\_\_\_

### STRUCTURE AND OCCUPANCY REPORT

Attached hereto is a completed Structure and Occupancy Report for the above-mentioned parcel/project.

A 120 day notice to vacate should be sent in the usual manner.

**Vote:** \_\_\_\_\_

**Record:** \_\_\_\_\_

**Payment:** \_\_\_\_\_

Attachments ( )

cc: Review Administrator  
Relocation Administrator  
Property Management Administrator  
Clerical Supervisor  
Area Supervisor

**MassDOT Highway Division  
Right of Way Bureau  
Fee Appraisal & Assignment Form**

**City/Town:** \_\_\_\_\_ **Fed. Aid #:** \_\_\_\_\_ **Prepared By:** \_\_\_\_\_

**Project:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Attached  
Plans:** \_\_\_\_\_ **Cost Account:** \_\_\_\_\_

Parcel No.	Owners Name & Propert Location	Partial/ Total	Description of Buildings Taken	Property Use/Res., Comm., Indust.	Number of Appraisals	Remarks

**MassDOT Highway Division  
Right of Way Bureau  
LAYOUT SCHEDULE**

**City/Town:** \_\_\_\_\_ **Cost Account #:** \_\_\_\_\_

**Project:** \_\_\_\_\_ **Fed. Aid #:** \_\_\_\_\_

**Layout #:** \_\_\_\_\_ **Layout Date:** \_\_\_\_\_ **Payment Date:** \_\_\_\_\_

Parcel No.	Record the Names and Addresses of Owners, mortgagees, Lessees and Easement Holders	Area Taken	Title Refferences Book	Page



## Commonwealth of Massachusetts

MassDOT Highway Division

**Right of Way Bureau**

### INTEROFFICE MEMORANDUM

**To:** Administrator

**From:** Deputy Director, ROW Bureau

**Date:** \_\_\_\_\_

**Subject:** \_\_\_\_\_

**Route:** \_\_\_\_\_

**Layout No.:** \_\_\_\_\_

**F.A.P. No.:** \_\_\_\_\_

**Cost Code:** \_\_\_\_\_

Attached hereto is a completed Layout Schedule providing all the necessary information for the above-mentioned project.

The following parcels are to be taken for registered land:

All temporary easements are to be taken for a period of \_\_\_\_\_.

A \_\_\_\_\_ day notice to vacate should be sent in the usual manner.

Recommended by:

---

\_\_\_\_\_  
Deputy Director, Right of Way Bureau

Approved by:

---

\_\_\_\_\_  
Director, Right of Way Bureau

Exhibit No. 4-10

**MassDOT Highway Division**

Right of Way Bureau

**Structure and Occupancy Report**

**City/Town:** \_\_\_\_\_ **Project:** \_\_\_\_\_

**Fed Aid No.:** \_\_\_\_\_ **Layout/Order:** \_\_\_\_\_ **Date Recorded** \_\_\_\_\_

**Prepared By:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Sheet** \_\_\_\_ of \_\_\_\_ **Sheet**

Parcel No.	Owner	Location & Type of Building	Demo Item #	Res Bus	Occupants	W NW	Rent	# of Rooms	Sq. Ft. Occupied

TO BE COMPLETED BY FHWA



FEDERAL-AID PROJECT AGREEMENT

U.S. Department  
of Transportation  
Federal Highway  
Administration

STATE

MASSACHUSETTS

COUNTY

PROJECT NO.

The State agrees that as a condition to payment of the Federal funds obligated, it accepts and will comply with the agreement provisions set forth in 23 CFR 630.307; and its signature constitutes the making of the certifications.

PROJECT TERMINI

PROJECT CLASSIFICATION OR PHASE OF WORK	EFFECTIVE DATE OF AUTHORIZATION
FHWA PLANNING AND RESEARCH	
PRELIMINARY ENGINEERING	
RIGHTS-OF-WAY	
CONSTRUCTION	
OTHER (SPECIFY)	

REMARKS

TOTAL PROJECT COST	IDENTIFY FEDERAL SHARE	AMOUNT OF FEDERAL FUNDS UNDER AGREEMENT
\$	<input checked="" type="checkbox"/> Pro Rate _____ % <input type="checkbox"/> Lump Sum	\$

MASSACHUSETTS HIGHWAY DEPARTMENT

(Official name of Highway Agency)

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By \_\_\_\_\_

By \_\_\_\_\_

(Division Administrator)

DIRECTOR, CEPO

(Title)

Date executed by

Division Administrator \_\_\_\_\_

Form PR-2A-MA

**MASSDOT HIGHWAY DIVISION**  
**PARS NUMBER**

DATE

PARS NO:	(SYS.) FED. AID PROJECT NO:	
TOWN/CITY:		
LOCATION:		
ACTIVITY CODES:	FHWA AUTH. DATE:	ADV. DATE:
REMARKS:		

**REQUEST FOR ALLOCATION OF BOND FUNDS PRIOR TO ENCUMBRANCE**

ENCUMBRANCE DOCUMENT ID			
TRANS	DEPT	R/ORG	NUMBER

DATE

SECTION A:

APPROPRIATION	SUB.	OBJ.	ORG.	ACT.	N/P	AMOUNT

SECTION B: OBLIGATION BY FISCAL YEAR FOR MULTI-YEAR CONTRACTS

APPROPRIATION				
TOTAL:				

REASON FOR REQUEST:

CONTRACTOR / CONTR. NO:

REMARKS:

RECOMMENDED - TITLE

APPROVED - TITLE

TO BE COMPLETED BY FISCAL MANAGEMENT:

APPROVED: \_\_\_\_\_  
MANAGER/DATE

TO BE COMPLETED BY CEPO:

EXPENSE BUDGET: \_\_\_\_\_  
ENTERED BY / DATE

APPROVED BY:

ACCOUNT MANAGER / DATE



## Commonwealth of Massachusetts

MassDOT Highway Division

### Right of Way Bureau

## INTEROFFICE MEMORANDUM

To: Property Management Administrator

From: Project Supervisor

Date: \_\_\_\_\_

Subject: \_\_\_\_\_

Route: \_\_\_\_\_

Layout No.: \_\_\_\_\_

F.A.P. No.: \_\_\_\_\_

Cost Code: \_\_\_\_\_

Parcel No: \_\_\_\_\_

### Demolition Report

Attached hereto is a completed Demolition Report for the above-mentioned parcel/project.

The total estimated demolition cost is \$\_\_\_\_\_.

Vote: \_\_\_\_\_

File: \_\_\_\_\_

Pay: \_\_\_\_\_

EGC/  
Attachment ()

cc: Area Supervisor  
Property Management Administrator



## Commonwealth of Massachusetts

MassDOT Highway Division

Right of Way Bureau

### INTEROFFICE MEMORANDUM

#### SIGN INVENTORY REPORT

--	--

--	--

City/Town: \_\_\_\_\_

Project: \_\_\_\_\_

Layout/Order: \_\_\_\_\_

Federal  
Aid No.: \_\_\_\_\_

Parcel No.(s): \_\_\_\_\_

Location  
(BaseLine): \_\_\_\_\_

Property Owner: \_\_\_\_\_

Sign Owner: \_\_\_\_\_

Remarks: \_\_\_\_\_

**Commonwealth of Massachusetts**  
MassDOT Highway Division

**Right of Way Bureau**



**INTEROFFICE MEMORANDUM**

---

Date: \_\_\_\_\_

Subject: \_\_\_\_\_

Route: \_\_\_\_\_

Layout No.: \_\_\_\_\_

F.A.P. No.: \_\_\_\_\_

Cost Code: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

**SIGN INVENTORY REPORT**

Attached hereto is a complete Sign Inventory Report for the above mentioned project.

Attachment(s) ( )

cc:      Review Administrator  
          Property Management Administrator

Exhibit No. 4-16

**MassDOT Highway Division  
Right of way Bureau**

Sheet \_\_ of \_\_ Sheet

**Demolition Report**

City/Town: \_\_\_\_\_ F.A.P. No.: \_\_\_\_\_ Route No.: \_\_\_\_\_  
Layout No.: \_\_\_\_\_ Layout Date: \_\_\_\_\_ Date Recorded: \_\_\_\_\_  
Stations: \_\_\_\_\_ Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Parcel Number	Item Number	Owner & Location of Building	Height & Type of Building	Estimated Demolition Cost

Exhibit No. 4-17

## Chapter 5

CITY/ TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code: \_\_\_\_\_  
 PARCEL NO.: \_\_\_\_\_  
 OWNER: \_\_\_\_\_  
 LAYOUT NO.: \_\_\_\_\_ FAP#: \_\_\_\_\_

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**PROPERTY INTERVIEW RECORD**

PERSON(S) INTERVIEWED	OWNER'S TELEPHONE NUMBER		
	HOME:	- -	
	WORK:	- -	FAX:
OWNER'S ADDRESS	OWNER'S SOCIAL SECURITY/FEDERAL I.D. #		
	OWNER # 1:		
	OWNER # 2:		
LOCATION OF PROPERTY			
TYPE OF STRUCTURE(S)	VACANT LAND		
LAND AREA	FRONTAGE	DEPTH	BOUNDARIES ON GROUND ( Describe in Remarks )
MORTGAGEE #1	BOOK	PAGE	DOCUMENT NO.
			AMOUNT \$
ADDRESS	FEDERAL I.D. #		
MORTGAGEE # 2	BOOK	PAGE	DOCUMENT NO.
			AMOUNT \$
ADDRESS	FEDERAL I.D. #		
TENANT / LESSEE #1 N/A	SOCIAL SECURITY #		
ADDRESS	WHAT IS BEING LEASED		
LEASE TERMS (# years, TAW)	LEASE AMOUNT \$	Per	LEASE OPTIONS (RENEWABLE)
TENANT/LESSEE#1PAYS	R.E. TAX \$	INSURANCE \$	HEAT \$
FIXTURES	ELECTRIC \$		
			WATER/SEWER \$
GRANTOR	AGENT	FAMILY	
ADDRESS	BOOK	PAGE	DOCUMENT NO.
			SALE PRICE \$
ASSESSSOR'S MAP:	BLOCK:	LOT:	OTHER
ESTATE OF	PROBATE NO.		REGISTRY
ENCUMBRANCES			

**EXHIBIT NO. 5-1**

CITY/ TOWN: \_\_\_\_\_ FILE NO: \_\_\_\_\_ PROJIS code \_\_\_\_\_

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

FAP#:

WATER:	MUNICIPAL Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	WELL Y <input type="checkbox"/> N <input type="checkbox"/>	WITH PUMP Y <input type="checkbox"/> N <input type="checkbox"/>	UNDERGROUND SPRINKLER SYSTEM Y <input type="checkbox"/> N <input type="checkbox"/>	OTHER
SEWER:	MUNICIPAL Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	SEPTIC TANK Y <input type="checkbox"/> N <input type="checkbox"/>	CESSPOOL Y <input type="checkbox"/> N <input type="checkbox"/>	DRY WELL (for washer) Y <input type="checkbox"/> N <input type="checkbox"/>	OTHER CAPACITY
OTHER UTILITIES:	ELECTRICITY TO SITE Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	GAS TO SITE Y <input type="checkbox"/> X <input type="checkbox"/> N <input type="checkbox"/>	OTHER: TREES LANDSCAPING STONE WALL		

ARE ANY OF THE ABOVE ITEMS (UTILITIES, SPRINKLER SYSTEMS, LEACHING FIELDS, WELLS, LANDSCAPING) IN THE AREA TO BE ACQUIRED? Y  N  IF YES, IDENTIFY THE LOCATION (S) OF THE ABOVE ITEMS ON THE PARCELS BEING ACQUIRED.

BUILDING:	TYPE/STYLE	AGE	GARAGE	# OF ROOMS	OTHER
				YEAR BUILT:	
	# BEDROOMS	# BATHS	LIVING RM	DINING RM	KITCHEN OTHER
HEATING:	TYPE OF SYSTEM (hot air, hot water, steam, baseboard, convector, portable)		FIRED BY (oil, gas, electric)		SIZE
SIGNS:	TYPE:	DIMENSIONS			
TOTAL COST OF IMPROVEMENTS SINCE PURCHASE:	\$	BREAKDOWN OF COSTS (if necessary)			

WILL RELOCATION ASSISTANCE BE REQUIRED? Y  N  RELOCATION REQUIRED FOR ANY SIGNS? Y  N   
IF YES, DESCRIBE (ITEMS) TO BE RELOCATED, AND THEIR CURRENT LOCATION:

FEDERAL AID PROJECTS ONLY! – DOES OWNER WANT REMAINDER LAND ACQUIRED, IF DEEMED UNECONOMIC? (Y/N)

Y  N

REMARKS: Information recorded above is obtained from Deed, Assessors field card & Owner(s) Interview...

PROPERTY OWNER HAS BEEN INFORMED OF THE RIGHT TO ACCOMPANY THE APPRAISER  
WHEN HE/SHE VISITS TO INSPECT THE PROPERTY BEING ACQUIRED.

WISHES TO ACCOMPANY? CIRCLE ONE: YES NO

SKETCH: ( also list all Tenant-Owned Improvements):

PARCEL #(S):

Signature by Owner(s) acknowledges only that the above Property Interview took place.

Interviewer Signature	Date	Owner Signature	Date
Supervisor Signature	Date	Owner Signature	Date

**EXHIBIT NO. 5-1**

**Commonwealth of Massachusetts**  
**Request for Verification of Taxation Reporting Information**  
*(Massachusetts Substitute W-9 Format)*

Pursuant to IRS regulations, vendors & customers must furnish their Taxpayer Identification Number (*TIN*) to the Commonwealth. Vendors must complete, sign, and return this form before payments may be made.

**LEGAL NAME** (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I below.  
 (See **Specific Instructions** on the back page.)

**BUSINESS NAME-** If different from the above. (See **Specific Instructions** on the back page)

**LEGAL ADDRESS** – Number, Street, and apt. or suite no., City, State and ZIP code.

**REMITTANCE (PAYMENT) ADDRESS** (If different from the above) Number, Street, and apt. or suite no., City, State and ZIP code.

**PHONE #**

**FAX #**

PART I- Taxpayer Identification Number (TIN) Verification	PART III- Update to existing W-9 Form
Enter your Taxpayer Identification Number (TIN) in the appropriate box. Enter either <b>SSN OR EIN</b> . DO NOT ENTER BOTH. (See PART II.)	<b>Social Security Number (SSN)</b> <input style="width: 100px; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/> <b>Employer Identification Number (EIN)</b> <input style="width: 100px; height: 1.2em; border: 1px solid black; margin-bottom: 5px;" type="text"/>
	<input type="checkbox"/> A Request for Verification of Taxation Reporting Information has been previously filed with the Commonwealth under this TIN. This form will replace that form.  <i>Please attach supporting documentations specified in instructions on the back page under Updates.</i>

**PART II – What Name and Number to give to the requester (one type of account box MUST be checked)**

TYPE OF ACCOUNT Please check one	NAME	TIN	ORGANIZATION TYPE
<input type="radio"/> Individual	The Individual Name	SSN	I
<input type="radio"/> Sole Proprietorship	The Individual Name- The Owner	SSN or EIN	I
<input type="radio"/> Corporate	The corporation (including Canada & Mexico)	EIN	C
<input type="radio"/> Partnership	The Partnership	EIN	P
<input type="radio"/> A valid trust, estate, or pension trust	Legal entity. List first and circle the name of the legal trust, estate or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)	EIN	T
<input type="radio"/> Association, club, religious, charitable, educational, or other tax-exempt organization.	The Organization	EIN	O
<input type="radio"/> A broker or registered nominee	The broker or nominee	EIN	Any of the above except Individual

I have read and understand the Commonwealth of Massachusetts Request for Verification of Taxation Reporting Information

Please check this box

**Under penalties of perjury, I declare that I have examined this request and to the best of my knowledge and belief, all information I have supplied is true, correct, and complete.**

\_\_\_\_\_  
 Signature \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_  
 Please print or type your name & title \_\_\_\_\_

\_\_\_\_\_  
 Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**EXHIBIT NO. 5-2**

\_\_\_\_\_  
 Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

# Commonwealth of Massachusetts

## Request for Verification of Taxation Reporting Information

### GENERAL INSTRUCTIONS

(Section references are to the Internal Revenue Code.)

**Purpose of Form** - A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report payments made to you for the sales of goods & services & real estate transactions. Use the Request for Verification of Taxation Reporting Information (*Massachusetts Substitute W-9 Format*) to furnish your correct TIN to the Commonwealth and, when applicable, (1) to certify that the TIN you are furnishing is correct (*or that you are waiting for a number to be issued*).

**How To Obtain a TIN** - If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5**, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or **Form SS-4**, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete the Request for Verification of Taxation Reporting Information if you do not have a TIN, write "Applied For" in the space for the TIN in Part 1, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. Note: Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Request for Verification of Taxation Reporting Information, include your TIN, sign and date the form, and give it to the requester.

### Penalties

**Failure to Furnish TIN** - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding** - If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of \$500.

**Criminal Penalty for Falsifying Information** - Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

### SPECIFIC INSTRUCTIONS

**Name** - If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card and your new last name.

**Sole proprietor** - You must enter your *individual* Name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the business name line.

**Other entities** - Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or legal document creating the entity. You may enter your business, trade, or "doing business as" name on the business line.

**Foreign Vendors** - If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed **Form W-8BEN** (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

**TIN "Applied For"** - Follow the instructions under How to Obtain a TIN, sign and date this form.

**Signature** - The form must be signed to be considered valid.

**Privacy Act Notice** - Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid, the acquisition of property. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return.

**Organizations Recognized by the Commonwealth as Tax Exempt** - Organizations seeking recognition of tax exempt status with the Commonwealth must provide documentation of the organization federal tax exempt status in the form of a ruling or determination letter issued by the Internal Revenue Service (IRS). The Commonwealth recognizes the following IRS tax exempt status organization rulings:

- . Section 501© (1 through 23)
- . Section 501 (d)
- . Section 501(e)
- . Section 501 (f)
- . Section 501(k)
- . Section 521 (a)

For more information on Tax-Exempt status, please see IRS Publication 557 (rev. Jan. 99).

**Updates to the Request for Verification of Vendor/Customer Taxation Reporting Information** - If any of the information requested on this form changes (*i.e.*, name or address changes), the payee must submit a new Request for Verification of Taxation Reporting Information with the updated information. Changes to name or TIN must be accompanied by IRS certification of Name & TIN.

If the payee receives notification from the IRS that an information return (*i.e.*, 1099-MISC) was filed on their behalf by the Commonwealth with incorrect spelling of their name and/or incorrect or missing TIN (commonly referred to as a "B-Notice" or IRS Form 8355), the payee must immediately complete a new Request for Verification of Taxation Reporting Information with the corrected information and attach a copy of the IRS Form 8355 to the form.

If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct (*legal*) name.

**If you have Questions on Completing this Form** - Please contact the Office of the State Comptroller

**By Phone:** (617) 973-2311 or 973-2655

### Completion of Form:

Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

### EXHIBIT NO. 5-2

Date

CITY/TOWN:

ROUTE:

PARCELS:

ADDRESS:

Dear Mrs.

The purpose of this letter is to notify you that your property located at address, Massachusetts, is to be acquired by the Commonwealth of Massachusetts for construction purposes. Enclosed is a sketch of your property showing the dimensions of the parcel (s) to be acquired. The proposed acquisition includes:

Parcel No.: , a Fee Taking consisting of s.f. (Acre).

Please review the enclosed sketch which shows the acquisition. After an Appraisal (s) of this property has been completed, you will be presented with an Award of Damages for the acquisition of your property. Your rights concerning the acquisition will also be explained at that time.

Please complete the enclosed "Property Interview Form" and answer or (confirm) the items checked in RED. In order for payment to be made to you, it is required that you complete the enclosed W-9 form, and include the SOCIAL SECURITY NUMBERS OF THE PERSONS WHOSE NAMES APPEAR ON THE TITLE DEED TO THE PROPERTY. Please return these forms in the enclosed self addressed envelope as soon as possible.

If you have any questions, you may contact Mr.\_\_\_\_\_ at our Right of Way Office. The phone number is ( ) - .

Thank you for your cooperation in this matter.

Sincerely,

Director, Right of Way Bureau

ATTACHMENTS: SKETCH, "EMINENT DOMAIN PROCEDURES"  
BROCHURE, "W-9" FORM, "PROPERTY INTERVIEW" FORM,  
SELF ADDRESSED ENVELOPE

**EXHIBIT NO. 5-3**

## ***Eminent Domain Brochure***

**MassDOT  
Highway Division  
Right of Bureau  
January 5, 2011**

**(Revised 3/28/12)**

**EXHIBIT NO. 5-4**

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### **EXHIBIT NO. 5-4**

## **EMINENT DOMAIN PROCEDURES**

### **INTRODUCTION**

The purpose of this brochure is to explain the Eminent Domain land acquisition process, and answer frequently asked questions about the process. The MassDOT Highway Division ("Division") realizes that it can be difficult to understand how the Eminent Domain process works, and that this may cause concern for property owners impacted by a possible Eminent Domain acquisition.

The objective of this brochure is to accomplish two things:

- (1) Explain the Eminent Domain process.
- (2) Answer the most frequently asked questions about the process.

By explaining how the Eminent Domain process works, the Division hopes to reduce the concerns which owners may have.

### **THE LAND ACQUISITION PROCESS**

Under the Eminent Domain Law, if it is determined that public necessity and convenience require the construction, relocation, or modification of a state highway, the MassDOT may acquire property needed for highway purposes through the Division after a public hearing is held.

After the Division has contacted impacted property owners, and an appraisal of the acquired "real" property<sup>1</sup> has been completed, and an offer of fair market value has been made, then a copy of the "Plan" (showing the location of the acquired property) and the "Order of Taking" (describing the acquired property) are recorded in the Registry of Deeds (or Registry District of the Land Court) of the county in which the acquired property is located.

If the acquisition is a fee taking, title to the acquired property transfers to the Division on the date of the recording. A "fee" taking means that the Division becomes the *owner* of the property. If the acquisition is an easement taking, title remains in the name of the property owner. However, the Division acquires a right to the *use of the property*.

Owners will be notified that property has been acquired by a "Notice of Taking", which will be sent to an owner by the Division shortly after the recording of the Order of Taking. This process applies to both fee and easement acquisitions.

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<sup>1</sup> "Real" property is land and buildings (if buildings are affected). The appraisal(s) of the affected property will only consider "real" property items. "Personal" property are items such as furniture. Personal property items are not appraised, instead, the cost of moving personal property items to another location will be paid by the Highway Division.

## **PUBLIC HEARINGS**

Before laying out a new state highway or altering an existing state highway, the Division will hold public hearings in the impacted cities and towns along the proposed highway corridor.

Public hearings are held to obtain public input in governmental decision-making. Public hearings provide a forum for the exchange of ideas during the official presentation of the Division proposal. Information is distributed to everyone attending the public hearing. Any member of the public has an opportunity to comment on the proposal being presented.

During the public hearing, the public will be advised of the proposed location and layout of the highway project including the design of any project structures. All aspects of the project will be considered, including the effect of the project on the environment and the social and economic impact of the project upon the community.

Minutes of the public hearing are recorded. Transcripts of the public hearing are reviewed by the Division and the Federal Highway Administration ("F.H.W.A.").

All comments are carefully considered before the determination of the final design for a highway improvement plan is made.

## **HOW OWNERS WILL BE CONTACTED**

Property owners will be contacted by the Division's Right of Way Bureau's agents. Each of whom serves a specific purpose:

- The first agent to contact the property owner will be from the Right of Way Bureau's Projects section. The agent provides the owner with preliminary information concerning the project and the proposed acquisition of the owner's property. The agent will describe the land acquisition process and request information about the property in order to confirm various property and title facts.
- An appraiser will contact the owner to obtain data for an appraisal of the property.
- If applicable, a Relocation agent will contact the owner and discuss the available relocation benefits.
- After the Award of Damages has been determined, a Negotiations section agent will contact the property owner in order to present the Award of Damages and explain the owner's rights.

## **RIGHTS-OF-ENTRY**

"Rights-of-Entry" for construction purposes, other than for temporary occupancies, shall be obtained only in exceptional circumstances, with prior approval of the owner.

### **EXHIBIT NO. 5-4**

The value of the property to be acquired by the Division, the property's value will be calculated by a qualified appraiser(s). One appraisal will be prepared for all property acquisitions; complex acquisitions will require two appraisals. The appraiser(s) will examine all features of the property in order to determine the amount of "Just Compensation" the owner is entitled to be paid. The appraiser(s) will contact the property owner and welcome any information the owner can provide regarding the property. The property owner should accompany the appraiser(s) during the inspection of the property.

If the property to be acquired involves real property other than land, such as buildings, then the appraisal process will include a "Real and Personal Property Report". The report lists all items of "real" property and "personal" property on the impacted property including any part of the "real" property which may be tenant owned improvements. The owner will be asked to sign the Real and Personal Property Report to concur with the findings made in the report of "real" versus "personal" property. The Real and Personal Property Report is incorporated into the appraisal.

After the appraisal process has been completed, all appraisals are reviewed by the Review Appraisal Section of the Division or a Fee Review Appraiser under contract with the Division.

After the appraisal(s) of the property have been completed *and* a review of the appraisal(s) have been completed by a review appraiser, if the value of a property to be acquired could exceed \$300,000.00, then the property is reviewed by the Real Estate Appraisal Review Board (R. E. A. R. B.). The R. E. A. R. B. is an independent board comprised of real estate appraisers. The R.E. A.R.B. sets the "Award of Damages" amount to be paid to the property owner.

The Award of Damages is then approved at the Division's Administrator meeting, and this amount is then presented to the owner.

#### **ACCEPTANCE OF PRO TANTO OFFER DOES NOT PRECLUDE SUIT FOR ADDITIONAL AMOUNT**

After the Division's Administrator has approved the Award of Damages, the property owner or the owner of tenant-owned improvements will be contacted by an agent of the Division's Right of Way Bureau to present the amount of the Award of Damages.

If the owner is satisfied that the Award of Damages presented is fair and equitable, the owner will be asked to sign an Agreement of Settlement based upon the Award of Damages.

If the owner is not satisfied with the amount of the Award of Damages, the owner may accept the Award of Damages on a "Pro Tanto" basis. Acceptance on a Pro Tanto basis allows the owner to receive full payment of the Award of Damages while still maintaining his/her right to bring a claim in court against the Division for an additional amount. If the owner decides to commence such an action, the owner must do so within three (3) years from the date of the recording of the Order of Taking at the Registry of Deeds. The Pro Tanto receipt will be sent to the owner prior to the payment date.

#### **EXHIBIT NO. 5-4**

## **RIGHTS OF THOSE WHOSE PROPERTY IS ACQUIRED**

The date property is acquired by the Division (and title or rights are taken) is the date on which the Order of Taking is recorded at the Registry of Deeds. When property is acquired, owners are entitled to be paid "Just Compensation" for the damages resulting from the acquisition of the property. This payment is called an "Award of Damage", and it is due an owner within sixty (60) days of the date of the acquisition of the owner's property by the Division.

## **TENANT-OWNED IMPROVEMENTS**

Where the Division identifies buildings, structures and other improvements (including removable buildings, equipment, and trade fixtures) which are considered to be part of the real property for which the offer of Just Compensation is made, a statement shall identify any separately held ownership interest in the property (e.g. a tenant-owned improvement), and so indicate that such interest is not covered by the offer. An item will only be classified as a tenant-owned improvement if both the fee owner and tenant-owned improvement owner agree to this classification, or if the lease indicates a tenant-owned improvement designation.

In these instances, if the fee owner disclaims all interest in the tenant-owned improvements, then the Division will inform the fee owner and tenant of their individual interests, and submit separate offers to the parties involved.

## **INTEREST ACCRUED**

Interest accrues on all claims, beginning on the date that the Division records the Order of Taking at the Registry of Deeds, and continuing until the date on which the Division is able to tender (offer) payment to the owner.

Interest is paid at the rate equal to the 52-week U.S. Treasury Bill rate. The interest rate paid on any monies deposited in the Eminent Domain Trust Fund of the State Treasurer's Office is determined by the State Treasurer's Office.

## **LIENS, TAXES, AND MORTGAGES**

Liens, taxes and mortgages on the owner's property, which are outstanding at the time an owner's property is acquired, must be released *before* payment of the Award of Damages is made. If the outstanding liens, taxes and mortgages are not satisfied within sixty (60) days of the date on which payment was tendered to the owner, the owner's payment may be deposited as unclaimed funds in the Eminent Domain Trust Fund of the State Treasurer's Office.

## **REQUEST FOR TAX REPORTING INFORMATION ("W-9" FORM)**

*In order to ensure timely payment of the amount due an owner, it is essential that the owner return a properly completed "W-9" Form as soon as possible (or a "W-8" Form for Foreign Status). The purpose of this form is to ensure that an owner's taxpayer identification information is accurate and complete.*

### **Exhibit no. 5-4**

*The completed W-9 Form must be signed by the owner or owners whose names appear on the title deed of the acquired property, as recorded in the Registry of Deeds.*

If the Division does not receive a properly completed W-9 Form from a property owner, the Division cannot set aside the funds which will be needed for the owner's payment, and the owner will not receive payment until a properly completed W-9 Form is received.

## **RESIDENTIAL RELOCATION BENEFITS**

If the owner of an affected residential dwelling lives in the dwelling, the owner may be entitled to receive relocation benefits and a replacement housing payment, after the owner has purchased, and moved into, a new dwelling.

Tenants in an impacted residential dwelling may be entitled to receive relocation benefits and a replacement housing payment, after they have moved into a new dwelling.

Relocation assistance to help the owner and/or tenants find another dwelling will be provided by a Relocation agent from the Division's Right of Way Bureau.

All eligible residential occupants (owners and tenants and their families) are entitled to actual, reasonable, and necessary moving expenses, or they may elect a fixed amount in accordance with a scheduled relocation allowance.

Additional benefits, including a dislocation payment and a mortgage rate differential, will be explained by a Relocation agent. Relocation benefits are also described in the Division's "Residential Relocation Brochure". A copy will be provided when an occupant is contacted by the relocation agent.

## **BUSINESS, FARM, & NON-PROFIT ORGANIZATION RELOCATION BENEFITS**

Operators of a displaced business, farm, or non-profit organization may be eligible for the actual, reasonable moving expenses of their personal property. A Relocation agent will be assigned to the case, and will contact the owner to assist in all phases of the relocation.

*If the property owner requires the services of a relocation planner/consultant to assist with the relocation and the owner intends to seek reimbursement from the Division for these costs, the property owner must take the following steps to be eligible for reimbursement:*

- (1) Provide the Division with a written Scope of Work for the relocation planner/consultant services. This Scope of Work must describe all activities and services to be performed by the relocation planner/consultant.
- (2) The Division will review the Scope of Work, and respond in writing identifying those services determined to be reimbursable.
- (3) Based on the reimbursable services, the property owner must provide the Division with three (3) written bids (from 3 separate relocation planner/consultant firms) detailing the cost to perform these relocation planner/consultant services.
- (4) The Division will review the bids, and determine what, if any, reimbursement will be allowed for relocation planning/consulting.

Relocation benefits will be explained by a Relocation agent. Business Relocation benefits are further described in the Division's "Business Relocation Brochure".

## **EXHIBIT NO. 5-4**

## **BUY BACKS AND MOVING OF BUILDINGS**

Owners may be given the right to repurchase their building(s), for relocation to another site. Relocation to another site may be authorized, at the buyer's expense, if it is feasible.

A reasonable length of time will be afforded for the removal of the building.

In some instances, because of age, size, condition of the building or the distance that it must be moved to the new site, it may not be feasible to relocate the building.

## **TIME TO ACQUIRE NEW ACCOMMODATIONS**

If the owner, or tenant of the owner, is residing or conducting business in a building that is going to be acquired, then the owner/tenant will be allowed at least four (4) months (from the date the property is acquired by the Division) to move to another location.

If the acquisition of property does not involve a residential or business relocation, the owner/tenant will be allowed at least thirty (30) days (from the date the property is acquired by the Division) to vacate the property.

## **USE OF BUILDING AFTER THE DIVISION ACQUIRES THE PROPERTY**

The owner or the tenant may continue to use or occupy the acquired building for at least four (4) months after the owner has been notified that it was acquired by the Division. However, after the owner has received the "Notice of Taking", a "Use and Occupancy" charge will be due for the use or occupancy of the building. This charge is determined by, and payable to, the Division.

In the event that the "Use and Occupancy" charge has not been paid in full on or before the 90th day of occupancy (from the date the Division acquired the property), then the property owner will receive an Eviction Notice in accordance with the 4-month occupancy. Requests to extend beyond the 4-month period will be considered, provided that arrangements can be made to ensure that the "Use and Occupancy" charge will be paid, and only if the Division cannot demonstrate an immediate need for the property. Unpaid "Use and Occupancy" charges are monitored by the Highway Division, and may be forwarded to the Massachusetts Office of the Attorney General for action.

## **IF YOU NEED ASSISTANCE**

If you wish to discuss some aspect of the acquisition of your property by the Highway Division, contact the Division by writing to:

Director, Right of Way Bureau  
MassDOT Division  
10 Park Plaza -- Room 6160  
Boston, MA 02116-3973

Your inquiry will be referred to the appropriate person within the Highway Division for investigation and reply.

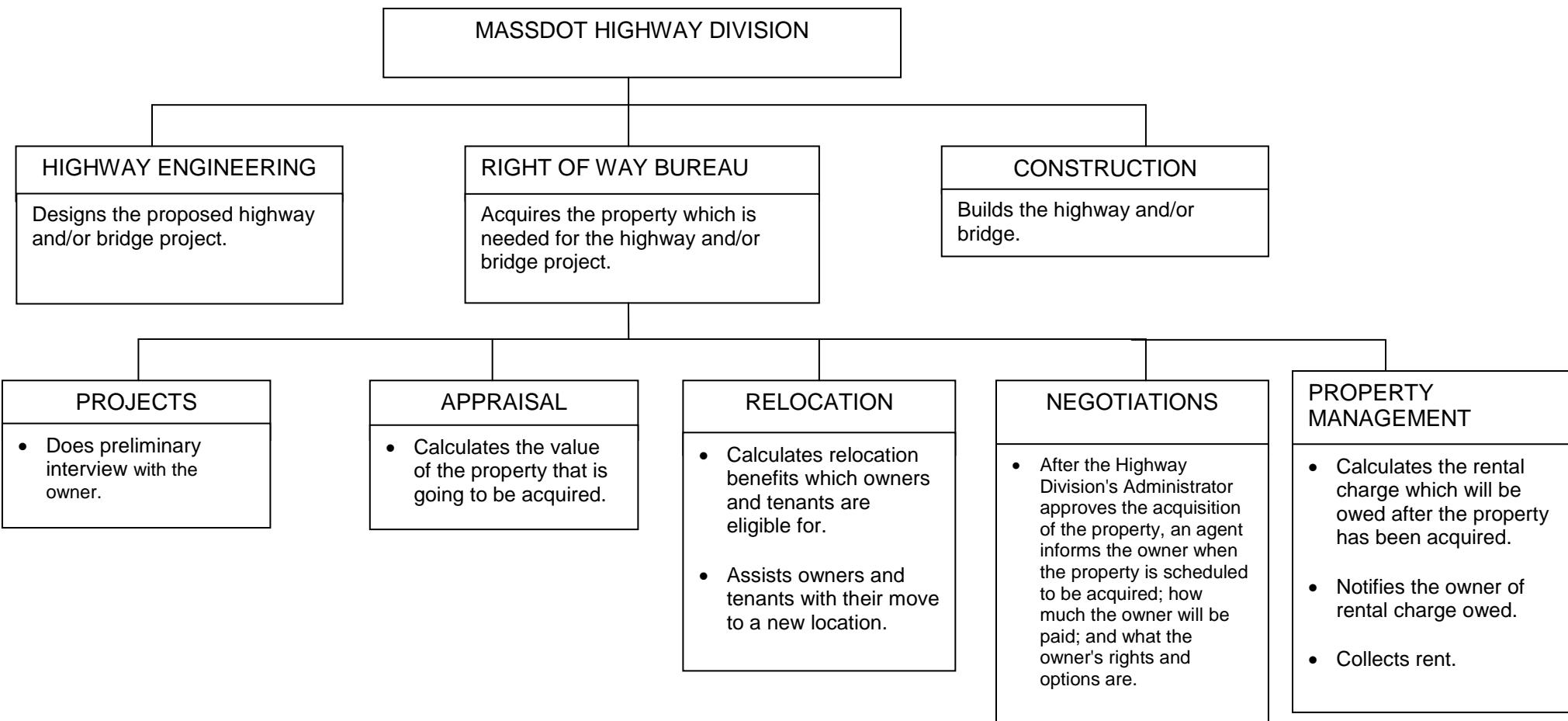
## **EXHIBIT NO. 5-4**

## *Frequent Questions*

EXHIBIT NO. 5-4

## TABLE OF ORGANIZATION

**The Right of Way Bureau (R.O.W.)** oversees and coordinates the land acquisition (Eminent Domain) process for the MassDOT Highway Division (M.H.D.). Within the Right of Way Bureau, there are a number of different sections including: Projects, Appraisal, Relocation, Negotiations, and Property Management.



If you are unsure who you should speak to, please call the Right of Way Bureau at (617) -973-7900 and your call will be directed to the appropriate section and individual.

### EXHIBIT NO. 5-4

The following are frequently asked questions:

1. What is the Process by which property is acquired by the Division?
  - A. Public Hearing.
  - B. Right-of-Way Plans. After the Public Hearing, the design of the highway is finalized and "right-of-way plans" are drawn up. The right-of-way plans show the land that the Highway Division will need to acquire for highway construction purposes.
  - C. Preliminary Interview. When right-of-way plans are completed, an agent from the Right of Way Bureau's (R.O.W.) Projects section will contact each impacted property owner to arrange a meeting. At this meeting, the agent will show the owner the right of way plans of the impacted property, explain the owner's rights, and request information from the owner regarding the property.
  - D. Appraisal of the Property. Property, scheduled to be acquired, is appraised in order to determine the amount the owner will be paid as "Just Compensation" for the property acquisition. This "Just Compensation" amount includes the "Award of Damages", plus interest from the date of the acquisition to the date payment is tendered, plus an apportionment for real estate taxes. The appraiser(s) will contact the owner, and will welcome any information the owner can provide regarding the property. The owner should accompany the appraiser during the inspection of the impacted property.
  - E. Relocation Benefits. If the acquisition of the owner's property involves relocation, an agent from R.O.W.'s Relocation section will meet with the owner to discuss the available benefits, and the procedures involved.
  - F. Administrator's Approval The Administrator of the MassDOT Division approves the "Total Payment" due to each owner. The Total Payment includes the Award of Damages, interest, and real estate tax apportionment. The Administrator also approves an "Order of Taking", which authorizes the acquisition of property by Eminent Domain.
  - G. Presentation of the Award of Damages. An agent from R.O.W.'s Negotiations section will meet with the owner in order to present the Total Payment amount and to explain the owner's legal rights. . This meeting occurs *after* the Administrator has approved the highway project and the Total Payment (Step F), and *before* the property is acquired by the Division (see Step H). Additionally, a Relocation agent may be present. The Relocation agent will explain what relocation benefits the occupants are entitled to.
  - H. The Property is acquired by the Division. Ownership of the property transfers to the Division *when the Order of Taking* (approved in Step F by the Administrator) is recorded at the Registry of Deeds.

Ownership of the property transfers to the Division even though the owner has not signed any papers, and has not yet received any money.

**EXHIBIT NO. 5-4**

- I. Notification is sent to Owners and Tenants. After the property has been acquired, owners are sent several notices. These include:
    - Notice of Taking - informing the Owner what property was acquired, when it was acquired, and how much they will be paid;
    - Notice to Vacate - informing the Owner and/or Tenants of the date until which they are legally allowed to occupy the property. Under no circumstances do the occupants need to leave earlier than the date specified in the Notice of Taking.
    - Use & Occupancy Charge - informing the occupants of the property how much they will be charged for monthly rent until the property is vacated. For owners, this rental charge does not begin until after payment for the property has been made available to them. For tenants, this rental charge begins on the 1st of the month after the property has been acquired.
  - J. Payment is made to the owner. Payment should be made within 60 days of the recording of the Order of Taking (Step H), however, payment will not be made until the owner of the property has returned a properly completed "W-9" form, and all liens, taxes, and mortgages which are outstanding have been satisfied (either paid off, or a release or partial release has been obtained).
  - K. Rent is due. See Step I, "Use & Occupancy Charge" (above).
2. Who will contact me?
- After right-of-way plans have been completed, and the impacted properties are known, an agent from R.O.W.'s Projects section will contact each impacted property owner, and arrange a meeting (as explained in Question #1, Step C).
- At this meeting, the agent will show the owner the right of way plans of the impacted property, explain the owner's rights, and request information from the owner regarding various property information.
3. On what date will my Property be acquired?
- The Division schedules a preliminary date on which it anticipates acquiring property for a highway project. In many instances, however, the actual date that an owner's property is acquired changes from the scheduled time. Changes in the acquisition date can occur for a number of reasons including:
- Minor modifications to the highway project.
  - Special legislation. The highway project may require the passage of special legislation by the State Legislature, prior to the acquisition of the property.
  - Delay in the allocation of funds. The money needed to pay an owner for the acquisition of the property is not available on the scheduled acquisition date.

The date an owner's property is acquired by the Division is the date on which the "Order of Taking" is recorded at the Registry of Deeds (Question #1, Step H).

**EXHIBIT NO. 5-4**

4. How much will I be paid?

The owner will be paid "Just Compensation" for damages resulting from the property acquisition. This "Just Compensation" amount is called an "Award of Damages". The Award of Damages is the Fair Market Value of the property acquired from the owner, as well as damage to the value of the remaining property - *if any*.

Division appraisers, independent appraisers, Division Review Appraisers", independent "Review Appraisers" and an independent Real Estate Appraisal Review Board may all contribute to the process of arriving at the appropriate Just Compensation amount that an owner is due. Additionally, the Division will pay a proportionate share of the real estate tax for the current tax year. The Division will also pay interest from the date the owner's property is acquired to the date on which an owner is paid.

5. When will I know how much I'll be paid?

The amount of the Award of Damages will be presented to the owner *after* the Administrator has voted the exact amount (Question #1, Step F) and *before* the Order of Taking has been recorded at the Registry of Deeds (Question #1, Step H).

The owner will not be told prior to the Administrator vote, since the amount has not yet been determined and approved.

6. When the appraiser inspects my property, why might they only do a cursory visual inspection?

The purpose of the inspection is not to take an inventory of every single item used in the construction of the building. The purpose of the inspection can be to determine the general overall condition of the property, and verify information about the property obtained from other sources.

7. What if I'm not satisfied with the amount? Must I accept the amount offered by the Division for damages? What are my options?

(a) An owner can submit their own appraisal. However, it must be a "certified" appraisal done by a licensed real estate appraiser. If the owner furnishes the appraisal to the Right of Way Bureau, then the Right of Way Bureau will review the owner's appraisal. If the Right of Way Bureau determines that the owner's appraisal contains information which would increase the value of the property, then the Award will be increased. If, however, the Award is greater than \$300,000, then the owner's appraisal would be presented to the independent Real Estate Appraisal Review Board. If the Real Estate Appraisal Review Board decides an increase is warranted, then the owner will be paid the amount recommended by the Real Estate Appraisal Review Board.

An owner can request that the owner's appraisal be reviewed only up until the time that the owner receives payment for the property. The owner cannot request a review after they have been paid.

**EXHIBIT NO. 5-4**

- (b) Or, if an owner feels the amount offered to them by the Division is not fair, they may accept the offer on a "Pro Tanto" basis. Acceptance on a Pro Tanto basis allows the owner to receive full payment of the amount offered to them, while still maintaining the right to bring an action in court against the Division for an additional amount. If the owner decides to commence a court action, they must do so within three (3) years from the date of the acquisition of the property.

It should be noted, however, that in instances where a residential relocation is involved, an increase in an owner's "Award of Damages" would result in an equal decrease in a previously calculated "Replacement Housing Payment", since the owner's Replacement Housing Payment is based on the *difference* between the amount an owner is paid for the property, and the actual cost of currently available comparable dwellings.

8. How long can I continue to occupy the property after the Property has been acquired by Eminent Domain (Question #1, Step H)?

State law allows legal occupants to remain in the property for 4 months from the date on which they received written notification to vacate (Notice to Vacate described in Question #1, Step I). If the occupant(s) of a property need to stay beyond 4 months, the Right of Way Bureau will consider each request on a case by case basis.

9. After the property has been acquired, when will I have to begin paying rent?

As an owner occupying the property, rent is due beginning immediately after payment for the property is made available to the owner. Payment is generally made available to the owner 50-60 days after the property has been acquired by the Division (Question #1, Step H).

As a tenant, rent is due beginning on the 1st day of the month after the property has been acquired.

10. How much rent will I be charged?

As an owner occupying the property, the rent charged by the Division is the lower of:

- (a) Fair Market Rental of the property, minus a 20% deduction. (The Fair Market Rental is based on the same information which was considered in the appraisal and which determined the Award of Damages); or
- (b) 25% of the owner's gross family income.

As a tenant occupying the property, the rent charged by the Division is the lower of:

- (a) Fair Market Rental of the property, minus a 20% deduction. (The Fair Market Rental is based on the same information which was considered in the appraisal and which determined the Award of Damages); or
- (b) 25% of the tenant's gross family income.

**EXHIBIT NO. 5-4**

11. What relocation benefits are available?

See the attached "Relocation Benefits" tables.

12. What will happen to my house?

The owner may be given the opportunity to repurchase the building from the Division for removal to another site. If it is feasible, relocation to another site may be authorized at the owner's expense. A reasonable length of time will be permitted for the removal of the building.

In some instances, because of the age, size, condition of the building, or the distance that it must be moved to the new site, it may be unwise to relocate the building. In these instances, the building will be demolished.

If it is possible to relocate the building and the owner does not wish to repurchase it, the building may be advertised and awarded to the highest bidder, provided that the successful bidder has a location to which it can be moved and has obtained the necessary permits for its removal.

**EXHIBIT NO. 5-4**

## **RESIDENTIAL RELOCATION BENEFIT**

### **Owner-Occupants of at least 180 days**

Category	Who is Eligible?	Eligibility is Based on What?	How Much Can be Paid?
II. <u>Moving Costs</u>	Owner-occupants who have lived in the property for at least 180 days.	Verifying the actual expenses, or moving for a fixed amount (which has been agreed upon in advance).	No set limit
II. <u>Replacement Housing Payment</u>	Owner-occupants who have lived in the property for at least 180 days.	See below	Up to \$ 22,500.00
A. Price differential	"	The difference between the amount the owner is paid for their existing house, and the price of currently available comparable houses.	
B. Interest rate differential	"	Due to a higher interest rate on the mortgage of the replacement house.	
C. Other incidental expenses	"	Verifying the actual expenses. Items which may be eligible include: application fees (bank, FHA, or VA), appraisal fees, inspection costs, loan origination fees (points) that do not represent prepaid interest application fees, documentary stamps, and other closing costs. (per 49 CFR Part 24, section 24.401 [e]).	
D. Rental Assistance Payment	"	The difference between the fair market rent at the displacement dwelling at the time the property was acquired, and the amount of rent needed for a comparable rental unit which has been determined to be "decent, safe, and sanitary housing". This monthly rent differential is then multiplied by 42 (months).	
III. <u>Last Resort Housing Payment</u>	Owner-occupants who's Replacement Housing Payment exceeds \$ 22,500.00.	The Replacement Housing Payment exceeding \$ 22,500.00.	No set limit

**EXHIBIT NO. 5-4**  
**RESIDENTIAL RELOCATION BENEFITS**

**Owner-Occupants of at least 90 days, but less than 180 days**

<u>Category</u>	<u>Who is Eligible?</u>	<u>Eligibility is Based on What?</u>	<u>How Much Can be Paid?</u>
I. <u>Moving Costs</u>	Owner occupants who have lived in the property for at least 90 days, but less than 180 days.	Verifying the actual expenses, or moving for a fixed amount (which has been agreed upon in advance).	No set limit
II. Replacement Housing Payment	Owner occupants who have lived in the property for at least 90 days, but less than 180 days.	See below	Up to \$ 5,250.00
A. Rental Assistance Payment	90-day owner-occupants who move to, and rent, another dwelling unit.	The difference between the fair market rent at the displacement dwelling at the time the property was acquired, and the amount of rent needed for a comparable rental unit which has been determined to be "decent, safe, and sanitary housing". This monthly rent differential is then multiplied by 42 (months).	
- OR -			
B. Down payment Assistance Payment	90-day owner-occupants who move to, and <u>purchase</u> (rather than rent), another dwelling unit.	The amount is the same as the amount determined above in the "Rental Assistance Payment" calculation. If a 90-day owner-occupant purchases, then they may receive \$ 5,250.00. However, eligibility will be limited to the amount that would have been calculated had they been a 180 day owner.	
III. <u>Last Resort Housing Payment</u>	90-day owner-occupants who's Replacement Housing Payment exceeds \$ 5,250.00.	The Replacement Housing Payment exceeding \$ 5,250.00.	No set limit

**EXHIBIT NO. 5-4**

## RESIDENTIAL RELOCATION BENEFITS

### Tenant-occupants of at least 90 days

Category	Who is Eligible?	Eligibility is Based on What?	How Much Can be Paid?
I. <u>Moving Costs</u>	Tenants who have lived in the property for at least 90 days.	Verifying the actual expenses, or moving for a fixed amount (which has been agreed upon in advance). See below	No set limit
II. <u>Replacement Housing Payment</u>	Tenants who have lived in the property for at least 90 days.		Up to \$ 5,250.00
A. Rental Assistance Payment	Tenants who move to, and rent, another dwelling unit.	The difference between the base monthly rental paid at the time the property was acquired, and the amount of rent needed for a comparable rental unit which has been determined to be "decent, safe, and sanitary housing°. This monthly rent differential is then multiplied by 42 (months).	
- OR -			
B. Down payment Assistance Payment	Tenants who move to, and purchase (rather than rent), another dwelling unit.	The amount is the same as the amount determined above in the "Rental Assistance Payment" calculation. If a Tenant purchases, then they may receive a payment not to exceed \$ 5,250.00.	
III. <u>Last Resort Housing Payment</u>	Tenants whose Replacement Housing Payment exceeds \$ 5,250.00.	The Replacement Housing Payment exceeding \$ 5,250.00.	No set limit

### EXHIBIT NO. 5-4

## **RESIDENTIAL RELOCATION BENEFITS**

### **Tenant-occupants and Owner-occupants of less than 90 days**

<u>Category</u>	<u>Who is Eligible?</u>	<u>Eligibility is Based on What?</u>	<u>How Much Can be Paid?</u>
I. <u>Moving Costs</u>	Tenants and owner-occupants who have lived in the property less than 90 days.	Verifying the actual expenses, or moving for a fixed amount (which has been agreed upon in advance).	No set limit

### **EXHIBIT NO. 5-4**

## Chapter 7

## FUNCTIONAL REPLACEMENT COST ESTIMATE

CITY/TOWN: \_\_\_\_\_  
**PROPERTY ADDRESS:** \_\_\_\_\_

FAP#: \_\_\_\_\_

A summary of estimates or actual costs should be prepared to show applicable cost items. A suggested format is as follows:

<u><b>COST ITEMS</b></u>	<u><b>ACQUISITION BASED ON MARKET VALUE CONCEPT</b></u>	<u><b>COST TO ACQUIRE SUBSTITUTE PROPERTY</b></u>
<b>LAND</b>	\$ _____	_____
<b>BUILDINGS</b>	_____	_____
<b>FACILITIES</b>	_____	_____
<b>DAMAGES</b>	_____	_____
<b>MOVING COSTS</b>	_____	_____
<b>REPLACEMENT HOUSING</b>	_____	_____
<b>OTHER ITEMS</b>	_____	_____
<b>TOTALS</b>	_____	\$ _____
		<b>COST TO CURE OR FUNCTIONALLY REPLACE</b>
<b>BUILDINGS</b>	_____	_____
<b>FACILITIES</b>	_____	_____
<b>OTHER ITEMS</b>	_____	(+) _____
		_____
		<b>NONPARTICIPATING ITEMS (BETTERMENTS)</b> _____
<b>(IDENTIFY ITEMS)</b>	\$ _____	_____
		_____
		(-) _____
<b>TOTAL</b>		_____

NOTE: Exact breakdowns need not be given if property estimates are appropriate. Moving costs, replacement housing, and Incidental expenses may be on averages or percentages similar to 104(b)5 estimates.

## Chapter 8

**THE COMMONWEALTH OF MASSACHUSETTS**  
**MASSDOT HIGHWAY DIVISION**  
**INTEROFFICE MEMORANDUM**

---

**TO:** .., Chief Engineer

**FROM:** , District Four Highway Director

**DATE:**

**RE:** Request for Project Initiation and Entry into PROJIS/PARS

**Project Description:**

District Four/Project Development Section requests the above captioned project to be considered by the Project Review Committee. Information pertinent to the project is as follows.

**PART I** Project Identification and Funding Information

A. City/Town:

B. Route/Street(s):

C. Bridge Number:

D. Is this a state numbered highway?      YES \_\_\_\_\_      NO \_\_\_\_\_

E. Is this a state administrated highway?      YES \_\_\_\_\_      NO \_\_\_\_\_

F. Location description and estimated project limits by mile marker and station:

G. Number of travel lanes:

H. ADT:

I. Is Proposed Project on the National Highway System?      YES \_\_\_\_\_      NO \_\_\_\_\_

**EXHIBIT NO. 8-1**

J. What is the functional classification of the subject roadway:

<u>Urban Interstate</u> (U1)	<u>Rural Interstate</u> (R1)
<u>Urban extension of Rural Principal Arterial</u> (U2)	<u>Rural Principal Arterial</u> (R2)
<u>Urban extension of Rural Minor Arterial</u> (U3)	<u>Rural Minor Arterial</u> (R3)
<u>Urban other Principal Arterial</u> (U4)	
<u>Urban Minor Arterial</u> (U5)	<u>Rural Major Collector</u> (R5)
<u>Urban Collector</u> (U6)	<u>Rural Minor Collector</u> (R6)
<u>Urban Local</u> (U0)	<u>Rural Local</u> (R0)

K. Project Type:

*(Include new project type code)*

L. Estimated Construction Duration:

*(in months)*

M. Estimated Construction Cost:

**N. Estimated Advertising Date:**

O. Is the proposed project in a Transportation Bond Bill?

YES \_\_\_\_\_ NO \_\_\_\_\_ If YES, which Bill: \_\_\_\_\_

Amount of funds authorized in Bill (If any): \_\_\_\_\_

**P. Anticipated Funding:**

Bridge ON System (BRN) \_\_\_\_\_ NHS \_\_\_\_\_ IM \_\_\_\_\_

Bridge OFF System (BRZ) \_\_\_\_\_ STP \_\_\_\_\_ CMQ \_\_\_\_\_

NFA \_\_\_\_\_ Operating Funds (NFO) \_\_\_\_\_

OTHER \_\_\_\_\_ Specify: \_\_\_\_\_

**PART II      Description of needs and responsibilities**

A. District/Division priority ranking.

Urgent \_\_\_\_\_ High \_\_\_\_\_ Routine \_\_\_\_\_ Low \_\_\_\_\_

B. Description of need for improvements:

**EXHIBIT NO. 8-1**

**C. District/Division resources. Include design and data gathering.**

**Design Responsibility:**

**Boston:**

In-house: \_\_\_\_\_

Consultant: \_\_\_\_\_

**District:** \_\_\_\_\_

**City/Town:** \_\_\_\_\_

Other: \_\_\_\_\_ Specify: \_\_\_\_\_

**Boston Project Management Responsibility:**

HE \_\_\_\_\_ HO \_\_\_\_\_ TRAFFIC \_\_\_\_\_ ENV \_\_\_\_\_

**Estimated Design Costs**

MHD Personnel: \_\_\_\_\_

MHD Consultant: \_\_\_\_\_

**D. Who is responsible for Right of Way:**

MHD \_\_\_\_\_

Municipality \_\_\_\_\_

County \_\_\_\_\_

Other \_\_\_\_\_

NA \_\_\_\_\_

Adequacy of existing Right of Way:

\_\_\_\_\_ Probably adequate.

\_\_\_\_\_ Probably will require takings

\_\_\_\_\_ Probably will require easements and/or rights of entry

**E. What environmental issues may have an impact on the proposed project:**

EIS/EIR probably required: YES \_\_\_\_\_ NO \_\_\_\_\_  
ENF probably required: YES \_\_\_\_\_ NO \_\_\_\_\_

Cultural Resources: Major impact \_\_\_\_\_ Minor impact \_\_\_\_\_

Hazardous Materials: Major impact \_\_\_\_\_ Minor impact \_\_\_\_\_

Wetlands: Major impact \_\_\_\_\_ Minor impact \_\_\_\_\_

Other: \_\_\_\_\_ Major impact \_\_\_\_\_ Minor impact \_\_\_\_\_

F. Is the project viable based on its projected cost, funding mechanisms available and the timing of the project in relation to others in the area? Is the project to be included in the current federal fiscal year's list of projects to be advertised?

**EXHIBIT NO. 8-1**

G. Are there any known issues or concerns which could pose a problem in designing and/or implementing this project?

H. Scenic road?    YES \_\_\_\_\_    NO \_\_\_\_\_

I. Are bicycle and pedestrian accommodations going to be met?

Pedestrians:    YES \_\_\_\_\_    NO \_\_\_\_\_  
Bicycles:    YES \_\_\_\_\_    NO \_\_\_\_\_

If NO, Explain why.

J. Are any design exceptions anticipated?    YES \_\_\_\_\_    NO \_\_\_\_\_

K. Is there any other information regarding this project which may be useful to the Project Review Committee in reaching their decision?

**PART III**    **PROJIS History**

Select one:    A\_\_\_\_\_ B1\_\_\_\_\_ B2\_\_\_\_\_

A. The District/Division has checked PROJIS for the above project and has not found the project listed.

B. The District/Division has checked PROJIS for the above project and has found the project listed as File Number xxxxx.

1. The District/Division feels that this entry should be made to this File Number.

2. The District/Division feels that this entry should be made to a new File Number.

Explain:

If you need additional information please do not hesitate to contact Mr. G. Robert MacDonald at (781) 641-8474.  
<sup>1</sup>

**EXHIBIT NO. 8-1**

**LETTERHEAD**

Date

DHD  
District # Highway Director

**Re: Project description and projis #**

Dear DHD:

I am pleased to inform you that the Project Review Committee has approved the subject project for Non Federal Aid funding. This approval is based on a estimated cost of \$.

It should be emphasized that this approval is subject to the availability of State funds when the project is ready for advertising.

By copy of this letter, we are requesting that Highway Engineering assign a project manager to oversee this project. Name, Supervisor of Federal Aid (ext. 7861), will issue a pars# for design in the near future. The District is responsible for design.

If you have any questions or need additional information, please contact me at 973-7155.

Sincerely,

Manager of Capital Programming

CC:

EXHIBIT NO. 8-2

**LETTERHEAD**

Date

DHD,  
District # Highway Director

**Re: Project description & projis #**

Dear Mr. McCourt:

I am sorry to inform you that the Project Review Committee has denied the subject project for Non Federal Aid funding. This denial is based on an estimated cost of \$ and the limited amount of state funds.

By copy of this letter, we are requesting the district to notify the municipality of this denial.

If you have any questions or need additional information, please contact me at 973-7155.

Sincerely,

Manager of Capital Programming

CC:

**EXHIBIT NO. 8-3**

April 28, 2011

Anytown  
c/o  
Any Address  
Anyplace, USA

Re:

Dear: Sir or Whomever

The Right of Way Bureau has been informed that the above proposal has received Department approval as a Federal Aid Project.

A secured right of way is necessary for the design, construction and future maintenance requirements of this project. Your community is responsible for all cost and effort associated with acquiring any necessary rights in private or public lands for this undertaking. Acquisition procedures must follow Federal and State laws and regulations. Your community may acquire needed rights through eminent domain, donations or purchase. If you have a town form of government, please note the enclosed document concerning Town Meeting approval.

The Commonwealth is responsible for monitoring acquisition activities of local acquiring agencies on Federal Aid Projects. Therefore, it is advisable that the Right of Way Bureau and your municipality work closely together during the entire acquisition process. This association will enable your community to expedite the acquisitions and be assured that Federal and State requirements are met.

Your municipality must designate a coordinator/liaison to work with our Community Compliance section. The Right of Way Bureau will provide brochures, guidance, sample forms, and advisory services to meet Federal and State requirements.

The scope of the right of way activity will determine the need or requirement for right of way plans. Please review the enclosed guidelines.

The Right of Way Bureau is looking forward to working with your community on this project. If you have any questions please feel free to contact Charles O'Brien, Community Compliance Officer, at (508) 884-4266

Sincerely,

Gerald L. Solomon  
Director Right of Way

enclosure(s)

**THE COMMONWEALTH OF MASSACHUSETTS**  
**MASSDOT HIGHWAY DIVISION**  
**INTEROFFICE MEMORANDUM**

---

TO: .., Chief Engineer  
FROM: , Manager of Engineering Expediting  
DATE:  
RE: City/Town - Project  
**Request for Public Hearing**  
Projis No. , Pars #

---

Plans have been sufficiently developed to warrant the conducting of a Design Public Hearing for the referenced project.

Your approval to conduct this Public Hearing on Date, at Time in the City of, City Hall, Room , Address , is requested.

If you have any questions regarding this project please contact the Project Manager, Name, at extension XXXX.

(Hold copy distribution pending Chief Engineer's approval)  
cc: DHD

Director, ROW Bureau

**EXHIBIT NO. 8-5**

GUIDELINES - Right of Way Bureau  
Eminent Domain on Federal and State Projects

1. Review procedures with the Community Compliance Officer. Forms and documents will be provided.
2. Acceptable acquisitions plans should be available.
3. The title of the subject property should be reviewed to determine ownership and or rights in the parcel(s) to be acquired.
4. Interview property owner(s) or their representatives and discuss issues about the property to be acquired. Severance damage, cost to cure items, and uneconomic remainders may be indicated. Take notes for future reference and potential appraisal use.
5. Assign a competent appraiser. Your municipality may consider in house (assessors) or local appraisers. A list of approved Massachusetts Division of Highways FEE Appraisers is available. Review the suggested Federal Highway Authority appraisal format.
6. Completed appraisals must be acknowledged and reviewed by a responsible local official. It is suggested that your Chief Assessor be delegated this task. The appraisals will then be delivered to the Community Compliance Officer for final review.
7. Prepare and vote the Order of Taking and the Award of Damages.
- 8. *Record the Order of Taking and plans (if required) in your Registry of Deeds. This must be accomplished within thirty (30) days of the vote date.***
9. Notify owner of the acquisition(s) and the award of damages. A suggested written format is available.
10. Payment must be tendered as soon as possible. In any case not later than sixty (60) days after the recording date.
11. Gain physical and legal possession land parcels/structures.
12. Complete affidavits and forward to the Community Compliance Officer as soon as possible.

Note: The Eminent Domain procedure is as unique and varied as the Municipality that implement the process. Your procedures are regulated by Massachusetts General Law. Most towns require town meeting approval in order to exercise eminent domain authority. Refer to "Real estate Acquisition Guide for Local Public Agencies" for more detailed guidance.

**EXHIBIT NO. 8-6**

# MASSACHUSETTS

## RIGHT OF ENTRY - WITHOUT PREJUDICE

Owner(s) of Record: \_\_\_\_\_

Address: \_\_\_\_\_

Stations: \_\_\_\_\_ Parcel(s): \_\_\_\_\_

Projects: \_\_\_\_\_

Permission is hereby given to the above municipality and the MassDOT Highway Division or its duly authorized agents to enter upon my property in connection with the reconstruction of a roadway on the above named project. Plans for this project are located in the Municipal Offices. The purpose of this Right of Entry is to allow for changes and to carry out the work on my property as outlined below.

This entry to be made without prejudice to my rights in settlement of any claims for damages that may hereafter appear.

Granted by: \_\_\_\_\_ / \_\_\_\_\_  
Owner(s) or Authorized Representative Date

Recommended by: \_\_\_\_\_ / \_\_\_\_\_  
City/Town Official - Title Date

# CERTIFICATE OF DONATION

Owner(s) of Record:	
City/Town:	Fed Aid Number:
Project:	
In Fee:	Permanent Easement(s):
Temporary Easement(s):	

To: Director, Right of Way Bureau  
MassDOT Highway Division  
10 Park Plaza - Room 6160  
Boston, MA 02116-3973

This is to certify that the above referenced parcel(s) were donated by the owner(s) as provided for in the provisions of Title III, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

The conveyance of these parcels, will be accomplished by deed or Order of Taking and recorded in the Registry of Deeds.

This donation is made of my/our free will.  
I/we waive my/our right(s) to an appraisal  
and compensation.

\_\_\_\_\_  
Owner(s)/ Authorized Representative \_\_\_\_\_ date

\_\_\_\_\_  
City/Town Official - Title \_\_\_\_\_ date

Note: If the subject parcel(s) is/are owned by a corporation, estate, trust, ect., then an appropriate document, authorizing this donation must be attached to this document.

# Affidavit

City/Town: \_\_\_\_\_

Fed Aid Number: \_\_\_\_\_

Owner(s) of Record: \_\_\_\_\_

Project: \_\_\_\_\_ Parcel(s): \_\_\_\_\_

To: Director, Right of Way Bureau-MassDOT Highway Division  
10 Park Plaza, Room 6160 - Boston, Ma 02116-3973

This is to certify that all rights in land acquired by the City/Town in connection with the above referenced project were acquired in accordance with the provisions of Title III, Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 as amended.

With reference to the Act, the following applicable provisions were specifically met:

1. Real property was appraised on \_\_\_\_\_, before the initiation of the negotiations. The owner or his designated representative was given the opportunity to accompany the appraiser during the inspection of the property.
2. A fair market value of \$ \_\_\_\_\_ for the acquired property was offered. The owner was provided with a basis summary (a written-statement) for the amount established as just compensation.
- 3: The owner was not or will not be required to surrender possession of the subject property before the tender of payment, or the agreed purchase price.
4. The owner was not coerced or compelled in any way to agree on the price to be paid for the property and was not left with an uneconomic remnant.
5. Relocation, of residential/commercial occupancy, was not required.

Order of Taking Voted: \_\_\_\_\_

Recorded: \_\_\_\_\_

Written Notice Mailed: \_\_\_\_\_

Payment Tendered: \_\_\_\_\_

Physical Possession Secured: \_\_\_\_\_

\_\_\_\_\_  
City/Town Official

\_\_\_\_\_  
Date \_\_\_\_\_

Physical Possession may only be secured on the later of:

- 1: Thirty (30) days after the owner receives written notice , or
- 2: After payment (award of damages) has been tendered

## **RIGHT OF WAY CERTIFICATE**

City/Town: \_\_\_\_\_

Route/Project: \_\_\_\_\_

Federal Aid Project Number: \_\_\_\_\_

Projis Key #: \_\_\_\_\_

Geographical Limits of Contract: \_\_\_\_\_  
\_\_\_\_\_

The Right of Way Bureau, MassDOT Highway Division, hereby certifies that the right to occupy and use all rights-of-way for the proper execution of this project has been acquired. A summary of the acquisitions follows.

In Fee	Eminent Donation Domain	Order of Taking Voted
Permanent Easement		Taking(s) Recorded
Temporary Easement		Written Notice Mailed
Rights of Entry		Payment was Tendered
		Physical Possession

It is further certified that :

1. No structures exist on the acquired parcels, therefore, no businesses, families, or individuals will require relocation.
2. The applicable portion of Title III, of the Uniformed Relocation Assistance and Real Property Acquisitions Policies Act of 1970 as amended, has been complied with.

\_\_\_\_\_, / /  
Director Date  
Right of Way Bureau

CC:

# INTEROFFICE MEMORANDUM

**TO:** , Director  
**FROM:** , Community Compliance Officer (East)  
**DATE:** mm/dd/yy  
**SUBJECT:** Right of Way Certificate

---

**RE:** City/Town: \_\_\_\_\_

Project: \_\_\_\_\_

F.A.P.# \_\_\_\_\_

Geographical Limits of Contract: \_\_\_\_\_

This is to certify that all the necessary steps have been taken by the above referenced City/Town to comply with Title III.

There is/ are: Fee Takings: \_\_\_\_\_

Grants/Deeds/ Donations: \_\_\_\_\_

Permanent Easements: \_\_\_\_\_

Temporary Easements: \_\_\_\_\_

Rights of Entry: \_\_\_\_\_

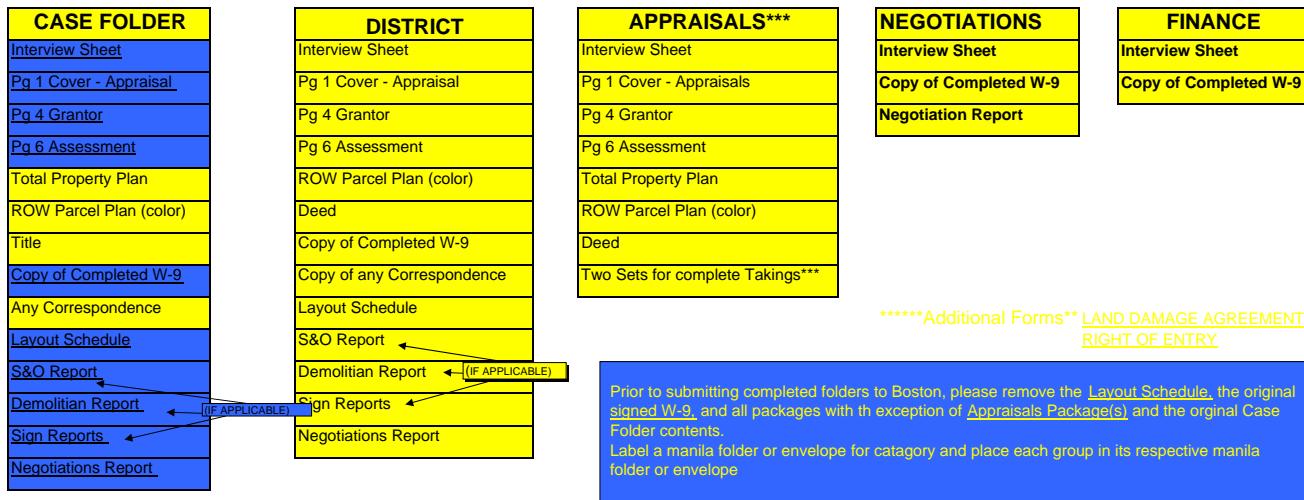
I have checked the taking(s) or donations and found it/them to be in proper form. The properties were appraised at to fair market value if required. The owners were contacted and given the opportunity to accompany the appraiser on the inspection of the property ( if applicable).

Therefore, it is recommended that a Right of Way Certificate be Executed.

## E Projects ROW FORMS

Click on the Parcel Summary Sheet below to enter parcel information. This form is the source document for all other forms. Additional information may be required on other forms so check each required form prior to printing. You can click **BLUE** highlighted cells listed under the "CASE FOLDER" column to be taken to that form or section, OR USE THE TABS on the bottom taskbar.

### PARCEL SUMMARY SHEET



# Parcel Summary Sheet

Project Name	Parcel Fee				City /Town	Haverhill
Parcel(s)	14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel F				Cost Account	P601-355-R11(1)
Owner	Storage Portfolio I LLC					
Property Address	40 Ferry Road, Haverhill, MA 01830					
Mailing Address	P.O. Box 19156, Alexandria, VA 22320-0156					
Telephone #'s	(978) 557-5805		W-9 OBTAINED?		FAP #	NFA
MAP	754	BLOCK	123456	LOT	Prepared By	Marilyn Torre
Registry Location	Essex South					
Total Land Area	89298.0	SQ. FT.	SQ. Meters	8295.8	Layout #	8019
Frontage					Layout Date	9/15/08
Zoning	Industrial					

## Permanent and Temporary Easements

Parcel Number	Sq. Footage	Sq. Meters	Easement Type
14-WDGR-1-C	989	91.88	Wall Drainage/Guard Rail-city
14-TE-10	3045	282.88	Wall Drainage/Guard Rail-city
Parcel #	1000	92.90	Wall Drainage/Guard Rail-city
Parcel #	1000	92.90	Wall Drainage/Guard Rail-city

## Fee Takings

Parcel Number	Sq. Ft.	Sq. Meters
Parcel Fee	3000	278.70
Parcel Fee	300	27.87
Parcel Fee	3000	278.70
Parcel Fee	3000	278.70

### Current Year

Year:	2008	2007	2006

Land Value	\$562,600.00	Land Value#	Land Value#
Building Value	\$2,943,800.00	Building Value #	Building Value #
Other	\$31,600.00	Other Value #	Other Value #
Other		Other Value #	Other Value #
	\$3,538,000.00		
Tax Rate	17.0	17.0	17.0

## Mortgage Information

Mortgage	Lawrence Savings Bank	Bk/Pg	11792/380
Address:	30 Massachusetts Ave, North Andover, MA 01845	Doc #	123456789
Mortgage	Sun America Life Insurance Company	Bk/Pg	22605/368
Address:	1 Sun America Center, Century City, Los Angeles CA 90666	Doc #	123456789
Mortgage	Enter Mortage Information Here	Bk/Pg	123456789
Address:	Enter Mortage Address Information here	Doc #	123456789

## Grantor Information

Grantor:	This is the Grantor Information Field -Parcel Summary Sheet	1234/1234	Date	5/1/2008
		Book/Page	Price	\$2,500.00
Grantor:	This is the Grantor Information Field -Parcel Summary Sheet	1234/1234	Date	5/1/2008
		Book/Page	Price	\$45,000.00

## Estate Information

## Registered Land Information

Name:	This is the Estate Information Field	Document#	12345678910	BK/PG	12345678910
Probate #:	This is the Probate Number/Estate Info Field	Certificate#	12345678910	LCC #	12345678910

## Encumbrances

## Lessee

Name/Address		Book & Page & Doc	Name/Address		Book & Page & Doc
List Name of Encumbrances if any		1234/1234	List Lessee if any		1234/1234
Address of Encumbrance		12345678910	List Lessee if any		123456789
Type:	List Type if any				
List Name of Encumbrances if any		1234/1234	List Lessee if any		1234/1234
Address of Encumbrances		12345678910	List Lessee if any		123456789
Type:	List Type if any				
List Name of Encumbrances if any		1234/1234	List Lessee if any		1234/1234
List Name of Encumbrances if any		12345678910	List Lessee if any		123456789
Type:	List Type of any				

## Payment and Computation Schedule

### AWARD OF DAMAGES

Vote Date	8/15/08	Interest Rate Tax Rate RE End Date	7.3%
Record Date	8/25/08		17.0
Payment Date	10/25/08		
RE Tax Date	9/1/08		9/25/08
Computed by	Russ McGilvery		

## Permanent and Temporary Easements

## Fee Takings

Parcel Number	Sq. Ft.	Sq. Meters	Easement Type	Parcel Number	Sq. Ft.	Sq. Meters
14-WDGR-1-C	989	91.88	Wall Drainage/Guard Rail-city	Parcel Fee	3000	278.70
14-TE-10	3045	282.88	Wall Drainage/Guard Rail-city	Parcel Fee	300	27.87
Parcel #	1000	92.90	Wall Drainage/Guard Rail-city	Parcel Fee	3000	278.70
Parcel #	1000	92.90	Wall Drainage/Guard Rail-city	Parcel Fee	3000	278.70

## Notes/Field Log

City/Town: Haverhill

Cost Account: P601-355-R11(1)

The Commonwealth of Massachusetts

Highway Department  
Right of Way Bureau

**APPRAISAL REPORT**

**City/Town:** Haverhill

**Project:** Parcel Fee

**Cost Account:** P601-355-R11(1)

**Owner's Name:** Storage Portfolio I LLC

**Mailing Address:** P.O. Box 19156, Alexandria, VA 22320-0156

**Property Location:** 40 Ferry Road, Haverhill, MA 01830

**F.A. Project No.:** NFA

**Layout Number:** 8019

**Permanent & Temporary Easements**

**Fee Takings**

Parcel Number	Sq. Footage	Sq. Meters	Easement Type	Parcel Number	Sq. Footage	Sq. Meters
14-WDGR-1-C	989	91.88	Wall Drainage/Guard	Parcel Fee	3000	278.70
14-TE-10	3045	282.88	Wall Drainage/Guard	Parcel Fee	300	27.87
Parcel #	1000	92.90	Wall Drainage/Guard	Parcel Fee	3000	278.70
Parcel #	1000	92.90	Wall Drainage/Guard	Parcel Fee	3000	278.70

<b>City/Town</b>	Haverhill	<b>Cost Acct.</b>	P601-355-R11(1)
<b>Parcel No.</b>	14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel Fee		
<b>Owner</b>	Storage Portfolio I LLC		

Pg 4

## GRANTOR, TITLE ABSTRACT, UTILITIES

<b>Registry</b>	Essex South	<b>BK/PG</b>	<b>Date</b>
<b>Grantor</b>	This is the Grantor Information Field -Parcel Summary Sheet	1234/1234	5/1/08
<b>Grantor</b>	This is the Grantor Information Field -Parcel Summary Sheet	1234/1234	5/1/08

## REGISTERED LAND

BK/PG	CERT	LCC	DOC
12345678910	12345678910	12345678910	12345678910

Mortgagee (s):	Book and Page	Document Number
Lawrence Savings Bank	1234/1234	12345678910
Sun America Life Insurance Company	1234/1234	123456789
Enter Mortage Information Here	1234/1234	123456789

Lessee (s)	Book and Page	Document Number
List Lessee if any	1234/1234	123456789
List Lessee if any	1234/1234	123456789
List Lessee if any	1234/1234	123456789

Encumbrances	Type	Book and Page	Document Number
List Name of Encumbrances if any	List Type if any	1234/1234	12345678910
List Name of Encumbrances if any	List Type if any	1234/1234	12345678910
List Name of Encumbrances if any	List Type of any	1234/1234	12345678910

List All Tenants	CONTACT PERSON	PHONE
List all Tenants if Applicable	List Contact Person	508-929-3903
List all Tenants if Applicable	List Contact Person	508-929-3903
List all Tenants if Applicable	List Contact Person	508-929-3903

WATER	Yes	GAS	Yes
SEWER	YES	ELECTRIC	YES

**Location of Underground Services (shown on property sketch): \*\*\*\*\*CONFIRM WITH DIG SAFE\*\*\*\*\***

Locate underground service	Confirm with Dig Safe
Other Pertinent Data:	List other Pertinent date

Assessor's Description						
	MAP	754	BLOCK	123456	LOT	219

<b>City/Town</b>	Haverhill	<b>Cost Acct.</b>	P601-355-R11(1)
<b>Parcel No.(s)</b>	14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel Fee		
<b>Owner</b>	Storage Portfolio I LLC		

## ZONING

Zoning District	Industrial	Required Minimum Lot Area	45560 Sq. Ft
Required Minimum Lot Frontage	200 Ft.		

Other Pertinent Data or Allowable Uses and Minimums

Other Pertinent Data or Allowable Uses and Minimums

## Title Reference

BK/PG

1234/1234

BK/PG

1234/1234

## Registered Land

BK/PG

12345678910

CERT

12345678910

LCC

12345678910

DOC

12345678910

## Assessor's Description

MAP

754

BLOCK

123456

LOT

219

## Assessments

LIST CURRENT ASSESSMENTS, PLUS TWO (2) PREVIOUS YEARS; TAX RATES; ACTUAL TAXES; DATE OF LAST REVALUATION; STATE WHETHER OWNED IN GOVERNMENTAL OR PROPRIETARY INTEREST, AND WHETHER TAX EXEMPT; GIVE ANY FACTORS INFLUENCING PROPERTY VALUE; STATE WHETHER ANY ABATEMENTS WERE APPLIED FOR, AND IF SO, WHETHER GRANTED OR DENIED.

Land Area	89,298 Sq. Ft.	8,296 Sq. Meters
-----------	----------------	------------------

Year	2008	2007	2006
------	------	------	------

Land Valuation	\$ 562,600.00	\$ 473,800.00	\$ 42,900.00
Improvement Valuation	\$ 2,943,800.00	\$ 2,943,800.00	\$ 2,943,800.00
Other	\$ 31,600.00	\$ 31,600.00	\$ 31,600.00
Other			
Total Valuation	\$ 3,538,000.00	\$ 3,449,200.00	\$ 3,018,300.00
Tax Rate per \$1,000	17.0	17.0	17.0
Total Real Estate Tax	\$60,146.00	\$58,636.40	\$51,311.10
Date or Last Revaluation	2007	2006	2005

## Factors Influencing Values

Owned in Governmental Interest?	NO
Owned in Proprietary Interest?	NO
Tax Exempt?	NO
Applied for Abatement?	NO
If Yes Granted or Denied?	NO

Governmental Ownership	NO
Proprietary Ownership	NO
Tax Exempt?	NO
Abatement Applied for?	NO
If yes-Granted or Denied?	

## FACTORS INFLUENCING PROPERTY VALUES

**Massachusetts Highway Department  
LAYOUT SCHEDULE**

**RECORDED AND REGISTERED LAND**

City/Town Project Layout #:	Haverhill		Cost Account	P601-355-R11(1)
	Parcel Fee		Fed. Aid #:	NFA
	8019	Date	9/15/08	Date Recorded
			Payment Date	10/25/08

**Assessor's Description**

MAP	754	BLOCK	123456	LOT	219
-----	-----	-------	--------	-----	-----

**PROPERTY OWNERS NAME AND ADDRESS**

40 Ferry Road, Haverhill, MA 01830	1234/1234
P.O. Box 19156, Alexandria, VA 22320-0156	

**Fee Takings**

Parcel Number	Sq. Footage	Sq. Meters
Parcel Fee	3000	278.70
Parcel Fee	300	27.87
Parcel Fee	3000	278.70
Parcel Fee	3000	278.70

**Easements**

Parcel Number	Sq. Footage	Sq. Meters
14-WDGR-1-C	989	91.88
14-TE-10	3045	282.88
Parcel #	1000	92.90
Parcel #	1000	92.90

**REGISTERED LAND**

BK/PG	CERT	LCC	DOC
12345678910	12345678910	12345678910	12345678910

**MORTGAGES**

**Title References**

Lawrence Savings Bank	11792/380
30 Massachusetts Ave, North Andover, MA 01845	
Sun America Life Insurance Company	22605/368
1 Sun America Center, Century City, Los Angeles CA 90666	
Enter Mortage Information Here	123456789
Enter Mortage Address Information here	

**ENCUMBRANCES**

**Type**

**Title Reference**

List Name of Encumbrances if any	List Type if any	1234/1234
Address-fill in post interview		
List Name of Encumbrances if any	List Type if any	1234/1234
Address-fill in post interview		
List Name of Encumbrances if any	List Type of any	1234/1234
Address-fill in post interview		

**Recorded Lessee**

**Title Reference**

List Lessee if any	1234/1234
Address-fill in post interview	
List Lessee if any	1234/1234
Address-fill in post interview	
List Lessee if any	1234/1234
Address-fill in post interview	

CITY/TOWN	Haverhill	COST ACCT	P601-355-R11(1)
PARCEL #	14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel Fee		
OWNER	Storage Portfolio I LLC		
AYOUT	8019	PROJECT	Parcel Fee

**MASSACHUSETTS HIGHWAY DEPARTMENT**

**RIGHT OF WAY BUREAU**

**PROPERTY INTERVIEW RECORD**

<b>PERSON(S) INTERVIEWED</b>		<b>OWNERS CONTACT INFORMATION</b>				
MR. PROPERTY OWNER		HOME:	(1234) 567-8910			
MRS. PROPERTY OWNER		WORK:	(1234) 567-8910			
<b>PROPERTY ADDRESS</b>		CELL PHONE:	(1234) 567-8910			
40 Ferry Road, Haverhill, MA 01830		E-MAIL:	PROPOWNER@AOL.COM			
<b>MAILING ADDRESS</b>						
SPRINGFIELD, VA						
<b>TYPE OF STRUCTURE(S)</b>		VACANT LAND				
Office Building		None				
LAND AREA Sq. Ft.	FRONTAGE	DEPTH	BOUNDARIES ON GROUND (also Describe in "Remarks Section")			
89298	200 Feet	200 Feet	YES or NO	YES		
<b>MORTGAGE #1</b>		BOOK/PAGE	DOCUMENT NO.	AMOUNT		
Lawrence Savings Bank		11792/380	123456789	\$465,000.00		
30 Massachusetts Ave, North Andover, MA 01845						
<b>MORTGAGE #2</b>		BOOK/PAGE	DOCUMENT NO.	AMOUNT		
Sun America Life Insurance Company		22605/368	123456789	\$372,000.00		
1 Sun America Center, Century City, Los Angeles CA 90666						
<b>MORTGAGE #3</b>		BOOK/PAGE	DOCUMENT NO.	AMOUNT		
Enter Mortage Information Here		123456789	123456789	\$874,000.00		
Enter Mortage Address Information here						
<b>TENANTS/LESSEES</b>		<b>CONTACT PERSON</b>		<b>PHONE</b>		
List Lessee if any		Tenant Contact		(1234) 567-8910		
List Lessee if any		Tenant Contact		(1234) 567-8910		
List Lessee if any		Tenant Contact		(1234) 567-8910		
<b>GRANTOR</b>		BOOK/PAGE	SALE PRICE			
This is the Grantor Information Field -Parcel Sur		1234/1234	\$2,500.00			
<b>GRANTOR</b>		BOOK/PAGE	SALE PRICE			
This is the Grantor Information Field -Parcel Sur		1234/1234	\$45,000.00			
MAP	BLOCK	LOT	CERT.#	BOOK/PAGE	DOCUMENT NO.	LCC#
754	123456	219	12345678910	12345678910	12345678910	12345678910
<b>ESTATE OF</b>			<b>PROBATE NO.</b>		<b>REGISTRY</b>	
This is the Estate Information Field			is the Probate Number/Estate Info		Essex South	
<b>ENCUMBRANCES</b>		<b>TYPE</b>	<b>BOOK &amp; PAGE</b>	<b>DOCUMENT #</b>		
List Name of Encumbrances if any		List Type if any	1234/1234	12345678910		
List Name of Encumbrances if any		List Type if any	1234/1234	12345678910		
List Name of Encumbrances if any		List Type of any	1234/1234	12345678910		

<b>City/Town</b>	Haverhill	<b>Parcel #</b>	14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel Fee
<b>Project Name</b>	Parcel Fee	<b>Layout</b>	8019
<b>Owner</b>	Storage Portfolio I LLC	<b>Cost Acct</b>	P601-355-R11(1)

### UTILITIES AND STRUCTURES

Town Water/Sewer	Electric	X	Check what applies	Dry Well-(washer)	X	
	Gas	X		Underground Sprinkler	X	
	Well	X		Property Boundary Markers	X	
	Well & Pump	X		Landscaping	X	
	Septic	X		Trees	X	
	Cesspool	X		Stonewall	X	
OTHER	High Tension wires and Gas Pipe line					

**ARE ANY OF THE ABOVE ITEMS IN THE AREA TO BE ACQUIRED?**  **NO**  **IF YES IDENTIFY THE**

**LOCATIONS OF THE ABOVE ITEMS ON THE PARCEL BEING ACQUIRED IN THE SPACE BELOW.**

No Locations to Report

<b>BUILDING TYPE AND STYLE</b>		<b>GARAGE</b>	<b># OF ROOMS</b>		<b>OTHER</b>	
Office Park		No	10		None	
<b>#BEDROOMS</b>	<b>#BATHS</b>	<b>LIVING RM</b>	<b>DINING RM</b>	<b>Kitchen</b>	<b>OTHER</b>	
3	3	1	1	1	1	
HEATING: TYPE OF SYSTEM (HOT AIR, HOT WATER, STEAM, BASEBOARD, CONVECTOR, PORTABLE) FIRED BY (OIL, GAS, ELECTRIC) SIZE						

Forced Hot Air

<b>SIGNS:</b>	<b>TYPE</b>	<b>DIMENSIONS</b>	<b>RELOCATION REQUIRED FOR ANY SIGNS?</b>	<b>Y</b>	<b>N</b>
NO	None	None	NO		X
<b>RELOCATION ASSISTANCE NEEDED?</b>			<b>ANTICIPATED RELOCATION CONTACT:</b>	<b>Months</b>	<b>Weeks</b>
	NO			No	No

**IF YES, DESCRIBE ITEM(S) TO BE RELOCATED, AND THEIR CURRENT LOCATION:**

None

FEDERAL AID PROJECTS! DOES OWNER WANT REMAINDER LAND ACQUIRED, IF DEEMED UNECONOMIC? (Y/N)

<b>PLAN INFORMATION</b>				
<b>RIGHT OF WAY PLAN REVIEWED WITH AND PROVIDED TO PROPERTY OWNER</b>	Enter "yes" or "no"	<b>INTEREST IN PROPERTY BEING ACQUIRED EXPLAINED?</b>	<b>Y</b>	<b>N</b>
	Yes		Y	
<b>SIGNED W-9 OBTAINED?</b>	yes	<b>ANTICIPATED TIME FRAME FOR APPRAISER CONTACT:</b>	<b>Weeks</b>	3
			Months	3
<b>REMARKS</b>	Boundaries at corners	<b>DURATION OF EASEMENTS:</b>	Years	3

Avoid Overhead Power Lines and Gas Line

**FOR ADDITIONAL INFORMATION VISIT OUR WEB SITE: "WWW.MHD.STATE.MA.US" CLICK ON "MORE" FOR THE RIGHT OF WAY MENU.**

<b>INTERVIEWER SIGNATURE</b>	<b>DATE</b>	<b>OWNER SIGNATURE</b>	<b>DATE</b>
<b>INTERVIEWER SIGNATURE</b>	<b>DATE</b>	<b>OWNER SIGNATURE</b>	<b>DATE</b>

CITY/TOWN: Haverhill LAYOUT NUMBER: 8019

PROJECT: Parcel Fee

PARCEL NUMBER(S): 14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel Fee

### Commonwealth of Massachusetts

#### Request for Verification of Taxation Reporting Information

(Massachusetts Substitute W-9 Format)

**LEGAL NAME** (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I below.  
See Specific Instructions on the back page.)

**Legal Name of Taxable Entity**

**LEGAL ADDRESS** – Number & Street (include suite or apt # when possible) City, State and ZIP (include 9 digit Zip when available)

**Legal Address of Taxable Entity**

**IF REMITTANCE (PAYMENT) ADDRESS IS DIFFERENT FROM YOUR LEGAL ADDRESS, PLEASE FILL IN BOXES PROVIDED BELOW.**

**REMITTANCE ADDRESS** (number & street, include suite or apt# when possible)

10 Park Plaza - Room 5510

**REMITTANCE CITY, STATE, ZIP** (include 9 digit ZIP when available)

Boston, Massachusetts 02116-3973

**PHONE #** 617-973-7584

**Part I - TIN VERIFICATION**

Social Security Number (SSN)

Enter your Taxpayer Identification number (TIN) in the appropriate box.  
(Enter either SSN OR EIN. DO NOT enter both)

1  2  3  4  5  6  7  8  9  
OR

Employer Identification Number (EIN)

1  2  3  4  5  6  7  8  9

See Chart B

**PART II - ORGANIZATION T**

Organization Type

**CHART A - WHAT NAME TO GIVE THE REQUESTER**

**PART III TAX - EXEMPT**

Check if your organization is recognized by the IRS as Tax Exempt (i.e.501(c))?

If claiming Tax Exempt Status, attach the IRS ruling or Determination Letter or this status will not be

**PART IV - UPDATE TO EXISTING W-9**

A Request for Verification of Taxation Reporting Information has been previously filed with the Commonwealth under this TIN. This report replaces that form.

Please attach supporting documentation specified in instructions on back of this form under Updates

**For this type of Account:**

Give the Name and SSN OR EIN

**CHART B - ORGANIZATION TYPE**

Type

Individual

The individual - SSN ONLY

For this type of vendor:

I

Sole Proprietorship

The owner (Show individual's name)  
SSN or EIN

Individual - SSN

I

**For this type of Account:**

Give the Name and Employer Identification Number of:

For this type of vendor:

P

A valid trust, estate, or pension trust

Legal entity (do not furnish the identification number of the personal

Partnership - EIN

T

Corporation

The corporation

Corporation (including Mexico & Canada) - EIN

C

Association, club, religious, charitable, or other tax-exempt org.

The organization is associated with Other in CHART B

Other - EIN  
Please explain on line provided below

O

Partnership

The partnership

Additional instructions are provided on the back of this form

Broker or registered nominee

The broker or nominee

**If you select and organization type of "O" (Other), please explain why?**

**Explain "other" organization**

I have read and understand the Commonwealth's Tax Reporting Information (Please check box.)

**Under penalties of perjury, I declare that I have examined this request and to the best of my knowledge and belief, all the information**

Sign here

9/22/2008

Signature

DATE

Name and Title \_\_\_\_\_

Please print or type your name & title

## Commonwealth of Massachusetts Request for Verification of Taxation Reporting Information

### GENERAL INSTRUCTIONS

(Section references are to the Internal Revenue Code.)

**Purpose of Form** - A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report payments made to you for the sales of goods & services & real estate transactions. Use the Request for Verification of Taxation Reporting Information (*Massachusetts Substitute W-9 Format*) to furnish your correct TIN to the Commonwealth and, when applicable, (1) to certify that the TIN you are furnishing is correct (*or that you are waiting for a number to be issued*).

**How To Obtain a TIN** - If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5**, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or **Form SS-4**, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete the Request for Verification of Taxation Reporting Information if you do not have a TIN, write "Applied For" in the space for the TIN in Part 1, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. Note: Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Request for Verification of Taxation Reporting Information, include your TIN, sign and date the form, and give it to the requester.

### Penalties

**Failure to Furnish TIN** - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding** - If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of \$500.

**Criminal Penalty for Falsifying Information** - Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

### SPECIFIC INSTRUCTIONS

**Name** - If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card and your new last name.

**Sole proprietor** - You must enter your *individual* Name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the business name line.

**Other entities** - Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or legal document creating the entity. You may enter your business, trade, or "doing business as" name on the business line.

**Foreign Vendors** - If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed **Form W-8BEN** (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

**TIN "Applied For"** - Follow the instructions under How to Obtain a TIN, sign and date this form.

**Signature** - The form must be signed to be considered valid.

**Privacy Act Notice** - Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid, the acquisition of property. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return.

**Organizations Recognized by the Commonwealth as Tax Exempt** - Organizations seeking recognition of tax exempt status with the Commonwealth must provide documentation of the organization federal tax exempt status in the form of a ruling or determination letter issued by the Internal Revenue Service (IRS). The Commonwealth recognizes the following IRS tax exempt status organization rulings:

- . Section 501© (1 through 23)
- . Section 501 (d)
- . Section 501(e)
- . Section 501 (f)
- . Section 501(k)
- . Section 521 (a)

For more information on Tax-Exempt status, please see IRS Publication 557 (rev. Jan. 99).

### Updates to the Request for Verification of Vendor/Customer Taxation Reporting Information

- If any of the information requested on this form changes (*i.e., name or address changes*), the payee must submit a new Request for Verification of Taxation Reporting Information with the updated information. Changes to name or TIN must be accompanied by IRS certification of Name & TIN.

If the payee receives notification from the IRS that an information return (*i.e., 1099-MISC*) was filed on their behalf by the Commonwealth with incorrect spelling of their name and/or incorrect or missing TIN (commonly referred to as a "B-Notice" or IRS Form 8355), the payee must immediately complete a new Request for Verification of Taxation Reporting Information with the corrected information and attach a copy of the IRS Form 8355 to the form.

If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct (*legal*) name.

**If you have Questions on Completing this Form** - Please contact the Office of the State Comptroller

**By Phone:** (617) 973-2311 or 973-2655

### Completion of Form:

Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

## Request for Verification of Taxation Reporting Information

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- . Section 501© (1 through 23)
- . Section 501 (d)
- . Section 501(e)
- . Section 501 (f)
- . Section 501(k)
- . Section 521 (a)

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If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct (*legal*) name.

**If you have Questions on Completing this Form** - Please contact the Office of the State Comptroller

**By Phone:** (617) 973-2311 or 973-2655

### Completion of Form:

Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

# COMMONWEALTH OF MASSACHUSETTS

**Municipalities Name**

## NEGOTIATION REPORT

TOWN/CITY:  
PROPERTY ADDRESS  
LAYOUT NO.  
PARCEL(S):  
OWNER(S):  
PHONE #  
E-MAIL ADDRESS  
OWNER'S ADDRESS

F.A.P.#		
PROJECT		
LAYOUT DATE		
TENANTS:		
PHONE#		
E-MAIL ADDRESS		

CONTACT WITH:

OWNER	TENANT	ATTORNEY	
BY: VISIT	PHONE	LETTER	
Obtain W-9?			

EXPLAINED:	LAYOUT PLANS	CONSTRUCTION PLANS	THE TAKING
PRO TANTO			RELEASES
RELO ASSISTANCE		INTEREST & TAX REBATE	TENANTS
	OWNER'S RIGHTS		RIGHTS
	USE & OCCUPANCY CHARGE (PER Month)		

I met on this date with the Owners at the Locus. I explained the **ROW Plan**, **The Taking**, and the **Owners Rights**. I provided them with the amount of award as based on the **Just Compensation Summary Report and Appraisal**. I also provided them with the following:

---



---



---



---



---

DATE:

Negotiators Signature

TIME  AM / PM

Town Representative



Property Owner Signature

Property Owner/Representative\*

*\*Signature acknowledges only that the above took place.*

EXHIBIT NO. 8-12

**Just Compensation Summary Report**  
**Payment and Computation Schedule**

<b>City /Town</b>	Haverhill	<b>Map</b>	<b>Block</b>	<b>Lot</b>		<b>F.A.P No:</b>	NFA
<b>Layout #</b>	8019	754	123456	219		<b>E.W.O. NO</b>	
<b>Owner</b>	Storage Portfolio I LLC						
<b>Property Address</b>	40 Ferry Road, Haverhill, MA 01830						
<b>Telephone #'s</b>	(978) 557-5805						

**IN FEE PARCELS**

Parcel Number	Sq. Footage	Sq. Meters	Type
Parcel Fee	3000	278.70	
Parcel Fee	300	27.87	

**PERMANENT AND TEMPORARY EASEMENTS**

Parcel Number	Sq. Footage	Sq. Meters	Type
14-WDGR-1-C	989	91.88	Wall Drainage/Guard Rail-city
14-TE-10	3045	282.88	Wall Drainage/Guard Rail-city
Parcel #	1000	92.90	Wall Drainage/Guard Rail-city
Parcel #	1000	92.90	Wall Drainage/Guard Rail-city

**Calculations**

Vote /Approve Date Record Date Payment Date	8/15/08	RE Taxes	From	9/1/08	To	9/25/08
	8/25/08					
	10/25/08	Interest	From	9/1/08	To	9/25/08

**Real Estate Taxes**

		1st Fee Parcel			AREA	
Number of Days	Tax Rate	Assessments		Sq. Ft.	Sq. Mt.	Calculations
0.068493	17.0	\$ 562.60		0.03359538	0.03359538	
25		\$ 562,600.00		3000	278.70	
365		1000		89,298	8,296	

**Real Estate Taxes**

		2nd Fee Parcel			AREA	
Number of Days	Tax Rate	Assessments		Sq. Feet	Sq. Meters	Calculations
0.068493	17.0	\$ 562.60		0.00335954	0.00335954	
25		\$ 562,600.00		300	27.87	
365		1000		89,298	8,296	

**Interest Calculations**

Interest	Number of Days	Damages Awarded	Calculations
0.0002	24	\$83.45	\$0.40
0.07300			
365			

**Verifications**

Computed By	Russ McGilvery	Date	
Checked By		Date	

**Totals**

Real Property Damages Awarded	MGL CH 79,SEC.6	\$ 83.45
Real Estate Tax Apportionment	MGL CH 79,SEC.12	\$ 24.21
Interest From Recording Date	MGL CH 79,SEC.37	\$ 0.40
	<b>TOTAL</b>	\$ 108.06

Commonwealth of Massachusetts  
Right of Way Bureau

**INTEROFFICE MEMORANDUM**

**SIGN INVENTORY REPORT**

Put a Picture of the Sign here

City/Town:	Haverhill	Project:	Parcel Fee
------------	-----------	----------	------------

Layout/Order:	8019	FAP #	NFA
Parcel #	14-WDGR-1-C , 14-TE-10, Parcel #, Parcel #, Parcel Fee, Parcel Fee		
Location (BaseLine):	Find Baseline Location Info		
Property Owner:	Storage Portfolio I LLC		
Sign Owner:	Find The Sign Owner		
Remarks:	Any Remarks?		

Prepared By: Whoever filled this out

Sheets  of  Sheets

Commonwealth of Massachusetts  
Massachusetts Highway Department  
Right of Way Bureau

Demolition Report	
City/Town	Haverhill
Project	Parcel Fee
Fed. Aid #:	NFA
Prepared by	whoever filled this form out

**Commonwealth of Massachusetts**  
**Massachusetts Highway Department**  
**Right of Way Bureau**

**Structure and Occupancy Report**

City/Town	Haverhill	Layout/Order	8019
Project	Parcel Fee	Date Recorded	9/22/08
Fed. Aid #:	NFA		
Prepared by	Whoever filled this out		

Parcel No.	Owner	Location and Bldg. Type	Demo Item-No.	Sheet	1	Of	1	Sheet	
				Res-Bus	occupants	W NW	Rent	# of rooms	Sq.Ft. Occupied
Parcel Fee	Storage Portfolio I LLC	Corner office Building next to the gym	123456	Residential	yes		No	50	42,000
Parcel Fee	Storage Portfolio I LLC	Corner office Building next to the gym	123456	Residential	yes		No	50	42,000
14-WDGR-1-C	Storage Portfolio I LLC	Corner office Building next to the gym	123456	Residential	yes		No	50	42,000
14-TE-10	Storage Portfolio I LLC	Corner office Building next to the gym	123456	Residential	yes		No	50	42,000
Parcel #	Storage Portfolio I LLC	Corner office Building next to the gym	123456	Residential	yes		No	50	42,000



The Commonwealth of Massachusetts  
MASSHIGHWAY DEPARTMENT  
Right of Way Bureau

**RIGHT OF ENTRY  
(WITHOUT PREJUDICE)**

City/Town: \_\_\_\_\_

Project: \_\_\_\_\_

Owner: \_\_\_\_\_

Station: \_\_\_\_\_

Station: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

Permission is hereby given to City/State personnel and their contractors to enter upon my property in the city of \_\_\_\_\_ in connection with the construction of a state highway as shown on the plan in the office of said Department at 10 Park Plaza, Boston, Massachusetts for the purpose of making changes and carrying out the work on my property as outlined below:

This entry to be made without prejudice to my rights in settlement of any claims for damage that may hereafter appear.

**GRANTED BY:**

\_\_\_\_\_  
Signature of Owner

**RECOMMENDED BY:**

\_\_\_\_\_  
Deputy Director – Right of Way Bureau

Date: \_\_\_\_\_

Date: \_\_\_\_\_



The Commonwealth of Massachusetts

MASSHIGHWAY DEPARTMENT  
Right of Way Bureau

LAND DAMAGE AGREEMENT

Standard Form

City/Town: \_\_\_\_\_ Project: \_\_\_\_\_

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County: \_\_\_\_\_ Layout No.: \_\_\_\_\_

Parcel No.: \_\_\_\_\_ F.A.P. #: \_\_\_\_\_

Order No.: \_\_\_\_\_ Order Recorded: \_\_\_\_\_

This agreement is entered into for full settlement of any and all claims for damage incurred or to be incurred by the MassHighway Department as a result of a taking by eminent domain, construction, and/or alteration of the subject project by the MassHighway Department. The land and/or rights in land taken, and limitations of access, if any, are described in an order of taking (together with any related plans) adopted by the MassHighway Department, and on file at the office of said Department and recorded in the Registry of Deeds for the above county.

The owner agrees to accept the sum of \$ Zero, plus an apportionment of real estate taxes from the date of the recording of the order of taking to the end of the calendar year of the taking, in full settlement of any and all claims whatever to the taken or remaining property of the owner on the subject project whether caused by the taking of land and/or rights in land, limitations of access, changes in grade or drainage and/or alteration of said project; and agrees to give the Commonwealth of Massachusetts, through its MassHighway Department, such releases as will release the claims, due to said taking, construction and/or alteration, of any and all persons or concerns having ownership or any interest or title in the premises.

Additions to this agreement are as follows: (if none, write "None")

None

It is understood and agreed that this agreement shall become binding only when signed by the owner and other parties in interest, and formally approved by the MassHighway Department Board of Commissioners. It is also understood and agreed that the owners are entitled to damages for the rights being acquired, but have agreed to accept no award of damages.

SIGNATURE OF OWNER(S):

DATE:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

TOTAL DAMAGES:

Damages \$0.00

ASSENTED TO BY MORTGAGEE(S):

R.E. Taxes \$0.00

Interest \$0.00

TOTAL \$0.00

APPROVED BY:

DEPUTY DIRECTOR, Right of Way Bureau

\_\_\_\_\_  
\_\_\_\_\_

# Right-of-Way Process

Helping Communities Move Projects Forward

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# Right-of-Way Process

## Helping Communities Move Projects Forward

EXHIBIT NO. 8-13



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## The Right-of-Way Bureau

- A division of MassHighway responsible for acquiring and managing property necessary for state highway transportation projects
- The Uniform Act applies to all projects receiving federal or state funds or federal or state financial assistance where real property is acquired or persons are displaced as a result of acquisition, demolition, or rehabilitation
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) [> WEBSITE](#)



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## State Highway Projects versus Local Roadway Projects

- **State Highway Project**

- MassHighway is responsible for the Right of Way process

- **Local Roadway Project**

- Municipality is responsible for Right of Way process with MassHighway oversight
  - Roadways
  - Bridges
  - Multi-Use Paths
  - Other; scenic by-way easements, visitor centers, transportation enhancement projects



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## Community Compliance Section

- A project can not be advertised for construction bids until the ROW Bureau issues a ROW certificate
- Ensures that municipalities follow all federal and state regulations in the ROW process
- Upon plan compliance, issues Right-of-Way certificate for the municipality which enables the transportation-related project to proceed



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## When Must Municipalities Follow our Process?

- Local transportation-related project is receiving State and Federal assistance
- MassHighway administers construction
- Funding is through the Metropolitan Planning Organization (MPO) process

# Right-of-Way Process

Helping Communities Move Projects Forward



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## Project Development Process

- Outlined in Section 2 of the 2006 MassHighway Design Guide
- Identification of a Problem, Need, or Opportunity
  - Occurs through the Regional Planning or Metropolitan Planning Process
  - Initiated by the Community, Legislature or Citizen Input



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## Communities and State Transportation Agencies provide transportation services

- Long Range and Area Transportation Plans and Studies
- Asset and Performance Management Systems
- Operational Plans and Initiatives
- Road Safety Audits
- Local/Community Plans
- American with Disabilities Act (ADA) Program Access

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Planning Process

- Transportation Evaluation Criteria (TEC)
- Identify Project Constituents and Public Outreach Plan
- Project Planning Scope
- Project Need Form



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## Project Need Form (PNF)

- Verification of the problem, need or opportunity to enable it to move forward to design
- Determination of the level of further project planning warranted
- Dismissal of a project from further consideration



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## Potential outcomes of the Project Need Form (PNF)

- Agreement by the project proponent and District on the problem and project definition
  - This enables a project to move out of planning and into design
  - Determination that there is a problem, need or opportunity but further planning is warranted to better define the project
  - Advice on alternatives to consider and the planning process
  - A recommendation that the project be dismissed from further consideration

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Project Initiation

- Those projects seeking federal and state funding must:
  - Receive approval from the Project Review Committee (PRC)
  - Programmed by the Metropolitan Planning Organization (MPO) on the regions Transportation Improvement Program (TIP)
- Legislative (2/3 vote) approval required

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Project Initiation Form

- Copy to District and MPO
- Preliminary Screening by District and MPO
- Project Review Committee (PRC) Review
- Preliminary MPO Review
- Preliminary Assignments
- Design and Environmental Steps

# Right-of-Way Process

Helping Communities Move Projects Forward



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## Helping Communities Move Projects Forward



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# Right-of-Way Process

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- Preliminary Assignments
- Design and Environmental Steps



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## Potential outcomes of the Project Need Form (PNF)

- Compilation of 13 regional Transportation Improvement Programs (TIPs)
- Prepared annually by the state's MPOs
- List of priority transportation projects by region and fiscal year (highway and transit)
- MassHighway and Capital Expenditure and Programming Office (CEPO) compile STIP
- Reviewed and Approved by state and federal transportation and environmental agencies



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## Transportation Improvement Program (TIP)

- Prepared Annually by each region
- 6 year program of capital improvements that reflect the needs of the region
- Federal Highway Administration (FHWA) requires:
  - fiscally constrained to available funds
  - consistent with long-range regional plans
  - include annual element or listing of projects to be advertised in first year of TIP



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## Metropolitan Planning Organizations (MPOs)

- Regional body of state, regional and local officials
- Responsible for conducting transportation planning and programming
- Voting members include:
  - Executive Office of Transportation and Public Works (EOTPW)
  - MassHighway
  - Regional Planning Agencies (RPAs)
  - Regional Transit Authorities (RTAs)
  - Local Elected Officials
- Federal Highway and Federal Transit serve as non-voting members.

# Right-of-Way Process

Helping Communities Move Projects Forward



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## Securing Rights of Way for Multi-Use Trails

- Typically Transportation Enhancement (TE) Projects
  - On-road and off-road transportation corridors for bicyclists and pedestrians
  - Require a significant federal and state investment
    - Public interest in and access to the activity should be in perpetuity
    - Dependent on the nature and the magnitude of the expenditure
    - All modes of transportation are treated equally
      - Use of eminent domain is allowed for both traditional and non-traditional federal and state aid projects



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## Right of Way Requirements for Multi- Use Trails

- Fee Simple Interest
- Permanent Easement
- 99-year lease term



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## 99-year lease terms

- Public vs. Privately-owned corridors
  - o MBTA, EOTPW, National Grid, CSX, etc.
- Acceptable means for Reversionary or Termination prior to expiration date
  - o Demonstration of a greater public good than the TE intended use can be demonstrated
    - No pay back requirement
  - o Default/Termination Clauses
  - o Option to Renew Clause
- State and Federal Government not party to the lease agreements
  - Leases reviewed for consistent with funding requirements
  - Failure to comply will result in non-participation of funding

# Right-of-Way Process

## Helping Communities Move Projects Forward



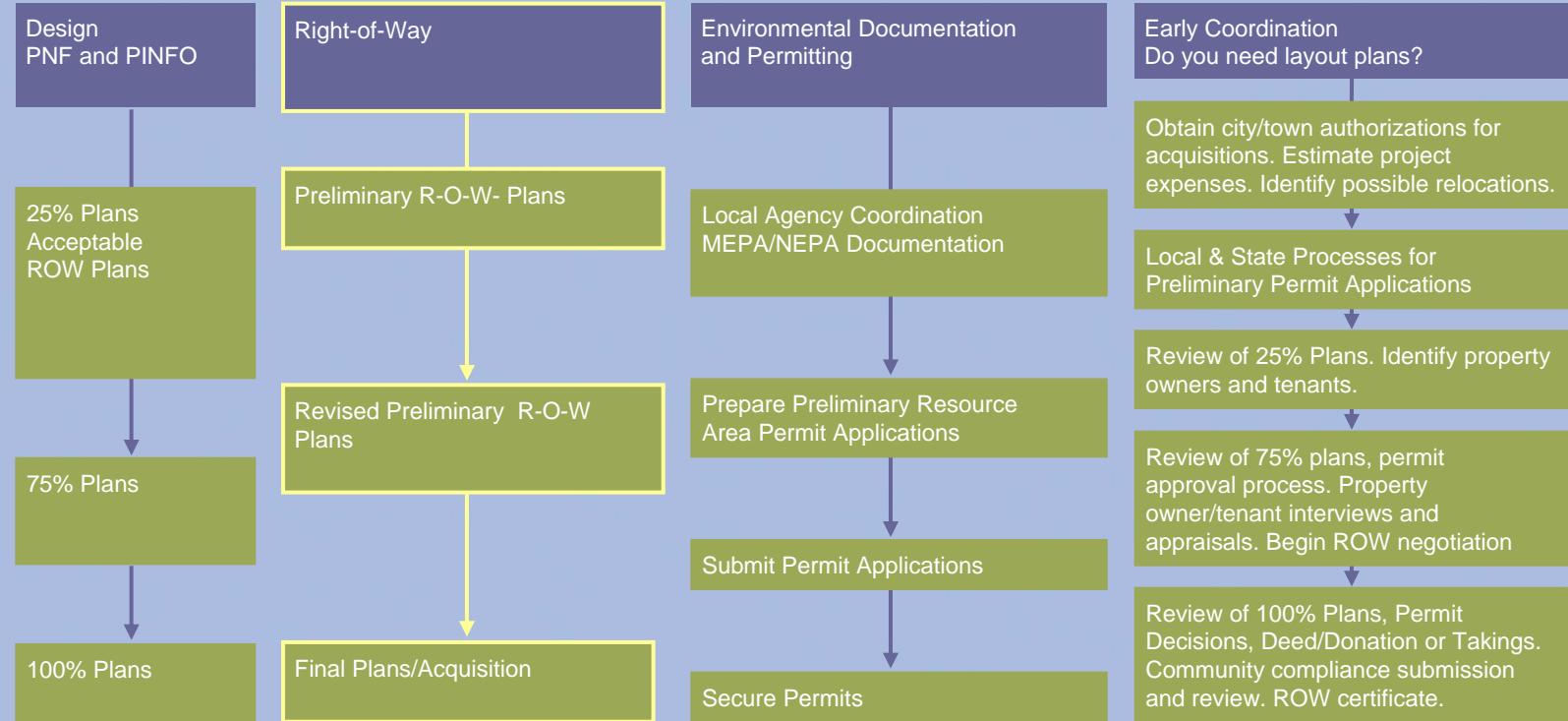
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## The Overall Process



# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Methods of Acquisitions for Municipalities

- Right of Entry
- Temporary Easement
- Permanent Easement
- Fee Acquisition
- Lease Agreement
- Permits

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Right-of-Way Acquisitions

	Right of Entry	Temporary Easement	Permanent Easement	Fee Acquisition
Description	Access to private property necessary for minor work	Access to private property necessary for minor work	Gives acquiring agency permanent access to property	MassHighway or municipality determines it is in the public interest to purchase private property for project
Future Access Required	No	No	Yes	NA
Time span	One-time	Specific Term	Permanent	Permanent
Compensation to property owner	No	Yes	Yes	Yes
Recorded at Registry of Deeds	No	Yes	Yes	Yes
Plans Required	<ul style="list-style-type: none"><li>• Description of limits of Right of Entry</li><li>• Construction Drawings</li></ul>	<ul style="list-style-type: none"><li>• Preliminary Right-of-Way Plan</li><li>• Construction Drawings</li><li>• Layout Plan (certain Instances)</li><li>• Instrument</li><li>• Final Right-of-Way plan</li></ul>	<ul style="list-style-type: none"><li>• Preliminary Right-of-Way Plan</li><li>• Construction Drawings</li><li>• Layout Plan</li><li>• Instrument</li><li>• Final Right-of-Way plan</li></ul>	<ul style="list-style-type: none"><li>• Preliminary Right-of-Way Plan</li><li>• Construction Drawings</li><li>• Layout Plan</li><li>• Instrument</li><li>• Final Right-of-Way plan</li></ul>

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## New Slide – Lease Agreements

- Text

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## The 25% Design Phase

- Reaffirm or identify Municipal liaison
- Begin Municipal authorization process
- Identify ROW associated costs
- Identify property owners
- ROW plans required at 25% design submittal





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## Right-Of-Way Plan

- A Right-Of-Way Plan is a valuable visual tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps the property owners understand why and how their properties are being acquired.
- A completed parcel summary sheet is required.

## Right-of-Way Process

Helping Communities Move Projects Forward



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# Parcel Summary Sheet



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## What we look for on the Preliminary Right-Of-Way Plans

- Fences
- Shrubbery
- Trees
- Irrigation
- Parkland (legislation may be required for change in use)
- Signs
- Improvements



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## Preliminary Right-of-Way Plan

- Includes all information associated with:

Structures	Access roads
Improvements	Landscaping
Drainage	Fences
Cesspools	Septic tanks
Wells	Property bounds
Signs	
- Existing and proposed ROW lines, property lines and owner names for each property
- Preliminary Right-of-Way Plans are required for 25% design submittal
- Format should follow the 2006 MassHighway Project Development Design Guide
- Plans remain in preliminary stage until layout plan and instrument has been filed with Registry of Deeds

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## What We Look for





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## Applicable “Parkland” Regulations

- Section 4(f) of the DOT Act, 49 U.S.C Section 303 – Federal
  - “Use” of Section 4(f) Land
- Article 97 of the Constitution – State
  - Article 97 Land Disposition



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## Section 4(f)

- “Use” of Section 4(f) land
  - Permanent incorporation
  - Temporary occupancy - adverse impacts
  - Constructive use



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## Early Coordination

- Identify Parkland and other open space areas prior to during project development
- Documentation Required
  - Letter from officials stating use, “significance”
  - Indicate parklands on design plans



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## “Use” - Section 4(f) Evaluations

- Temporary Occupancy – If no adverse impact, officials acknowledge specific conditions will be met
- Programmatic/Individual Section 4(f) Evaluations
  - Prudent & feasible alternatives
  - If no alternatives:
    - Minimize Impacts
    - Provide Mitigation
    - Documentation

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Article 97

- Publicly-owned Open Space – conservation, recreation, watershed protection, etc.
- Legislative (2/3 vote) approval required
- MEPA Trigger – ENF
- Permit or license not considered disposition

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Outreach Letter

- Reaffirm a Municipal contact
- Establishes the MassHighway liaison

April 29, 2008

Re: Conway-Bridge Replacements-C-2-003, 004 & 005, North Poland Rd over Poland Brook & South River

Dear Selectman :

The Right of Way Bureau has been informed that the above proposal has received Department approval as a Federal Aid Project.

A secured right of way is necessary for the design, construction and future maintenance requirements of this project. Your community is responsible for all cost and effort associated with acquiring any necessary rights in private or public lands for this undertaking. Acquisition procedures must follow Federal and State laws and regulations. Your community may acquire needed rights through eminent domain, donations or purchase. If you have a town form of government, please note the enclosed document concerning Town Meeting approval.

The Commonwealth is responsible for monitoring acquisition activities of local acquiring agencies on Federal Aid Projects. Therefore, it is advisable that the Right of Way Bureau and your municipality work closely together during the entire acquisition process. This association will enable your community to expedite the acquisitions and be assured that Federal and State requirements are met.

Your municipality must designate a coordinator/liaison to work with our Community Compliance section. **Your municipality must respond within thirty days in writing with the name and position of the coordinator/liaison.** The Right of Way Bureau will provide brochures, guidance, sample forms, and advisory services to meet Federal and State requirements.

The scope of the right of way activity will determine the need or requirement for right of way plans. Please review the enclosed guidelines.

The Right of Way Bureau is looking forward to working with your community on this project. If you have any questions please feel free to contact Pamela Prentiss, Community Compliance Officer, at (617) 973-7951.

Sincerely,

Thomas Gray, Director  
Right of Way Bureau

Enclosure(s)

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Federal Funding Letter

- Confirms Federal funding for the project
- Property owners rights must be protected under MA general laws MGO Chapter 79 and the Real Property Acts of 1970 as amended

August 31, 2005

The above project has been approved as a Federal-Aided project. Enclosed you will find some suggested sample forms that you may utilize on this project. City/Towns are responsible for the acquisition of all necessary rights in private/public lands for its implementation.

- 1: This project will be constructed with Federal Funds.
  - 2: Property Owners rights must be protected under MGL Chap.79 and The Real Property Acts of 1970 as amended.
  - 3: The actual project can't be advertised for construction until the new proposed right of way is secured and the Right-of-Way Bureau issues a "Right-of-Way Certificate".
  - 4: The Project Manager, the design firm, and/or the Community Compliance Officer will be available to assist in determining if any right-of-way action will be required.
- If you have any questions concerning right-of-way activity please contact me.

---

Community Compliance Officer  
(508) 929-3909

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Eminent Domain Guidelines

Record the Order of Taking and Plans (if required) at your Registry of Deeds. This must be accomplished within thirty (30) days of the vote date.

### GUIDELINES - Right of Way Bureau

#### Eminent Domain on Federal and State Projects

1. Review procedures with the Community Compliance Officer. Forms and documents will be provided.
2. Acceptable acquisitions plans should be available.
3. The title of the subject property should be reviewed to determine ownership and or rights in the parcel(s) to be acquired.
4. Interview property owner(s) or their representatives and discuss issues about the property to be acquired. Severance damage, cost to cure items, and uneconomic remainders may be indicated. Take notes for future reference and potential appraisal use.
5. Assign a competent appraiser. Your municipality may consider in house (assessors) or local appraisers. A list of approved Massachusetts Highway Department FEE Appraisers is available. Review the suggested Federal Highway Authority appraisal format.
6. Completed appraisals must be acknowledged and reviewed by a responsible local official. It is suggested that your Chief Assessor be delegated this task. The appraisals will then be delivered to the Community Compliance Officer for final review.
7. Prepare and vote the Order of Taking and the Award of Damages.
8. ***Record the Order of Taking and plans (if required) in your Registry of Deeds. This must be accomplished within thirty (30) days of the vote date.***
9. Notify owner of the acquisition(s) and the award of damages. A suggested written format is available. ***Property files and Negotiations Logs must be kept for each property owner.***
10. Payment must be tendered as soon as possible. In any case not later than sixty (60) days after the recording date.
11. Gain physical and legal possession land parcels/structures.
12. Complete affidavits and forward to the Community Compliance Officer as soon as possible.

Note: The Eminent Domain procedure is as unique and varied as the Municipality that implement the process. Your procedures are regulated by Massachusetts General Law. Most towns require town meeting approval in order to exercise eminent domain authority.

# Right-of-Way Process

Helping Communities Move Projects Forward



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## Instructions

- Compliance with these instructions  
is required for certification

TO BE EMAILED

# Right-of-Way Process

Helping Communities Move Projects Forward



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## Layout Plan

- Prepared once Preliminary ROW Plan is approved
- Must follow guidelines in the 2006 MassHighway Project Development & Design Guide
- Elements of the Layout Plan:
  - Proposed layout lines
  - Property lines
  - Corner markers
  - Names of property owners
  - Parcels to be taken
  - Access and non-access points
  - All boundaries
- Decree Plan may be required



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## Written Instrument

- Required to be recorded in Registry of Deeds
- Format should follow MassHighway standards
- Includes:
  - Plans
  - Descriptions
  - Orders of taking
  - Alterations
  - Layouts
  - Easements
- Title sheet of all plans must be signed and stamped by Massachusetts Registered Land Surveyor in charge of work



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## Appraisal Guidance

- Municipality is responsible for appraisal expenses
- Consult MassHighway List of Approved Appraisers
- Damages >\$175,000 require two appraisals, and MassHighway appraisal review
- Affidavit of appraiser for property owner appraisal inspection

# Right-of-Way Process

## Helping Communities Move Projects Forward



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MASSACHUSETTS HIGHWAY DEPARTMENT  
RIGHT OF WAY BUREAU

### AFFIDAVIT

I, \_\_\_\_\_, HEREBY CERTIFY:  
that on \_\_\_\_\_, I afforded the Owner or the Owner's Representative the opportunity to accompany me on the inspection of the property located at,  
\_\_\_\_\_.

OWNER: APPRAISER:

Signature

Signature

OWNER'S REPRESENTATIVE: APPRAISER:

Signature

Signature

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Negotiations

- Text

COMMONWEALTH OF MASSACHUSETTS	
Municipalities Name	
NEGOTIATION REPORT	
TOWNSHIP: PROPERTY ADDRESS LAYOUT NO. PARCEL(S): OWNER(S): PHONE #: E-MAIL ADDRESS OWNER'S ADDRESS	F.A.P.#: PROJECT LAYOUT DATE  TENANTS: PHONE#: E-MAIL ADDRESS
CONTACT WITH: OWNER <input type="checkbox"/> TENANT <input type="checkbox"/> ATTORNEY <input type="checkbox"/> BY: VISIT <input type="checkbox"/> PHONE <input type="checkbox"/> LETTER <input type="checkbox"/> Obtain W-97	
EXPLAINED: RELO ASSISTANCE	LAYOUT PLANS <input type="checkbox"/> CONSTRUCTION PLANS <input type="checkbox"/> THE TAKING <input type="checkbox"/> PRO TANTO <input type="checkbox"/> INTEREST & TAX REBATE <input type="checkbox"/> RELEASES <input type="checkbox"/> OWNER'S RIGHTS <input type="checkbox"/> USE & OCCUPANCY CHARGE (PER Month) <input type="checkbox"/> TENANTS <input type="checkbox"/> RIGHTS <input type="checkbox"/>
I met on this date with the Owners at the Locus. I explained the ROW Plan, The Taking, and the Owners Rights. I provided them with the amount of award as based on the Just Compensation Summary Report and Appraisal I also provided them with the following:	
<hr/> <hr/> <hr/>	
DATE <input type="text"/>	Negotiator's Signature <input type="text"/>
TIME <input type="text"/>	AM / PM <input type="text"/>
Town Representative <input type="text"/>	
Property Owner Signature <input type="text"/>	
Property Owner/Representative* <input type="text"/>	

\*Signature acknowledges only that the above took place.

# Right-of-Way Process

## Helping Communities Move Projects Forward



OVERVIEW

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## New Slide – ROE

- Text

City/Town <b>MASSACHUSETTS</b>	
RIGHT OF ENTRY - WITHOUT PREJUDICE	
Owner(s) of Record:	<input type="text"/>
Address:	<input type="text"/>
Stations:	<input type="text"/>
Parcel & <b>Square Footage(s):</b>	<input type="text"/>
Projects:	<input type="text"/>

Permission is hereby given to the above municipality and the Massachusetts Highway Department or its duly authorized agents to enter upon my property in connection with the reconstruction of a roadway on the above named project. Plans for this project are located in the Municipal Offices. **The ROW impacts to my property are shown on the back page of this two sided document.** The purpose of this Right of Entry is to allow for changes and to carry out the work on my property as outlined below.

This Right of Entry is made of my/our free will. I/we waive my/our right(s) to an appraisal and compensation. I/we have been advised of our rights for just compensation under the provisions of Title III, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

This entry to be made without prejudice to my rights in settlement of any claims for damages that may hereafter appear.

Granted by: \_\_\_\_\_ / \_\_\_\_\_  
Owner(s) or Authorized Representative

Recommended by: \_\_\_\_\_ / \_\_\_\_\_  
City/Town Official - Title

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Certificate of Donation

- Donation requires property owner to sign form waiving rights to an appraisal and an award of damages.

<b><u>CERTIFICATE OF DONATION</u></b>		
Owner(s) of Record:	_____ City/Town: _____ Fed Aid Number: _____	
Project:	_____	
In Fee:	Permanent Easement(s):	_____
Temporary Easement(s): _____		
 To: Director, Right of Way Bureau Massachusetts Highway Department 10 Park Plaza - Room 6160 Boston, MA 02116-3973		
 This is to certify that the above referenced parcel(s) were donated by the owner(s) as provided for in the provisions of Title III, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.		
 The conveyance of these parcels, will be accomplished by deed or Order of Taking and recorded in the Registry of Deeds.		
 This donation is made of my/our free will. I/we waive my/our right(s) to an appraisal and compensation.		
Owner(s)/ Authorized Representative	_____	date
City/Town Official - Title	_____	date
 Note: If the subject parcel(s) is/are owned by a corporation, estate, trust, ect., then an appropriate document, authorizing this donation must be attached to this document.		

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Affidavit

- City/Town authorized official must sign the affidavit
- An affidavit is required for each property
- The owner was not coerced or compelled in any way to agree on the price to be paid for the property and was not left with an uneconomic remnant.

Affidavit	
City/Town: _____	Fed Aid Number: _____
Owner(s) of Record: _____	
Parcel(s): _____	
To: Massachusetts Highway Department Director, Right of Way Bureau 10 Park Plaza, Room 6160 Boston, Ma 02116-3973	
This is to certify that all rights in land acquired by the City/Town in connection with the above referenced project were acquired in accordance with the provisions of Title III, Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 as amended.	
With reference to the Act, the following applicable provisions were specifically met:	
1. Real property was appraised on _____ before the initiation of the negotiations. The owner or his designated representative was given the opportunity to accompany the appraiser during the inspection of the property.	
2. A fair market value of \$ _____ for the acquired property was offered. The owner was provided with a basis summary (a written-statement) for the amount established as just compensation.	
3. The owner was not or will not be required to surrender possession of the subject property before the tender of payment, or the agreed purchase price.	
4. The owner was not coerced or compelled in any way to agree on the price to be paid for the property and was not left with an uneconomic remnant.	
5. Relocation, of residential/commercial occupancy, was not required.	
Order of Taking Voted: _____	Recorded: _____
Written Notice Mailed: _____	Payment Tendered: _____
Physical Possession Secured: _____	
City/Town Official	Date _____
Physical Possession may only be secured on the later of: 1: Thirty (30) days after the owner receives written notice , or 2: After payment (award of damages) has been tendered	

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Town Meeting Approval of Eminent Domain

- Example language is provided in this document
- Do not omit or limit the town's power to use eminent domain.

### Town Meeting Approval, Eminent Domain & Donations

Most towns require town meeting approval to acquire land parcels for highway purposes

The following is a suggested format that allows the Board of Selectmen to acquire the necessary land areas on behalf of the inhabitants of your municipality.

To authorize the Board of Selectmen to acquire the following land parcels and/or rights in land parcels for the purpose of obtaining a secure and public right of way. This will allow for the construction and roadway safety improvements (Name of Project)

	Total # Parcels	Area (Square Feet)
In Fee	_____	_____
Permanent Easements	_____	_____
Temporary Easements	_____	_____

Further that the Selectmen may acquire these parcels, or modification of these parcels or other required parcels through all legal means. This includes donations, purchase or eminent domain. The subject parcels are currently identified on plans drafted by \_\_\_\_\_

Dated \_\_\_\_\_ Titled \_\_\_\_\_

Further, to raise and appropriate an amount of \$ \_\_\_\_\_ to defray any associated right of way expenses connected with this project.

Your town counsel and other appropriate officials should review and draft the proposed article. It should be modified as necessary given current information. Chapter 90 funds may be used for right of way purposes. Contact the local Ma. Hwy. District Office for information regarding use of your Chapter 90 Funds.

Town officials must estimate the Right of Way Cost. This may include appraiser fees, sign relocation's, award of damages, recording fees, Attorney fees, etc. Your assessors office should be of assistance in estimating the required appropriation.

If you have any questions? Do not hesitate to give me a call

Pamela Prentiss, Community Compliance Officer  
(508)929-3909  
Fax (617) 973-7951  
Ten Park Plaza  
Boston, Ma 02116-3973



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## Relocation Guidance

- 3 kinds - Business, Residential and sign and or privately held utility
- Strict adherence to Public Law 91-646 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49CFR Part 24), Massachusetts General Laws, Ch. 79, 79A and 81§7J, Massachusetts Regulation 760 CMR Part 27 and the Right of Way Manual
- Relocation assigned to each displacee to assist in understanding benefits and make any type of relocation a smooth of a transition as possible
- Displacees are contacted early on in the process by relocation agents who guide and assist throughout the whole process
- After acquisition has been made, there is a minimum of 120 days that the displacee may remain on the acquired property

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## The 75% to 100% Design Phase

- Municipality is responsible for all appraisal, damages, and litigation costs.



# Right-of-Way Process

Helping Communities Move Projects Forward



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## Right-of-Way Certificate

- Once the final Right-Of-Way Plan and all necessary documents have been submitted, reviewed, and accepted, MassHighway issues a Federal Right of Way Certificate

# Right-of-Way Process

Helping Communities Move Projects Forward



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## Benefits of Following the Process

- Avoid jeopardizing Transportation Improvement Program funding or deobligation of federal funding
- Avoid delays in advertising and construction
- Failure to comply with the provisions of the Uniform Act will result in denial of federal participation in project cost

# Right-of-Way Process

## Helping Communities Move Projects Forward



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## Right of Way Bureau Contact Information

### Community Compliance / Project Management Sections

Charles O'Brien, Project Administrator, Statewide

(617) 973-7921 / [charles.obrien@mhd.state.ma.us](mailto:charles.obrien@mhd.state.ma.us)

Marilyn Torre, Assistant Project Administrator, Statewide

(617) 973-8212 / [marilyn.torre@mhd.state.ma.us](mailto:marilyn.torre@mhd.state.ma.us)

Linda Walsh, Transportation Planner, Early Coordination and TE projects

(617) 973-8052 / [linda.walsh@mhd.state.ma.us](mailto:linda.walsh@mhd.state.ma.us)

Pamela Prentiss, Community Compliance Officer, District 1, 2 & 5

(617) 973-2441 / [pamela.prentiss@mhd.state.ma.us](mailto:pamela.prentiss@mhd.state.ma.us)

Daniel Gentile, Community Compliance Officer, District 3 & 4

(617) 973-2441 / [daniel.gentile@mhd.state.ma.us](mailto:daniel.gentile@mhd.state.ma.us)

## Chapter 9

# **MASSDOT HIGHWAY DIVISION**

**Number: P-94-005  
Date: 11-2-94**

## **POLICY DIRECTIVE**

---

**Highway Administrator**

### **Hazardous Waste Policy for Department Projects Policy Directive #2 Valuation of Contaminated Property**

**Purpose:**

In order to develop and maintain a fair and consistent valuation policy for contaminated property taken through eminent domain that meets the equity of the constitutional requirement for just compensation in light of changing statutory and regulatory requirements, the Division hereby modified Policy Directive #1, and to the extent that this Directive #2 conflicts with Policy Directive #1, this Directive #2 shall control.

**Policy Overview:**

This policy is based on a concept of value as it would be reflected in a private transaction between a willing buyer and willing seller. Value would reflect environmental due diligence as it would have been done and contamination as it would have been found by the parties in a private transaction. The market value derived would be based on the property's highest and best use, which contemplates all costs associated with developing the property for that use, including the costs of remediation necessary to bring the property into regulatory compliance for that use as revealed by the relevant due diligence standards.

**Policy:**

1. **Market value for contaminated property is the price a willing buyer would pay a willing seller in an arm's length transaction that assumes reasonable environmental due diligence typically performed in such a transaction.**
  - Reasonable environmental due diligence refers to the type of investigation that would have been done, and what would have been found in that investigation. For commercial/industrial property, reasonable due diligence is defined by ASTM Standard Practice E 1528-93 (Transaction Screen Process) and E 1527-93 (Phase I Environmental Site Assessment).
  - The Costs of remediation refer to those costs (if any) that would have been reasonably required to redress regulatory non-compliance or to meet other health-based standards, in order to achieve the highest and best use for the property.
  - The “highest and best” use for a contaminated property is the value maximizing use which meets the usual criteria of being legally permissible, physically possible, and economically feasible, but which also anticipates all remediation costs necessary to achieve that use. Determination of highest and best use may require testing different uses, each with its own remediation strategy, to select the value-maximizing, or “highest and best”, use.
2. **Remediation costs that would not have been borne by the condemnee in a normal market transaction should be disregarded by the appraiser in the determination of just compensation.**
  - If there is agreement on the scope of remediation required to achieve regulatory compliance, then information from the condemnee relating to the determination of the remediation cost will be considered.
  - If the contamination would not have been detected with reasonable environmental use diligence, and was only discovered due to the higher than normal level of due diligence (or construction related activity of the highway project) conducted by the condemnor, then the effects of the contamination and the resulting costs of remediation on market value should be disregarded by the appraiser in the determination of just compensation.

3. **There may be situations where the application of these guidelines will result in an inequitable calculation of just compensation. In those cases the Department shall use the valuation method which best meets the goal of providing "just compensation" to the condemnee. These could include:**
  - **Cases in which the Massachusetts Highway Department may want to value the property as though uncontaminated, and pursue a cost recovery action against a third party, not the condemnee.**
  - **Cases in which the Massachusetts Highway Department may want to consider the presence of an insurance policy that would pay for remediation costs.**
  - **Other cases not necessarily specified in this policy.**

-2-Policy.-

- 1 Market value for contaminated property is the price a willing buyer would pay a willing seller in an arm's length transaction that assumes reasonable environmental due diligence typically performed in such a transaction.
  - Reasonable environmental due diligence refers to the type of investigation that would have been done, and what would have been found in that investigation. For commercial industrial property, reasonable due diligence is defined by ASTM Standard Practice E1528-93 (Transaction Screen Process) and E 1527-93 (Phase I Environmental Site Assessment).
  - The costs of remediation refer to those costs (if any) that would have been reasonably required to redress regulatory non-compliance or to meet other health-based standards, in order to achieve the highest and best use for the property.
  - The "highest and best" use for a contaminated property is the value maximizing use which meets the usual criteria of being legally permissible, physically possible, and economically feasible, but which also anticipates all remediation costs necessary to achieve that use. Determination of highest and best use may require testing different uses, each with its own remediation strategy, to select the value maximizing, or "highest and best", use.
- 2 Remediation costs that would not have been borne by the condemnee in a normal market transaction should be disregarded by the appraiser in the determination of just compensation.
  - If there is agreement on the scope of remediation required to achieve regulatory compliance, then information from the condemnee relating to the determination of the remediation cost will be considered.
  - If the contamination would not have been detected with reasonable environmental due diligence, and was only discovered due to the higher than normal level of due diligence (or construction related activity of the highway project) conducted by the condemnor, then the effects of the contamination and the resulting costs of remediation on market value should be disregarded by the appraiser in the determination of just compensation.

**EXHIBIT NO. 9-1**

3. There may be situations where the application of these guidelines will result in an inequitable calculation of just compensation. In those cases the Division shall use the valuation method which best meets the goal of providing "just compensation" to the condemnee. These could include:
  - Cases in which the MassDOT Highway Division may want to value the property as though uncontaminated, and pursue a cost recovery action against a third party, not the condemnee.
  - Cases in which the MassDOT Highway Division may want to consider the presence of an insurance policy that would pay for remediation costs.
  - Other cases not necessarily specified in this policy.

**EXHIBIT NO. 9-1**

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
TERMS, CONDITIONS AND REQUIREMENTS FOR  
EXPERT REAL ESTATE APPRAISAL SERVICE CONTRACTS

2000 EDITION

ARTICLE 1. PREPARATION OF APPRAISALS

The CONTRACTOR shall make a detailed inspection and identification of the physical characteristics of the property, make such investigations and studies as are appropriate and necessary, afford the owner or his designated representative an opportunity to accompany the CONTRACTOR during his inspection of the property, and shall submit five original appraisal reports for each property being appraised, properly bound, preferable a three-ring binder that can easily adapt to inserting amended and/or deleting pages. These reports shall be on the HIGHWAY DIVISION'S standard form or on a reasonable facsimile thereof, and shall, in form and substance, conform to recognized appraisal principles and practices.

The CONTRACTOR shall view the property appraised under the terms of the contract within twenty (20) days after he receives notice in writing from the DIVISION that the taking has been recorded and inform the DIVISION of any changes in the condition of the property so viewed and/or in the estimated damages indicated in his submitted appraisal report.

The CONTRACTOR agrees personally to perform the services contracted for, except as provided hereinafter:

- (a) Where the CONTRACTOR is a partnership, firm or corporation, the CONTRACTOR shall identify the person who will render the appraisal services.
- (b) If the complexity and nature of an appraisal is such as to require highly specialized professional or expert assistance, service or advice in connection with special phases of the work which normally are not the type performed directly by the CONTRACTOR, he may employ, by contract or otherwise, and at his own expense, unless otherwise provided for, supplemental professional or expert services necessary for the proper performance of this contract, provided the CONTRACTOR identifies in writing, either in his proposal letter or in a separate letter to the DIVISION, the name, address and qualifications of the person or firm to be retained for such professional or expert services. The CONTRACTOR shall obtain prior written approval from the DIVISION for any such professional or expert services to be retained. The report of any specialist so retained shall be made a part of the appraisal prepared and submitted by the CONTRACTOR under the Contract.

ARTICLE 2. CHANGES

The DIVISION and the CONTRACTOR hereby mutually agree that in the case where there may be a substantial change or changes in the scope, character or estimated total cost of the work to be performed which the DIVISION deems necessary, such change or changes shall be made by the DIVISION giving written notice to the CONTRACTOR. If such change or changes cause an increase or decrease in the cost of and/or the time required for the performance of the contract, an equitable adjustment shall be made and the contract shall be modified accordingly.

ARTICLE 3. COMPLETION AND DELIVERY OF APPRAISAL REPORTS

It is understood and agreed that the time within which the work is to be performed is of primary importance and of the essence in the Contract. The CONTRACTOR will proceed with the work in such sequence and order as the DIVISION may direct and will furthermore furnish and deliver the appraisal reports to the DIVISION as soon as each appraisal report is completed.

If the work embraced in the Contract shall not have been completed by the time stipulated in the Executed Contract or, if applicable, the Letter of Assignment, then the CONTRACTOR shall pay to the DIVISION 1% of the contract amount per calendar day for the entire period of overrun, unless the CONTRACTOR submits a valid reason for the lateness in writing and the Fee Appraisal Committee votes to accept this reason.

Whatever sum of money may become due and payable to the DIVISION by the CONTRACTOR under this article may be retained out of money belonging to the CONTRACTOR in the hands and possession of the DIVISION.

EXHIBIT NO. 9-2

It is agreed that this Article shall be construed and treated by the parties to the Contract, not as imposing a penalty upon said CONTRACTOR for failing fully to complete said work as agreed on or before the time specified in the Executed Contract or, if applicable, the Letter of Assignment, but as liquidated damages to compensate said DIVISION for all additional costs incurred by the DIVISION because of the failure of the CONTRACTOR fully to complete said work on or before the date of completion specified in the Contract.

ARTICLE 4. PROCUREMENT OF APPRAISAL CONTRACT AND DISCLOSURE

The CONTRACTOR warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure the Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of the Contract. The contractor agrees to disclose any business relationship with any Massachusetts Highway DIVISION personnel. For breach or violation of this warranty, the DIVISION shall have the right to annul the Contract without liability.

ARTICLE 5. TESTIMONY IN JUDICIAL, REAL ESTATE REVIEW BOARD OR ADMINISTRATIVE PROCEEDINGS

For testimony in any Judicial, Real Estate Review Board, or Administrative Proceedings, the fair and reasonable compensation for the CONTRACTOR'S services shall be the sum of Three Hundred Fifty (\$350.00) dollars per day for each full day's attendance. In the event such attendance shall be one-half day or less, the fair and reasonable compensation shall be made on the basis of Two Hundred (\$200.00) dollars for each half day. Compensation for conference time with duly authorized representatives of the Attorney General's Office prior to trial shall be at the rate of sixty-five (\$65.00) dollars per hour or any fraction thereof. The CONTRACTOR shall keep such personal records of all details with respect to the appraisal reports as will enable the CONTRACTOR to appear as such witness. The CONTRACTOR will not accept any appraisal assignments or testify in Court on behalf of any property owner against the Commonwealth on property located within the limits as delineated or contained by the terms of the Contract.

ARTICLE 6. ACCEPTANCE OF THE WORK

In the event the appraisal reports are not acceptable to the DIVISION with respect to matter of form or content, they shall be returned to the CONTRACTOR in order that the same may be revised, amended or added to without further compensation being paid by the DIVISION.

ARTICLE 7. MATERIALS TO BE SUPPLIED

All materials supplied by the DIVISION and described in the Contract shall remain the property of the DIVISION, and upon completion of the work in accordance with the terms of the Contract, the CONTRACTOR shall be required to return the same upon request of the DIVISION.

Within fourteen (14) days of the Contract date, the CONTRACTOR is required to notify the DIVISION of any failure to receive items enumerated in the Contract relative to the work to be performed. If the CONTRACTOR fails to send the aforesaid notice within the fourteen (14) days, the CONTRACTOR shall be deemed to have waived any claim of nonconformity by the DIVISION under this article.

ARTICLE 8. PAYMENT

The full compensation as stated in the Contract less liquidated damages, if any, under Article 3, will be paid as follows: Eighty (80) percent of said compensation will be paid at the time of completion and delivery of all appraisal reports which are acceptable to the DIVISION, with respect to form and content after a preliminary review. Twenty (20) percent of said compensation will be paid when all appraisal reports have received final review and approval by the DIVISION. When all the appraisals are submitted under a Contract, a bill must also be submitted which includes a breakdown of the dates work was performed and hours spent at the rate of \$65.00 per hour, which total shall represent the proposed fee of the Contract.

#### ARTICLE 9. CERTIFICATION OF APPRAISAL

The CONTRACTOR hereby agrees to execute and include in his appraisal report, the DIVISION'S "Certificate of Appraiser" form for each property appraised. A new certificate shall be prepared when there is a change in the appraisal report which affects the date of valuation or the appraised value, or when additional or supplemental value information to support the appraised value is supplied by the CONTRACTOR.

#### ARTICLE 10. DISPUTES

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract which is not disposed of by agreement, shall be decided by the Commissioner of the Massachusetts Highway DIVISION, or his/her duly authorized representatives, who shall furnish to the CONTRACTOR a written copy of his/her decision within thirty (30) days from the date of receipt thereof. The CONTRACTOR may appeal therefrom by mailing or otherwise furnishing a written appeal addressed to the Division Administrator. The decision of the Board of Commissioners upon such appeal shall be final and conclusive. In connection with any appeal proceeding under the "Disputes" Clause, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the contract and in accordance with the Commissioner's decision. None of the provisions of the Contract shall be construed as making final the decision of any administrative official representative or board concerning a question of law.

#### ARTICLE 11. APPRAISAL REQUIREMENTS

The following elements are minimum requirements.

##### (1) Parcel Identification

- (a) Federal-aid project number and land parcel number.
- (b) Names of apparent owner of each interest being evaluated.
- (c) Location of property.
- (d) Total area of property in acres or square feet.
- (e) Area of each interest in property being acquired, in acres or square feet.

##### (2) 5-Year Delineation of Title

As a minimum, the following information shall be shown for all transfers of the appraisal property for the past five years. If possible the consideration should be verified. If there have been no transfers within the past five years, "none" shall be indicated.

(a) FROM TO DATE BOOK PAGE      CONSIDERATION VERIFIED - INDICATED

##### (3) Purpose of Appraisal

- (a) Statement of value to be estimated.
- (b) Right of interests being appraised.

##### (4) Description of Property

General location, present use, total area, zoning type and condition of improvements and special features that may add to or detract from the value of the property. In case of partial acquisition there shall be a similar description of the remainder property.

##### (5) Highest and Best Use

State the highest and best use of the property on which the appraisal is based before the acquisition of certain rights and interests and the highest and best use of the remainder after the take when a partial take is involved. In either instance, if the existing use is not the premise on which valuation is based, the appraisal shall contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

##### (6) Changes in Valuation Caused by the Public Improvement

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the likelihood that the property would be acquired for such improvement, other than that

due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

(7) Documentation

(a) The appraisal shall include all applicable approaches to value and if an approach is not considered applicable by the CONTRACTOR he/she shall state why. All pertinent calculations used in developing the approaches shall be shown. The DIVISION may require in certain cases, that any or all applicable approaches be demonstrated. All pertinent calculations used in developing the approaches shall be shown. The DIVISION may require in certain cases, that any or all applicable approaches be demonstrated. All pertinent calculations used in developing the approaches shall be shown.

(b) Where the cost approach is utilized, the appraisal shall contain the specific source of cost data and an explanation of each type of accrued depreciation. Depreciation may be shown in either dollar (\$) amounts or percentages (%) but each type shall be explained to the extent possible.

(c) In the market approach, the appraisal must contain a direct comparison of pertinent comparable sales to the property being appraised. In general, three to five comparable sales are required but in special instances a lesser number may be used. Where a lesser number is used, acceptable reasons must be given why other comparable sales are not available. When comparing properties, the appraisal must show, in dollar amounts, the actual adjustments of the sale price of the comparable property to the subject property. In the case of rents, the appraisal must state the reason for an adjustment in rent from the comparable to the subject property. When comparing properties, the adjustments must not be excessive in relation to the type of property being appraised and the market data available. When comparing properties, the adjustment is acceptable provided it is accompanied by a listing of the significant elements of dissimilarity affecting value that entered into the value estimate. The use of lump-sum adjustments is primarily intended for those cases where the comparables and the subject property are closely similar and where there is not a substantial value difference.

(d) When the income (capitalization) approach is used, there shall be documentation to support the income, expenses, interest rate, remaining economic life and capitalization rate. Where it is determined that the economic rental income is different from the existing or contract income, the increase or decrease shall be explained and supported by market information.

(8) Reduction of Compensation by Benefit Conferred

(a) Compensation to which an owner of property is entitled by reason of a partial taking or a public improvement is reduced by the special benefit conferred on his property by the taking or improvement.

(b) The effect of a partial taking or of a public improvement on property not taken may be beneficial rather than injurious. More often property may be injured in some respect and benefited in others.

(c) The value of any benefit is appraised separately and then deducted from the damages suffered by the landowner. Just and reasonable compensation entails reduction in the fair market value of the property involved, that is total damages sustained minus the value of benefits conferred.

(9) Direct Cause and Reasonably Probable Consequence

Injuries and benefits to property not taken may be considered in determining compensation only to the extent that they are directly caused by and are a reasonably probable consequence of a taking of land or the construction of a public improvement.

(a) To be entitled to consideration in an appraisal, any injuries to property not taken must arise either from a partial taking or from a public improvement. Every injury and benefit considered must be traced back to its cause, in writing, in the appraisal report. Fundamental to reliable operation of the appraisal process, is discovery of the sources of injury or benefit and analysis of them in terms of their probable consequences.

(b) If an injury or benefit arises exclusively from activities of a taking agency, the requirement of the rule is fulfilled. If however, injury or benefit arises from natural causes or some other unrelated source, it may not be used as an element in determining damages to property. When in doubt, an appraiser should include, in his written report, a complete exposition of his/her reasoning in support of whatever decision he/she makes on a problem of this type.

(10) After Value

The appraisal of the after-value shall be supported to the same extent as the appraisal of the before value. This support shall include one or more of the following:

- (a) Sales comparable to the remainder properties.
- (b) Sales of comparable properties from which there have been similar acquisitions or takings for like usages.
- (c) Indications from severance damage studies as related to similar takings.
- (d) Public sales of comparable lands by the State or other public agencies.
- (e) In the event the data described in a ~~thru~~ d above are not available, the appraisal shall so state and give the appraiser's reasoning for his value estimate.

(11) Title to Buildings

"Where title to a building, structure or improvement is to be acquired, and a tenant therein has a right or obligation to remove said building, structure or improvement at the end of his term, the CONTRACTOR shall, notwithstanding said right, separately appraise the fair market value which such building, structure or improvement contributes to the fair market value of the real property being appraised and/or acquired. The CONTRACTOR shall also appraise the fair market value of such building, structure or improvement for removal from the real property. The CONTRACTOR shall in such cases provide a breakdown showing the allocation of the separate interests involved."

(12) Approaches to Value

Where two or more of the approaches to value are used, the appraisal shall show the correlation of the separate indications of value derived by each approach along with a reasonable explanation for the final conclusion of value. This correlation shall be included for both before and after appraisals.

(13) Photographs

All appraisals shall include identified photographs of the subject property including all principal above ground improvements or unusual features affecting the value of the property to be taken or damaged. The photographs must be identified by placing the following information on or adjacent to the photograph.

- (a) Property Owner
- (b) Date Taken
- (c) Taken by Whom
- (d) The property location of the camera must be shown on a plan or on the photograph

(14) Property Plan

Appraisal reports for total takings shall contain a sketch or plan of the property showing boundary dimensions, location of improvement and other significant features of the property. For partial takings, the sketch or plan shall also show the area to be acquired, relation or improvements to the taking area, and area of each remainder.

(15) Comparable Sale

Each appraisal shall contain or make reference to the comparable sales which were used in arriving at the fair market value estimate. The CONTRACTOR shall state the date of the sales, the names of the parties to the transaction, consideration paid, financing, conditions of sale, and with whom and by whom these were verified, the location, total area, type of improvement, his/her estimate of highest and best use at the date of the sale, zoning and any other data pertinent to the analysis and evaluation thereof. If the CONTRACTOR is unable to verify the financing and all conditions of sale from the usual sources, such as buyer, seller, broker, title or escrow company, etc., he shall so state. In addition to the above, the appraisal must include a narrative description of the comparable sale and a map or sketch showing the location of each comparable sale and the subject property.

- (a) A sketch, not necessarily to scale, will be included for each comparable sale noted in the appraisal report and will include the following information:

The street name and the number on which the comparable property is located together with the dimensions of the property and area of same, in the absence of same a dimension from the nearest identifiable location or street which may intersect the subject street.

(16) Inspection

All property appraised and the comparable sales which were relied upon in arriving at the fair market value estimate shall be personally inspected in the field by the CONTRACTOR and all dates of inspection shall be shown in the appraisal.

(17) Signature

Each appraisal shall contain the date of the CONTRACTOR'S signature.

**(18) Real and Personal Property**

The CONTRACTOR is required to list items which he considers Real and Personal Property. Also to be listed or noted are items of a questionable nature that have been included as part of the realty. The final result should be a clear and positive identification of the items considered as either Real or Personal Property and it should reflect a position on the inclusion of questionable items as part of the realty.

**(19) Specialty Items**

When a separate valuation of machinery, equipment or other specialty is required, the value of such item shall not be arbitrarily added to the valuation of the realty but shall be considered to the extent of the contributory value in establishing the value of the whole property.

**ARTICLE 12. LEGAL QUESTIONS**

(1) Concerning fundamental principles of law, relative to the award of damages, deductible and non-deductible benefits, and the proper measure of just compensation under Massachusetts Laws, the CONTRACTOR is directed to refer to the Attorney General's Manual.

**ARTICLE 13. PARTIAL ACQUISITION**

The "Before and After" Method of valuation as interpreted by State law shall be used in all partial acquisitions of subject property. Where there is no damage or benefits to the residue land or improvements, the CONTRACTOR shall so state.

**ARTICLE 14. NOMINAL DAMAGES**

If the taking is determined to be nominal in value and results in damages of \$2,500.00 or less, the CONTRACTOR must include at least one comparable land sale to justify his square foot area.

**ARTICLE 15. APPRAISAL FORMAT**

The appraisal report shall be prepared in the following sequence.

TOWN-CITY, PROJECT  
OWNER'S NAME & ADDRESS  
LOCATION OF PROPERTY  
FEDERAL AID PROJECT NO.  
PARCEL IDENTIFICATIONS  
TABLE OF CONTENTS  
SUMMARY OF SALIENT FACTS: PURPOSE OF APPRAISAL  
GRANTOR: TITLE ABSTRACT: UTILITIES  
LOCATION & NEIGHBORHOOD  
ZONING: ASSESSMENTS: ABATEMENTS  
SALES HISTORY ANALYSIS  
PHOTOGRAPHS  
PLAN OF ENTIRE PROPERTY SHOWING TAKING  
DESCRIPTION OF PROPERTY BEFORE TAKING  
HIGHEST & BEST USE: NEIGHBORHOOD INFLUENCE  
APPRAISAL PROCESS - THREE (3) APPROACHES  
COST APPROACH TO VALUE:  
    LAND VALUATION - COMPARABLE SALES ANALYSIS  
    LAND VALUATION - MARKET DATA APPROACH  
    SITE IMPROVEMENT VALUATION: TOTAL VALUATION  
INCOME APPROACH TO VALUE  
    RENT SCHEDULES  
MARKET DATA APPROACH TO VALUE:  
    LAND W/IMPROVEMENTS VALUATION - COMP. SALES ANALYSIS  
    LAND W/IMPROVEMENTS VALUATION - MARKET DATA APPROACH

RECONCILIATION: FINAL ESTIMATE OF VALUE - ENTIRE PROPERTY  
DESCRIPTION OF PARCELS TO BE TAKEN: DESCRIPTION OF  
    REMAINDER PROPERTY AND EFFECT OF TAKING AND  
    CONSTRUCTION: CONTRACT WORK IN LIEU OF DAMAGES  
APPRAISAL OF PROPERTY - AFTER VALUE  
ANALYSIS OF VALUE OF THE FINAL ESTIMATE OF DAMAGES  
CERTIFICATE OF APPRAISER

**ADDENDA**

COPY OF DEED  
 LOCATION MAP OF COMPARABLE SALES  
 COMPARABLE SALES DATA SHEETS (INCLUDING SKETCH & PHOTO)  
 COST DATA  
 REAL & PERSONAL PROPERTY REPORT  
 ECONOMIC RENTAL  
 ALLOCATION OF DAMAGES  
 AFFIDAVIT  
 REVIEW APPRAISER'S CHECKLIST: COMMENTS & ESTIMATE: STATEMENT

ARTICLE 16. DIVISION STANDARD SYMBOLS

1	Taken in Fee in Behalf of the Commonwealth
1-C	Taken in Fee in Behalf of the City
1-T	Taken in Fee in Behalf of the Town
1-U	Taken in Fee (Ordinarily Conveyed to Utility)
1-RR	Taken in Fee in Behalf of the Railroad
1-X	Excess Land
M-1	Maintenance Area
D-1-F	Drainage Taking in Fee
C-1-F	Channel Taking in Fee
UR-1	Uneconomic Remainder
VP-1	Vehicular Parking
CVP-1	Commuter Vehicular Parking
FRL-1	Functional Replacement Land
RL-1	Replacement Land
ABBREVIATIONS FOR EASEMENT TAKINGS*	
AT-1	Access Taking
B-1	Bridge
BA-1	Bridge Abutment
C-1	Channel
CD-1	Channel Drainage
CL	Construction Limitation
D-1	Drainage
DS-1	Drainage and Slope
E-1	Highway Easement (Portion of Right-of Way)
E-RR-1	Easement on Behalf of Railroad
FB-1	Footbridge
FS-2	Flight of Stairs
GD-1	Gravel Dike
GR-1	Guard Rail
GU-1	General Utility
HS-1	Highway Sign
HL-1	Highway Light
PL-1	Power Line
R-1	Right-of-Way Taken in Behalf of Owner of Land Who's Rights of Access thereto and egress therefrom would otherwise be inoperative due to the limited access provisions.
R-B-1	Road and Bridge
R-B-S-1	Road, Bridge and Slope
RD-1	Drainage in Connection with a Right of Way
RR-1	Railroad Bypass
R-RR-1	Road and Railroad Bypass
RS-1	Slope in Connection with a Right of Way
RT-1	Temporary Easement for Removal or Demolition of Certain Structures
S-1	Slope
SRE-1	Temporary Sign Removal
SS-1	Slope
SW-1	Sidewalk
SW-S-1	Sidewalk and Slope
TB-1	Tie Back
TE-1	Temporary Easement for Various Purposes
TR-1	Temporary Road
U-1	Utility Easement (Ordinarily Conveyed to a Utility Company)

W-1	Wall
WM-1	Watermain
WMD-1	Watermain and Drainage
WQM-1	Water Quality Monitoring Station
WS-1	Wall and Slope
	ABBREVIATIONS FOR DISPOSITION OF STATE PROPERTY
LL	Land Lease (Portion of State Highway)
LR	Land Lease (Not Part of State Highway)
LU	Land Use (Portion of State Highway)
LS	Land Sale (Portion of State Highway)
SR	Land Sale (Not Part of State Highway)
LA	Land Acquired By DIVISION (Usually by Deed)

\*Notes for Easement Takings

1. Temporary Easements are preceded by letter "T" (For Example, TD-1, TWM-1,etc.)
2. Easements in Behalf of Town, City, Railroad, or the M.D.C. are followed by Letter: "T", "C", "RR", "MDC", (For example: D- 1-T, D-1-C, D-1-RR, D-1-MDC
3. EG-1. The Symbol is used to delineate an area comprising a portion of State Property in which an easement is to be granted.
4. The symbols listed and described above may be preceded by a number prefix. (For example, 1-1, 1-D-1, 2-1, 2-D-1, etc.)
5. The symbols A, B, C. etc. designate "Spot Takings in Fee". The symbols B11-1, B11-2, etc. designate "Block Taking in Fee".

EXHIBIT NO. 9-2

THE COMMONWEALTH OF MASSACHUSETTS

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**APPRAISAL REPORT**

City/Town:

Project:

File Number:

Owner's Name:

Mailing Address:

Property Location:

F.A. Project No.:

Layout Number:

Parcel No. (s) :      Area(s) :      Interest(s) Acquired:

**EXHIBIT NO. 9-3**

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

## AFFIDAVIT

Date:

I, \_\_\_\_\_, HEREBY  
CERTIFY:  
that on \_\_\_\_\_, I afforded the Owner or the Owner's  
Representative the opportunity to accompany me on the inspection  
of the property located at  
\_\_\_\_\_ on \_\_\_\_\_.

OWNER: APPRAISER:

Signature

Signature

OWNER'S REPRESENTATIVE: APPRAISER:

Signature

Signature

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

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PURPOSE OF APPRAISAL; DEFINITION OF MARKET VALUE;	
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ANALYSIS OF VALUE OF THE FINAL ESTIMATE OF DAMAGES . . . . .	9
CERTIFICATE OF APPRAISER . . . . .	10

## ADDENDA

COPY OF DEED  
LOCATION MAP OF COMPARABLE SALES  
COMPARABLE SALES DATA SHEETS (INCLUDING SKETCH & PHOTO)  
ALLOCATION OF DAMAGES  
AFFIDAVIT  
REVIEW APPRAISER'S CHECKLIST; COMMENTS & ESTIMATE; STATEMENT

(\$0 to \$2,500)

**NOTE: REFER TO THE FULL APPRAISAL REPORT (EXHIBIT NO. 9-5 FOR  
EXAMPLE OF INFORMATION NEEDED FOR THIS TABLE OF CONTENTS.**

EXHIBIT NO. 9-3

THE COMMONWEALTH OF MASSACHUSETTS

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**APPRAISAL REPORT**

City/Town:

Project:

File Number: PROJIS code

Owner's Name:

Mailing

Address:

Property Location:

F.A. Project No.:

Layout Number:

Parcel No. (s) :      Area (s) :      Interest (s) Acquired:

**EXHIBIT NO. 9-4**

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**AFFIDAVIT**

Date:

I, \_\_\_\_\_, HEREBY  
CERTIFY:  
that on \_\_\_\_\_, I afforded the Owner or the Owner's  
Representative the opportunity to accompany me on the inspection  
of the property located at  
\_\_\_\_\_ on

OWNER: APPRAISER:

Signature

Signature

OWNER'S REPRESENTATIVE: APPRAISER:

Signature

Signature

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**REAL AND PERSONAL PROPERTY REPORT**

**TO:** , Deputy Director, Right of Way  
**FROM:** , Review Appraiser  
**DATE:**  
**SUBJECT:** Above-referenced property

---

OWNER:

TENANT:

ADDRESS:

COST CODE:

On \_\_\_\_\_, an inspection was made of the above-mentioned property. ,  
Review Appraiser, was accompanied by

---

The following property was determined to be REAL PROPERTY:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

Real and Personal Property Report

REAL PROPERTY, continued

Page 2 of 2

The following property was determined to be PERSONAL PROPERTY:

Relocation	Comments	(if any) :
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CITY/TOWN: \_\_\_\_\_  
FILE NO.: \_\_\_\_\_

PARCEL:  
OWNER:

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## ADDENDA

COPY OF DEED

LOCATION MAP OF COMPARABLE SALES

COMPARABLE SALES DATA SHEETS (INCLUDING SKETCH & PHOTO)

REAL & PERSONAL PROPERTY REPORT

ECONOMIC RENTAL

ALLOCATION OF DAMAGES

AFFIDAVIT

REVIEW APPRAISER'S CHECKLIST; COMMENTS & ESTIMATE; STATEMENT

(2,500+/NO SEVERANCE DAMAGE)

NOTE: REFER TO THE FULL APPRAISAL REPORT (EXHIBIT NO. 9-5) FOR EXAMPLES OF INFORMATION NEEDED FOR THIS TABLE OF CONTENTS.

THE COMMONWEALTH OF MASSACHUSETTS

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**APPRAISAL REPORT**

City/Town:

Project:

File Number: PROJIS code

Owner's Name:

Mailing Address:

Property Location:

F.A. Project No.:

Layout Number:

Parcel No. (s):      Area(s):      Interest(s) Acquired:

**EXHIBIT NO. 9-5**

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

LAYOUT NO.: \_\_\_\_\_ F.A. PROJECT NO.:  
PROJECT:

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

## AFFIDAVIT

Date:

I, \_\_\_\_\_, HEREBY  
CERTIFY:

that on \_\_\_\_\_, I afforded the Owner or the Owner's Representative the opportunity to accompany me on the inspection of the property located at \_\_\_\_\_ on \_\_\_\_\_.

OWNER: APPRAISER:

Signature

Signature

OWNER'S REPRESENTATIVE: APPRAISER:

Signature

Signature

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

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<b>COST APPROACH TO VALUE:</b>	
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LAND VALUATION - MARKET DATA APPROACH . . . . .	14
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<b>INCOME APPROACH TO VALUE . . . . .</b>	
RENT SCHEDULES . . . . .	17
<b>MARKET DATA APPROACH TO VALUE:</b>	
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COPY OF DEED  
LOCATION MAP OF COMPARABLE SALES  
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COST DATA  
REAL & PERSONAL PROPERTY REPORT  
ECONOMIC RENTAL  
ALLOCATION OF DAMAGES  
AFFIDAVIT  
REVIEW APPRAISER'S CHECKLIST; COMMENTS & ESTIMATE; STATEMENT

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:  
OWNER:

### SUMMARY OF SALIENT FACTS OF APPRAISAL

Present use of Property:  
Highest and Best Use:

Improvements:

Total Area of Property: \_\_\_\_\_ sq.ft. \_\_\_\_\_ acres

Area to be Taken (Fee): \_\_\_\_\_ sq.ft. \_\_\_\_\_ acres

Other Rights to be Taken:

Improvements to be Taken:

Land Improvements to be Taken:

Before Value: \$

After Value: \$

Damages: \$

Of the Three Approaches to Value, the Principal Approach Considered to Establish Fair Market Value:

Remarks:

### PURPOSE OF APPRAISAL

The purpose of the appraisal is to estimate the Market Value of the property affected, and the legally compensable damages resulting from the taking of land and/or rights in land for highway purposes, as determined by the laws of the Commonwealth of Massachusetts. (If for any other purpose, state below.)

### DEFINITION OF MARKET VALUE

Market Value is defined as the highest price, in terms of money, which a property will bring if exposed for sale in a normal market, allowing a reasonable time to find a purchaser, who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used, with neither

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

party under compulsion to buy or sell.

-3-

**GRANTOR, TITLE ABSTRACT, UTILITIES**

Registry and District:

Grantor:

Date: \_\_\_\_ / \_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_ Price: \$

Registered Land - Certificate No.: \_\_\_\_\_ Case No.:

Document No.:

Probate of \_\_\_\_\_ Probate No.:

Registry

Mortgagee(s) : \_\_\_\_\_ Book: \_\_\_\_\_ Page:

Lessee(s) : \_\_\_\_\_ Book: \_\_\_\_\_ Page:

Encumbrances:

Tenant(s) at Will - Name(s) & Addresses:

Utilities Available:

Water(Y/N) : \_\_\_\_\_ Sewer(Y/N) : \_\_\_\_\_ Electricity(Y/N) : \_\_\_\_\_ Gas(Y/N) :

Location of Underground Services (show on property sketch) :

Other Pertinent Data:

Assessor's Map(s) : \_\_\_\_\_ Lot(s) :

-4-

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

LOCATION AND NEIGHBORHOOD

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

LOCATION AND NEIGHBORHOOD

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

## ZONING

Residential:

Business:

Industrial (or Other):

Required Minimum Lot Area:

Required Minimum Lot Frontage:

Other Pertinent Data (Allowable Uses, Minimums):

## ASSESSMENTS

List current assessments, plus two (2) previous years; tax rates; actual taxes; date of last revaluation; state whether owned in governmental or proprietary interest, and whether tax exempt; give any factors influencing property value; state whether any abatements were applied for, and if so, whether granted or denied.

	<u>1992</u>	<u>1991</u>	<u>1990</u>
Land area:			
Land Valuation:	\$	\$	\$
Improvement Valuation:	\$	\$	\$
-----	-----	-----	-----
Total Valuation:	\$	\$	\$
Tax rate (per \$1,000):	\$ . /	\$ . /	\$ . /
Total real estate tax:	\$	\$	\$

Date of last revaluation:

Owned in governmental

or proprietary interest: Governmental \_\_\_\_\_ Proprietary

Tax Exempt: Yes \_\_\_\_\_ No

Factors influencing property value:

Abatement applied for: Yes \_\_\_\_\_ No

If Yes: Granted \_\_\_\_\_ DENIED \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

**SALES HISTORY ANALYSIS (MINIMUM - 5 YEAR)**

Explain pertinent data including parties to transaction, date of purchase, price verified, deed reference, mortgage, leases and any other effects on subject property.

/ / : Book \_\_\_\_\_ Page

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### PHOTOGRAPHS

Photos indexed with location and direction shown on plot plan.  
Photos to show principal improvements and/or any unusual features,  
and be identified, including location; name of photographer; date  
photo was taken; direction of camera.



PHOTOGRAPH #1

PHOTOGRAPH SHOWS

TAKEN BY:

DATE TAKEN: / /  
DIRECTION:



PHOTOGRAPH

#2:

PHOTOGRAPH

SHOWS

TAKEN BY

DATE TAKEN: / /

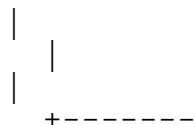
DIRECTION:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO. :

OWNER:



- 8A -

CITY/TOWN: \_\_\_\_\_

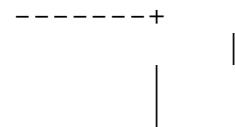
FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO. :

OWNER:

## PHOTOGRAPHS

Photos indexed with location and direction shown on plot plan.  
Photos to show principal improvements and/or any unusual  
features, and be identified, includ-  
ing location; name of photographer; date photo was taken; direction  
of camera.



### PHOTOGRAPH #3:

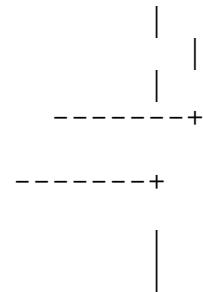
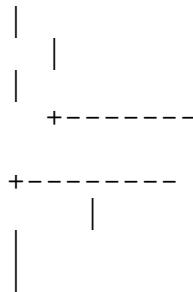
SHOWS

PHOTOGRAPH

TAKEN BY:

DATE TAKEN:    /    /

DIRECTION:



### PHOTOGRAPH #4:

SHOWS

PHOTOGRAPH

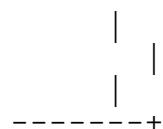
CITY/TOWN: \_\_\_\_\_  
PARCEL NO.:  
OWNER:

FILE NO.: \_\_\_\_\_ PROJIS code

TAKEN BY:

DATE TAKEN:    /    /

DIRECTION:



CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

## PHOTOGRAPHS

Photos indexed with location and direction shown on plot plan. Photos to show principal improvements and/or any unusual features, and be identified, including location; name of photographer; date photo was taken; direction of camera.

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### PHOTOGRAPH #5:

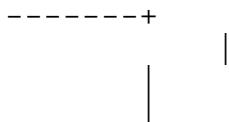
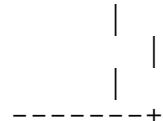
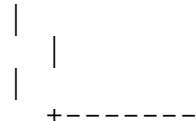
SHOWS

PHOTOGRAPH

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



### PHOTOGRAPH #6:

SHOWS

PHOTOGRAPH

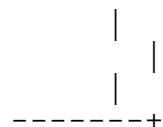
CITY/TOWN: \_\_\_\_\_  
PARCEL NO.:  
OWNER:

FILE NO.: \_\_\_\_\_ PROJIS code

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



- 8C -

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

## PHOTOGRAPHS

Photos indexed with location and direction shown on plot plan. Photos to show principal improvements and/or any unusual features, and be identified, including location; name of photographer; date photo was taken; direction of camera.

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### PHOTOGRAPH #7:

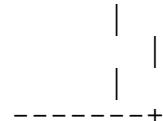
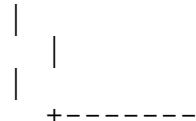
SHOWS

PHOTOGRAPH

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



### PHOTOGRAPH #8:

SHOWS

PHOTOGRAPH

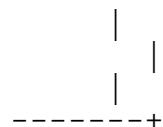
CITY/TOWN: \_\_\_\_\_  
PARCEL NO.:  
OWNER:

FILE NO.: \_\_\_\_\_ PROJIS code

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



- 8D -

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

## PHOTOGRAPHS

Photos indexed with location and direction shown on plot plan. Photos to show principal improvements and/or any unusual features, and be identified, including location; name of photographer; date photo was taken; direction of camera.

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### PHOTOGRAPH #9:

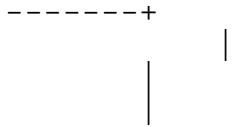
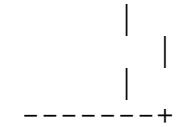
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PHOTOGRAPH

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



### PHOTOGRAPH #10:

SHOWS

PHOTOGRAPH

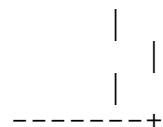
CITY/TOWN: \_\_\_\_\_  
PARCEL NO.:  
OWNER:

FILE NO.: \_\_\_\_\_ PROJIS code

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



- 8 E -

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

## PHOTOGRAPHS

Photos indexed with location and direction shown on plot plan. Photos to show principal improvements and/or any unusual features, and be identified, including location; name of photographer; date photo was taken; direction of camera.

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PHOTOGRAPH #11:

SHOWS

PHOTOGRAPH

TAKEN BY:

DATE TAKEN: / /

DIRECTION:

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PHOTOGRAPH #12:

SHOWS

PHOTOGRAPH

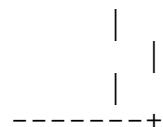
CITY/TOWN: \_\_\_\_\_  
PARCEL NO.:  
OWNER:

FILE NO.: \_\_\_\_\_ PROJIS code

TAKEN BY:

DATE TAKEN: / /

DIRECTION:



- 8F -

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### PLAN OF ENTIRE PROPERTY SHOWING TAKING

Show boundary dimensions, location of improvements, underground utilities and services where required, directional arrow and scale, any other significant features affecting appraisal, including the name of the nearest intersection and the distance to it.

Area Before:

AREA OF TAKING:

Area Remaining:

NOTE: Show sketches of improvements on separate pages. Include the dimensions, and area, of each floor.

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### DESCRIPTION OF PROPERTY BEFORE TAKING

Give general location and present use; describe land area, shape and dimensions, and any other special features; describe types of buildings, size and dimensions; give actual or approximate age; state condition; itemize real and personal property (if needed) and include in the Addenda the "Real and Personal Property Report".

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### DESCRIPTION OF PROPERTY BEFORE TAKING

Give general location and present use; describe land area, shape and dimensions, and any other special features; describe types of buildings, size and dimensions; give actual or approximate age; state condition; itemize real and personal property (if needed) and include in the Addenda the "Real and Personal Property Report".

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### DESCRIPTION OF PROPERTY BEFORE TAKING

Give general location and present use; describe land area, shape and dimensions, and any other special features; describe types of buildings, size and dimensions; give actual or approximate age; state condition; itemize real and personal property (if needed) and include in the Addenda the "Real and Personal Property Report".

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

**HIGHEST AND BEST USE**

(If present use, justify; if other use, explain)

**NEIGHBORHOOD INFLUENCE**

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### APPRAISAL PROCESS - 3 APPROACHES

(Include reasons for selecting or omitting each approach to value)

#### VALUATION RATIONALE AND METHODOLOGY

This section of the report explains the applicability of recognized appraisal methods, reviews the work done in the valuation process, and explains the methodology used in our analysis.

The Income Approach: This approach analyzes a property's capacity to generate income (or other monetary benefits) and converts this capacity into an indication of market value. The approach is suitable for properties that have obvious earning power and investment appeal, but inappropriate for properties that have no readily discernible income potential.

The Market Approach: This approach compares the subject property to other properties that have recently changed hands at known price levels. The approach is most meaningful when there is adequate market data involving comparable properties. Reliability of the approach varies directly with the quantity and quality of available market data.

The Cost Approach: In this approach, the cost to replace the improvements is estimated. A deduction is made for depreciation, and the result is combined with the estimated value of the underlying land. The approach is applicable when each component is independently measurable, and when the sum of all components is believed to reflect market value. The approach is not applicable to un-improved land or obsolete improvements.

#### APPLICABILITY OF APPROACHES

The inherent strengths of each approach and the nature of the subject property must be evaluated to determine which will provide supportable estimates of market value. In this instance,

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND VALUATION - COMPARABLE SALES ANALYSIS**

(See data sheets in Addenda)

Narrative description and analysis of each sale:

COMP LS-1:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND VALUATION - COMPARABLE SALES ANALYSIS**

(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND VALUATION - COMPARABLE SALES ANALYSIS**

(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### LAND VALUATION - MARKET DATA APPROACH

ADJUSTMENT FACTORS	COMP LS-1	COMP LS-2	COMP LS-3	COMP LS-4	COMP LS-5
PURCHASE PRICE (from Addenda)	\$	\$	\$	\$	\$
LAND AREA					
LOCATION					
LOT CHARACTERISTICS					
LANDSCAPING					
NET ADJUSTMENT					
INDICATED VALUE OF SUBJECT LAND	\$	\$	\$	\$	\$

### EXPLANATION OF ADJUSTMENTS

LAND AREA:

LOCATION:

LOT CHARACTERISTICS:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**INDICATED VALUE OF LAND**  
(Show computations)

INDICATED VALUE OF SUBJECT LAND: \$

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

### SITE IMPROVEMENT VALUATION

List cost data source; show and explain depreciation in each category.

Building & Site Improvements:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

### SITE IMPROVEMENT VALUATION

List cost data source; show and explain depreciation in each category.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code \_\_\_\_\_

PARCEL NO.:

OWNER:

## TOTAL VALUATION

- 15B -

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

### INCOME APPROACH TO VALUE

Support all income, expense and capitalization data.

ESTIMATED VALUE BY **INCOME APPROACH**: \$-----

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

### RENT SCHEDULES

List actual rents, and economic rents; analyze; support data, and include narrative description of comparable rental sources.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**COMPARABLE SALES ANALYSIS**  
(See data sheets in Addenda)

Narrative description and analysis of each sale:

COMP DS-1:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**COMPARABLE SALES ANALYSIS**  
(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**COMPARABLE SALES ANALYSIS**  
(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**COMPARABLE SALES ANALYSIS**  
(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**COMPARABLE SALES ANALYSIS**  
(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**COMPARABLE SALES ANALYSIS**  
(See data sheets in Addenda)

Narrative description and analysis of each sale:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**MARKET DATA APPROACH**

Estimate value by comparison, using market data from previous pages; explain each adjustment; show calculations and conclusions; use sales grid if necessary.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**MARKET DATA APPROACH**

Estimate value by comparison, using market data from previous pages; explain each adjustment; show calculations and conclusions; use sales grid if necessary.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**MARKET DATA APPROACH**

Estimate value by comparison, using market data from previous pages; explain each adjustment; show calculations and conclusions; use sales grid if necessary.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**MARKET DATA APPROACH**

Estimate value by comparison, using market data from previous pages; explain each adjustment; show calculations and conclusions; use sales grid if necessary.

ESTIMATED VALUE BY **MARKET DATA APPROACH**: \$-----

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**LAND WITH IMPROVEMENTS VALUATION -**  
**MARKET DATA APPROACH**

**COMPARABLE SALES ADJUSTMENT GRID**

VALUE ADJUSTMENT	COMP DS-1	COMP DS-2	COMP DS-3	COMP DS-4	COMP DS-5
Purchase Price	\$	\$	\$	\$	\$
S I N C E					
Net Appreciat'n					
Improvements					
Financing					
CURRENT VALUE	\$	\$	\$	\$	\$
L A N D					
Land Area					
Lot Characteristics					
Location					
Landscaping					
Easements					
S T R U C T U R E S					
Building Area					
Number of Rooms					
Visual Appeal					
Heating					
Kitchen & Bath					
Plumbing & Electricity					
Condition					
Basement					
Porch/Deck					
Fireplce/Wd Stv					
O T H E R					

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

Garage					
Shed/Pool					
NET ADJUSTMENT					
<b>INDICATED VALUE</b>	\$	\$	\$	\$	\$

-19E-

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**RECONCILIATION & FINAL ESTIMATE OF VALUE - ENTIRE PROPERTY**

Estimated Market Value - COST APPROACH: \$

Estimated Market Value - INCOME APPROACH: \$

Estimated Market Value - MARKET DATA APPROACH: \$

**RECONCILIATION**

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

RECONCILIATION

FINAL ESTIMATE OF VALUE - ENTIRE PROPERTY

FINAL ESTIMATE OF VALUE OF THE ENTIRE PROPERTY: \$-----

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### DESCRIPTION OF PARCELS TO BE TAKEN

Identify here, from the property sheet and sketch, all improvements to be taken.

### DESCRIPTION OF THE REMAINDER PROPERTY & EFFECT OF TAKING AND THE PROPOSED CONSTRUCTION ON THE REMAINDER PROPERTY

Identify all improvements not to be taken; explain grades, access, isolation; highest and best use.

### WORK INCLUDED IN CONTRACT, IN LIEU OF DAMAGES

Explain if any work is included, and if so, include a copy of the related construction plan in the Addenda if needed.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

**APPRAISAL OF PROPERTY AFTER TAKING**

Appraise and support after value. Explain severance and special benefits, if any.

APPRAISED VALUE OF THE PROPERTY, AFTER THE TAKING: \$

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

### ANALYSIS OF VALUE OF THE FINAL ESTIMATE OF DAMAGES

In my opinion, the value of the real property taken, and the damages to the remainder if any, as of \_\_\_\_\_ 1992 is \$\_\_\_\_\_.

Date: \_\_\_\_\_

Appraiser: \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

LAYOUT NO.: \_\_\_\_\_

F.A. PROJECT NO.:

PROJECT:

### CERTIFICATE OF APPRAISER

Date:

I, \_\_\_\_\_, hereby certify:

That

on \_\_\_\_\_, I personally made a field inspection of the property herein appraised, and have afforded the owner the opportunity to accompany me on this inspection. I have also, on

personally made a field inspection of the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal.

That to the best of my knowledge and belief, the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of right-of-way for a highway to be constructed by the Commonwealth of Massachusetts with the assistance of Federal Aid highway funds or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations, policies and procedures applicable to appraisal of right-of-way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of the Commonwealth of Massachusetts.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the damages or values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property, or in any benefit form the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the Massachusetts Highway Department or officials of the Federal Highway Administration and I will not do so until so authorized by the Massachusetts Highway Department, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

THAT MY OPINION OF THE DAMAGES TO THE PROPERTY AFFECTED BY THE TAKING(S) OR PROPOSED TAKING(S), AS OF THE \_\_\_\_\_ DAY OF 1992 IS \$\_\_\_\_\_.

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

AND THAT THE CONCLUSION SET FORTH IN THIS INDEPENDENT APPRAISAL IS BASED UPON  
THE EXERCISE OF MY PROFESSIONAL JUDGEMENT.

Date: \_\_\_\_\_ Appraiser:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

## ADDENDA

- Copy of Deed
- Location Map of Comparable Sales
- Comparable Sales Data Sheets  
(including Photo and Sketch)
- Cost Data
- Real & Personal Property Report
- Economic Rental
- Allocation of Damages
- Affidavit
- Review Appraiser's Checklist
- Review Appraiser's Comments & Estimate
- Review Appraiser's Statement

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #LS-1

City/Town: \_\_\_\_\_ Grantor: \_\_\_\_\_  
Location: \_\_\_\_\_ Address: \_\_\_\_\_  
Date of Sale: \_\_\_\_\_ Grantee: \_\_\_\_\_  
Total Land Area: \_\_\_\_\_ Address: \_\_\_\_\_  
Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_ Title Ref.: \_\_\_\_\_  
Zoning: \_\_\_\_\_ Price: \$ \_\_\_\_\_  
Utilities: \_\_\_\_\_ Mortgagee: \_\_\_\_\_

Assessment: \$ \_\_\_\_\_ Amount: \$ \_\_\_\_\_

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable): Number of Stories:  
Gross: SF Number of Rooms:  
Net Usable: SF Above Ground:  
Basement: SF Basement:  
Ground Floor: SF Bathrooms:  
Condition at Sale: Type of Heat:  
Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_ UNIT PRICE OF SALE:  
Confirmed With: \_\_\_\_\_ Per Sq.Ft.:  
Date: \_\_\_\_\_ Per Acre:  
Per Front Ft.:  
Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_ Completed by: \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #LS-1**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

## COMPARABLE SALE #LS-2

City/Town: \_\_\_\_\_

Grantor:

Location: \_\_\_\_\_

Address:

Date of Sale: \_\_\_\_\_

Grantee:

Total Land Area: \_\_\_\_\_

Address:

Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

Title Ref.:

Zoning: \_\_\_\_\_

Price: \$

Utilities: \_\_\_\_\_

Mortgagee:

Assessment: \$ \_\_\_\_\_

Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable):

Gross: \_\_\_\_\_ SF

Number of Stories:

Net Usable: \_\_\_\_\_ SF

Number of Rooms:

Basement: \_\_\_\_\_ SF

Above Ground:

Ground Floor: \_\_\_\_\_ SF

Basement:

Condition at Sale: \_\_\_\_\_

Bathrooms:

Highest & Best Use (at sale date):

Type of Heat:

ACTUAL PRICE: \$ \_\_\_\_\_

UNIT PRICE OF SALE:

Confirmed With: \_\_\_\_\_

Per Sq.Ft.:

Date: \_\_\_\_\_

Per Acre:

Per Front Ft.:

Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_

Completed by:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #LS-2**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #LS-3

City/Town: \_\_\_\_\_ Grantor:  
Location: \_\_\_\_\_ Address:  
Date of Sale: \_\_\_\_\_ Grantee:  
Total Land Area: \_\_\_\_\_ Address:  
Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_ Title Ref.:  
Zoning: \_\_\_\_\_ Price: \$  
Utilities: \_\_\_\_\_ Mortgagee:

Assessment: \$ \_\_\_\_\_ Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable): Number of Stories:  
Gross: \_\_\_\_\_ SF Number of Rooms:  
Net Usable: \_\_\_\_\_ SF Above Ground:  
Basement: \_\_\_\_\_ SF Basement:  
Ground Floor: \_\_\_\_\_ SF Bathrooms:  
Condition at Sale: \_\_\_\_\_ Type of Heat:

Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_ UNIT PRICE OF SALE:  
Confirmed With: \_\_\_\_\_ Per Sq.Ft.:  
Date: \_\_\_\_\_ Per Acre:  
Per Front Ft.:  
Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_ Completed by:

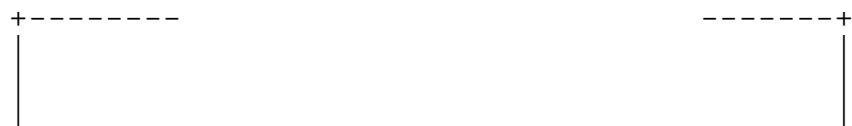
CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #LS-3**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #LS-4

City/Town: \_\_\_\_\_

Grantor:

Location: \_\_\_\_\_

Address:

Date of Sale: \_\_\_\_\_

Grantee:

Total Land Area: \_\_\_\_\_

Address:

Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

Title Ref.: \_\_\_\_\_

Zoning: \_\_\_\_\_

Price: \$ \_\_\_\_\_

Utilities: \_\_\_\_\_

Mortgagee: \_\_\_\_\_

Assessment: \$ \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable):

Number of Stories:

Gross: \_\_\_\_\_ SF

Number of Rooms:

Net Usable: \_\_\_\_\_ SF

Above Ground:

Basement: \_\_\_\_\_ SF

Basement:

Ground Floor: \_\_\_\_\_ SF

Bathrooms:

Condition at Sale: \_\_\_\_\_

Type of Heat:

Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_

UNIT PRICE OF SALE:

Confirmed With: \_\_\_\_\_

Per Sq.Ft.:

Date: \_\_\_\_\_

Per Acre:

Per Front Ft.:

Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_

Completed by:

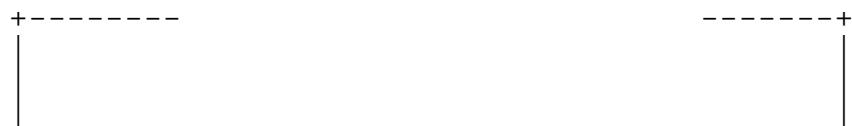
CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #LS-4**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #LS-5

City/Town: \_\_\_\_\_ Grantor:  
Location: \_\_\_\_\_ Address:  
Date of Sale: \_\_\_\_\_ Grantee:  
Total Land Area: \_\_\_\_\_ Address:  
Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_ Title Ref.:  
Zoning: \_\_\_\_\_ Price: \$  
Utilities: \_\_\_\_\_ Mortgagee:

Assessment: \$ \_\_\_\_\_ Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable): Number of Stories:  
Gross: \_\_\_\_\_ SF Number of Rooms:  
Net Usable: \_\_\_\_\_ SF Above Ground:  
Basement: \_\_\_\_\_ SF Basement:  
Ground Floor: \_\_\_\_\_ SF Bathrooms:  
Condition at Sale: \_\_\_\_\_ Type of Heat:  
Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_ UNIT PRICE OF SALE:  
Confirmed With: \_\_\_\_\_ Per Sq.Ft.:  
Date: \_\_\_\_\_ Per Acre:  
Per Front Ft.:  
Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_ Completed by:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #LS-5**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #DS-1

City/Town: \_\_\_\_\_ Grantor:  
Location: \_\_\_\_\_ Address:  
Date of Sale: \_\_\_\_\_ Grantee:  
Total Land Area: \_\_\_\_\_ Address:  
Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_ Title Ref.:  
Zoning: \_\_\_\_\_ Price: \$  
Utilities: \_\_\_\_\_ Mortgagee:

Assessment: \$ \_\_\_\_\_ Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable): Number of Stories:  
Gross: \_\_\_\_\_ SF Number of Rooms:  
Net Usable: \_\_\_\_\_ SF Above Ground:  
Basement: \_\_\_\_\_ SF Basement:  
Ground Floor: \_\_\_\_\_ SF Bathrooms:  
Condition at Sale: \_\_\_\_\_ Type of Heat:  
Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_ UNIT PRICE OF SALE:  
Confirmed With: \_\_\_\_\_ Per Sq.Ft.:  
Date: \_\_\_\_\_ Per Acre:  
Per Front Ft.:  
Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_ Completed by:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #DS-1**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #DS-2

City/Town: \_\_\_\_\_

Grantor:

Location: \_\_\_\_\_

Address:

Date of Sale: \_\_\_\_\_

Grantee:

Total Land Area: \_\_\_\_\_

Address:

Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

Title Ref.:

Zoning: \_\_\_\_\_

Price: \$

Utilities: \_\_\_\_\_

Mortgagee:

Assessment: \$ \_\_\_\_\_

Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable):

Number of Stories:

Gross: \_\_\_\_\_ SF

Number of Rooms:

Net Usable: \_\_\_\_\_ SF

Above Ground:

Basement: \_\_\_\_\_ SF

Basement:

Ground Floor: \_\_\_\_\_ SF

Bathrooms:

Condition at Sale: \_\_\_\_\_

Type of Heat:

Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_

UNIT PRICE OF SALE:

Confirmed With: \_\_\_\_\_

Per Sq.Ft.:

Date: \_\_\_\_\_

Per Acre:

Per Front Ft.:

Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_

Completed by:

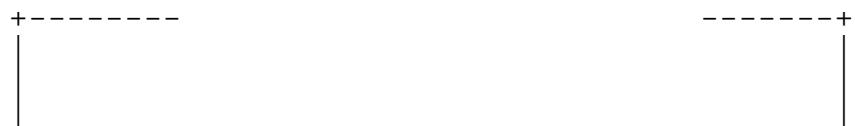
CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #DS-2**



PHOTOGRAPH



**SKETCH**



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #DS-3

City/Town: \_\_\_\_\_

Grantor:

Location: \_\_\_\_\_

Address:

Date of Sale: \_\_\_\_\_

Grantee:

Total Land Area: \_\_\_\_\_

Address:

Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

Title Ref.:

Zoning: \_\_\_\_\_

Price: \$

Utilities: \_\_\_\_\_

Mortgagee:

Assessment: \$ \_\_\_\_\_

Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable):

Number of Stories:

Gross: \_\_\_\_\_ SF

Number of Rooms:

Net Usable: \_\_\_\_\_ SF

Above Ground:

Basement: \_\_\_\_\_ SF

Basement:

Ground Floor: \_\_\_\_\_ SF

Bathrooms:

Condition at Sale: \_\_\_\_\_

Type of Heat:

Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_

UNIT PRICE OF SALE:

Confirmed With: \_\_\_\_\_

Per Sq.Ft.:

Date: \_\_\_\_\_

Per Acre:

Per Front Ft.:

Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_

Completed by:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #DS-3**



PHOTOGRAPH



SKETCH



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #DS-4

City/Town: \_\_\_\_\_

Grantor:

Location: \_\_\_\_\_

Address:

Date of Sale: \_\_\_\_\_

Grantee:

Total Land Area: \_\_\_\_\_

Address:

Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

Title Ref.:

Zoning: \_\_\_\_\_

Price: \$

Utilities: \_\_\_\_\_

Mortgagee:

Assessment: \$ \_\_\_\_\_

Amount: \$

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable):

Number of Stories:

Gross: \_\_\_\_\_ SF

Number of Rooms:

Net Usable: \_\_\_\_\_ SF

Above Ground:

Basement: \_\_\_\_\_ SF

Basement:

Ground Floor: \_\_\_\_\_ SF

Bathrooms:

Condition at Sale: \_\_\_\_\_

Type of Heat:

Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_

UNIT PRICE OF SALE:

Confirmed With: \_\_\_\_\_

Per Sq.Ft.:

Date: \_\_\_\_\_

Per Acre:

Per Front Ft.:

Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_

Completed by:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

**COMPARABLE SALE #DS-4**



PHOTOGRAPH



**SKETCH**



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

### COMPARABLE SALE #DS-5

City/Town: \_\_\_\_\_

Grantor:

Location: \_\_\_\_\_

Address:

Date of Sale: \_\_\_\_\_

Grantee:

Total Land Area: \_\_\_\_\_

Address:

Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

Title Ref.: \_\_\_\_\_

Zoning: \_\_\_\_\_

Price: \$ \_\_\_\_\_

Utilities: \_\_\_\_\_

Mortgagee: \_\_\_\_\_

Assessment: \$ \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Year Last Revalued:

Improvements and Type (if any), and Brief Description (including year built):

BUILDING AREA (if applicable):

Number of Stories:

Gross: \_\_\_\_\_ SF

Number of Rooms:

Net Usable: \_\_\_\_\_ SF

Above Ground:

Basement: \_\_\_\_\_ SF

Basement:

Ground Floor: \_\_\_\_\_ SF

Bathrooms:

Condition at Sale: \_\_\_\_\_

Type of Heat:

Highest & Best Use (at sale date):

ACTUAL PRICE: \$ \_\_\_\_\_

UNIT PRICE OF SALE:

Confirmed With: \_\_\_\_\_

Per Sq.Ft.:

Date: \_\_\_\_\_

Per Acre:

Per Front Ft.:

Per Unit:

Conditions of Sale:

Unusual Circumstances of Sale:

Financing:

Other Remarks:

Date: \_\_\_\_\_

Completed by:

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

**COMPARABLE SALE #DS-5**



PHOTOGRAPH



**SKETCH**



CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

LAYOUT NO.: \_\_\_\_\_ F.A. PROJECT NO.:  
PROJECT:

MASSACHUSETTS HIGHWAY DEPARTMENT  
RIGHT OF WAY BUREAU

## **ECONOMIC RENTAL**

Present Occupant:  
Location of Property:

Rental Unit:

Utilities or Services Included in Rental:

Economic Rental Analysis:

Economic Rental: \$ \_\_\_\_\_ per

Prepared By: \_\_\_\_\_ Date:  
Approved By: \_\_\_\_\_ Date:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

## **ALLOCATION OF DAMAGES**

Land . . . . . \$

## Building Improvements List . . . . .

## Site Improvements List . . . . .

### Cost to Cure Items . . . . .

Damages to the Remainder . . . . .  
(Severance Damages - Documentation -----  
to be shown in the Appraisal Report)  
SUBTOTAL: \$  
Rounded to: \$

Less Benefits. . . . . . . . . . . - (\$ )

TOTAL AWARD OF DAMAGES: \$

The above allocations relative to land & improvements are to be used for record purposes only, and the individual breakdown does not necessarily reflect the Market Value of the separate items shown.

Damage to the Remainder (Severance Damages), however, is an actual figure and is ultimately reported to the property owners at the time of the taking, and must be properly documented in the written report.

CITY/TOWN: \_\_\_\_\_

FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

LAYOUT: \_\_\_\_\_

F.A. PROJECT NO.: \_\_\_\_\_

PROJECT: \_\_\_\_\_

**REVIEW APPRAISER'S CHECKLIST**

APPRAISER: \_\_\_\_\_ FIELD REVIEWED: Yes \_\_\_\_\_ No \_\_\_\_\_

TYPE OF TAKING: \_\_\_\_\_

<u>COMPLIANCE</u>				
Yes	No	Item	APPRAISAL	COMMENTS
		1	Letter of transmittal, dated & signed (Fee appraisers only)	
		2	Owner's name, address of property	
		3	Project number, Federal Aid Project number (if applicable)	
		4	Parcel number, area of taking, interest acquired	
		5	Photos: properly identified, date taken, by whom	
		6	Plot plan of entire property: showing the dimensions, area(s), and improvement(s) (if any)	
		7	Floor plans of structures: dimensions, and areas	
		8	Description of location & neiqhbhd, and neiqhbhd influence	
		9	Description of entire property	
		10	List of non-compensable (personal) property,	
		11	Zoning, including all pertinent information	
		12	Assessments, tax exempt, abatements, Governmental interests	
		13	Highest & best use of property at time of taking	
		14	Description of each parcel taken: land and improvements	
-	-	15	Description of remaining property:	
			(a) Effect of layout and construction on remainder	
			(b) Highest and best use, after taking	
			(c) Special benefits to remainder. If any, justify	
		16	Five years sales history, data, and analysis	
-	-	17	Approaches considered & Reason for selection of each:	
			(a) MARKET DATA APPROACH - Comparable sales data forms with detailed information, photo, and sketch	
			(b) Narrative analysis of sale	
			(c) Explanation of adjustments	
			(d) Sketch or map showing location of comparable sales	
			(e) COST APPROACH - Land comp. sales forms w/ detailed info; photo; sketch; analysis; adjust. explanation	
			(f) Source of cost factors for improvements	
			(g) Basis of all depreciation used	
			(h) INCOME APPROACH - Land value supported	
			(i) Source of income: Economic and contract rent, with differences explained	
			(j) Source of expenses	
			(k) Basis of future economic life	
			(l) Source of interest, and capitalization rates	
		18	Reason why certain approaches were not considered	
		19	Before value - supported and justified	
		20	After value - supported and justified	
		21	Reconciliation & Final Value Est. - reasons & conclusions	
		22	Affidavit of appraiser - Dept. form properly filled out	
		23	Allocation of value estimate or damages	
		24	Economic Rentals for Property Management purposes	
		25	Mathematics (Office checker)	

| \*FINAL

**DETERMINATION OF DAMAGES\***

Appraiser

Reviewer

/ 19 Accepted original submission |

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

	Value BEFORE: \$
- <u>  \$  </u> 19 <u>  </u> Accepted original submission, s.t. revisions or additions	<u>Value AFTER:</u> \$
- <u>  \$  </u>	DAMAGES: \$
- <u>  \$  </u> 19 <u>  </u> Revisions/additions received	Date: ___ / ___ /
- <u>  \$  </u> 19 <u>  </u> Revisions/additions accepted	Review Appraiser:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code

PARCEL NO.:

OWNER:

LAYOUT NO.: \_\_\_\_\_  
PROJECT:

F.A. PROJECT NO.:

**REVIEW APPRAISER'S COMMENTS AND ESTIMATE**

Date: \_\_\_\_\_

Review Appraiser:

CITY/TOWN: \_\_\_\_\_ FILE NO.: \_\_\_\_\_ PROJIS code  
PARCEL NO.:  
OWNER:

LAYOUT NO.: \_\_\_\_\_ F.A. PROJECT NO.:  
PROJECT:

### STATEMENT OF THE REVIEW APPRAISER

I, \_\_\_\_\_, as Review Appraiser, hereby certify:

That I have determined that \$\_\_\_\_\_ is a reasonable measure of Fair Market Value and/or damages. This determination is based upon all competent information that is available including the appraisal and data submitted by \_\_\_\_\_, as well as my own observations and calculations. This determination is/is not a revision or an adjustment of a former determination of value based upon additional value information that has been made available.

That I understand that the above-stated determination of Fair Market Value and/or damages is to be used in connection with a Federal Aid Project.

That I acknowledge the following checked statement(s):

- A visual inspection of the parcel(s) to be acquired, and the comparable sales relating thereto, was made by me.
- The visual inspection of the parcel(s) and applicable comparable sales was made by an assistant Review Appraiser and properly documented in the file.
- I am familiar with the project, and the area, from a recent visit.

That I have no direct or indirect present, or contemplated future, personal interest in such property, or any benefit from the acquisition of such property.

That my determination has been reached independently, based on appraisals or other factual data of record, without collaboration or direction.

That my determination of Fair Market Value and/or damages included only items which are compensable under State law, and are eligible for Federal reimbursement as herein noted.

Date: \_\_\_\_\_

Review Appraiser:

Attached: Appraisals by

CITY/TOWN: \_\_\_\_\_ FILE NO.:  
PARCEL NO.:

OWNER:

LAYOUT NO.: \_\_\_\_\_ F.A. PROJ.NO.:  
PROJECT:

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU**

**REAL ESTATE REVIEW BOARD RECOMMENDATION**

ADMINISTRATOR  
MassDOT Highway Division  
10 Park Plaza  
Boston, Massachusetts 02116-3973

Dear Administrator:

We, the undersigned, members of the Massachusetts Real Estate Appraisal Review Board, have reviewed the appraisals submitted by the Right of Way Bureau for eminent domain takings for highway purposes. In the process of arriving at value estimates, it is customary to consider three approaches: depreciated replacement, capitalized income, and market comparisons. The Review Board gives consideration to all statements contained in such reports as are submitted to it, correlating such information and arriving at a composite opinion of the highest price which the Highway Division of the Commonwealth of Massachusetts should pay for a specific property, unless ordered otherwise by some court of proper jurisdiction.

ALLOCATION OF DAMAGES:

Land . . . . .	\$
Building Improvements. .	\$
Site Improvements. . . .	\$
Cost to Cure Items . . .	\$
Severance Damages. . . .	\$
-----	
TOTAL AWARD OF DAMAGES .	\$
-----	

| We have concluded that the MassDOT Highway Division should not  
allow| more than: \$\_\_\_\_\_ |  
+-----+  
for damages for this parcel, as of the date of taking, plus xx%  
interest from the date the Order of Taking is recorded to the date  
of payment, and pro rata amount of local real estate property  
taxes for the balance of the calendar year.

Date: \_\_\_\_\_ Signed:

CITY/TOWN: \_\_\_\_\_

PARCEL:

FILE NO.: \_\_\_\_\_

OWNER:

Form Revised 1/11

ROW Form 691

**MEMORANDUM**

**TO:** John Leonard, Esq.

**FROM:** Stephen Dick

**DATE:** August 7, 1996

**RE :** Comments Re NES Realty-Personalty Criteria

---

I have one suggested revision to your succinct summary of the criteria with respect to these issues, to 9(b) and (c), as contained in this suggested re-draft:

9(b) A fixture is an article of personal property which, by both its nature and its manner of attachment to land/buildings may be regarded as real estate;

(c) In determining whether an article attached to land/buildings remains personal property or may be classified as real estate, the appraiser focuses on the intent manifested at the time of the attachment, as apparent by:

(i) The character of the item and its adaptation to the land/building. An item is considered personality if it will retain its integration, character, function and value upon removal.

(ii) The manner in which the item is attached. Intent to remove the item may be evidenced by the permanency of the attachment as demonstrated by the practicality of removal and the injury which removal will cause to the land/building.

(iii)The express intent of the parties -- as, for example, set forth in a lease -- so long as such express intent is consistent with (i) and (ii) above

**EXHIBIT 9-6**

Commonwealth of Massachusetts  
MassDOT Highway division  
Right of Way Bureau

**INTEROFFICE MEMORANDUM**

**TO:** , Staff Appraiser

**FROM:** , Appraisal Administrator

**DATE:**

**RE:** Appraisal Assignment and Scope of Work

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Please prepare a (short form, 8, 15, 24 page) appraisal on the subject property per the attached folder that contains:

1. Names of owners, lessees, tenants;
2. Parcel number(s) and, where applicable, Federal-aid project number; EWO/PARS
3. Title abstracts and list of encumbrances, if any;
4. Utilities available and locus of underground services;
5. Type of interest e.g. easement, partial/total taking, to be acquired;
6. A plan or sketch of the entire property, showing the location of improvements or other significant features as well as boundary dimensions;
7. Area to be acquired;
8. Construction and layout plans showing cross-sections of construction features, grades, slopes;
9. Where it is a partial taking, a plan or sketch showing the area to be acquired as well as the area remaining and the relation of the taking area to the improvements;
10. Right of way plans prepared in accordance with FHWA's Right-of-Way Project Development Guide, should be provided to the appraiser on all Federal-aid projects;
11. Property assessments and zoning.
12. A contaminated property report if one has been prepared (refer to Exhibit # 9-1, MHD's Departmental Policy Directive #2 dated 11-2-94 entitled "Hazardous Waste Policy for Department Projects - Valuation of Contaminated Property").
13. A real and personal property report.

Should you have any questions I can be reached at X - xxxx.

**EXHIBIT NO. 9-7**

## Chapter 10

## **WEB SITE INFORMATION**

Information concerning proposal submissions and contract procurement is obtainable by going to the web site <http://www.Comm-PASS.com>. The directions are as follows: On the opening page click on Open Solicitations/by Purchasing Entities; then proceed to MassDOT Highway Division; advance to Professional Services, and then continue to RFR Scope FOR NEW CONTRACTS FOR FEE REAL ESTATE APPRAISERS.

Please read carefully all of the instructions and requirements under the RFR Scope FOR NEW CONTRACTS FOR FEE REAL ESTATE APPRAISERS. For submitting a proposal. Difficulties encountered with the web site should be addressed to the help desk at 1-888-MA-STATE (1-888-627-8283). If you have any questions concerning the process, please do not hesitate to call Virginia Tarabocchia at 617-973-8271.

## **EXHIBIT 10-1**

**RFR SCOPE  
NEW CONTRACTS  
FOR FEE REAL ESTATE APPRAISERS**

The MassDOT Highway Division Right of Way Bureau seeks to issue new contracts with real estate appraisers that are currently on the Massachusetts Highway Department Approved List of Fee Appraisers and those real estate appraisers interested in being placed on the MassDOT Highway Division Approved List of Fee Appraisers. This RFR is an open enrollment and the new contract will commence on xx/xx/yyyy and terminate on xx/xx/yyyy.

For real estate appraisers interested in being considered by the MassDOT Highway Division for inclusion on it's Approved List the following qualifications are required: (1) Minimum of five (5) years experience, either self-employed or with a private real estate agency, bank, insurance company, public utility or any agency concerned with the appraisal or acquisition of real estate; (2) Member in good standing of a local real estate board and/or appraisal organization; (3) Evidence of ability to qualify as an Expert Real Estate Appraiser in the Massachusetts Superior Court; (4) Presently devoting at least 50 % of your normal work time to the real estate appraisal field; (5) Satisfy the Division as to their character, integrity, and ability to serve the best interests of the Commonwealth; (6) Certified and licensed in accordance with Title XI of the FIRREA. (See section A for submission requirements)

The appraiser's scope of work will include determination of the fair market value of certain parcels of real property for Right of Way Acquisition in connection with MassDOT Highway Division projects throughout the Commonwealth. The appraiser must provide services in accordance with the Division's Request Letter for Proposal and the Division's Letter of Assignment. All reports must be submitted on the date that the assignment is due and all fee takings require a submission of an economical rental in regard to any structure, business or residence, which could be effected by the fee taking. It is mandatory for the appraiser to contact the owner whose property is being appraised. Documentation will be required as evidence that good faith effort was made to personally contact the owner i.e. return receipt of the letter. All appraisals must be full narratives with a minimum of three comparable sales, except as otherwise specified by the Division's Letter of Agreement.

Appraisers will prepare and submit the required appraisals in accordance with the Articles of the MassDOT Highway Division document entitled: "Terms, Conditions and Requirements for Expert Real Estate Appraisal Service Contracts Revised 1998", which is a binding part of the contract. When the appraiser signs the standard contract, the appraiser *"agrees personally to perform the services contracted for"* (*Article 1 of the "Terms, Conditions and Requirements for Expert Real Estate Appraisal Service Contracts"*). The individual that signs the contract must be the person doing the majority of the work. Other qualified appraisers may assist on the assignments. However, contract appraisers must personally perform market analysis including but not limited to meeting with the property owner; inspecting the property; searching the market to ensure that the information used is the most appropriate; doing the analysis, etc. All work will be completed in accordance with MassDOT Highway Division standards as well as the Uniform Standards of Professional appraisal Practice and the requirements of the Federal Highway Administration. Appraisers must be Certified General Appraisers.

**EXHIBIT 10-2**

When the MDH Review Appraiser reviews the appraisal, if he/she has any questions, we require that the Review Appraiser only communicate with the contract appraiser, and not others that assisted with the appraisal preparation.

Compensation will be subject to Article 8 of the "Terms, Conditions and Requirements for Expert Real Estate Appraisal Service Contracts Revised 1998" which provided, in part, that "Eighty (80%) percent of said compensation will be paid at the time of completion and delivery of all appraisal reports which are *acceptable* to the Division, with respect to form and content, *after a preliminary review*". Twenty (20) percent of said compensation will be paid when all appraisal reports have received final review and approval by the Division. Compensation is Sixty-five Dollars (\$65.00) per hour for a total not to exceed the written and accepted proposal amount.

Compensation for testimony concerning opinions of value is subject to Article 5 of the "Terms, Conditions and Requirements for Expert Real Estate Appraisal Service Contracts Revised 1998" which provides in part that for testimony in any Judicial, Real Estate Review Board, or Administrative Proceedings, the fair and reasonable compensation for the CONTRACTOR'S services is Three Hundred Fifty (\$350.00) dollars per day for each full day's attendance. In the event such attendance is one-half day or less, the fair and reasonable compensation shall be made on the basis of Two Hundred (\$200.00) dollars for each half day. Compensation for conferences time with duly authorized representatives of the Attorney General's Office prior to trial shall be at the rate of sixty-five (\$65.00) dollars per hour or any fraction thereof.

If during the course of this contract the CONTRACTOR 's name or address changes a new contract, W-9 and Commonwealth Terms and Conditions need to be executed.

We strongly encourage the CONTRACTOR to consider receiving payment via the electronic funds (EFT) payment method. EFT payments significantly reduce payment delays and provide almost instantaneous payment. (See below submission section)

**Appraisers interested in being considered by the MassDOT Highway Division for inclusion on MDH's Approved list see Section A.**

**Appraisers who are already on the MassDOT Highway Division Approved List and whose contract will expire on June 30, 1999 see Section B.**

**Appraisers who are already on the MassDOT Highway Division Approved List, but had not previously obtained a contract and are now interested in securing a contract see Section C.**

## **EXHIBIT NO. 10-2**

## **SUBMISSION REQUIREMENTS**

### **SECTION: A Appraisers interested in being considered by the MassDOT Highway Division for inclusion on MDH's Approved list.**

1) Cover letter stating interest in being on the MassDOT Highway Division Approved List for Fee Appraisers.

1) Names and addresses of at least three (3) persons for reference, who have personal knowledge of the individual's character and qualifications, one of whom should be full member of the Appraisal Institute, or some similar, recognized national appraisal organization.

2) Minimum of three (3) recent appraisals for review by MassDOT Highway Division Right of Way Bureau. This must include one (1) appraisal of three different types of property, specifically, one industrial appraisal, one commercial appraisal, and one residential appraisal with a house. NOTE: FREDDIE MAC AND FANNIE MAE FORMS ARE NOT ACCEPTABLE.

3) Completed form "EXPERIENCE QUESTIONNAIRE FOR REAL ESTATE APPRAISERS," which is attached to this RFR.

After the application is reviewed, if acceptable by the Right of Way Bureau, your name will automatically be submitted to the MassDOT Highway Division Administrator for approval for inclusion unto the MassDOT Highway Division Approved List of Fee Appraisers. You will be notified in writing of your admittance to the Approved List. Once you receive notification from the Department that you are on the MassDOT Highway Division Approved List of Fee Appraisers, it is your responsibility to download the Commonwealth of Massachusetts standard contract form and other pertinent documents and mail the documentation to the Department. Proceed to SECTION C for obtaining a contract with the Massachusetts Highway Department.

### **SECTION: B Appraisers, who are already on the MassDOT Highway Division Approved List and have a contract which expires on June 30, 1999.**

1) Three original Commonwealth of Massachusetts Standard Contracts which must be signed and dated. The date must be written in ink, typed dates are unacceptable.

2) Copy of RFR Scope Real Estate Fee Appraisers

3) Copy of Appraisal State License current for the period of the contract.

4) Consultant Contractor Mandatory Submission Form  
This form must be completed as part of the contract

5) Northern Ireland Notice and Certification Form

All bidders must complete this form and submit it as part of their response, even if they have no business activity in Northern Ireland.

6) Affirmative Action Plan Form

7) Contractor Authorized Signature Verification Form

8) Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional)

EXHIBIT NO 10-2

**SECTION: C Appraisers who are already on the MassDOT Highway Division Approved List, but had not previously obtained a contract and are now interested in securing a contract.**

- 1) Three original Commonwealth of Massachusetts Standard Contracts which must be signed and dated. The date must be written in ink, typed dates are unacceptable.
- 2) Copy of RFR Scope Real Estate Fee Appraisers
- 3) Copy of Appraisal State License current for the period of the contract.
- 4) Commonwealth of Massachusetts (Massachusetts Substitute W-9 Format)
- 5) Commonwealth Terms and Conditions
- 6) Consultant Contractor Mandatory Submission Form  
This form must be completed as part of the contract
- 7) Northern Ireland Notice and Certification Form  
All bidders must complete this form and submit it as part of their response, even if they have no business activity in Northern Ireland.
- 8) Affirmative Action Plan Form
- 9) Contractor Authorized Signature Verification Form
- 10) Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional)

All forms may be activated by going to [www.comm-pass.com](http://www.comm-pass.com) scroll down to form information, click on Form and Information - look for forms entitled as follows: Commonwealth of Massachusetts Standard Contract Form; Commonwealth of Massachusetts (Massachusetts Substitute W-9 Format); Commonwealth Terms and Conditions; Consultant Contractor Mandatory Submission Form; Northern Ireland Notice and Certification Form; Affirmative Action Plan Form; Contractor Authorized Signature Verification Form; Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional).

The following forms are attached to this RFR

- 1) MASSDOT HIGHWAY DIVISION RIGHT OF WAY BUREAU - TERMS, CONDITIONS AND REQUIREMENTS FOR EXPERT REAL ESTATE APPRAISAL SERVICE CONTRACTS 1998 EDITION.
- 2) EXPERIENCE QUESTIONNAIRE FOR REAL ESTATE APPRAISERS

**EXHIBIT NO 10-2**

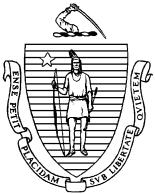
**IF YOU EXPERIENCE DIFFCULTY IN DOWNLOADING ANY OF THE FORMS, CALL THE  
HELP DESK PHONE: (888) MA-STATE / (888) 627-8283 FROM 9AM - 5PM MONDAY THUR  
FRIDAY. IF NO ONE ANSWERS YOUR CALL, LEAVE A MESSESSAGE AND SOMEONE  
WILL RETURN THE CALL.**

**SUBMIT ALL INFORMATION TO THE FOLLOWING INDIVIDUAL.**

**Finance Manager  
Right of Way Bureau, Room 6160  
MassDOT Highway Division  
10 Park Plaza  
Boston, MA 02116-3973**

**All questions should be addressed to Finance Manager at (617) 973-7900**

**EXHIBIT NO. 10-2**



# **COMMONWEALTH OF MASSACHUSETTS**

## **STANDARD CONTRACT FORM**

This form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. **Any changes to the official printed language of this form as published by ANF, CTR and OSD shall be void.** This shall not prohibit the addition of non-conflicting Contract terms. The quality of all performance by the Contractor under this Contract must be timely and meet or exceed industry standards. The Contractor shall comply with all applicable Massachusetts ("State") and federal laws and regulations and perform this Contract in accordance with the applicable Commonwealth Terms and Conditions and as follows:

*(The Contractor Must Complete Only Those Sections preceded by an ">>")*

>>Vendor Code:	Document ID:
>> <b>CONTRACTOR NAME:</b>	<b>DEPARTMENT NAME:</b>
>>Contract Manager:	Contract Manager:
>>Phone: >>Fax:	Phone: Fax:
>>Business and Mailing Address:	Business and Mailing Address:
<b>Terms and Conditions that apply to this Contract</b> ( <i>Completed by Department. Check one option only</i> ): <input type="checkbox"/> COMMONWEALTH TERMS AND CONDITIONS (Standard) OR <input type="checkbox"/> COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES	<b>Compensation</b> ( <i>Completed by Department</i> ) <input type="checkbox"/> Maximum Obligation of this Contract: \$_____ OR <input type="checkbox"/> No Maximum Obligation established: <input type="checkbox"/> Rate Contract with a Rate of: \$_____ <input type="checkbox"/> Per: _____ (Multiple Rates Must Be Attached) <input type="checkbox"/> Statewide Contract or Qualified List Contract
<b>Execution and Filing Status of applicable Terms and Conditions:</b> ( <i>Check one option only</i> ): <input type="checkbox"/> Previously executed by Contractor and is on file as prescribed by CTR OR <input type="checkbox"/> Executed by Contractor and is attached to this Contract	<b>Payment Type:</b> FOR INFORMATION PURPOSES ONLY ( <i>Completed by Department- Check one option only</i> ) <input type="checkbox"/> Payment Voucher <input type="checkbox"/> Ready Payment (Schedule: _____ Initial Base Amt: \$_____) <input type="checkbox"/> Contractor Payroll <input type="checkbox"/> Recurring Payment
<b>Start Date of This Contract:</b> _____ ( <i>Completed by Department. Subject To Section 1. of the applicable Terms and Conditions.</i> )	<b>Termination Date of This Contract :</b> _____ ( <i>Completed by Department. Subject To Section 4. of the applicable Terms and Conditions.</i> )
<b>Brief Description of Performance:</b> ( <i>Completed by Department</i> ) Attach a copy of the Request for Response (RFR) and the Contractor's Response and any additional negotiated terms, if applicable; or if an RFR was not required attach appropriate justification documentation including exemption from RFR requirement and details of scope of performance and compensation.	

**IN WITNESS WHEREOF, the Contractor certifies, under the pains and penalties of perjury that it is in compliance with all of the following provisions and shall remain in compliance with these provisions for the life of this Contract:** That the Contractor is qualified to perform this Contract and possesses, or shall obtain, all requisite licenses and permits to complete performance under this Contract; that it is in compliance with all federal and state tax laws, including M.G.L. c. 62C, §49A; that pursuant to M.G.L. c. 151A, §19A and M.G.L. c. 152, it will comply with all laws and regulations relating to payments to the Employment Security System and required workers' compensation insurance policies; that it shall carry professional and personal injury liability insurance sufficient to cover its performance under this Contract; that it will comply with all relevant prevailing wage rate and employment laws; that it is in compliance with the provisions of the Acts of 1990, c. 521, §7 as amended by the Acts of 1991, c. 329 and 102 CMR 12.00 and that the Contractor is either a "qualified employer" (it has fifty (50) or more full time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements) or the Contractor is an "exempt employer"; that pursuant to M.G.L. c. 156B, §109 (business corporations), c. 180, §26A (non-profit corporations), c. 181, §4 (foreign corporations) and c. 12, §8F (public charities) it has filed all required certificates and reports with the Secretary of State and the Attorney General's Office; that it is in compliance with Federal Anti-Lobbying requirements of 31 USC 1352; that it and any of its subcontractors are not currently debarred or suspended by the federal government or the State under any law or regulation, including Federal Executive Orders 12549 and 12689, Executive Order 147, M.G.L. c. 29, §29F and M.G.L. c. 152, §25C; and that it shall comply with Executive Orders 130, 346 and 359, M.G.L. c. 268A, c. 7, §22C and any additional provisions specified in this Contract, and **IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it has submitted a Response to a Request for Response (RFR) issued by the Department and that this Response is the Contractor's offer as evidenced by the execution below of the Contractor's authorized signatory, and that this Response may be subject to negotiation by the Department, and that the terms of the RFR, the Contractor's Response and any negotiated terms of the Response shall be deemed accepted by the Department and included as part of this Contract, which incorporates by reference the applicable Terms and Conditions, upon execution of this Contract by the Department's authorized signatory as of the date indicated below, OR if this Contract is not the result of a Request for Response solicitation that this Contract complies with all applicable laws and regulations as indicated by the execution of the authorized signatories of the Department and the Contractor as of the last date indicated below:**

**FOR THE CONTRACTOR:**

>>X: \_\_\_\_\_  
(Signature)  
>>NAME: \_\_\_\_\_  
  
>>TITLE: \_\_\_\_\_  
  
>>DATE: \_\_\_\_\_

**FOR THE DEPARTMENT:**

X: \_\_\_\_\_  
(Signature)  
NAME: \_\_\_\_\_  
  
TITLE: \_\_\_\_\_  
  
DATE: \_\_\_\_\_

### **EXHIBIT NO. 10-2A**

**Commonwealth of Massachusetts**  
**Request for Verification of Taxation Reporting Information**  
*(Massachusetts Substitute W-9 Format)*

Pursuant to IRS regulations, vendors & customers must furnish their Taxpayer Identification Number (*TIN*) to the Commonwealth. Vendors must complete, sign, and return this form before payments may be made.

**LEGAL NAME** (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I below.  
 (See **Specific Instructions** on the back page.)

**BUSINESS NAME-** If different from the above. (See **Specific Instructions** on the back page)

**LEGAL ADDRESS** – Number, Street, and apt. or suite no., City, State and ZIP code.

**REMITTANCE (PAYMENT) ADDRESS** (If different from the above) Number, Street, and apt. or suite no., City, State and ZIP code.

**PHONE #**

**FAX #**

PART I- Taxpayer Identification Number (TIN) Verification	PART III- Update to existing W-9 Form
Enter your Taxpayer Identification Number (TIN) in the appropriate box. Enter either SSN OR EIN. DO NOT ENTER BOTH. (See PART II.)	<p><b>Social Security Number (SSN)</b>  <input type="text"/> <input type="text"/></p> <p><b>Employer Identification Number (EIN)</b>  <input type="text"/> <input type="text"/></p>
	<input type="checkbox"/> A Request for Verification of Taxation Reporting Information has been previously filed with the Commonwealth under this TIN. This form will replace that form.  <i>Please attach supporting documentations specified in instructions on the back page under Updates.</i>

**PART II – What Name and Number to give to the requester (one type of account box MUST be checked)**

TYPE OF ACCOUNT Please check one	NAME	TIN	ORGANIZATION TYPE
<input type="radio"/> Individual	The Individual Name	SSN	I
<input type="radio"/> Sole Proprietorship	The Individual Name- The Owner	SSN or EIN	I
<input type="radio"/> Corporate	The corporation (including Canada & Mexico)	EIN	C
<input type="radio"/> Partnership	The Partnership	EIN	P
<input type="radio"/> A valid trust, estate, or pension trust	Legal entity. List first and circle the name of the legal trust, estate or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)	EIN	T
<input type="radio"/> Association, club, religious, charitable, educational, or other tax-exempt organization.	The Organization	EIN	O
<input type="radio"/> A broker or registered nominee	The broker or nominee	EIN	Any of the above except Individual

I have read and understand the Commonwealth of Massachusetts Request for Verification of Taxation Reporting Information

Please check this box

**Under penalties of perjury, I declare that I have examined this request and to the best of my knowledge and belief, all information I have supplied is true, correct, and complete.**

\_\_\_\_\_  
 Signature \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Signature

Date

**EXHIBIT NO. 10-2B**

\_\_\_\_\_  
 Please print or type your name & title \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Date

# Commonwealth of Massachusetts

## Request for Verification of Taxation Reporting Information

### GENERAL INSTRUCTIONS

(Section references are to the Internal Revenue Code.)

**Purpose of Form** - A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report payments made to you for the sales of goods & services & real estate transactions. Use the Request for Verification of Taxation Reporting Information (*Massachusetts Substitute W-9 Format*) to furnish your correct TIN to the Commonwealth and, when applicable, (1) to certify that the TIN you are furnishing is correct (*or that you are waiting for a number to be issued*).

**How To Obtain a TIN** - If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5**, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or **Form SS-4**, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete the Request for Verification of Taxation Reporting Information if you do not have a TIN, write "Applied For" in the space for the TIN in Part 1, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. Note: Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Request for Verification of Taxation Reporting Information, include your TIN, sign and date the form, and give it to the requester.

### Penalties

**Failure to Furnish TIN** - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding** - If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of \$500.

**Criminal Penalty for Falsifying Information** - Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

### SPECIFIC INSTRUCTIONS

**Name** - If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card and your new last name.

**Sole proprietor** - You must enter your *individual* Name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the business name line.

**Other entities** - Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or legal document creating the entity. You may enter your business, trade, or "doing business as" name on the business line.

**Foreign Vendors** - If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed **Form W-8BEN** (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

**TIN "Applied For"** - Follow the instructions under How to Obtain a TIN, sign and date this form.

**Signature** - The form must be signed to be considered valid.

**Privacy Act Notice** - Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid, the acquisition of property. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return.

**Organizations Recognized by the Commonwealth as Tax Exempt** - Organizations seeking recognition of tax exempt status with the Commonwealth must provide documentation of the organization federal tax exempt status in the form of a ruling or determination letter issued by the Internal Revenue Service (IRS). The Commonwealth recognizes the following IRS tax exempt status organization rulings:

- . Section 501© (1 through 23)
- . Section 501 (d)
- . Section 501(e)
- . Section 501 (f)
- . Section 501(k)
- . Section 521 (a)

For more information on Tax-Exempt status, please see IRS Publication 557 (rev. Jan. 99).

**Updates to the Request for Verification of Vendor/Customer Taxation Reporting Information** - If any of the information requested on this form changes (*i.e.*, name or address changes), the payee must submit a new Request for Verification of Taxation Reporting Information with the updated information. Changes to name or TIN must be accompanied by IRS certification of Name & TIN.

If the payee receives notification from the IRS that an information return (*i.e.*, 1099-MISC) was filed on their behalf by the Commonwealth with incorrect spelling of their name and/or incorrect or missing TIN (commonly referred to as a "B-Notice" or IRS Form 8355), the payee must immediately complete a new Request for Verification of Taxation Reporting Information with the corrected information and attach a copy of the IRS Form 8355 to the form.

If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct (*legal*) name.

**If you have Questions on Completing this Form** - Please contact the Office of the State Comptroller

**By Phone:** (617) 973-2311 or 973-2655

### Completion of Form:

Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

### EXHIBIT NO. 10-2B

# **CONSULTANT CONTRACTOR MANDATORY SUBMISSION FORM**

**COMPLETE THE FOLLOWING ONLY FOR CONSULTANT CONTRACTS**  
*(Within HH and NN subsidiaries)*

Bidder: \_\_\_\_\_

RFR Name/Title: \_\_\_\_\_

RFR Number: # \_\_\_\_\_

**Additional Income Disclosure.** Pursuant to the provisions of M.G.L. c. 29, s 29A, the following amounts represent any contracts, grants or other income due from the Commonwealth of Massachusetts, including any political subdivision or public authority, during the period of a contract. Enter N/A if none. You may attach additional sheets as necessary.

**Disclosure of Persons with Financial Interest.** Pursuant to the provisions of M.G.L. c. 29, s 29A and c. 7A, s. 6., the following individuals have a financial interest in a contract and/or with more than one percent (1%) interest in the capital stock of the contractor. Enter N/A if none. You may attach additional sheets as necessary.

**Key Personnel.** Attach a resume or statement of qualifications for all key personnel specifically named in bidder's response to be assigned to the performance of a contract. Enter N/A if none.

The information submitted herein is certified by the Bidder to be accurate under the pains and penalties of perjury.

Signature of Authorized Signatory for Bidder: \_\_\_\_\_

Title of Authorized Signatory for Bidder: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT NO. 10-2C**

## **NORTHERN IRELAND NOTICE AND CERTIFICATION**

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State agencies, state authorities, the House of Representatives or the state Senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland who fails to complete the certification below as required by M.G.L. c.7 section 22C:

The bidder does not employ ten or more employees in an office or other facility in Northern Ireland.

The bidder employs ten or more employees in an office or other facility located in Northern Ireland and certifies that:

- 1) the bidder does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and
  - 2) the bidder promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and
  - 3) the bidder is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.
- 

Signed under the pains and penalties of perjury on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Bidder Name

X \_\_\_\_\_  
Signature of Authorized Representative Signing on Behalf  
of Bidder

\_\_\_\_\_  
Print Name of Authorized Representative of Bidder

\_\_\_\_\_  
Print Title of Authorized Representative of Bidder

### **EXHIBIT 10-2D**

## **AFFIRMATIVE ACTION PLAN FORM**

*(Required for procurements of \$50,000 or more - employers only)*

Bidder: \_\_\_\_\_

RFR Name/Title: \_\_\_\_\_

RFR Number: # \_\_\_\_\_

Pursuant to Executive Orders 227 and 246, any contract with a potential financial benefit of \$50,000 dollars or more requires a bidder to submit an Affirmative Action Plan. The format for Affirmative Action Plans shall be determined in accordance with the Executive Orders and the procuring department's secretariat, if the secretariat specifies a format. **If a format has not been specified by the department's secretariat, bidders will be required to complete either A or B below:**

- A. BIDDER MUST ATTACH A COPY OF AFFIRMATIVE ACTION PLAN TO RFR RESPONSE.**

**OR**

- B. BIDDER MUST COMPLETE THE FOLLOWING CERTIFICATION OF AFFIRMATIVE ACTION PLAN.**

**IN WITNESS WHEREOF**, the bidder certifies under the pains and penalties of perjury, that as an employer, it is committed to non-discrimination in employment and if selected to execute contracts with the Commonwealth of Massachusetts shall also be committed to procure commodities, services and supplies from certified minority and women-owned business enterprises, businesses owned by individuals with disabilities and businesses owned and controlled by socially or economically disadvantaged individuals, both in the performance of contracts with the Commonwealth of Massachusetts and in the performance of its business generally, as certified by the execution of this certification by an authorized signatory of the bidder as of the last date indicated below.

X \_\_\_\_\_  
(Signature of Authorized Signatory of Bidder)

PRINT NAME: \_\_\_\_\_  
(Print Name of Authorized Signatory of Bidder)

TITLE: \_\_\_\_\_  
(Print Title of Authorized Signatory of Bidder)

DATE: \_\_\_\_\_

**EXHIBIT 10-2E**

## CONTRACTOR AUTHORIZED SIGNATURE VERIFICATION FORM

**Individuals:** Individuals have **two options** to verify signature authorization:

- 1. Official Sample of Signature.** Signature verification may be accomplished by submitting a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature, **OR**
- 2. Notarization.** In the alternative, the Bidder can have their signature notarized in the space below.

**Corporations.** Corporations have **two options** to verify signature authorization.

- 1. Authorization and Clerk Certification:** The Corporate Clerk may certify in the space below that they have witnessed the authorized signatory's signature (made in the Clerk's presence) **AND** that the signatory is authorized to execute contracts and other documents and legally bind the corporation. (**NOTE:** Clerks may not self-certify if they act as Clerk and as an authorized signatory. Alternative documentation should be submitted); **OR**
- 2. Authorization and Official Sample of Signature or Notarization** (Complete both "a." and "b." below)
  - a. Authorization.** The Bidder may attach a copy of a board of directors vote stating that each signatory is authorized to execute contracts and other documents and legally bind the corporation, **AND**:
  - b. Official Sample of Signature or Notarization. (Select one option)**
    - **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing an example of the authorized signatory's signature, **OR**
    - **Notarization.** Have each of the signatory's signature notarized (made in a notary's presence) below.

### **Partnership or Other Entities**

- 1. Authorization.** Attach documentation for each signatory of authorization to execute contracts and other documents and legally bind the partnership or other entity, **AND**
- 2. Official Sample of Signature or Notarization:** (Select one option)
  - a. Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature; **OR**
  - b. Notarization.** Have their signature notarized in the space below.

---

### **THIS SECTION IS FOR NOTARIZATION OR CORPORATE CLERK CERTIFICATION**

**PRINT SIGNATORY'S FULL LEGAL NAME:** \_\_\_\_\_

**SIGNATURE: (as it will appear on documents)** \_\_\_\_\_

**(NOTARY) I, \_\_\_\_\_ as a notary public certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory on behalf of the Bidder, and the individual's identity was verified, on this date: \_\_\_\_\_, 20 \_\_\_\_\_. My commission expires on:**

**OR**

**(CORPORATE CLERK) I, \_\_\_\_\_ as corporate clerk of the Bidder/Contractor certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory and the signatory is authorized to execute contracts and other instruments and legally bind the Bidder/Contractor. This date: \_\_\_\_\_, 20 \_\_\_\_\_.**

**AFFIX CORPORATE SEAL OR NOTARY SEAL HERE:  
EXHIBIT 10-2F**

## **AUTHORIZATION FOR ELECTRONIC FUNDS PAYMENT**

### **WHAT SHOULD A DEPARTMENT DO TO PROCESS A PAYEE'S REQUEST TO RECEIVE PAYMENT VIA ELECTRONIC FUNDS TRANSFER (EFT)?**

Electronic funds transfer (EFT) allows for payments to be made to Contractors electronically. It is the preferred method of payment for all payees doing business with the Commonwealth. A new Contractor should always be encouraged by the Department to receive payment electronically. It saves the Commonwealth money and can be more efficient for the payee. When a Department initiates a new business relationship with a payee this question should always be asked.

Registering a Contractor for EFT payment is the responsibility of the Department doing business with that payee. The Contractor should complete and return **to the Department** the "Authorization For Electronic Funds Transfer Payment" form, which follows. This form contains the banking information that the Department must enter on the Vendor Update (VU) Transaction screen.

Departments should follow the steps listed below:

- I. Departments will enter the required EFT information on the Vendor Update (VU) screen.
- II. After the Vendor Update has been approved by CTR, MMARS alerts Treasury to the fact that an EFT Contractor request has been entered.
- III. The Treasury initiates a pre-note process, similar to a test run, of the EFT process, to ensure that the electronic transfer will work correctly. This takes about 15 days to complete.
- IV. If there is no problem, the EFT payment process is enabled.
- V. If there is a problem, there are two options:
  - A. In some cases, TRE will be able to correct misinformation and process the EFT request. The Contractor Banking Status Table (VBST) will be updated with a 'Y' in the "Notice of Change" field. If the banking information has been corrected the Department may have to update their own internal system when applicable.
  - B. In other cases, TRE will not be able to fix the information. Departments must monitor the VBST table, for any rejected EFT and changed requests. The VBST screen contains the "Electronic Commerce Status Flag". If the value for your Department Contractor is "R" for Reject, either the Pre-note on the "EFT" has rejected for the Contractors shown on that table. The Department should contact the Contractor to resolve the problem.

### **Availability of Electronic Funds Transfer (EFT) for Payees**

In order to facilitate the Contractor's use of this technology, on the next page is the Authorization for Electronic Funds Payments form, which can be given by Departments to Contractors. Contractors should then return the form to the Department so the following data can be entered on the Vendor Update (VU) transaction.

- Bank Transit Routing Number
- Bank Account Number
- Type of Account (Checking or Savings)

Having the Contractor attach a voided check to the form may be helpful to the Department in ensuring the accuracy and completeness of the information. To complete the EFT initiation process, Contractors need to contact their bank and inform it that they will be receiving their payments by EFT. The bank receives EFT payments through their Automated Clearing House (ACH) service. It is then up to the bank to provide that detailed payment description information for the payee.

### **EXHIBIT 10-2G**

**COMMONWEALTH OF MASSACHUSETTS**  
**AUTHORIZATION FOR ELECTRONIC PAYMENTS**

The Commonwealth's goal is to make the printing and mailing of paper checks an obsolete business practice in the Commonwealth of Massachusetts. Electronic fund transfer (EFT) is the preferred method of payment for all payees doing business with the Commonwealth. EFT saves the Commonwealth money and is more efficient for the payee.

EFT allows for payments to be credited to payee's designated account electronically similar to an employee's direct deposit of payroll. The Commonwealth has been offering EFT to Vendors for almost 15 years. Annually, the Commonwealth pays more than \$5 billion dollars via EFT. Payments are more predictable, with no delays to the payee. Remittance information is transmitted to the vendor bank and is provided to vendors on their bank statements. This remittance information can now also be accessed via the Internet at the Comptroller's VendorWeb site <http://massfinance.state.ma.us>.

Payees can sign up through the Office of the Comptroller. To expedite this process, the payee should complete the lower portion of this page and return to the address listed below.

A voided check attached to the form may help to ensure the accuracy and completeness of the information. To complete the EFT initiation process, payees should contact their bank once the form has been filed with the Commonwealth and inform them that they will be receiving payment by EFT using the CTX format. The bank receives EFT payments through their Automated Clearing House (ACH) service.

***EFT is safer and faster. Thank you for your smart decision in going the EFT way.***

**COMMONWEALTH OF MASSACHUSETTS**  
**AUTHORIZATION FOR ELECTRONIC FUNDS TRANSFER PAYMENTS**

"I, \_\_\_\_\_, hereby authorize the Commonwealth of Massachusetts, through the State Treasurer, to deposit funds due into the account at the bank named below. The State Treasurer is also authorized to debit my account only to adjust any over deposit which it has caused to be made to my account."

**VENDOR BANK INFORMATION:**

Vendor Bank Name: \_\_\_\_\_

Vendor Bank Transit Routing Number: \_\_\_\_\_

Vendor Bank Account Number: \_\_\_\_\_

(Please Check Account Type):  Checking Account (attach voided check) or  Saving Account

**VENDOR INFORMATION:**

Vendor Tax Identification Number (EIN): \_\_\_\_\_

Vendor/Business Name: \_\_\_\_\_

Vendor Contact Name: \_\_\_\_\_ Telephone: (      ) \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

This authorization will remain in effect until either canceled in writing or an updated form changing information is sent to:

**Office of the Comptroller  
One Ashburton Place, Room 901  
Boston, Ma 02108**

AUTHORIZED SIGNATURE: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_ DATE: \_\_\_\_\_



## COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.



## COMMONWEALTH TERMS AND CONDITIONS

**12. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

**13. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be

superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

**IN WITNESS WHEREOF,** The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_

(signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Check One):     Organization     Individual

Full Legal Organization or Individual Name: \_\_\_\_\_

Doing Business As: Name (If Different): \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

### **INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS**

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: **Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

### **EXHIBIT 10-2 H**

## **EXPERIENCE QUESTIONNAIRE FOR FEE REAL ESTATE APPRAISERS**

### **1. PERSONAL INFORMATION**

Name: \_\_\_\_\_

PROFESSIONAL DESIGNATIONS: \_\_\_\_\_

COMPANY: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

\_\_\_\_\_ TEL. \_\_\_\_\_ FAX: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

TEL. \_\_\_\_\_ FAX: \_\_\_\_\_

### **2. OCCUPATION**

PERCENTAGE OF WORK HOURS SPENT DOING VARIOUS ACTIVITIES --  
DURING THE LAST FIVE YEARS:

APPRAISING: \_\_\_\_\_ %

REVIEWING APPRAISALS: \_\_\_\_\_ %

R.E. BROKERAGE: \_\_\_\_\_ %

PROPERTY MANAGEMENT: \_\_\_\_\_ %

OTHER: \_\_\_\_\_ % (Describe) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### **3. EDUCATION**

#### **A. GENERAL**

##### HIGH SCHOOL

<u>SCHOOL ATTENDED</u>	<u>DATES ATTENDED</u>	<u>COURSEWORK TAKEN</u>	<u>YEAR GRADUATED</u>
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT 10-2-I**

## COLLEGE

**SCHOOL ATTENDED**

**DATES ATTENDED**

**DEGREE RECEIVED**

2. **SPECIAL COURSE TAKEN** (Resumes detailing the below information can be attached, if they provide sufficient information. Simply indicate " See attached".)

## **1. REAL ESTATE APPRAISING**

SCHOOL/COURSE ATTENDED . DATES ATTENDED

**CERTIFICATE/  
DEGREE RECEIVED**

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2. **SPECIAL COURSE TAKEN** (Resumes detailing the below information can be attached, if they provide sufficient information. Simply indicate "See attached".) (cont.)

2. OTHER (R.E. Law, Brokerage, Property Management, Investment etc.)

**SCHOOL/COURSE ATTENDED**

**DATES ATTENDED**

**CERTIFICATE/  
DEGREE RECEIVED**

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**EXHIBIT NO. 10-2-I**

Attachment C

Experience Questionnaire  
Page 3 of 7

4. PROFESSIONAL WORK EXPERIENCE

A. APPRAISING

Employer Name      Address      Date Employed      Title

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B. Are you qualified as an Expert Real Estate Appraiser in the Massachusetts Superior Court?

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C. COURT APPEARANCES AS AN EXPERT WITNESS (As a Real Estate Appraiser)

Court      Type of Case      Dates

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D. BROKERAGE AND MANAGEMENT

Employer Name      Address      Dates Employed      Title

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**EXHIBIT NO 10-2-I**

E. SUBDIVISION AND DEVELOPMENT

<u>Employer Name</u>	<u>Address</u>	<u>Dates Employed</u>	<u>Title</u>
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4. PROFESSIONAL WORK EXPERIENCE (cont.)

F. CONSTRUCTION AND FINANCING

<u>Employer Name</u>	<u>Address</u>	<u>Dates Employed</u>	<u>Title</u>
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G. MASSACHUSETTS LICENSES:

APPRAISER LICENSE No. \_\_\_\_\_

APPRAISER LICENSEE TYPE: \_\_\_\_\_

R.E. BROKER LICENSE No. \_\_\_\_\_

5. NUMBER & TYPES OF PROPERTIES APPRAISED IN THE PAST TEN (10) YEARS

<u>TYPE</u>	<u>NUMBER</u>
SINGLE FAMILY DWELLINGS	_____
TWO FAMILY DWELLINGS	_____
THREE FAMILY DWELLINGS	_____
MULTIPLE FAMILY DWELLINGS	_____
FOUR OR MORE LIVING UNITS	_____
COMMERCIAL	_____
MOTELS	_____
SCHOOLS	_____
CHURCHES	_____
HOSPITAL	_____
SERVICE STATIONS	_____
THEATERS	_____
SHOPPING CENTERS	_____
INDUSTRIAL	_____
CEMETERIES	_____
FARMS	_____

**EXHIBIT NO. 10-2-I**

## Attachment C

## Experience Questionnaire

### Page 5 of 7

FOREST LAND \_\_\_\_\_  
GRAVEL AND SAND DEPOSITS \_\_\_\_\_  
SUBDIVISION -ACREAGE \_\_\_\_\_  
LEASEHOLD INTERESTS \_\_\_\_\_  
OTHER (SPECIFY) \_\_\_\_\_

#### **6. NUMBER AND PURPOSE OF APPRAISALS**

<u>PURPOSE</u>	<u>NUMBER</u>
A. EMINENT DOMAIN TAKING	_____
● FOR TAKING AUTHORITIES	_____
● FOR AFFECTED OWNERS	_____
B. FOR BROKERAGE SALES	_____
C. FOR TAXATION	_____
D. FOR PROBATE	_____
E. FOR MORTGAGE LOANS	_____
F. FOR INSURANCE	_____

**7. PROFESSIONAL ASSOCIATIONS: (SPECIFY WHETHER FULL, OR ASSOCIATE MEMBER)**

## **8. REFERENCES**

SUBMIT THE NAMES AND ADDRESSES OF AT LEAST THREE (3) PERSONS KNOWLEDGEABLE OF YOUR QUALIFICATIONS-- ONE OF WHOM SHOULD BE A FULL MEMBER OF SOME RECOGNIZED NATIONAL APPRAISAL ORGANIZATION.

**EXHIBIT NO. 10-2-I**

Name \_\_\_\_\_ Appraisal Organization \_\_\_\_\_ Phone Number \_\_\_\_\_

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9. **PREFERRED GEOGRAPHIC AREA (S).** Area(s) in which you are interested in doing work for M.H.D (if no restrictions, then indicated "Statewide": \_\_\_\_\_)

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10. **IS YOUR FIRM A CERTIFIED MINORITY-, WOMEN-, or DISADVANTAGED BUSINESS ENTERPRISE?**

YES \_\_\_\_\_ NO \_\_\_\_\_

- \* If not currently certified, any minority or female appraisers are encouraged to become certified. For more information, contact Patricia O'Brien at M.H.D at (617) 973-7339

11. **SUBMISSIONS REQUIRED -- IN ORDER TO QUALIFY AS FEE APPRAISER**

- A. Three (3) recent narrative appraisals - One (1) of each of the following types of appraisals (1 industrial appraisal, 1 commercial appraisal, 1 residential appraisal with house). These appraisals are only for review by M.H.D., in order to determine the quality of the appraiser's work, and the contents will remain confidential.
- B. A copy of your R.E. Appraiser's License, indicating that you have been **certified** and licensed in accordance with Title XI of the FIRREA.

12. **LEGAL OR ADMINISTRATIVE PROCEEDINGS: COMPLIANCE WITH LAWS.** List all judicial or administrative proceedings currently pending, or concluded adversely, against the applicant or any partner or any officer of the applicant's company within the past ten (10) years -- which relate to the procurement or performance of any public or private contracts, or which relate to environmental offenses.

List any criminal proceedings relating to embezzlement, graft, forgery, bribery, falsification or destruction of records, receipt of stolen property, environmental offenses, or other felonies.

**EXHIBIT 10-2-I**

Attachment C  
Experience Questionnaire  
Page 7 of 7

If any of the above apply, list on attached sheet each judicial, administrative, or criminal proceeding -- giving the dates, place, nature of the offense, and disposition of the case, including sentence imposed.

Any false statement in the application may, at the discretion of M.H.D, result in a determination not to award a contract to the applicant and/or the applicant's company, or to terminate an awarded contract.

**EXHIBIT 10-2-I**

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**RFR SCOPE**  
**COST EXPERTS, MOVERS, BUSINESS RELOCATION CONSULTANTS AND MOVE  
PLANNERS**

The MassDOT Highway Division Right of Way Bureau seeks to contract for expert cost estimating or move planning services in connection with persons or businesses displaced by eminent domain takings throughout the COMMONWEALTH. The CONTRACTOR will perform services in accordance with his/her "Proposal Letter" and the Division's "Letter of Assignment". This RFR is an open enrollment and the new contract will commence on July 1, 1999 and terminate on June 30, 2002.

**QUALIFICATION REQUIRED FOR SPECIALISTS (Cost Experts, Movers, Business  
Relocation Consultants & Move Planners)**

For cost experts, movers, business relocation consultants and move planners, interested in being considered by the MassDOT Highway Division for inclusion on its Approved List the following qualifications required: (1) Minimum of five (5) years experience in specialized field, either self-employed or with a firm or agency in that field; (2) Evidence of ability to qualify as an Expert in this field in the Massachusetts Superior Court; (3) Presently devoting at least 50% of your normal work time to the specialized field; (4) Satisfy the Division as to their character, integrity, and ability to serve the best interests of the Commonwealth.

Cost estimating, consulting, or move planning services to be performed will include one or more of the following, depending on the Contractor's expertise, which will be specified in the "Letter of Assignment":

- (a) Detailed cost reports on special and peculiar items of real/personal property requiring an expert opinion.
- (b) "Fair Market Value" and/or "In Place Value" of items determined to be real property, belonging to a person or business, who is being displaced by eminent domain taking. The Fair Market Value of the taking is determined by our Real Estate Appraisers.
- (c) "Fair Market Value" and/or "In Place Value" of items determined to be personal property, belonging to a person or business, who is being displaced by an eminent domain taking, and is entitled to Relocation Benefits under either the State or Federal Regulations.
- (d) Moving Cost Estimates, including any contractual work necessary for items as stated in (c) above.

**EXHIBIT NO. 10-3**

- (e) Verification, as to fairness and reasonableness, of existing moving cost estimates.

- (f) Prepare personal property inventories or verify accuracy of existing inventories of businesses being relocated.
- (g) Prepare specifications for each phase of work necessary for the relocation of a business.
- (h) Move Planner estimates and verification of fairness and reasonableness of existing estimates in connection with the relocation of businesses being displaced by an eminent domain taking, who are entitled to Relocation Benefits under either the State or Federal Regulations.
- (I) “In-Place Value” and/or moving cost estimate on signs which have been determined to be the personal property and are entitled to relocation benefits. In-Place Value must include description of sign including dimensions, uprights, footings, foundation and electrical supply, if applicable, an analysis of “in-place” value of sign as described, as well as a photograph of sign. Moving cost estimates should include each phase of work necessary to dismantle, move and reinstall including electrical wiring, if applicable.

To perform these services, the Contractor will be supplied with all necessary information, including the following where applicable:

- (1) Copy of Real/Personal Property Report.
- (2) Inventory of Personal Property.
- (3) Specifications, if available.
- (4) Copy of existing moving cost estimates, if verification as to fairness and reasonableness is requested, as in Item (e).
- (5) Copy of existing personal property inventory, if verification as to accuracy is requested, as in Item (f).
- (6) Copy of existing move planning estimates, if verification as to fairness and reasonableness is requested, as in Item (h).

The contractor must be well-equipped, qualified and have an experienced organization, which is in the position to prepare and furnish to the Division, any of the above items.

#### EXHIBIT NO. 10-3

#### MOVE PLANNER

## **SCOPE OF SERVICES**

**Submit a proposal to perform the services outlined below in the following areas:**

**Facility Relocation Planning  
Project Management  
Relocation Management**

- (1) Prepare a detailed project plan and project schedule to meet the operational and occupancy goals .**
- (2) Review Real and Personal Property Report in conjunction with Massachusetts Division of Highways (MDH) practice.**
- (3) Conduct inventory of personal property and prepare listing using an acceptable database.**
- (4) Prepare a Request for space planning/architectural services.**
- (5) Review space planning/architectural proposals and prepare recommendations .**
- (6) Attend, as needed, project status meetings to address issues relating to the planning, scheduling, implementation, renovation, occupancy and operation of the new facility.**
- (7) Prepare a Request for Proposal for continuity of telephone service at current and new location. Serve as interface with NYNEX, AT&A, etc.**
- (8) Prepare a Request for Proposal for voice and data cabling.**
- (9) Review proposal for voice and data cabling and prepare recommendations.**
- (10) Incorporate the existing office furniture and equipment into the preliminary proposed corporate offices and facility floor plans.**
- (11) Prepare a Request for Proposal for systems and office furniture and related equipment.**
- (12) Develop a separate list of furniture, data equipment, telephone equipment, electrical equipment, carpentry items and other equipment to be substituted in accordance with 49 CFR 24.303 (12) and 760 CMR 27.09 (13).**

## **EXHIBIT NO. 10-3**

- (13) Develop a separate list of furniture, data equipment, telephone equipment, electrical equipment and carpentry items and other equipment to be taken as an Actual Direct Loss of Property (ADLP) in accordance with 49 CFR 24.303 (10) and 760 CMR 27.09(20).
- (14) Whenever such work pertains to the relocation of claimant's personal property, oversee the development of construction and /or renovation drawings for the new facility.
- (15) Pre-qualify contractors for bidding on relocation related work. All contractors will be subject to interviews, full time employee verifications, and must show evidence of meeting the client's insurance requirements.
- (16) Prepare a Request for proposal for all renovation related activities.
- (17) Analyze proposals for adherence to request for proposal specifications, price and conditions, and propose recommendations.
- (18) Schedule and coordinate activities of all trades and related services. Update work schedules an occupancy plan as needed.
- (19) Approve partial payment requests for relocation related contractor in accordance with their performance and adherence to contract terms and conditions.
- (20) Prepare a Request for Proposal for relocation related electrician services.
- (21) Prepare a Request for Proposal for relocation related plumbing services.
- (22) Prepare a Request for Proposal for relocation related specialty services such as millwrights, sheet metal work, HVAC and other trades and services, as needed.
- (23) Prepare a Request for Proposal for replacement supply of all printed materials and stationery which will be made obsolete as a result of the move.
- (24) Prepare a Request for Proposal for the disposal of the items to be substituted in accordance with 49 CFR 24.303 912) and 760 CMR 27.09 (13).
- (25) Have an appraisal developed for the items of real property to be taken as an Actual Direct Loss of Property.

**EXHIBIT NO. 10-3**

- (26) Prepare a Request for Proposal for the disposal of the items to be taken as an Actual Direct Loss of Property in accordance with 49 CFR 24.303 (10) and 760 CMR 27.09 (20).
- (27) Prepare Request for Proposal for commercial movers and /or riggers.
- (28) Submit all estimates to MDH for Authorization to Move.

- (29) Establish an identification and tagging system to track all contents, including furniture, fixtures and equipment (FF&E) being moved to the new facility.
- (30) Prepare an employee move kit to keep all employees updated on the status of the project.
- (31) Provide on-site move coordinators at the origination site and at the new facility.
- (32) Provide for disposal of excess furniture and equipment which could not be sold in accordance with 49 CFR and 760 CMR and for which MDH has indicated no interest.
- (33) Develop a list and action plan for repairs, replacement of missing items and administration of insurance claims.
- (34) Coordinate adjustments to the final placement of relocation FF&E.
- (35) Serve as interface with representatives of MDH pertaining to all relocation issues.
- (36) Prepare documentation consisting of canceled checks, receipts, receipted invoices and other documentation required by MDH, in a format acceptable to MDH for recommendation to the Business Relocation Claims Advisory committee (BRCAC) and approval by the Division Administrator.

(37) **INSURANCE REQUIREMENTS (Recommended)**

(a)	Public Liability	\$1,000,000.00 individual
(b)	Property Damage	50,0000.00
(c)	Worker's Compensation	

**COMPENSATION:** The Contractor will be compensated at the rate of \$65.00 per hour for a total not to exceed his/her written and accepted proposal, unless changes in scope of work cause an increase or decrease, at which time an equitable adjustment must be made between the Contractor and thisDivision . Additional compensation may also be allowed for TESTIMONY IN JUDICIAL, REAL ESTATE APPRAISAL REVIEW BOARD OR ADMINISTRATIVE PROCEEDINGS, if such becomes necessary at the rate of \$350.00 per day for each full day and \$200.00 for each half day or less.

**EXHIBIT NO. 10-3**

We strongly encourage the CONTRACTOR to consider receiving payment via the electronic funds (EFT) payment method. EFT payments significantly reduce payment delays and provide almost instantaneous payment. (See below submission section)

**Cost Experts, Movers, Business Relocation Consultants and Move Planners interested in being considered by the MassDOT Highway Division for inclusion on MDH's Approved list see Section A.**

**Cost Experts, Movers, Business Relocation Consultants and Move Planners that have a current contract that will expire on June 30, 1999 and are interested in securing a new contract see Section B.**

**Cost Experts, Movers, Business Relocation Consultants and Move Planners that are already on the MassDOT Highway Division Approved List, but had not previously obtained a contract and are now interested in securing a contract see Section C.**

### **SUBMISSION REQUIREMENTS**

**Section A. Cost Experts, Movers, Business Relocation Consultants and Move Planners interested in being considered by the MassDOT Highway Division for inclusion on MDH's Approved list.**

- 1) Cover letter stating interest in being on the MassDOT Highway Division Approved List for Cost Experts, Movers, Business Relocation Consultants and Move Planners.
- 2) Completed form "Commonwealth of MassDOT Highway Division Right of Way Bureau Experience Questionnaire for Architects-Engineers-Cost Estimates, etc.

After the application is reviewed, if acceptable by the Right of Way Bureau, your name will automatically be submitted to the Massachusetts Division of Highways Board of Commissioners for approval for inclusion unto the MassDOT Highway Division Approved List of Cost Experts, Movers, Business Relocation Consultants and Move Planners. You will be notified in writing of your admittance to the Approved List. Once you receive notification from the Division that you are on the MassDOT Highway Division Approved List of Cost Experts, Movers, Business Relocation Consultants and Move Planners it is your responsibility to download the Commonwealth of Massachusetts standard contract form and other pertinent documents and mail the documentation to the Division. Proceed to SECTION C for obtaining a contract with the MassDOT Highway Division.

The following form is attached to this RFR

**1) COMMONWEALTH OF MASSDOT HIGHWAY DIVISION RIGHT OF WAY  
BUREAU EXPERIENCE QUESTIONNAIRE FOR ARCHITECTS - ENGINEERS-COST  
ESTIMATES, ETC.**

**Section B. Cost Experts, Movers, Business Relocation Consultants and Move Planners** that have a current contract that will expire on June 30, 1999 and are interested in securing a new contract.

1)Three original Commonwealth of Massachusetts Standard Contracts which must be signed and dated. The date must be written in ink, typed dates are unacceptable.

2) Copy of the Cost Expert, Movers, Business Relocation Consultants and Move Planners RFR

**3 Northern Ireland Notice and Certification Form.** All bidders must complete this form and submit it as part of their response, even if they have no business activity in Northern Ireland.

4) Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional)

All forms may be activated by going to [www.Comm-PASS.com](http://www.Comm-PASS.com) scroll down to form information, click on Form and Information - look for forms entitled as follows: Commonwealth of Massachusetts Standard Contract form; commonwealth of Massachusetts (Massachusetts Substitute W-9 Format); Commonwealth Terms and Conditions; Consultant Contractor Mandatory Submission Form; Northern Ireland Notice and Certification Form; Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional).

IF YOU EXPERIENCE DIFFCULTY IN DOWNLOADING ANY OF THE FORMS, CALL THE HELP DESK PHONE: (888) MA-STATE / (888) 627-8283 from 9AM -5PM MONDAY THUR FRIDAY. IF NO ONE ANSWERS YOUR CALL, LEAVE A MESSESSAGE AND SOMEONE WILL RETURN THE CALL.

**EXHIBIT NO. 10-3**

**SECTION C: Cost Experts, Movers, Business Relocation Consultants and Move Planners** that do not have a current contract with the MassDOT Highway Division and are interested in securing a contract.

1) Cover letter stating interest in obtaining a contract with the Massachusetts Division of Highways.

2)Three original Commonwealth of Massachusetts Standard Contracts which must be signed and dated. The date must be written in ink, typed dates are unacceptable.

3)Copy of the Cost Expert, Movers, Business Relocation Consultants and Move Planners RFR

**4)Commonwealth of Massachusetts (Massachusetts Substitute W-9 format)**

**5)Commonwealth Terms and Conditions**

**6) Northern Ireland Notice and Certification Form.** All bidders must complete this form and submit it as part of their response, even if they have no business activity in Northern Ireland.

**7)Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional)**

All forms may be activated by going to [www.comm-pass.com](http://www.comm-pass.com) scroll down to form information, click on Form and Information - look for forms entitled as follows as follows: Commonwealth of Massachusetts Standard Contract form; Commonwealth of Massachusetts (Massachusetts Substitute W-9 Format); Commonwealth Terms and Conditions; Consultant Contractor Mandatory Submission Form; Northern Ireland Notice and Certification Form; Commonwealth of Massachusetts Authorization for Electronic Funds Payment Form (optional).

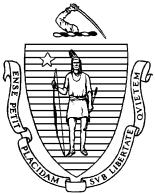
**IF YOU EXPERIENCE DIFFCULTY IN DOWNLOADING ANY OF THE FORMS,  
CALL THE HELP DESK PHONE: (888) MA-STATE / (888) 627-8283 from 9AM -5PM  
MONDAY THUR FRIDAY. IF NO ONE ANSWERS YOUR CALL, LEAVE A  
MESSESSAGE AND SOMEONE WILL RETURN THE CALL.**

**SUBMIT ALL INFORMATION TO THE FOLLOWING INDIVIDUAL.**

**Right of Way Bureau, Room 6160  
MassDOT Highway Division  
10 Park Plaza  
Boston, Ma. 02116-3973**

All questions should be addressed to Relocation Administrator at (617) 973-7900.

**EXHIBIT NO. 10-3**



# **COMMONWEALTH OF MASSACHUSETTS**

## **STANDARD CONTRACT FORM**

This form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. **Any changes to the official printed language of this form as published by ANF, CTR and OSD shall be void.** This shall not prohibit the addition of non-conflicting Contract terms. The quality of all performance by the Contractor under this Contract must be timely and meet or exceed industry standards. The Contractor shall comply with all applicable Massachusetts ("State") and federal laws and regulations and perform this Contract in accordance with the applicable Commonwealth Terms and Conditions and as follows:

*(The Contractor Must Complete Only Those Sections preceded by an ">>")*

>>Vendor Code:	Document ID:
>> <b>CONTRACTOR NAME:</b>	<b>DEPARTMENT NAME:</b>
>>Contract Manager:	Contract Manager:
>>Phone: >>Fax:	Phone: Fax:
>>Business and Mailing Address:	Business and Mailing Address:
<b>Terms and Conditions that apply to this Contract</b> ( <i>Completed by Department. Check one option only</i> ): <input type="checkbox"/> COMMONWEALTH TERMS AND CONDITIONS (Standard) OR <input type="checkbox"/> COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES	<b>Compensation</b> ( <i>Completed by Department</i> ) <input type="checkbox"/> Maximum Obligation of this Contract: \$_____ OR <input type="checkbox"/> No Maximum Obligation established: <input type="checkbox"/> Rate Contract with a Rate of: \$_____ <input type="checkbox"/> Per: _____ (Multiple Rates Must Be Attached) <input type="checkbox"/> Statewide Contract or Qualified List Contract
<b>Execution and Filing Status of applicable Terms and Conditions:</b> ( <i>Check one option only</i> ): <input type="checkbox"/> Previously executed by Contractor and is on file as prescribed by CTR OR <input type="checkbox"/> Executed by Contractor and is attached to this Contract	<b>Payment Type:</b> FOR INFORMATION PURPOSES ONLY ( <i>Completed by Department- Check one option only</i> ) <input type="checkbox"/> Payment Voucher <input type="checkbox"/> Ready Payment (Schedule: _____ Initial Base Amt: \$_____) <input type="checkbox"/> Contractor Payroll <input type="checkbox"/> Recurring Payment
<b>Start Date of This Contract:</b> _____ ( <i>Completed by Department. Subject To Section 1. of the applicable Terms and Conditions.</i> )	<b>Termination Date of This Contract :</b> _____ ( <i>Completed by Department. Subject To Section 4. of the applicable Terms and Conditions.</i> )
<b>Brief Description of Performance:</b> ( <i>Completed by Department</i> ) Attach a copy of the Request for Response (RFR) and the Contractor's Response and any additional negotiated terms, if applicable; or if an RFR was not required attach appropriate justification documentation including exemption from RFR requirement and details of scope of performance and compensation.	

**IN WITNESS WHEREOF, the Contractor certifies, under the pains and penalties of perjury that it is in compliance with all of the following provisions and shall remain in compliance with these provisions for the life of this Contract:** That the Contractor is qualified to perform this Contract and possesses, or shall obtain, all requisite licenses and permits to complete performance under this Contract; that it is in compliance with all federal and state tax laws, including M.G.L. c. 62C, §49A; that pursuant to M.G.L. c. 151A, §19A and M.G.L. c. 152, it will comply with all laws and regulations relating to payments to the Employment Security System and required workers' compensation insurance policies; that it shall carry professional and personal injury liability insurance sufficient to cover its performance under this Contract; that it will comply with all relevant prevailing wage rate and employment laws; that it is in compliance with the provisions of the Acts of 1990, c. 521, §7 as amended by the Acts of 1991, c. 329 and 102 CMR 12.00 and that the Contractor is either a "qualified employer" (it has fifty (50) or more full time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements) or the Contractor is an "exempt employer"; that pursuant to M.G.L. c. 156B, §109 (business corporations), c. 180, §26A (non-profit corporations), c. 181, §4 (foreign corporations) and c. 12, §8F (public charities) it has filed all required certificates and reports with the Secretary of State and the Attorney General's Office; that it is in compliance with Federal Anti-Lobbying requirements of 31 USC 1352; that it and any of its subcontractors are not currently debarred or suspended by the federal government or the State under any law or regulation, including Federal Executive Orders 12549 and 12689, Executive Order 147, M.G.L. c. 29, §29F and M.G.L. c. 152, §25C; and that it shall comply with Executive Orders 130, 346 and 359, M.G.L. c. 268A, c. 7, §22C and any additional provisions specified in this Contract, and **IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it has submitted a Response to a Request for Response (RFR) issued by the Department and that this Response is the Contractor's offer as evidenced by the execution below of the Contractor's authorized signatory, and that this Response may be subject to negotiation by the Department, and that the terms of the RFR, the Contractor's Response and any negotiated terms of the Response shall be deemed accepted by the Department and included as part of this Contract, which incorporates by reference the applicable Terms and Conditions, upon execution of this Contract by the Department's authorized signatory as of the date indicated below, OR if this Contract is not the result of a Request for Response solicitation that this Contract complies with all applicable laws and regulations as indicated by the execution of the authorized signatories of the Department and the Contractor as of the last date indicated below:**

**FOR THE CONTRACTOR:**

>>X: \_\_\_\_\_  
(Signature)  
>>NAME: \_\_\_\_\_  
  
>>TITLE: \_\_\_\_\_  
  
>>DATE: \_\_\_\_\_

**FOR THE DEPARTMENT:**

X: \_\_\_\_\_  
(Signature)  
NAME: \_\_\_\_\_  
  
TITLE: \_\_\_\_\_  
  
DATE: \_\_\_\_\_

### **EXHIBIT NO. 10-3A**

**Commonwealth of Massachusetts**  
**Request for Verification of Taxation Reporting Information**  
*(Massachusetts Substitute W-9 Format)*

Pursuant to IRS regulations, vendors & customers must furnish their Taxpayer Identification Number (*TIN*) to the Commonwealth. Vendors must complete, sign, and return this form before payments may be made.

**LEGAL NAME** (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I below.  
 (See **Specific Instructions** on the back page.)

**BUSINESS NAME-** If different from the above. (See **Specific Instructions** on the back page)

**LEGAL ADDRESS** – Number, Street, and apt. or suite no., City, State and ZIP code.

**REMITTANCE (PAYMENT) ADDRESS** (If different from the above) Number, Street, and apt. or suite no., City, State and ZIP code.

**PHONE #**

**FAX #**

<b>PART I- Taxpayer Identification Number (TIN) Verification</b>		<b>PART III- Update to existing W-9 Form</b>
Enter your Taxpayer Identification Number (TIN) in the appropriate box. Enter either <b>SSN OR EIN</b> . DO NOT ENTER BOTH. (See PART II.)		<input type="checkbox"/> A Request for Verification of Taxation Reporting Information has been previously filed with the Commonwealth under this TIN. This form will replace that form.  <i>Please attach supporting documentations specified in instructions on the back page under Updates.</i>
<b>Social Security Number (SSN)</b> <input type="text"/> <input type="text"/> <b>Employer Identification Number (EIN)</b> <input type="text"/> <input type="text"/>		

**PART II – What Name and Number to give to the requester (one type of account box MUST be checked)**

<b>TYPE OF ACCOUNT</b> Please check one	<b>NAME</b>	<b>TIN</b>	<b>ORGANIZATION TYPE</b>
<input type="radio"/> Individual	The Individual Name	SSN	I
<input type="radio"/> Sole Proprietorship	The Individual Name- The Owner	SSN or EIN	I
<input type="radio"/> Corporate	The corporation (including Canada & Mexico)	EIN	C
<input type="radio"/> Partnership	The Partnership	EIN	P
<input type="radio"/> A valid trust, estate, or pension trust	Legal entity. List first and circle the name of the legal trust, estate or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)	EIN	T
<input type="radio"/> Association, club, religious, charitable, educational, or other tax-exempt organization.	The Organization	EIN	O
<input type="radio"/> A broker or registered nominee	The broker or nominee	EIN	Any of the above except Individual

I have read and understand the Commonwealth of Massachusetts Request for Verification of Taxation Reporting Information

Please check this box

**Under penalties of perjury, I declare that I have examined this request and to the best of my knowledge and belief, all information I have supplied is true, correct, and complete.**

\_\_\_\_\_  
 Signature \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_  
 Please print or type your name & title \_\_\_\_\_

\_\_\_\_\_  
 Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**EXHIBIT NO. 10-3B**

\_\_\_\_\_  
 Please print or type your name & title \_\_\_\_\_

\_\_\_\_\_  
 Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

# Commonwealth of Massachusetts

## Request for Verification of Taxation Reporting Information

### GENERAL INSTRUCTIONS

(Section references are to the Internal Revenue Code.)

**Purpose of Form** - A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report payments made to you for the sales of goods & services & real estate transactions. Use the Request for Verification of Taxation Reporting Information (*Massachusetts Substitute W-9 Format*) to furnish your correct TIN to the Commonwealth and, when applicable, (1) to certify that the TIN you are furnishing is correct (*or that you are waiting for a number to be issued*).

**How To Obtain a TIN** - If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5**, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or **Form SS-4**, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete the Request for Verification of Taxation Reporting Information if you do not have a TIN, write "Applied For" in the space for the TIN in Part 1, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. Note: Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Request for Verification of Taxation Reporting Information, include your TIN, sign and date the form, and give it to the requester.

### Penalties

**Failure to Furnish TIN** - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding** - If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of \$500.

**Criminal Penalty for Falsifying Information** - Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

### SPECIFIC INSTRUCTIONS

**Name** - If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card and your new last name.

**Sole proprietor** - You must enter your *individual* Name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the business name line.

**Other entities** - Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or legal document creating the entity. You may enter your business, trade, or "doing business as" name on the business line.

**Foreign Vendors** - If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed **Form W-8BEN** (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

**TIN "Applied For"** - Follow the instructions under How to Obtain a TIN, sign and date this form.

**Signature** - The form must be signed to be considered valid.

**Privacy Act Notice** - Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid, the acquisition of property. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return.

**Organizations Recognized by the Commonwealth as Tax Exempt** - Organizations seeking recognition of tax exempt status with the Commonwealth must provide documentation of the organization federal tax exempt status in the form of a ruling or determination letter issued by the Internal Revenue Service (IRS). The Commonwealth recognizes the following IRS tax exempt status organization rulings:

- . Section 501© (1 through 23)
- . Section 501 (d)
- . Section 501(e)
- . Section 501 (f)
- . Section 501(k)
- . Section 521 (a)

For more information on Tax-Exempt status, please see IRS Publication 557 (rev. Jan. 99).

**Updates to the Request for Verification of Vendor/Customer Taxation Reporting Information** - If any of the information requested on this form changes (*i.e.*, name or address changes), the payee must submit a new Request for Verification of Taxation Reporting Information with the updated information. Changes to name or TIN must be accompanied by IRS certification of Name & TIN.

If the payee receives notification from the IRS that an information return (*i.e.*, 1099-MISC) was filed on their behalf by the Commonwealth with incorrect spelling of their name and/or incorrect or missing TIN (commonly referred to as a "B-Notice" or IRS Form 8355), the payee must immediately complete a new Request for Verification of Taxation Reporting Information with the corrected information and attach a copy of the IRS Form 8355 to the form.

If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct (*legal*) name.

**If you have Questions on Completing this Form** - Please contact the Office of the State Comptroller

**By Phone:** (617) 973-2311 or 973-2655

### Completion of Form:

Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

### EXHIBIT NO. 10-3B

# **CONSULTANT CONTRACTOR MANDATORY SUBMISSION FORM**

**COMPLETE THE FOLLOWING ONLY FOR CONSULTANT CONTRACTS**  
*(Within HH and NN subsidiaries)*

Bidder: \_\_\_\_\_

RFR Name/Title: \_\_\_\_\_

RFR Number: # \_\_\_\_\_

**Additional Income Disclosure.** Pursuant to the provisions of M.G.L. c. 29, s 29A, the following amounts represent any contracts, grants or other income due from the Commonwealth of Massachusetts, including any political subdivision or public authority, during the period of a contract. Enter N/A if none. You may attach additional sheets as necessary.

**Disclosure of Persons with Financial Interest.** Pursuant to the provisions of M.G.L. c. 29, s 29A and c. 7A, s. 6., the following individuals have a financial interest in a contract and/or with more than one percent (1%) interest in the capital stock of the contractor. Enter N/A if none. You may attach additional sheets as necessary.

**Key Personnel.** Attach a resume or statement of qualifications for all key personnel specifically named in bidder's response to be assigned to the performance of a contract. Enter N/A if none.

The information submitted herein is certified by the Bidder to be accurate under the pains and penalties of perjury.

Signature of Authorized Signatory for Bidder: \_\_\_\_\_

Title of Authorized Signatory for Bidder: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT NO. 10-3C**

## **NORTHERN IRELAND NOTICE AND CERTIFICATION**

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State agencies, state authorities, the House of Representatives or the state Senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland who fails to complete the certification below as required by M.G.L. c.7 section 22C:

The bidder does not employ ten or more employees in an office or other facility in Northern Ireland.

The bidder employs ten or more employees in an office or other facility located in Northern Ireland and certifies that:

- 1) the bidder does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and
  - 2) the bidder promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and
  - 3) the bidder is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.
- 

Signed under the pains and penalties of perjury on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Bidder Name

X \_\_\_\_\_  
Signature of Authorized Representative Signing on Behalf  
of Bidder

\_\_\_\_\_  
Print Name of Authorized Representative of Bidder

\_\_\_\_\_  
Print Title of Authorized Representative of Bidder

### **EXHIBIT 10-3D**

## **AFFIRMATIVE ACTION PLAN FORM**

*(Required for procurements of \$50,000 or more - employers only)*

Bidder: \_\_\_\_\_

RFR Name/Title: \_\_\_\_\_

RFR Number: # \_\_\_\_\_

Pursuant to Executive Orders 227 and 246, any contract with a potential financial benefit of \$50,000 dollars or more requires a bidder to submit an Affirmative Action Plan. The format for Affirmative Action Plans shall be determined in accordance with the Executive Orders and the procuring department's secretariat, if the secretariat specifies a format. **If a format has not been specified by the department's secretariat, bidders will be required to complete either A or B below:**

- A. BIDDER MUST ATTACH A COPY OF AFFIRMATIVE ACTION PLAN TO RFR RESPONSE.**

**OR**

- B. BIDDER MUST COMPLETE THE FOLLOWING CERTIFICATION OF AFFIRMATIVE ACTION PLAN.**

**IN WITNESS WHEREOF**, the bidder certifies under the pains and penalties of perjury, that as an employer, it is committed to non-discrimination in employment and if selected to execute contracts with the Commonwealth of Massachusetts shall also be committed to procure commodities, services and supplies from certified minority and women-owned business enterprises, businesses owned by individuals with disabilities and businesses owned and controlled by socially or economically disadvantaged individuals, both in the performance of contracts with the Commonwealth of Massachusetts and in the performance of its business generally, as certified by the execution of this certification by an authorized signatory of the bidder as of the last date indicated below.

X \_\_\_\_\_  
(Signature of Authorized Signatory of Bidder)

PRINT NAME: \_\_\_\_\_  
(Print Name of Authorized Signatory of Bidder)

TITLE: \_\_\_\_\_  
(Print Title of Authorized Signatory of Bidder)

DATE: \_\_\_\_\_

**EXHIBIT 10-3E**

## CONTRACTOR AUTHORIZED SIGNATURE VERIFICATION FORM

**Individuals:** Individuals have **two options** to verify signature authorization:

1. **Official Sample of Signature.** Signature verification may be accomplished by submitting a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature, **OR**
2. **Notarization.** In the alternative, the Bidder can have their signature notarized in the space below.

**Corporations.** Corporations have **two options** to verify signature authorization.

1. **Authorization and Clerk Certification:** The Corporate Clerk may certify in the space below that they have witnessed the authorized signatory's signature (made in the Clerk's presence) **AND** that the signatory is authorized to execute contracts and other documents and legally bind the corporation. (**NOTE:** Clerks may not self-certify if they act as Clerk and as an authorized signatory. Alternative documentation should be submitted); **OR**
2. **Authorization and Official Sample of Signature or Notarization** (Complete both "a." and "b." below)
  - a. **Authorization.** The Bidder may attach a copy of a board of directors vote stating that each signatory is authorized to execute contracts and other documents and legally bind the corporation, **AND**:
  - b. **Official Sample of Signature or Notarization. (Select one option)**
    - **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing an example of the authorized signatory's signature, **OR**
    - **Notarization.** Have each of the signatory's signature notarized (made in a notary's presence) below.

### **Partnership or Other Entities**

1. **Authorization.** Attach documentation for each signatory of authorization to execute contracts and other documents and legally bind the partnership or other entity, **AND**
2. **Official Sample of Signature or Notarization:** (Select one option)
  - a. **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature; **OR**
  - b. **Notarization.** Have their signature notarized in the space below.

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### THIS SECTION IS FOR NOTARIZATION OR CORPORATE CLERK CERTIFICATION

PRINT SIGNATORY'S FULL LEGAL NAME: \_\_\_\_\_

SIGNATURE: (as it will appear on documents) \_\_\_\_\_

(NOTARY) I, \_\_\_\_\_ as a notary public certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory on behalf of the Bidder, and the individual's identity was verified, on this date: \_\_\_\_\_, 20 \_\_\_\_\_. My commission expires on:

OR

(CORPORATE CLERK) I, \_\_\_\_\_ as corporate clerk of the Bidder/Contractor certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory and the signatory is authorized to execute contracts and other instruments and legally bind the Bidder/Contractor. This date: \_\_\_\_\_, 20 \_\_\_\_\_.

AFFIX CORPORATE SEAL OR NOTARY SEAL HERE:

**EXHIBIT 10-3F**

## **AUTHORIZATION FOR ELECTRONIC FUNDS PAYMENT**

### **WHAT SHOULD A DEPARTMENT DO TO PROCESS A PAYEE'S REQUEST TO RECEIVE PAYMENT VIA ELECTRONIC FUNDS TRANSFER (EFT)?**

Electronic funds transfer (EFT) allows for payments to be made to Contractors electronically. It is the preferred method of payment for all payees doing business with the Commonwealth. A new Contractor should always be encouraged by the Department to receive payment electronically. It saves the Commonwealth money and can be more efficient for the payee. When a Department initiates a new business relationship with a payee this question should always be asked.

Registering a Contractor for EFT payment is the responsibility of the Department doing business with that payee. The Contractor should complete and return **to the Department** the "Authorization For Electronic Funds Transfer Payment" form, which follows. This form contains the banking information that the Department must enter on the Vendor Update (VU) Transaction screen.

Departments should follow the steps listed below:

- I. Departments will enter the required EFT information on the Vendor Update (VU) screen.
- II. After the Vendor Update has been approved by CTR, MMARS alerts Treasury to the fact that an EFT Contractor request has been entered.
- III. The Treasury initiates a pre-note process, similar to a test run, of the EFT process, to ensure that the electronic transfer will work correctly. This takes about 15 days to complete.
- IV. If there is no problem, the EFT payment process is enabled.
- V. If there is a problem, there are two options:
  - A. In some cases, TRE will be able to correct misinformation and process the EFT request. The Contractor Banking Status Table (VBST) will be updated with a 'Y' in the "Notice of Change" field. If the banking information has been corrected the Department may have to update their own internal system when applicable.
  - B. In other cases, TRE will not be able to fix the information. Departments must monitor the VBST table, for any rejected EFT and changed requests. The VBST screen contains the "Electronic Commerce Status Flag". If the value for your Department Contractor is "R" for Reject, either the Pre-note on the "EFT" has rejected for the Contractors shown on that table. The Department should contact the Contractor to resolve the problem.

### **Availability of Electronic Funds Transfer (EFT) for Payees**

In order to facilitate the Contractor's use of this technology, on the next page is the Authorization for Electronic Funds Payments form, which can be given by Departments to Contractors. Contractors should then return the form to the Department so the following data can be entered on the Vendor Update (VU) transaction.

- Bank Transit Routing Number
- Bank Account Number
- Type of Account (Checking or Savings)

Having the Contractor attach a voided check to the form may be helpful to the Department in ensuring the accuracy and completeness of the information. To complete the EFT initiation process, Contractors need to contact their bank and inform it that they will be receiving their payments by EFT. The bank receives EFT payments through their Automated Clearing House (ACH) service. It is then up to the bank to provide that detailed payment description information for the payee.

### **EXHIBIT 10-3G**

**COMMONWEALTH OF MASSACHUSETTS**  
**AUTHORIZATION FOR ELECTRONIC PAYMENTS**

The Commonwealth's goal is to make the printing and mailing of paper checks an obsolete business practice in the Commonwealth of Massachusetts. Electronic fund transfer (EFT) is the preferred method of payment for all payees doing business with the Commonwealth. EFT saves the Commonwealth money and is more efficient for the payee.

EFT allows for payments to be credited to payee's designated account electronically similar to an employee's direct deposit of payroll. The Commonwealth has been offering EFT to Vendors for almost 15 years. Annually, the Commonwealth pays more than \$5 billion dollars via EFT. Payments are more predictable, with no delays to the payee. Remittance information is transmitted to the vendor bank and is provided to vendors on their bank statements. This remittance information can now also be accessed via the Internet at the Comptroller's VendorWeb site <http://massfinance.state.ma.us>.

Payees can sign up through the Office of the Comptroller. To expedite this process, the payee should complete the lower portion of this page and return to the address listed below.

A voided check attached to the form may help to ensure the accuracy and completeness of the information. To complete the EFT initiation process, payees should contact their bank once the form has been filed with the Commonwealth and inform them that they will be receiving payment by EFT using the CTX format. The bank receives EFT payments through their Automated Clearing House (ACH) service.

***EFT is safer and faster. Thank you for your smart decision in going the EFT way.***

**COMMONWEALTH OF MASSACHUSETTS**  
**AUTHORIZATION FOR ELECTRONIC FUNDS TRANSFER PAYMENTS**

"I, \_\_\_\_\_, hereby authorize the Commonwealth of Massachusetts, through the State Treasurer, to deposit funds due into the account at the bank named below. The State Treasurer is also authorized to debit my account only to adjust any over deposit which it has caused to be made to my account."

**VENDOR BANK INFORMATION:**

Vendor Bank Name: \_\_\_\_\_

Vendor Bank Transit Routing Number: \_\_\_\_\_

Vendor Bank Account Number: \_\_\_\_\_

(Please Check Account Type):  Checking Account (attach voided check) or  Saving Account

**VENDOR INFORMATION:**

Vendor Tax Identification Number (EIN): \_\_\_\_\_

Vendor/Business Name: \_\_\_\_\_

Vendor Contact Name: \_\_\_\_\_ Telephone: (      ) \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

This authorization will remain in effect until either canceled in writing or an updated form changing information is sent to:

**Office of the Comptroller  
One Ashburton Place, Room 901  
Boston, Ma 02108**

AUTHORIZED SIGNATURE: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_ DATE: \_\_\_\_\_



# COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.



## COMMONWEALTH TERMS AND CONDITIONS

**12. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

**13. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be

superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

**IN WITNESS WHEREOF,** The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_

(signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Check One):  Organization  Individual

Full Legal Organization or Individual Name: \_\_\_\_\_

Doing Business As: Name (If Different): \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

### ***INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS***

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: ***Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108*** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

### **EXHIBIT 10-3 H**

COMMONWEALTH OF MASSACHUSETTS  
HIGHWAY DEPARTMENT  
RIGHT OF WAY BUREAU

EXPERIENCE QUESTIONNAIRE  
FOR  
ARCHITECTS-ENGINEERS-COST ESTIMATES, etc.

1. NAME: \_\_\_\_\_

SOC. SEC. NO.: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

2. ADDRESS

RESIDENCE: \_\_\_\_\_  
\_\_\_\_\_

ZIP CODE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

BUSINESS: \_\_\_\_\_  
\_\_\_\_\_

ZIP CODE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

3. BUSINESS INFORMATION:

ESTABLISHED

FIRM NAME	YEAR	STATE
FORMER FIRM NAME(S), IF ANY, AND YEAR ESTABLISHED		
ADDRESS	TELEPHONE	
PRINCIPALS OF FIRM: LIST NAME(S)		

ROW-163, REV.10-09-92

4. Type of Services Provided by Yourself and/or firm .

PERSONAL HISTORY STATEMENT OR YOURSELF AND/OR PRINCIPALS AND ASSOCIATES WITHIN YOUR FIRM (Furnish completed data but keep to essentials)

**APPLICANT**

5. NAME ( Last -first-middle-initial )

Date of Birth (Month-day - year)	Years of Experience	As Principal in this firm	As Principal in other forms	Other than Principal
Education (College, degree, year, specialization)				

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, Year, state)

**PRINCIPAL AND/OR ASSOCIATE**

6. NAME (Last-first-middle-initial)

Date of Birth (Month-day - year)	Years of Experience	As Principal in this firm	As Principal in other forms	Other than Principal
Education (College, degree, year, specialization)				

---

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

---

REGISTRATION (Type, Year, State)

---

**PRINCIPAL AND/OR ASSOCIATE**

6. NAME (Last-first-middle-initial)

Date of Birth (Month-day - year)	Years of Experience	As Principal in this firm	As Principal in other forms	Other than Principal
Education (College, degree, year, specialization)				

---

#### MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

---

#### REGISTRATION (Type, Year, State)

---

8. Name and address of at least five (5) persons or firms who have retained the services of yourself and/or firm and the type and location of services performed.

9. Submit copies of at least three (3) reports of work services performed, and copies of firms brochures, etc.

10, Have you ever performed services or work in connection with a real estate appraisal?

If so, explain.

11. Have you ever been arrested or convicted for breach or violation of the laws of this of any other State or Nation, or the ordinances or by-laws of any city or town, since you reached the age of seventeen years?

If "yes" state each case, giving the date, the place, the nature of the offense, and the disposition of the case, including the sentence imposed if any, (state the amount of fine or length of imprisonment), whether or not sentence was suspended, whether or not you were placed on probation (state length of probationary period), whether the case was filed without sentence, or whether you were released without appearing in court.

**NOTE:** It will not be necessary for you to furnish any information of arrest or conviction of drunkenness, simple assault, speeding, minor-traffic violations or disturbance of the peace if such arrest or conviction occurred more than ten years ago. A complete statement of your case may be obtained upon application to the Commissioner of Probation, Court House, Boston. Failure to answer this question fully may result in cancellation of your application.

12.

NAME OF FIRM OR INDIVIDUAL SUBMITTING QUESTIONNAIRE

NAME AND TITLE OF PERSON SIGNING

---

SIGNATURE

---

DATE

May 23, 2000

Contract:

Location:

Project:

Letter of Assignment

Mr.

Dear Mr.

Under authorization of and in accordance with terms of your contract, you are hereby assigned to submit an appraisal report on the following listed properties in .

<u>PARCEL</u>	<u>OWNER</u>	<u>TAKING</u>	<u>USE</u>
Payment will be in accordance with your proposal letter dated -----in the amount of ----- -----as full compensation.			

The completion period for this assignment will be ( ) days commencing on -----through  
.

Sincerely,

Director  
Right of Way Bureau

EXHIBIT 10-4

## Chapter 11

## REVIEWING APPRAISER'S PROGRESS CHART

MONTH OF \_\_\_\_\_

## REVIEWING APPRAISER

CITY/TOWN: \_\_\_\_\_ FILE NO.: PROJIS code

PARCEL NO.: \_\_\_\_\_ F.A.PROJECT NO.: \_\_\_\_\_

OWNER: \_\_\_\_\_

PROJECT: \_\_\_\_\_ LAYOUT NO.: \_\_\_\_\_

**EXHIBIT 11-2****REVIEW APPRAISER'S CHECKLIST**APPRAISER: \_\_\_\_\_ FIELD REVIEWED: Yes  No 

TYPE OF TAKING: \_\_\_\_\_

COMPLIANCE		Item	APPRAISAL	COMMENTS
Yes	No			
		1	Letter of transmittal, dated & signed (fee appraisers only)	
		2	Owner's name, address of property	
		3	Project number, Federal Aid Project number (if applicable)	
		4	Parcel number, area of taking, interest acquired	
		5	Photos: properly identified, date taken, by whom	
		6	Plot plan of entire property: showing the dimensions, area(s), and improvement(s) (if any)	
		7	Floor plans of structures: dimensions, and areas	
		8	Description of location & neighbhd, and neighbhd influence	
		9	Description of entire property	
		10	List of non-compensable (personal) property	
		11	Zoning, including all pertinent information	
		12	Assessments, tax exempt, abatements, Governmental interests	
		13	Highest & best use of property at time of taking	
		14	Description of each parcel taken: land and improvements	
-	-	15	Description of remaining property: <ul style="list-style-type: none"> <li>(a) Effect of layout and construction on remainder</li> <li>(b) Highest and best use, after taking</li> <li>(c) Special benefits to remainder. If any, justify</li> </ul>	
		16	Five years sales history, data, and analysis	
-	-	17	Land Valuation - Comparable Sales Analysis <ul style="list-style-type: none"> <li>(a) Comparable sales data forms with detailed information, photo, and sketch</li> <li>(b) Narrative analysis of sale</li> <li>(c) Explanation of adjustments</li> <li>(d) Sketch or map showing location of comparable sales</li> </ul>	
-	-	18	Valuation with Improvements - Comparable Sales Analysis <ul style="list-style-type: none"> <li>(a) Comparable sales data forms with detailed information, photo, and sketch</li> <li>(b) Narrative analysis of each sale</li> <li>(c) Explanation of adjustments</li> <li>(d) Sketch or map showing location of comparable sales</li> </ul>	
		19	Analysis of Value of the Final Estimate of Damages	
		20	Affidavit of appraiser - Dept. form properly filled out	
		21	Allocation of Damages	
		22	Economic Rental, for Property Management purposes	
		23	Mathematics (Office Checker)	

**\*FINAL DETERMINATION OF DAMAGES\***

		Appraiser	Reviewer
/	19	Accepted original submission	\$ _____ \$
/	19	Accepted original submission, s.t. revisions or additions	\$ _____ \$
/	19	Revisions/additions received	DAMAGES: \$ _____ \$
/	19	Revisions/additions accepted	Date: ____ / ____
/	19	Appraisal unacceptable	Review Appraiser:

**EXHIBIT NO. 11-2**

### STATEMENT OF THE REVIEW APPRAISER

In accordance with 49CFR, Part 24, Section 104, currently in effect, the following statements are herein made:

- (1) The Review Appraiser has determined that \$\_\_\_\_\_ is a reasonable measure of fair Market Value and/or damages. This determination is based upon all competent information that is available including the appraisal and data submitted by \_\_\_\_\_, as well as the Review Appraiser's own observations and calculations. This determination is/is not a revision or an adjustment of a former determination of value based upon additional value information that has been made available.
- (2) The Review Appraiser understands that the above-stated determination of fair Market Value and/or damages is to be used in connection with a Federal aid project.
- (3) The Review Appraiser acknowledges the following checked statement(s):
  - ( ) A visual inspection of the parcel(s) to be acquired, and the comparable sales relating thereto, was made by the Review Appraiser.
  - ( ) The visual inspection of the parcel(s) and applicable comparable sales was made by an assistant Review Appraiser and properly documented in the file.
  - ( ) The Review Appraiser is familiar with the project, and the area, from a recent visit.
- (4) That I have no direct or indirect, present or contemplated, future personal interest in such property, or in any benefit from the acquisition of such property herein appraised; that I, my immediate family or partner, or any business organization in which I am serving as an officer, director, trustee, partner or employee, or any person or organization with whom I am negotiating or have any arrangement concerning prospective employment, did not perform, in whole or in part, this review appraisal, and do not have a financial interest in the property which is herein appraised; that I have read the provisions of M.G.L. c. 268A, § 23, a copy of which is attached to and made a part of this review appraisal report; and that, to the best of my knowledge, in carrying out this appraisal assignment, I have not violated the standards of conduct set forth in said section 23.
- (5) The Review Appraiser's determination has been reached independently, based on appraisals or other factual data of record, without collaboration or direction.
- (6) That the Review Appraiser's determination of fair Market Value and/or damages included only items which are compensable under State law, and are eligible for Federal reimbursement as herein noted.

Date: \_\_\_\_\_ Review Appraiser: \_\_\_\_\_

Attached: Appraisals by \_\_\_\_\_  
\_\_\_\_\_

## **MASSDOT HIGHWAY DIVISION**

## **RIGHT OF WAY BUREAU**

## **REVIEWING APPRAISER'S REQUEST FOR CORRECTIONS AND/OR ADDITIONS**

Appraiser \_\_\_\_\_

City/Town \_\_\_\_\_ F. A. P. # \_\_\_\_\_

F. A. P. # \_\_\_\_\_

**Owner** \_\_\_\_\_

Layout # \_\_\_\_\_ Parcel # \_\_\_\_\_

**ITEM NUMBER / PAGE / INFORMATION REQUESTED**

## REVIEWING APPRAISER

---

---

DATE

**EXHIBIT NO. 11-4**

## REVIEW APPRAISER'S COMMENTS AND ESTIMATE

Date: \_\_\_\_\_ Review Appraiser:  
**Exhibit 11-5**

## Chapter 12

**MASSACHUSETTS  
ASSOCIATION OF REALTORS**

REALTOR    *The Voice for Real Estate in Massachusetts*

256 Second Avenue  
Waltham, MA 02154-1139  
Telephone (617) 890-3700  
Fax (617) 890-4919

August 13, 1996

Kevin J. Sullivan  
Commissioner  
Massachusetts Highway Department  
Ten Park Plaza  
Boston, MA 02116

Dear Commissioner Sullivan:

Please accept the following seven individuals as the recommendations of the Massachusetts Association of REALTORS for the Real Estate Review board.

If you desire addition information, please contact our Executive Vice President, Robert Nash, at 617-890-3700.

Richard Dufour  
Dufour Associates  
P.O. Box 3400  
Fall River, MA 02722  
508-678-2213

Paul Fontaine  
Century Appraisal  
615 South Street  
Fitchburg, MA 01420  
508-343-4384

Ronald Rogers  
Whitton Realty, Inc.  
112 Central Street  
Leominster, MA 01453  
508-537-6401

Karen Fusco  
Bourque BH&G  
Two Washington Street  
Leominster, MA 01453

James Cleary  
J V Cleary & Associates  
P.O. Box 692  
Leominster, MA 01453  
508-422-8560

Donald Frigoletto, Sr.  
D. L. Frigoletto & Associates  
770 N. Main Street  
Leominster, MA 01453  
508-537-3772

Arthur Larrivee  
R/W Larrivee Real Estate  
276 Union Street  
New Bedford, MA 02740  
508-990-7444

Sincerely,

Laura E. Shifrin  
President

**EXHIBIT NO. 12-1**

premises for the use of departments, commissioners or boards of the commonwealth in the area of Springfield, for a term not exceeding ten years with an option to renew for ten years. *Approved August 9, 1957.*

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*Chap.657*

AN ACT PROVIDING THAT THE REAL ESTATE REVIEW BOARD SHALL DETERMINE THE AMOUNT TO BE PAID FOR PUBLIC LANDS TAKEN FOR HIGHWAY PURPOSES.

*Be it enacted, etc., as follows:*

Section 1 of chapter 693 of the acts of 1955 is hereby amended by adding at the end the following two paragraphs: —

In the event that the parties concerned are unable to mutually agree upon the amounts to be paid as herein provided the matter shall be referred to the real estate review board created by section six of chapter four hundred and three of the acts of nineteen hundred and fifty-four which shall determine the amount to be paid, and said determination shall be final.

The provisions of this act shall apply also to all park or beach lands or lands used for park or beach purposes so taken, transferred or used on or after June thirtieth, nineteen hundred and fifty. *Approved August 9, 1957.*

**EXHIBIT NO. 12-2**

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**DOCKET OF DEPARTMENT REAL ESTATE APPRAISAL REVIEW BOARD**

CITY/TOWN:

DATE OF MEETING:

SHEET OF SHEETS

LAYOUT NO.:

PROJIS NO.:

FAP #:

**Unless otherwise noted, the maximum amount recommended by the Board represents the total value of the parcel(s) as if unaffected by contamination or hazardous material and is subject to adjustment for the cost of any remediation that may be required.\***

, : \_\_\_\_\_  
Chairman  
: \_\_\_\_\_  
: \_\_\_\_\_  
: \_\_\_\_\_  
:

CITY/TOWN: \_\_\_\_\_ FILE #: \_\_\_\_\_  
PARCEL #: \_\_\_\_\_ PROJECT: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
LAYOUT #: \_\_\_\_\_ F.A.P. #: \_\_\_\_\_

**RIGHT OF WAY BUREAU  
REAL ESTATE APPRAISAL REVIEW BOARD RECOMMENDATION**

Administrator  
MassDOT Highway Division  
10 Park Plaza  
Boston, MA 02116-3973

Dear Administrator:

We, the undersigned, Members of the Massachusetts Real Estate Appraisal Review Board, have reviewed the appraisal reports and the recommendation of the Division's Review Appraiser submitted to us by the Right of Way Bureau in connection with the eminent domain taking for highway purposes of the parcel(s) identified above.

In the process of arriving at value estimates, it is customary to consider three approaches: depreciated replacement, capitalized income, and market comparisons. The Review Board gives consideration to all information contained in such reports as are submitted to it, correlating such information and arriving at a composite opinion of the highest price which the MassDOT Highway Division of the Commonwealth of Massachusetts should pay for a specific property, unless ordered otherwise by some court of jurisdiction.

We have concluded that the MassDOT Highway Division award should not exceed \$ \_\_\_\_\_ for the parcel(s), as of date of taking, plus interest from date of recording of the order of taking to date of payment, and pro rata amount of local real estate property taxes for the balance of the calendar year. Unless otherwise noted, the maximum amount recommended by the Board represents the total value of the parcel(s) as if unaffected by contamination or hazardous material and is subject to adjustment for the cost of any remediation that may be required.

Remarks: Severance Damages, included in the above, amount to  
\$ \_\_\_\_\_.

ALLOCATION OF DAMAGES

Land	\$
Buildings	\$
Other Improvements	\$
Total	\$

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## Chapter 13

THE COMMONWEALTH OF MASSACHUSETTS

MASSDOT HIGHWAY DIVISION

RIGHT OF WAY BUREAU

**JUST COMPENSATION SUMMARY REPORT**

Information included in this Summary Report is provided to the owner of real property who has interests in property acquired or to be acquired and shows (as required by Title III, Section 301 (3)

of Public Law 91-646 "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970") the basis for the amount established as just compensation.

Owner's Name:

Mailing Address:

City/Town:

FA Project No.:

Layout Number:

Property Location:

Parcel No.(s):      Area(s):      Interest(s) Acquired:

**EXHIBIT NO. 13-1**

Form Revised 1/11

ROW Form 360

**Just Compensation  
Summary Report  
Page 2 of 3**

(2) Separately held interest in the real property not being acquired in whole or in part (if applicable):

(3) Buildings, structures, and other improvements, including fixtures, trade fixtures, and removable equipment in the building, which are considered to be part of the real property for which the offer of just compensation is made:

(4) Real property improvements, including fixtures not owned by the owner of the land (if none, so state):

ROW Form 360

**EXHIBIT NO. 13-1**

**Just Compensation  
Summary Report  
Page 3 of 3**

(5) Types, and approximate quantity, of personal property located on the premises that is not being acquired, where the owner and/or tenant(s) are eligible for a relocation payment to relocate the personal property located on the premises being acquired (if not eligible, so state):

(6) The Department's determination of just compensation is based on the following:

(a) The fair market value of the property.

(b) Just compensation is not less than the approved appraisal of land damages, based on the interests acquired.

(c) Just compensation disregards any decrease or increase in fair market value of the property prior to acquisition caused by the project for which the property is being acquired.

(d) In the case of separately-held interests in the real property, the apportionment of the total just compensation for each of those interests has been considered.

(7) Compensation for real property taken: \$ \_\_\_\_\_

(8) Damages to any remaining real property: \$ \_\_\_\_\_  
(If none, so state)

(9) Total amount of damages: \$ \_\_\_\_\_

(10) The amount of just compensation has been established through the use of acceptable principle applicable to the appraisal of real estate, by considering the three (3) approaches to value, namely the Cost Approach, the Market Data Approach, and the Income Approach.

ROW Form 360

**EXHIBIT NO. 13-1**

**COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
NEGOTIATION REPORT**

**TOWN/CITY:**  
**PROPERTY ADDRESS:**  
**LAYOUT NO.** Order  
**PARCEL(S):**

**F.A.P #:** NFA  
**PROJECT:**  
**LAYOUT DATE:** 1/10/01

**OWNER(S):** \_\_\_\_\_ **TENANT(S):** \_\_\_\_\_  
**PHONE #** \_\_\_\_\_ **PHONE #** \_\_\_\_\_  
**OWNER'S ADDRESS:** \_\_\_\_\_  
**CONTACT WITH:** \_\_\_\_\_  
**OWNER**  **TENANT**  **ATTORNEY:** \_\_\_\_\_ **VISIT:**  **PHONE:** \_\_\_\_\_ **LETTER:** \_\_\_\_\_

**EXPLAINED:** **LAYOUT PLANS**  **CONSTRUCTION PLANS**  **THE TAKING**   
**PRO TANTO**  **INTEREST AND TAX REBATE**  **RELEASES**   
**RELO ASSISTANCE**  **OWNER'S RIGHTS**  **TENANT'S RIGHTS**   
**USE & OCCUPANCY CHARGE (PER MONTH)** \_\_\_\_\_

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**DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ A.M. \_\_\_\_\_ P.M.

ROW Representative

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This is to certify that: (A) Any written agreement secured in connection with this report embodies all the considerations agreed to between the property owner and the Commonwealth of Massachusetts.  
(B) I understand the acquired property is for use in connection with a federal aid highway project.  
(C) I have no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from the acquisition of the property; and  
(D) The agreement was reached without coercion of any type.

**(EXHIBIT #13-2 Revised 1/11)**

**COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISIONS  
RIGHT OF WAY BUREAU  
OWNER'S REVIEW REQUEST**

**TOWN/CITY:**  
**PROPERTY ADDRESS:**  
**LAYOUT NO.**  
**PARCEL(S):**

**F.A.P #:**  
**PROJECT:**  
**LAYOUT DATE:**

**OWNER(S):**  
**PHONE #**  
**OWNER'S ADDRESS:**

**TENANT(S):**  
**PHONE #**

**MATERIAL PROVIDED:**

LETTER

APPRAISAL

PLANS

OTHER (EXPLAIN)

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DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ A.M. \_\_\_\_\_ P.M.

\_\_\_\_\_  
ROW Agent

I certify that I have provided the above noted material for further MHD review.

\_\_\_\_\_  
Property Owner

(EXHIBIT #13-3 Revised 1/11)

## Chapter 14

MASSDOT HIGHWAY DIVISION

RIGHT OF WAY BUREAU

**ADVANCE TITLE EXAMINATION REQUEST**

CITY/TOWN: \_\_\_\_\_ PROJECT: \_\_\_\_\_

FED. AID NO: \_\_\_\_\_ PARS# \_\_\_\_\_

REQUEST BY: \_\_\_\_\_ DATE: \_\_\_\_\_ SHEET 1 OF \_\_\_\_\_ SHEETS

SUPPOSED OWNER	LOCATION OF PROPERTY	TITLE REFERENCE		REMARKS
		BOOK	PAGE	
I Recommend for this Assignment in accordance with contract No.				
	Recommended By:			Approved By:
	Deputy Director Right of way Bureau			Director Right of Way Bureau

(LETTERHEAD)

DATE

PROPOSED LAYOUT:  
CONTRACT NO.: PARS#

NAME  
ADDRESS

Dear XXXXXX:

In accordance with your contract, we request that you examine the title to the parcel(s) of land on the attached list in connection with the above Proposed Layout.

Please adhere to the Terms of Conditions of your contract, when submitting the reports, as well as the 30 day completion date and billing process.

Sincerely,

Director, Right of Way Bureau

EXHIBIT NO. 14-2

**OFFICE CONVEYANCER'S REPORT ON REVIEW OF ABSTRACT**

1 of 3

Pay Conveyancer

for:

Photostats

Probate at

Rundown

Additional fee:

Remarks

**TOWN** \_\_\_\_\_

**FAP #** \_\_\_\_\_

Title/Rundown

**dated**

Ends:

**PARCEL NO.** \_\_\_\_\_

**OWNERS** \_\_\_\_\_

Book/ Page:

**Title examined by** \_\_\_\_\_

I have reviewed the abstract of title covering the above numbered parcel of land and in accordance with the content of the same it is my opinion that

holds a good title to the same subject to the following encumbrances:

---

DATE

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OFFICE CONVEYANCER

Title/  
Rundown  
Ends:

TOWN \_\_\_\_\_  
**AWARD** FAP # \_\_\_\_\_ dated \_\_\_\_\_  
Total Payment PARCEL NO. \_\_\_\_\_  
OWNERS \_\_\_\_\_  
Book/ Page: \_\_\_\_\_

Title examined by \_\_\_\_\_

I have made a rundown title examination of title of the above numbered parcel of land from the date when the examiner ended his examination to the present date and I find no further entries of record except the following:

EXCEPTIONS-

I have checked the record in connection with the outstanding encumbrances shown in the abstract and find no change except as follows:

EXCEPTIONS

DATE \_\_\_\_\_

OFFICE CONVEYANCER \_\_\_\_\_

Exhibit No. 14-2A

# **STATUS OF TITLE REPORT**

3 of 3

Title/  
Rundown  
Ends:

TOWN \_\_\_\_\_

**AWARD**

FAP # \_\_\_\_\_ dated \_\_\_\_\_

**Total Payment**

PARCEL NO. \_\_\_\_\_

OWNERS \_\_\_\_\_

Book/ Page:

Title examined by

I have made a rundown examination of this parcel(s) and from the information contained in this title review report and the findings of my rundown examination it will be necessary that the following documents be obtained in order to clear the record title.

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DATE \_\_\_\_\_

OFFICE CONVEYANCER \_\_\_\_\_

## VENDOR UPDATE INPUT FORM

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE COMPTROLLER

DEPARTMENT / ORGANIZATION NAME

MassDOT HIGHWAY DIVISION - RIGHT OF WAY BUREAU

ALPHA NAME TYPE \_\_\_\_\_

TRANS <b>VU</b>	DEPT <b>DPW</b>	R/ORG <b>0975</b>	NUMBER	VU DATE	ACTION: ENTRY (E) MODIFY (M)
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CITY/TOWN \_\_\_\_\_

PARCEL \_\_\_\_\_

VENDOR CODE:	MISC. VENDOR IND
--------------	------------------

VENDOR NAME	
-------------	--

VENDOR ADDRESS % MHD 10 PARK PLAZA, RM. 5510, BOSTON, MA 02116	LIENS / LEVIES - NAME / ADDRESS:

PHONE NUMBER:	CONTACT:	ACCOUNT:
COMMENTS	A/R CONTACT	

SMALL	WOMEN-OWNED	ORG STRUCTURE <b>T</b>	IN-STATE: <b>Y</b>	*MINORITY	TERMS/COND.
1099	NON-PROFIT: <b>N</b>	DOR:	SOS	TAX IND:	
DEALER	MANUFACTURER:	FACTORY	JOBBER:	RETAILER	
REPT-1	REPT-2	REPT-3	REPT-4	REPT-5	
HOLD	DISCOUNT	COMMODITY	PAY DAY:	PAY LAG:	
L/L	LIEN MAXIMUM AMT:				

The undersigned authorized signatory approving this document certifies that this document and any attachment are accurate and complete and comply with all applicable, general and special laws and regulations."

PREPARED BY: _____	TITLE: FINANCIAL SUPERVISOR	DATE: _____
APPROVED BY: _____	TITLE: FINANCE MANAGER	DATE: _____
ENTERED BY: _____	TITLE: _____	DATE: _____
EXHIBIT NO. 14-2D		

# Commonwealth of Massachusetts



## MassDOT Highway Division *Administrator*

*Right of Way Bureau*

## LAND ACQUISITION

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**CITY/TOWN:**

**PROJECT:**

FAP No.: N.F.A.

In accordance with Section 6 of Chapter 79 of the General Laws, as amended, XXXXXXXX, Deputy Director, recommends and XXXXXXXXX, Director, Right of Way Bureau, approves that for the land acquisitions made under an Order of Taking, dated XX/XX/XXXX, the following awards be made, and that such awards, plus legally required interest from XX/XX/XXXX to XX/XX/XXXX and real estate tax apportionment from XX/XX/XXXX to XX/XX/XXXX be paid either in settlement or as payment pro tanto, at the election of the persons entitled thereto.

<b><u>PARCEL</u></b>	<b><u>OWNER NAME</u></b>	<b><u>AWARD</u></b>	<b><u>TOTAL PAYMENT</u></b>
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**For Department Secretary:**

**Item #:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT NO. 14-2E**

## MASSACHUSETTS HIGHWAY DEPARTMENT

## REQUEST FOR ALLOCATION OF BOND FUNDS PRIOR TO ENCUMBRANCE

ENCUMBRANCE DOCUMENT ID			
TRANS	DEPT	R/ORG	NUMBER

DATE  
CEPO REFERENCE NUMBER

## SECTION A

## MODIFICATION

APPROPRIATION	SUB.	OBJ.	ORG	ACT	ENG. WORK ORDER	N/P	AMOUNT

## SECTION B: OBLIGATION BY FISCAL YEAR FOR MULTI - YEAR CONTRACT

APPROPRIATION				
1ST YR. FY				
2ND YR. FY				
3RD YR. FY				
TOTAL				

TOWN / TOWNROUTETYPE OF WORKF. A. P. NO. :REMARK :

DEPUTY DIRECTOR RIGHT OF WAY BUREAU

TO BE COMPLETED BY FISCAL MANAGEMENT:

APPROVED: \_\_\_\_\_

MANAGER / DATE

DIRECTOR RIGHT OF WAY BUREAU

TO BE COMPLETED BY CEPO:

EXPENSES BUDGET: \_\_\_\_\_  
ENTER BY / DATE

APPROVED BY: \_\_\_\_\_

ACCOUNT MANAGER / DATE

EXHIBIT NO. 14-2E

**COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE COMPTROLLER**

**DEPARTMENT / ORGANIZATION**

MASSDOT / HIGHWAY DIV - RIGHT OF WAY BUREAU

DOCUMENT ID		R/ORG	NUMBER	CC DATE	ACCTG PRD	BUD FY	ACTION: ENTRY (E)	APPROVAL #
TRANS <b>CC</b>	DEPT <b>DPW</b>							
VENDOR TYPE OPEN ORDER		VENDOR CODE			DATE OF SERVICES TO			
VENDOR NAME					COMMENTS			
CONTRACT BID TYPE	DOCUMENT TOTAL	CURRENT YEAR AMOUNT			TOTAL OUT- YEAR OBLIGATION AMNT			

LN	FY	DEPT DPW	ORG	S/ORG	APPROP	SUB	OBJ	S/OBJ	PROG	TY	PROJ/CL/GRE	STATUS
RPTG	SERV UNIT	DATES OF SERVICE			UNITS	I/D	RATE					
		SERV CD	OUT- YR. OBLIGATION	I/D	LINE AMOUNT	I/D						

LN	FY	DEPT DPW	ORG	S/ORG	APPROP	SUB	OBJ	S/OBJ	PROG	TY G	PROJ/CL/GRE	STATUS
RPTG	SERV UNIT	DATES OF SERVICE			UNITS	I/D	RATE					
		SERV CD	OUT- YR. OBLIGATION	I/D	LINE AMOUNT	I/D						

PREPARE BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

ENTERED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

THE UNDERSIGNED AUTHORIZED APPROVING THIS DOCUMENT CERTIFIES THAT THIS DOCUMENT AND ANY ATTACHMENTS ARE  
ACCURATE AND COMPLETE AND COMPLY WITH ALL APPLICABLE GENERAL AND SPECIAL LAWS AND REGULATIONS

APPROVED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_ PHONE: \_\_\_\_\_

## **APPENDIX G: FY XXXX OPENING**

### **REQUEST FOR APPROVAL OF “OPEN ORDER” VENDOR CODE**

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THIS REQUEST MUST BE ATTACHED TO ALL SC OR SM DOCUMENTS WITH “OPEN ORDER” VENDOR CODE AND FORWARDED TO:

Office of the Comptroller  
ATTN: Procurement Unit  
One Ashburton Place, 9<sup>th</sup> Floor  
Boston, Massachusetts, 02108

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PAGE 1 OF 2

**REQUESTING DEPARTMENT:** MASSDOT HIGHWAY DIV. - RIGHT OF WAY BUREAU  
10 PARK PLAZA - ROOM 6160  
BOSTON, MASSACHUSETTS 02116

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**Request Comptroller approval to establish the following “OPEN ORDER” Service Contract or amend a Service Contract:**

The use of an “OPEN ORDER” vendor code is NOT considered a procurement method. “OPEN ORDER” is a vendor code that allows payment to multiple contractors. It is only an accounting treatment and does not take the place of a procurement method.

- A. The Department must sign a contract with every vendor before payment is made against this “OPEN ORDER” vendor code transaction. If a department is not using one of the pre-approved standard contracts (see I on page 2), attach a sample copy with the request.
- B. SC or SM Document ID:

<b>TRANS</b>	<b>DEPT</b>	<b>ORG</b>	<b>7 DIGIT ID NUMBER</b>
C. Object Code		D. Dollar Amount: \$ =====	=====

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- E. Estimated number of vendors per year to be paid from this “OPEN ORDER” :
  - F. Estimated average payment per year per vendor :
  - G. Justification for “OPEN ORDER” and reasons why a MSA cannot be utilized:
- 

- H. Explanation of Services to be provided:
- 

### **EXHIBIT NO. 14-2H**

**-PAGE 2 OF 2**

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- I. Standardized “Form” Contracts for SC’s with “OPEN ORDER” vendor code.

Check One

Commonwealth Standard Contract (Short/Medium/Long)  
Purchase of Service Contract - Non Individual  
Purchase of Services - (Individuals)  
Data Processing Service Contract - Individual(I)  
Data Processing Service Contract - Corporation©  
Other Please Specify

Oversight Department  
ANF/CTR  
PGS  
PGS  
PGS  
PGS

**SIGNATURES:**

-----  
**Person to contact for questions(print name)**

-----  
**telephone**

-----  
**date**

-----  
**Department Authorized Signature**

-----  
**telephone**

-----  
**date**

-----  
**Approval of Office of the Comptroller**

-----  
**telephone**

-----  
**date**

**EXHIBIT NO. 14-2H**

Commonwealth of Massachusetts  
MassDOT Highway Division

Right of Way Bureau

**INTEROFFICE MEMORANDUM**

**TO:** , Director, CEPO

**FROM:** , Finance Manager

**DATE:**

<b>RE:</b>	<b>COURT</b>	<b>JUDGEMENT</b>	<b>"OPEN</b>	<b>ORDER"</b>	<b>JUSTIFICATION</b>
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Right of Way (Central Artery) anticipates paying court judgments to approximately 5 former property owners. These court judgments accrue interest from the date of the judgment, as a result the Mass Highway Department's liability is reduced when payment is accelerated.

The court judgments should be paid as soon as possible, so that:  
(1) We comply with the court judgment-ordering the payment of these judgments;  
(2) We can reduce the amount MHD eventually pays out in additional interest. This amount is increasing each day the judgment remains unpaid.

We are requesting an open order modification of \$.00 in order to pay these judgments as soon as we are notified by the Attorney General's Office.

**EXHIBIT NO. 14-2I**

(LETTERHEAD)

Date:

City/Town:

Layout No.:\_\_\_\_\_

Dear Tax Collector:

The MassDOT Highway Division (M.H.D.) is taking property by Eminent Domain, as part of the project shown on the attached "**Taking Summary for Tax Collector**". Under Chapter 79, Section 44A of the Massachusetts General Laws, if any of the affected parcels are subject to liens for taxes, assessments, or other charges, then the tax collector is entitled to be paid the lien amount -- before payment for the taking is made to any other party (including the owner).

In order to receive payment for the lien amount, the tax collector must give written notice of the amount claimed for the lien prior to the date of payment of the Award of Damage. The "Date of Payment" is shown on the attached "Taking Summary for Tax Collector".

Therefore, M.H.D. is requesting that you furnish it with written notice of any claims you are making for outstanding liens on the affected parcels of land as of the date of the taking. The "Date of Taking" is also shown on the attached "Taking Summary for Tax Collector".

In order to insure that your claim is deducted from an Owner's Award, it is critical that you return the deduction amounts (if any) within ten (10) business days of your receipt of this notice.

Enclosed is:

- (1) A copy of the "**Plan**", showing the affected parcels of land. Parcel No.(s) shown on the "Plan" are assigned by M.H.D., and indicate the type of interest taken ("fee" or "easement"). It should be noted that more than one parcel may be taken from one owner's property.
- (2) Two (2) copies of the "**Taking Summary for Tax Collector**", showing:
  - The Assessor's Map & Lot number which corresponds to the parcel number of the affected parcel(s)
  - The respective owner(s) of the affected parcels, along with interest taken in each of the affected parcels
  - The Award due to each owner. The "Award" column is the total combined amount of the Award of Damage (resulting from the taking), plus interest, plus real estate tax apportionment (from the "Date of Taking" through June 30, 20--).

**EXHIBIT NO. 14-3**

Based on the "Plan" and the "Taking Summary for Tax Collector", you can determine:

- If it is a "fee" taking or an "easement" taking.
- Whether the taking involves a small portion of the entire property, a substantial portion, or the entire property.

Generally, if it is an "easement" taking, there will be no deduction from the Award of Damage, in which case you would not need to furnish any deduction amount.

If it is a "fee" taking, you can write the deductions you are claiming in the blank space in the "Amount Claimed" column of the "Taking Summary for Tax Collector". However, if the fee taking only involves a small portion of the owner's property, you may wish to waive your claim for a deduction from the owner's Award of Damage, since sufficient property will remain as security for real estate tax purposes. If no deduction is claimed, write "Taxes Waived" in the blank space in the "Amount Claimed" column.

If no tax rate has been set, please indicate that an estimate was used to calculate the deduction claimed.

If you need additional information with respect to the affected parcels, contact our Conveyance section at (617) 973-7900.

In order to insure that your claim is deducted from the owner's Award, it is critical that you return one (1) completed copy of the "Taking Summary for Tax Collector", and include along with it a cover letter signed by you, within ten (10) business days of your receipt of this notice, regardless if there are taxes or not. Please fax the attached "Taking Summary for Tax Collector" to 617-973-8036 and follow up with a hard copy. They should be sent to the undersigned.

**It is important that you keep one (1) completed copy of the "Taking Summary for Tax Collector" and one copy of the Plan for your own records, since it will help you credit the correct owner and property.**

Sincerely,

Director, Right of Way Bureau  
10 Park Plaza - Room 6160  
Boston, MA 02116-3973  
Attention:

Enclosures: **Taking Summary for Tax Collector Plan**

**EXHIBIT NO. 14-3**

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
TAKING SUMMARY FOR TAX COLLECTOR

CITY/TOWN: PROJECT: DATE OF TAKING:  
LAYOUT NO: R.E. TAX APPORTIONMENT FROM: DATE OF PAYMENT:

MAP & LOT PARCEL NO.	OWNER	INTEREST TAKEN	AREA TAKEN	AWARD	AMOUNT CLAIMED
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Abbreviations

Temp.: Temporary Perm.:

Permanent Esmt.:

Easement Easemt.:

Easement TE:

Temporary Easement

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\* Return this "Taking Summary", along with a cover letter signed by you, within ten (10) business days. Thank you.

EXHIBIT NO. 14-3 (CONT.)

**RELEASE (Individual)**

City/Town: \_\_\_\_\_ Order of Taking Dated: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_, of \_\_\_\_\_ in the county of \_\_\_\_\_ in consideration of the sum of \$\_\_\_\_\_, (Award of Damages \$; plus Interest \$; plus Real Estate Taxes \$ paid by the Commonwealth of Massachusetts through its Division of Highways, the receipt whereof is hereby acknowledged, in full compensation for all damages sustained by me/us on account of a taking made by the Commonwealth of Massachusetts, by and through the MassDOT Highway Division, as follows:

<u>Parcel No. (s)</u>	<u>Land Area(s)</u>	<u>Interest(s) Acquired</u>
-----------------------	---------------------	-----------------------------

said parcel(s) being located in the City of \_\_\_\_\_ in Layout Number dated \_\_\_\_\_, and filed and recorded with the Registry of Deeds on \_\_\_\_\_ in Book \_\_\_\_\_ Page \_\_\_\_\_ and shown on a Taking Plan filed therewith, does hereby, for ourselves and our heirs and assigns, release and forever discharge the said Commonwealth of Massachusetts, the Division, and their successors and assigns from any and all claims, past, present, and future both in law and equity, arising from or in consequence of said Taking, and/or of any construction in or over the premises or within the Taking area shown on the plan referred to above.

IN WITNESS WHEREOF, we have hereunto set our hand(s) and seal(s) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

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OWNER

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OWNER

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OWNER

Signed and sealed in the presence of:

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---

**THE COMMONWEALTH OF MASSACHUSETTS**

---

ss. \_\_\_\_\_ 20\_\_\_

Then personally appeared the above-named \_\_\_\_\_, and acknowledged the foregoing instrument to be my/our free act and deed, before me.

Approved as to form

Notary Public:

---

Counsel, Right of Way Bureau

---

My Commission Expires: \_\_\_\_\_

**EXHIBIT NO. 14-4A**

**Release (Corporation)**

CITY/TOWN: \_\_\_\_\_ Order of Taking dated: \_\_\_\_\_

\_\_\_\_\_ a corporation duly organized by law and having its usual place of business in \_\_\_\_\_ the County of \_\_\_\_\_, Commonwealth of Massachusetts, in consideration of the sum of \$ \_\_\_\_\_, (Award of Damages \$ \_\_\_\_\_; plus Interest \$ \_\_\_\_\_; plus Real Estate Tax \$ \_\_\_\_\_) paid by the Commonwealth of Massachusetts through its MassDOT Highway Division, the receipt whereof is hereby acknowledged, in full compensation for all damages sustained by it on account of an acquisition made by the Commonwealth of Massachusetts by and through its Division, as follows:

<u>Parcel No.(s)</u>	<u>Land Area(s)</u>	<u>Interest(s) Acquired</u>
----------------------	---------------------	-----------------------------

said parcel(s) being located in the City/Town of \_\_\_\_\_ and shown in Layout No. \_\_\_\_\_ dated \_\_\_\_\_ and filed and recorded at the \_\_\_\_\_ County Registry of Deeds on \_\_\_\_\_ in Book \_\_\_\_\_ Page \_\_\_\_\_, and shown on a Taking Plan filed therewith, does hereby, for it and its heirs and assigns, release and forever discharge the said Commonwealth of Massachusetts, the Division, and their successors and assigns from any and all claims, past, present, and future, both in law and equity, arising from or in consequence of said taking, and/or of any construction in or over the premises, or within the area taken as shown on the Taking Plan referred to above.

IN WITNESS WHEREOF, \_\_\_\_\_ has caused its corporate name to be signed and its corporate seal to be affixed by \_\_\_\_\_, its \_\_\_\_\_ thereto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Corporate Name)

by: \_\_\_\_\_

Signed and sealed in the presence of:

THE COMMONWEALTH OF MASSACHUSETTS

ss \_\_\_\_\_ 200

Then personally appeared the above named \_\_\_\_\_ and acknowledged the foregoing instrument to be the free act and deed of the \_\_\_\_\_, before me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Counsel, Right of Way Bureau

**EXHIBIT NO. 14-4B**

**PRO TANTO RECEIPT (Individual)**

**City/Town:** \_\_\_\_\_ **Order of Taking Dated:** \_\_\_\_\_

I/We, \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_  
\_\_\_\_\_, Commonwealth of Massachusetts, do hereby acknowledge  
receiving from the Commonwealth of Massachusetts, through its  
MassDOT Highway Division, the sum of (\$ \_\_\_\_\_), which I/we have  
agreed to accept as pro tanto payment for my/our claim for damages  
against the Commonwealth due to the taking of land and/or  
buildings belonging to me/us, described as:

<b><u>Parcel No.(s)</u></b>	<b><u>Land Area(s)</u></b>	<b><u>Interest(s) Acquired</u></b>
-----------------------------	----------------------------	------------------------------------

said parcel(s) being located in the City/Town of  
and in Layout Number \_\_\_\_\_ dated \_\_\_\_\_, and filed and  
recorded at the \_\_\_\_\_ County Registry of Deeds on \_\_\_\_\_  
in Book \_\_\_\_\_ Page \_\_\_\_\_ and shown on a Taking plan  
filed therewith.

Award of Damages .....	\$
Apportionment of Real Estate Tax .....	\$
(Chapter 634 of the Acts of 1953)	\$

Interest from _____ to _____	\$
<b>TOTAL OFFER</b>	

---

SIGNED IN THE PRESENCE OF:

---

---

Approved as to form:

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Counsel, Right of Way Bureau

**PRO TANTO RECEIPT (CORPORATION)**

**CITY/TOWN:** \_\_\_\_\_ **Order of Taking dated:** \_\_\_\_\_

a corporation duly organized  
by law and having its usual place of business in \_\_\_\_\_ in  
the County of \_\_\_\_\_, Commonwealth of Massachusetts, does  
hereby acknowledge receiving from the Commonwealth of  
Massachusetts, through its MassDOT Highway Division, the sum of \$  
\_\_\_\_\_, which it has agreed to accept as pro tanto  
payment for its claim for damages against said Commonwealth due  
to the taking of land and/or buildings belonging to it, described  
as:

<b><u>Parcel No. (s)</u></b>	<b><u>Land Area(s)</u></b>	<b><u>Interest(s) Acquired</u></b>
------------------------------	----------------------------	------------------------------------

said parcel(s) being located in the City/Town of  
and shown in Layout No. \_\_\_\_\_ Dated \_\_\_\_\_ and filed and  
recorded at the \_\_\_\_\_ County Registry of Deeds on \_\_\_\_\_  
in Book \_\_\_\_\_, Page \_\_\_\_\_ and shown on a taking Plan filed  
therewith.

Award of Damages.....	\$
Apportionment of Real Estate Tax.....	\$
(Chapter 634 of the Acts of 1953)	
Interest from _____ to _____ .....	\$
<b>TOTAL OFFER</b> \$	

IN WITNESS WHEREOF, \_\_\_\_\_ has caused its corporate  
name to be signed and its corporate seal to be affixed by  
\_\_\_\_\_ its \_\_\_\_\_ thereto  
duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
(Corporate Name)

by: \_\_\_\_\_

Signed in the presence of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Counsel, Right of Way Bureau  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT NO. 14-5B**



## RIGHT OF WAY BUREAU

Notice is hereby given that all payments are considered to be made "pro tanto" thereby preserving the rights of the property owner unless a full release is requested by said property owner. The parties in interest to be named on payment checks are as follows:

- For acquisitions of permanent rights, MassDOT-Highway may make payment to the property owner without receiving mortgage discharges/releases if it provides notice to mortgagees of record and includes same as additional payees on the pro tanto award check.
- For acquisitions of temporary rights, the same process can be utilized (obtain release/discharge or include as additional payees). However, alternatively, the notice can provide that the mortgagees of record will not be named as additional payees unless they can demonstrate that they have a right to be so named under the terms of the mortgages or can show that the taking will affect their security in the property.
- For acquisitions of permanent or temporary rights where the award is less than \$2,000, MassDOT-Highway can make payment without a discharge/release and without naming the mortgagee(s) of record as additional payee(s) (and notwithstanding any other title deficiencies) upon a determination by the Administrator or his/her designee that payment would prevent hardship to the owner.
- For acquisitions of permanent or temporary rights, regardless of the amount(s), payment can be made without receiving a written election by the property owner, in the form of an executed pro tanto or release, reflecting whether he/she is accepting payment as settlement or as pro tanto.

To request a full release, or provide information, mail to:

MassDOT-Highway Division  
Right of Way Bureau - Conveyance  
10 Park Plaza, Room 6160  
Boston, MA 02116-3973

(Exhibit 14-5-C)

**EASEMENT RELEASE OF MORTGAGE (CORPORATION)**

KNOW ALL MEN BY THESE PRESENTS, that the \_\_\_\_\_  
a banking corporation duly established by law and having its usual  
place of business in \_\_\_\_\_ in the county of \_\_\_\_\_  
mortgagee named in and the present holder of a mortgage on property now or  
formerly owned by \_\_\_\_\_ in the town/city of \_\_\_\_\_  
which mortgage is dated \_\_\_\_\_ and recorded with \_\_\_\_\_  
Registry of Deeds in Book \_\_\_\_\_ Page \_\_\_\_\_, for  
consideration paid, hereby releases to the Commonwealth of Massachusetts  
from any and all damages with respect to the property described in the  
mortgage by reason of a taking made by the Commonwealth of Massachusetts,  
by and through the Division of Highways of an easement interest in a  
certain parcel of land situated in \_\_\_\_\_ described in  
an Order of Taking dated \_\_\_\_\_ and recorded on \_\_\_\_\_,  
in Book \_\_\_\_\_ Page \_\_\_\_\_.

This release shall not impair the mortgage on the land not taken.  
This release is given in exchange for damages due from the Commonwealth of  
Massachusetts to the mortgagee because of the taking.

IN WITNESS WHEREOF, the said \_\_\_\_\_  
has caused its corporate name to be signed and its corporate seal  
to be affixed by \_\_\_\_\_, its \_\_\_\_\_  
thereto duly authorized, this \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

Signed and sealed in  
presence of \_\_\_\_\_

By \_\_\_\_\_ (Seal)

THE COMMONWEALTH OF MASSACHUSETTS

ss. \_\_\_\_\_

20

Then personally appeared the above named \_\_\_\_\_  
and acknowledged the foregoing instrument to be the free act and  
deed of \_\_\_\_\_, before me.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT NO. 14-6B**

**PARTIAL RELEASE OF MORTGAGE (INDIVIDUAL)**

We, XXXX and XXXX holder of a mortgage by XXXX and XXXX to XXXX dated XX/XX/XXXX recorded with XXXX Registry of Deeds in Book XXXX Page XXX for consideration paid, release to THE COMMONWEALTH OF MASSACHUSETTS all interest acquired under said mortgage in the following described portion of the mortgage premises:

Parcel L.O.  
A parcel of land in the City of Fitchburg at the intersection  
of Fifth Street and Water Street and bounded as follows:

NORTHWESTERLY by the intersection of feet;

NORTHERLY by XXXX Street about feet;

EASTERLY by land now or formerly of  
about feet;

SOUTHERLY  
AND  
SOUTHEASTERLY by land now or formerly of  
about XX feet and about XX respectively; and

SOUTHERLY by land now or formerly of about X feet;

CONTAINING about square feet.

Also Easement Parcel Number

The above described land was taken by the Division of Highways by Order of Taking recorded XX/XX/XXXX with XXXX Registry of Deeds in Book XXXX Page XXX- and is shown as Parcel Numbers XXXXXXXXXX on a Plan filed therewith.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

EXHIBIT NO. 14-6C

THE COMMONWEALTH OF MASSACHUSETTS  
\_\_\_\_\_  
ss. \_\_\_\_\_, 20

Then personally appeared the above named  
\_\_\_\_\_ and acknowledged the foregoing  
instrument to be \_\_\_\_\_ free act and deed,

NOTARY PUBLIC  
My commission expires \_\_\_\_\_ 20

**EXHIBIT NO. 14-6C**

## **PARTIAL RELEASE OF MORTGAGE (CORPORATION)**

### **Co-operative Bank**

a banking corporation duly established by law and having a usual place of business at,  
Massachusetts

the holder of a mortgage from John B. & Irene and & Donna M

to **Co-operative Bank**

dated XX/XX/XXXX

and recorded with the XXX County Registry of Deeds, Book XXX Page XXX, for consideration paid, releases to THE COMMONWEALTH OF MASSACHUSETTS all interest acquired under said mortgage in the following described portions of the mortgaged premises.

#### **Order**

#### **Parcel**

A parcel of land supposed to be owned by C. Kenneth & Donna M., adjoining the southwesterly side of XXX Street and bounded as follows:

NORTHERLY TO	
NORTHEASTERLY	by XXXX Street about 525 feet;
NORTHEASTERLY	by land of Owner Unknown about 8 feet;
SOUTHWESTERLY	by remaining land of C. Kenneth & Donna M.
About 493 feet;	
WESTERLY	by land now or formerly of Robert J. & Patricia A. Meyers About 26 feet;
CONTAINING	about 0.65 acres.

Also Easement Parcel Numbers.

The above described land was taken by the Division of Highways by Order of Taking dated XX/XX/XXXX and recorded with the XXXX County Registry of Deeds in Book XXX Page XX and is shown as Parcel Numbers XXXX on a plan filed therewith.

**EXHIBIT 14-6D**

IN WITNESS THEREOF, Bank  
has caused its corporate name to be signed and its corporate seal to be affixed by  
\_\_\_\_\_  
its,  
thereto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 20XX.

\_\_\_\_\_  
Bank  
Corporate Name

\_\_\_\_\_  
Witness: \_\_\_\_\_  
by: \_\_\_\_\_  
President/Vice President

\_\_\_\_\_  
Witness: \_\_\_\_\_  
by: \_\_\_\_\_  
Treasurer/Assistant Treasurer

### THE COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 20XX

Then personally appeared the above-named \_\_\_\_\_  
\_\_\_\_\_ and acknowledged the foregoing instrument to be the  
free act and deed of Bank, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
Vote

\_\_\_\_\_  
**EXHIBIT NO. 14-6D**

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
NOTICE OF TAKING**

**Date:**

**To:**

Notice hereby giving that by an Order of Taking dated \_\_\_\_\_, certain land and/or rights in land were acquired by the MassDOT Highway Division for State Highway purposes in the City/Town of \_\_\_\_\_. The Order of Taking was recorded on in the \_\_\_\_\_ County Registry of Deeds, located in \_\_\_\_\_. Plans showing the State Highway and the land acquired are on file in the Registry, and in the Boston office of the Division, Room 6160. A copy of the plan showing the parcel(s) acquired is enclosed.

For damages to the parcel(s) of land described below, the Division of Highways has awarded to the supposed owner(s) of the land,

The sum of \_\_\_\_\_, subject to proof of title. The Division reserves the right to amend the Award at any time prior to payment, for good cause. This payment may be reduced if the City or Town exercises its right to claim a portion for real estate taxes.

The right of damages vested on \_\_\_\_\_, the date on which the Order of Taking was recorded in the Registry of Deeds above-described, and payment will be tendered to you within sixty (60) days of that date.

Land and/or rights in land taken (the nature of which may be identified from the list on page 3) are shown on the plan described in the Order of Taking, and are as follows;

<u>Parcel No.(s)</u>	<u>Land Area</u>	<u>Interest Taken</u>
----------------------	------------------	-----------------------

**EXHIBIT NO. 14-7**

**THE COMMONWEALTH OF MASSACHUSETTS**  
**OFFICE OF THE COMPTROLLER**  
**PAYMENT VOUCHER INPUT FORM**

DOCUMENT ID		TRANS	DEPT	R/ORG	NUMBER	PV DATE	ACCT PRD	BUD FY
PV	DPW							

**\*INSTRUCTIONS TO VENDOR\***  
**FILL IN SHADED AREAS -**  
**DIRECT INQUIRIES TO STATE**  
**ORGANIZATION -**  
**RETAIN A COPY**

ACTION (E) (M) E	SCH PAY DATE	OFF LIAB ACCT	VENDOR'S CERTIFICATION: I hereby certify under penalty of perjury that the below goods were shipped or the service rendered as set forth.  SIGNATURE: <b>SEE ATTACHED</b> (PLEASE SIGN IN INK ONLY)	DEPARTMENT/ORGANIZATION	
				Massachusetts Highway Dept. ROW BUREAU - Rm 6160	

DOCUMENT TOTAL	DEPT	VENDOR INVOICE NO.	VENDOR CODE	EMP		
	DPW					

REFERENCE ORDER	LINE	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT	

LN 01	TRANS PO	DEPT DPW	ORG	NUMBER	LINE 01	DEPT DPW	APPROP.	SUB	ORG.	S/ORG.	OBJ.	S/OBJ	PROG. 056N	TY G	PROJ/CL/GRC C
ACTV	REPT CAT	FUND	BS ACCT	DEPT DPW	VENDOR INVOICE NO.		DESCRIPTION								

MSA#	LN 1	DISC	DATES OF SERVICE	QUANTITY	AMOUNT	I/D	P/F	
------	---------	------	------------------	----------	--------	-----	-----	--

**TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS**

I HEREBY CERTIFY UNDER THE PENALTIES OF PERJURY THAT ALL LAWS OF THE COMMONWEALTH GOVERNING DISBURSEMENTS OF PUBLIC FUNDS AND THE REGULATIONS THEREOF HAVE BEEN COMPLIED WITH AND OBSERVED.

PREPARED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

PHONE #: X

APPROVED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

ENTERED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

PAGE 1 OF \_\_\_\_\_

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
RECOMMENDATION FOR AWARD**

From Right of Way Bureau FAP No.  
Attention Administrator  
Date  
Subject Recommendation for Award EWO No.

City/Town  
Project  
Layout No.  
Location  
Parcel No. (s) Dated

(if there are additional parcels, they are listed on the attached  
"Payment Schedule and Compensation of Taxes and Interest")

Former Owner (s)  
Dept. Appraiser  
Fee Appraiser none  
Fee Appraiser  
Review Appraiser  
R.E. Review Bd. (if applicable)

I recommend that an award be made to the above Owner (s) in the sum of , and that such award, plus the following amounts of legally required interest and real estate apportionment, be voted as a total payment either in settlement or as payment pro tanto at the election of the person (s) entitled thereto. The said total payment consists of the following items:

Award  
Apportionment of R.E. Taxes from  
Interest from

---

**TOTAL PAYMENT**

However, I further recommend that the Administrator determine for the reason marked below:

- (If not marked below - this paragraph does not apply.)  
( ) 1. That is unable, upon reasonable investigation, to determine the name (s) of person (s) entitled to the award of damages;  
( ) 2. That the person (s) named herein as entitled to damages awarded are under a legal disability from receiving payment therefore;  
( ) 3. That the damage awarded must be apportioned between two or more persons having an estate or interest in a single parcel of land;

and based on that determination, the Administrator approve that the check for the said award shall be made payable to the Treasurer of the Commonwealth of Massachusetts for the benefit of the person (s) entitled thereto.

Approved: Respectfully submitted,

Director, Right of Way Bureau

Deputy Director.

**EXHIBIT 14-8B**

**PAYMENT & COMPUTATION SCHEDULE**

CITY/TOWN: Worcester F.A.P. NO.: N.F.A.

LAYOUT NO: 7606 E.W.O. NO.: [REDACTED]

OWNER(S): Brote Realty Inc. 57 Davis Road Millbury, Ma

PARCEL NO.(S): LAND AREA(S): INTEREST(S) ACQUIRED:  
46-59-C 2,445 S.F. FEE TAKING  
46-TE-119 995 S.F. PERM. WALL MAINT. EASEMENT  
 S.F. TEMPORARY EASEMENT  
 S.F. TEMPORARY EASEMENT

TO BE APPROVED: [REDACTED]

TO BE RECORDED : [REDACTED] R.E. TAXES FROM: [REDACTED]

PAYMENT DATE: [REDACTED] INTEREST FROM: [REDACTED]

**CALCULATIONS**

**R.E. TAXES**

# OF DAYS	TAX RATE	ASSESSMENTS	AREA	CALCULATION
0	\$	-	#DIV/0!	#DIV/0!
365	\$	1,000.00	2,445	

0	\$	-	#DIV/0!	#DIV/0!
365	\$	1,000.00	0	

**INTEREST**

# OF DAYS	DAMAGES AWARDED	CALCULATION
0	0	\$ -
365		

COMPUTED BY: [REDACTED] DATE: 5/17/2001  
 CHECKED BY: [REDACTED] DATE: [REDACTED]

REAL PROPERTY	
DAMAGES	
AWARDED	(MGL CH 79, SEC.6)
REAL ESTATE TAX	\$ -
APPORTIONMENT	(MGL CH79, SEC.12)
INTEREST FROM	#DIV/0!
RECORDING DATE	(MGL CH79 SEC.37)
TOTAL COMPENSATION TO BE PAID	\$ -
	#DIV/0!

CITY/TOWN: \_\_\_\_\_ FILE #: \_\_\_\_\_  
PARCEL #: \_\_\_\_\_ PROJECT: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
LAYOUT #: \_\_\_\_\_ F.A.P. #: \_\_\_\_\_

**RIGHT OF WAY BUREAU  
REAL ESTATE APPRAISAL REVIEW BOARD RECOMMENDATION**

Administrator  
MassDOT Highway Division  
10 Park Plaza  
Boston, MA 02116-3973

Dear Administrator:

We, the undersigned, Members of the Massachusetts Real Estate Appraisal Review Board, have reviewed the appraisal reports and the recommendation of the Division's Review Appraiser submitted to us by the Right of Way Bureau in connection with the eminent domain taking for highway purposes of the parcel(s) identified above.

In the process of arriving at value estimates, it is customary to consider three approaches: depreciated replacement, capitalized income, and market comparisons. The Review Board gives consideration to all information contained in such reports as are submitted to it, correlating such information and arriving at a composite opinion of the highest price which the MassDOT Highway Division of the Commonwealth of Massachusetts should pay for a specific property, unless ordered otherwise by some court of jurisdiction.

We have concluded that the Massachusetts Division of Highways award should not exceed \$ \_\_\_\_\_ for the parcel(s), as of date of taking, plus interest from date of recording of the order of taking to date of payment, and pro rata amount of local real estate property taxes for the balance of the calendar year. Unless otherwise noted, the maximum amount recommended by the Board represents the total value of the parcel(s) as if unaffected by contamination or hazardous material and is subject to adjustment for the cost of any remediation that may be required.

Remarks: Severance Damages, included in the above, amount to  
\$ \_\_\_\_\_.

ALLOCATION OF DAMAGES

Land	\$
Buildings	\$
Other Improvements	\$
Total	\$

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT NO. 14-8D

## RIGHT OF WAY PAYMENT LOG

CITY/TOWN	PARCELS	FAP#	OWNER/S	CHECK AMOUNT	CHECK #	DATED	RELEASE	PROTANTO	PAYMENT	ROUTE	LAYOUT	VOTE DATE	RECORD	PAYDATE
BOSTON	77-TE-13		ECONOMIC DEVELOPMENT						\$0.00		N/A	1/12/2000	N/A	
	77-TE-14		AND INDUSTRIAL CORP.											
	77-TE-16		OF BOSTON											
	77-TE-18													
CITY/TOWN	PARCELS		OWNER/S	CHECK AMOUNT	CHECK #	DATED	RELEASE	PROTANTO	PAYMENT	ROUTE	LAYOUT	VOTE DATE	RECORD	PAYDATE
FAIRHAVEN	8-1		S&S DEVELOPMENT,LLC	\$0.00										
	8-2													
	8-E-1													
	8-1-T													
FAIRHAVEN	8-3		MONTOWESE INDUSTRIAL PARK, INC.	\$0.00										
CITY/TOWN	PARCELS		OWNER/S	CHECK AMOUNT	CHECK #	DATED	RELEASE	PROTANTO	PAYMENT	ROUTE	LAYOUT	VOTE DATE	RECORD	PAYDATE
HATFIELD	5-D-1		DAVID E. OMASTRA & MARGARET OMASTRA	\$1,296.79	8040385	3/23/1979								4/24/2000

Release of Lease (Corporation)

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ a corporation duly established by law and having its usual place of business in \_\_\_\_\_ in the County of \_\_\_\_\_ and Commonwealth of Massachusetts, named in and the present holder of a lease on property now or formerly owned by \_\_\_\_\_ in the City/Town of \_\_\_\_\_ which lease is dated \_\_\_\_\_ and recorded with \_\_\_\_\_ Registry of Deeds in Book\_\_\_\_\_, Page \_\_\_\_ for consideration paid, hereby releases the Commonwealth of Massachusetts from any and all damage caused to the property mentioned and described in said lease by reason of a taking made by the Commonwealth of Massachusetts, by and through the Division of Highways of a taking of a certain parcel of land situated in said \_\_\_\_\_ as described in an Order of Taking dated \_\_\_\_\_ and filed and recorded with said Deeds on \_\_\_\_\_ in Book \_\_\_\_, Page \_\_\_\_.

IN WITNESS WHEREOF, the said \_\_\_\_\_ has caused its corporate name to be signed and its corporate seal to be affixed thereto by \_\_\_\_\_, its duly authorized \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200 .

By \_\_\_\_\_ (Seal)

Signed and sealed in the presence of:

THE COMMONWEALTH OF MASSACHUSETTS

ss \_\_\_\_\_

Then personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be the free act and deed of \_\_\_\_\_, before me.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**EXHIBIT NO. 14-9A**

RELEASE OF LEASE (INDIVIDUAL)

KNOW ALL MEN BY THESE PRESENTS, THAT I, \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ named as Lessee in and being the present holder of a lease on property now or formerly owned by \_\_\_\_\_ Lessor in the Town/City of \_\_\_\_\_ which lease is dated \_\_\_\_\_ and recorded with \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, for consideration paid, hereby releases the Commonwealth of Massachusetts from any and all damages caused to the property mentioned and described in said lease by reason of a Taking made by the Commonwealth of Massachusetts, by and through the Division of Highways of a taking of a certain parcel of land being designated as Parcel No. \_\_\_\_\_ situated in said Town/City of \_\_\_\_\_ as described in an Order of Taking dated \_\_\_\_\_ and filed and recorded with said Deeds on \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_

Witness my/our hand(s) and seal(s) this day of \_\_\_\_\_, 200\_\_\_\_\_

Signed in the presence of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE COMMONWEALTH OF MASSACHUSETTS

ss \_\_\_\_\_

200\_\_\_\_\_

The personally appeared the above named \_\_\_\_\_ and acknowledge the foregoing instrument to be the free act and deed, before me.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Counsel, Right of Way Bureau

**EXHIBIT NO. 14-9B**

(LETTERHEAD)

DATE

NAME,  
Assistant Treasurer  
Office of the Treasurer, 12th Floor  
One Ashburton Place  
Boston, MA 02108-1608

Dear Ms. XXXX:

Kindly inform us on the amount of accrued interest (projected to DATE) the following checks have earned on deposit:

Check number XXXX dated XX/XX/XX in the amount of \$XXX.XX payable to **MANE**. In the town of XXXX, parcel No.XXXX. Shown as item No.12 sheet#1 on attached copy of Department Receipt Voucher No.X-XXX-XXX dated XX/XX/XX.

Sincerely,

Director, Right of Way Bureau  
EXHIBIT NO. 14-10A

**THE COMMONWEALTH OF MASSACHUSETTS**  
**OFFICE OF THE COMPTROLLER**  
**PAYMENT VOUCHER INPUT FORM**

**\*INSTRUCTIONS TO VENDOR\***

**FILL IN SHADED AREAS -  
 DIRECT INQUIRIES TO STATE  
 ORGANIZATION -  
 RETAIN A COPY**

DOCUMENT ID			NUMBER	PV DATE	ACCT PRD	BUD FY										
PV	0961					01										
ACTION (E) (M) E	SCH PAY DATE	OFF LIAB ACCT			<b>VENDOR'S CERTIFICATION:</b> I hereby certify under penalty of perjury that the below goods were shipped or the service rendered as set forth.  <b>SIGNATURE:</b>  <small>(PLEASE SIGN IN INK ONLY)</small>				<b>DEPARTMENT/ORGANIZATION</b>  Massachusetts Highway Dept. ROW BUREAU - Rm 6160							
DOCUMENT TOTAL		DEPT	VENDOR INVOICE NO.		VENDOR CODE			EMP	<b>VENDOR NAME AND ADDRESS</b>  C/O. MHD - FISCAL MANAGEMENT 10 PARK PLAZA, ROOM 5521 BOSTON, MA 02116							
		MHD														
REFERENCE ORDER		LINE	QUANTITY	DESCRIPTION					UNIT PRICE	AMOUNT						
Parcel No. (s):  2000 BUSINESS  Land Acqui: Easement: Acreage:				RE-ISSUE FROM RETRIEVAL FUND  PLUS: Additional interest as per Treasurer's Letter  TOWN/CITY: LAYOUT/ORDER: PARCEL NO. (s):												
REFERENCE DOCUMENT		LN 01	TRANS SC	DEPT MHD	ORG 0961	NUMBER 1RWB011	LINE 21	DEPT DPW	APPROP. 06100603	SUB 00	ORG. T14	S/ORG. T14	OBJ. S/OBJ	PROG.	TY	PROJ/CL/GRC
ACTV	REPT CAT 3120	FUND 0610	BS ACCT 0260				VENDOR INVOICE NO. 07/01/00 to '6/30/01		DESCRIPTION							
MSA#		LN		DISC	DATES OF SERVICE 07/01/99 to 06/30/00			QUANTITY 1	AMOUNT	I/D P	P/F					

**TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS**

I HEREBY CERTIFY UNDER THE PENALTIES OF PERJURY THAT ALL LAWS OF THE COMMONWEALTH GOVERNING DISBURSEMENTS OF  
 PUBLIC FUNDS AND THE REGULATIONS THEREOF HAVE BEEN COMPLIED WITH AND OBSERVED.

PREPARED BY:	<u>Patricia C. Howard</u>		TITLE: <u>Clerk V</u>	DATE: _____	PHONE #: X
APPROVED BY:	<u>RUSSELL MCGILVRAY</u>		TITLE: <u>ADMINISTRATIVE MGR.</u>	DATE: _____	7913
ENTERED BY:			TITLE: _____	DATE: _____	PAGE 1 OF

(LETTERHEAD)

November 21, 2000

Southborough  
L.O. 7168 dated 2/9/94  
Parcel Numbers 6-5-T, 6-W-1, 6-DS-4-T  
Bartolini Builders, Inc. v. Commonwealth of Mass., - Case 96-01466

Mr. David Kerrigan  
Assistant Attorney General  
Chief, Trial Division  
Department of the Attorney General  
200 Portland Street - 3<sup>rd</sup> Floor  
Boston, Massachusetts 02114

Dear Mr. Kerrigan:

Enclosed is a check in the amount of \$17,293.35 payable to Bartolini Builders, Inc. in connection with the taking of land in the Town of Southborough.

Sincerely,

Dale Carder  
Acting Administrative Manager  
Right of Way Bureau

Enclosure

EXHIBIT NO. 14-11

## Chapter 15



## RIGHT OF WAY BUREAU LAND DAMAGE PETITION REPORT

OWNER: \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_ LAYOUT NO. \_\_\_\_\_

PARCEL NO.(S): \_\_\_\_\_

LOCATION: \_\_\_\_\_ PROJECT: \_\_\_\_\_

F.A.P. NO.: \_\_\_\_\_ PROJIS/PARS#: \_\_\_\_\_

ATTORNEY: \_\_\_\_\_ LAYOUT/VOTE DATE: \_\_\_\_\_

MORTGAGE: \_\_\_\_\_ RECORDING DATE: \_\_\_\_\_

LESSEE: \_\_\_\_\_ PAYMENT DATE: \_\_\_\_\_

1. DIVISION APPRAISAL BY: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

2. OUTSIDE APPRAISAL BY: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

3. OUTSIDE APPRAISAL BY: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

4. REVIEW APPRAISER: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

5. REVIEW BOARD: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

6. AUTHORIZATION VOTED: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

7. REPLACEMENT HOUSING PAYMENT: \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

GENERAL COMMENTS: \_\_\_\_\_

BY:

DATA FURNISHED ATTORNEY GENERAL'S OFFICE:

CERTIFIED COPY ASSESSED VALUE

PROPERTY INTERVIEW RECORD

CONSTRUCTION AND LAYOUT PLANS

TITLE ABSTRACT

CROSS SECTIONS

APPRAISALS

NEGOTIATION REPORT

PICTURES

JUST COMPENSATION SUMMARY REPORT

PRO TANTO RECEIPT & INVOICE

WAIVER OF SUPPLEMENTAL PAYMENT

CLAIM FOR RENT DUE

ADDITIONAL PAYMENTS, IF ANY

OTHER

REPORT COMPILED BY: \_\_\_\_\_

DATE DELIVERED: \_\_\_\_\_

REPORT AND CASE RECEIVED IN ATTORNEY GENERAL'S OFFICE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

DATE RETURNED : \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_

## OFFICE OF THE ATTORNEY GENERAL

## REAL ESTATE SECTION

A.A.G.: \_\_\_\_\_

CASE ANALYSIS - SETTLEMENT RECOMMENDATION - TRIAL REPORTCASE ANALYSIS:BACKGROUND

A.G.#D \_\_\_\_\_ SUP. CT. # \_\_\_\_\_ PLAINTIFF: \_\_\_\_\_

TOWN: \_\_\_\_\_ COUNTY: \_\_\_\_\_ ATTORNEY: \_\_\_\_\_

AGENCY: \_\_\_\_\_ L.O.#: \_\_\_\_\_ FIRM: \_\_\_\_\_

DATE RECORDED: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

COST CODE: \_\_\_\_\_ TEL. NO: \_\_\_\_\_

<u>PARCEL</u>	<u>AREA</u>	<u>TYPE OF TAKING</u>	<u>ZONING</u>
---------------	-------------	-----------------------	---------------

TYPE OF PROPERTY: RES. \_\_\_\_\_ IND. \_\_\_\_\_ COMM. \_\_\_\_\_ OTHER \_\_\_\_\_

DESCRIPTION OF PROPERTY: \_\_\_\_\_  
\_\_\_\_\_

AREA BEFORE: \_\_\_\_\_ AREA AFTER: \_\_\_\_\_

SEVERANCE DAMAGES: \_\_\_\_\_

WITNESSES:

<u>VALUATION OF WITNESSES</u>				
<u>NAME</u>	<u>BEFORE</u>	<u>AFTER</u>	<u>DAMAGES</u>	<u>CREDIBILITY</u>
( ) _____	_____	_____	_____	_____
( ) _____	_____	_____	_____	_____
( ) _____	_____	_____	_____	_____

OTHER WITNESSES

<u>NAME</u>	<u>OCCUPATION</u>	<u>OPINION</u>
( ) _____	_____	_____
( ) _____	_____	_____

CASE STATUS:

AGREEMENT FOR JUDGMENT: \$ \_\_\_\_\_

PRO BARE FACTS.	DATE: _____	\$ _____	JUDGE: _____
JURY WAIVED:	DATE: _____	\$ _____	JUDGE: _____
JURY:	DATE: _____	\$ _____	JUDGE: _____

MONEY SAVED THE COMMONWEALTH: \$ \_\_\_\_\_

EXHIBIT NO. 15-2

**CASE ANALYSIS - SETTLEMENT RECOMMENDATION - TRAIL REPORT**

**SETTLEMENT DATA**

	<u>PRO TANTO</u>	<u>BALANCE</u>	<u>TOTAL</u>
DAMAGES:	\$ _____	\$ _____	\$ _____
TAXES:	\$ _____	\$ _____	\$ _____
INTEREST:	\$ _____	\$ _____	\$ _____
COSTS:	\$ _____	\$ _____	\$ _____
<b>TOTAL:</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

**DATE OF PRO TANTO PAYMENT:**

\_\_\_\_\_ \$ \_\_\_\_\_ CHECKED BY: \_\_\_\_\_

CHECKED WITH: \_\_\_\_\_

**REPLACEMENT HOUSING:** \$ \_\_\_\_\_ CHECKED BY: \_\_\_\_\_

CHECKED WITH: \_\_\_\_\_

**RENT DUE:**

\$ \_\_\_\_\_ DATE IN: \_\_\_\_\_ DATE OUT: \_\_\_\_\_

CHECKED BY: \_\_\_\_\_ CHECKED WITH: \_\_\_\_\_ MO. RENT: \_\_\_\_\_

**SETTLEMENT RECOMMENDATION WITH REASONS**

(SEPARATE MEMORANDUM ATTACHED HERETO)

**TESTIMONY OF MAJOR WITNESSES**

**FURTHER JUDICIAL REVIEW**

DATE: \_\_\_\_\_

ASSISTANT ATTORNEY GENERAL

APPROVED:

DATE: \_\_\_\_\_

ASSISTANT ATTORNEY GENERAL  
CHIEF, TRAIL DIVISION

**EXHIBIT NO. 15-2**

## PENDING EMINENT DOMAIN CASES

**EXHIBIT NO. 15-3**

# **OFFICE OF THE ATTORNEY GENERAL**

ANNUAL REPORT

JUDGMENTS-SETTLED and/or CLOSED EMINENT DOMAIN CASES - FY 20XX

**EXHIBIT NO. 15-4**

## COURT JUDGMENT

### CALCULATION SHEET

Cost Code: \_\_\_\_\_ Fed. Aid No.: \_\_\_\_\_ D/O/R: \_\_\_\_\_

City/Town: \_\_\_\_\_ L.O.: \_\_\_\_\_ Dated: \_\_\_\_\_ Parcel No.: \_\_\_\_\_

Taken in the name(s) of: \_\_\_\_\_

Record title in the name(s) of: \_\_\_\_\_

Petition No.: \_\_\_\_\_ Superior Court

Specifically covers Parcel Nos: \_\_\_\_\_ Agreement for Judgment \_\_\_\_\_

Make Check Payable to: \_\_\_\_\_ or Jury Verdict \_\_\_\_\_

or Order for Judgment \_\_\_\_\_

Pro Tanto

Damages \$ \_\_\_\_\_ Damages \$ \_\_\_\_\_

Taxes \$ \_\_\_\_\_ Interest\$ \_\_\_\_\_

Interest \$ \_\_\_\_\_ Costs \$ \_\_\_\_\_

\$ \_\_\_\_\_  
Less Pro Tanto Damages \_\_\_\_\_

Interest from date of Judgment \_\_\_\_\_ \$ \_\_\_\_\_

To \_\_\_\_\_, under G.L. Ch. 79 para .37 \_\_\_\_\_ \$ \_\_\_\_\_

Date: \_\_\_\_\_

Entered: \_\_\_\_\_ Cert. rec'd: \_\_\_\_\_ \$ \_\_\_\_\_

Appropriation No. PO # 0975 Line No. Obj.

6036- \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ NP \_\_\_\_\_

6036- \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ NP \_\_\_\_\_

Vendor Number \_\_\_\_\_

**Exhibit no. 15-5**

## Chapter 16

**GUIDELINES FOR CONSULTANT WORK**  
**IN PREPARING RELOCATION PLAN AND**  
**SUBMISSION OF RELOCATION DATA**

The consultant shall develop and submit reports and data as hereafter listed:

**Section 1.**

The consultant shall prepare a statement including data and information as may be necessary to comply with provisions of Department of Transportation, Title 49 CFR Part 24.205, dealing with the probable impact of displacing people, businesses, and farms and the relocation for incorporation into the draft and final environmental impact statement or into an environmental assessment as may be applicable. Data and material gathered and assembled under Section 3 below shall be used in addition to other information as appropriate in the preparation of the statement referred to in this section. The consultant shall follow the method of work outlined in appendix I, including consultations with the Relocation Planning Section of the Right of Way Bureau and submission of draft reports prior to preparation of the environmental assessment of preliminary draft environmental impact statement.

**Section 2.**

The consultant's report shall also be adequate to comply with the provisions of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended relating to the Relocation Planning Advisory Services and Coordination. The consultant's report,

prepared and submitted in accordance with Section 1-4 inclusive herein and with the method of work established in Appendix I, shall be called "Preliminary Report on Relocation Needs and Resources."

### Section 3.

The consultant shall compile, assemble and analyze data for the purpose of and in connection with relocation planning. Material shall be submitted in five general areas including an inventory of structures, description of households and businesses, evaluation of neighborhood characteristics, evaluation of housing market characteristics, correlation and analysis of relocation and neighborhood impact data including possible replacement facilities for displacees.

Guidelines to be followed for the preparation and analysis of data are as follows:

A. Inventory of Structures, Dwelling Units, Commercial Establishments and Farms

Where available, the consultant should prepare and submit:

1. A complete inventory of structures potentially taken under each alternative (structures affected by interchanges, widening or modification of existing streets, as well as takings for the main facility) including name, address, structure type,

description, approximate value, estimated condition, location (community, neighborhood, street).

2. An estimate of the number of dwelling units and tenure of households, including number of dwelling units in each residential structure affected (estimate number vacant), estimated tenure (own or rent) of occupants in each residential dwelling unit.

2. An accounting of the number of businesses (include farms) and of each business, including number of businesses in each commercial structure, name of each business effected, location (community neighborhood, street). Plans (200" scale) showing right of way limits, identifying each structure tabulated in the inventory of photographs may be used. The following graphic format is recommended, but not required, and may be supplemented by lists and field notes as appropriate:

Sample Inventory of Affected Dwellings

<u>Address</u>	Affected under 1 2 3 4 5	Type of Structure	Estimate Own/Rent (O)/(R)	Estim. Vacant	General condition	Approx. value	Photo map key
28 Main St. Chicopee	x	2F	I-O I-R	O	Good	\$28.500±	#3

19 South St.								
Chicopee	x	x	1F	I-O	O	Poor	\$12,000±	#11
191 8 <sup>th</sup> St. Holyoke	x		6F	6-R	1	Fair	\$50,000±	#9

Sample Summary Tabulation (separate for each alternative)

<u>Alternate Iva Neighborhood</u>		<u>Structures by structure type</u>				
<u>Worcester</u>		1F	2F	3F	4F+	Total
West Boylston Street Neighborhood	# Structures	2	1	21	2	26
	Estimated units owner-occupied	2	1	13	0	16
	Estimated units renter-occupied	0	1	50	12	63
Indian Hill Neighborhood	Total Units	2	2	63	12	79
	# Structures	22	0	0	0	22
	Estimated units owner-occupied	20	0	0	0	20
	Estimated units renter-occupied	2	0	0	0	2
Total Takings	Total units	22	0	0	0	22
	# Structures	96	1	21	2	120
	Estimated units owner-occupied	87	1	13	0	101
	Estimated units renter-occupied	9	1	50	12	72
Total units		96	2	63	12	173

Exhibit No. 16-1

**B. Description of Households Affected, Preliminary Inventory of Relocation Needs**

The consultant shall prepare and submit a general description of household characteristics from census tract and block data, and from other secondary sources. The compilation should show the proportion of affected households represented within each track and block population. Census tract and block data encompassing affected household should be compiled by neighborhood and community compared with tract and block data aggregated for the overall community and county (or SMSA). As a minimum, complete census block information should be compiled, and computations done where necessary. From census block and selected tract information, estimates are to be made of the number of persons, female headed, elderly, and large family household affected, and the probable range of their incomes. Estimates are to be made of the number of minority households, non-English speaking households, and significant presence of ethnic groups.

Other sources of information are to be used where available. Individual owners' length of residence can be obtained from the data of last sale in the Registry of Deeds, as well as information on mortgage amounts and discharge. Lists of polls are maintained by most cities and towns, providing the number of persons of voting age at each residence and in some cases age and occupations. City Directories may also provide age and occupation of residents, and this information would be of particular importance in identifying those affected who may be

retired or in low paying jobs. A list of the names and addresses of affected occupants shall be compiled and presented with information available from the above sources.

**N.B.** The material in this paragraph is to be included only in the submission to the Relocation Planning Section (see Method of Work), and should not appear in the preliminary draft statement or environmental assessment.

C. **Description of Business Affected, Preliminary Inventory of Relocation Need**

Where information is available, the consultant shall prepare and submit a general description and characteristics of business and institutions in the areas that are subject to takings from available sources such as census of business, chamber of commerce, industrial commission, regional planning, other publications and reports of local agencies. Such descriptions should include for each business or institution the following data:

1. Type of business (retail, manufacturing, service, wholesale, etc.) Include SIC or type of institution, public or private, such as school or church.
2. Tenure (own/rent) and estimate length of residence.
3. Approximate floor area.
4. Estimated number of employees, employment composition (include number of minority employees).
5. General location, utility, service requirements.
6. Estimated rental or tax rate and land values.

Additional items which are to be noted include difficulties in location requirements, utilities, zoning, services, (truck access and drainage agreements, special easements, etc.). Franchise or license problems should be identified. Existing and

projected market conditions for similar businesses in the area are to be discussed, focusing on trade area, business rate of entry, vacancies in existing structures, and available land suitable for development. The general effect of business dislocation on the economy of the community is to be discussed.

Individual contacts with affected businessmen shall be made, particularly where major employers are affected or when special problems may be anticipated.

In addition to the above source, it is suggested that the consultant obtain information from local representatives, planning agencies, community groups, and area residents participating in the planning process and utilize such information to expand and refine descriptions gathered from secondary sources.

D. Evaluation Reports of Residential Site Neighborhoods

The consultant shall prepare in written narrative form an evaluation of the characteristics residential neighborhoods which are located in the alternative alignment sites for residential displacess. Field notes and observations may be submitted in addition to the narrative evaluation. It is suggested that census data be obtained and computations done so that such evaluation may be made. A partial list of census information, to be applied as appropriate to particular project follows (Appendix II) and all of the material suggested in said list may be obtained from census publications. The Department through the Bureau of Transportation Planning and Development will provide additional census material for analysis, when available (e.g. fourth Count Housing Tapes). Data should be compiled by block and tract and compared to community and SMSA totals. Indicators of neighborhood stability and attractiveness should be discussed (mapped

Exhibit No. 16-1

where appropriate) to the extent information is available, including census data, crime rates, street traffic (children crossings), proximity to shopping and public transportation, churches, health facilities, playgrounds, open space and recreation facilities, quality of schools and housing.

Divisive or disruptive effects on the community, such as separation of residents from community facilities or separation of neighborhoods, are to be noted and evaluated.

Impacts on the neighborhood and housing where relocation is likely to take place are to be noted and evaluated.

#### Housing Market Characteristics

The consultant, shall prepare a survey of housing market characteristics which will focus on housing in the general area available in the private market which is of structure type, cost (or rent), size, and in a neighborhood comparable to structures to be acquired. Resources in public and publicly-assisted housing may be documented through contacts with the local housing authority and managers of individual projects. Contacts with Realtors and others knowledgeable of local housing are to be documented by name and time of contact.

The housing market survey shall include, as a minimum, the following:

1. Sample newspaper and periodical listings of homes for sale and rent by structure type, cost, size, and location. The sample should be selected over at least a one-year period to allow for seasonal variations and daily or weekly listings spaced far enough apart to eliminate repetition. A coded plotting of available units on a map of the community is essential and should show the proportion of identifiable locations to total listings. Length of time units that are available should be

Exhibit No. 16-1

- ascertained from comparison of continuous listings.
2. Detailed information on new construction: building permits by structure type (at least over the past five years), planned new construction (contact area builders, building inspectors, local planning officials, developers, public housing officials, HUD, MHFA).
  3. Comments from area Realtors and compilation of multiple listings (if available).

A number of Realtors should be contacted to obtain as complete a picture as possible of area housing market conditions, with discussion focusing on volume of recent past sale and rental turnover by type, cost, size, and location; present availability by type, cost, size and location (including length of time units are available); high demand areas and special circumstances which may affect relocation. If possible, the local Real Estate Transfer Directory should be obtained and sales over the previous complete year and recent months plotted by type, cost, size, and location.
  4. Information from local banks, utility companies, etc., for mortgage and other housing cost information. Information from community assessors and others to obtain tax rates, rates of assessment, real variations in particular sections.
  5. Information on availability of public and publicly-assisted housing; vacancies; waiting lists; turnovers; size and rents of available units; admissions criteria (family size and income); description of projects (e.g. density, neighborhood public and commercial services available, comparability to structures to be

Exhibit No. 16-1

- acquired, location and size of project).
6. Information on other projects involving displacement: recent and anticipated relocation; problems experienced by relocation agency. Where data is available (DPI or Redevelopment Authority files) recent past relocations should be plotted by type, size, location, tenure, and cost of pre-location vs. post-location housing.
  7. Information from census and other reports; changes in total supply and characteristics of the housing stock are to be noted by comparing 1970 with 1960 census data. Regional and local housing market and related studies may be used to supplement primary sources.

E. Replacement Housing and Business Development

Information developed in sections A-D above is to be correlated and displayed such that an analysis may be made of comparable housing and business resources that may be available in neighborhoods potentially suitable for relocatees. The consultant shall prepare a report relating possible innovative means, including provisions of excess land from takings, to accommodate displaced persons, business and institutional facilities. Community resources are to be discussed including comments on the community's (political subdivision) professional expertise, possible assistance from local official and agencies, land potentially suitable for development and potential rehabilitation of existing structures. Such a report shall further include comments on and a list of sites which are recommended for the location of replacement housing. These may be

Exhibit No. 16-1

described in relation to existing surroundings, zoning, site feature and access, proximity to shopping and local community facilities, proximity to public transportation, land values, pending or possible competing development, history of attempted development (requested zoning variances and results, permits requested), possible environmental impacts. Possibilities for structures moving are to be explored where it is a potential resource for replacement housing. Land in the immediate area owned by DPW and outside proposed rights of way should be identified. Local officials and representative of other public agencies should be contacted to explore possibilities for the use of publicly-owned or tax title land for replacement housing or other facilities.

#### Section 4. Presentation at Public Meetings

The consultant may be required to present preliminary finds of relocation needs and resources at public information meetings and meetings of elected officials, community groups, potential relocatees and residents of affected areas. Possible takings are to be shown, to whatever detail they are developed, at all public information meetings. The consultant should document by name, time, and summary report all contacts make with potential relocatees.

A special meeting with persons potentially displaced and others will be held, in accordance with Action Plan procedures. It will be the responsibility of the consultant to contact potentially affected occupants under direction of the Relocation Planning Section and to distribute information in accordance with Action Plan procedures.

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Section 5. Discretion to MHD

Application of the material specified by these guidelines shall be solely the responsibility of the MHD. Failure on the part of the Division to include any of the data specified herein in environmental assessment, draft of final environmental impact statements, or Conceptual State Relocation Program Plans shall not be construed as failure to meet the requirements of said documents.

Exhibit No. 16-1

## APPENDIX 1

### METHOD OF WORK

The purpose of the study of relocation needs and resources and impacts due to dislocation is to influence location and design engineering in the earliest stages of the highway project process. Consultants preparing reports in accordance with these guidelines are to stage their work and maintain continuous contacts with environmental and engineering personnel such that the above objectives are accomplished in the most effective, reasonable manner possible.

The MassDOT Highway Division may review consultant proposals and participate in contract negotiations. The consultant may develop with the assistance of MHD a detailed work program to fulfill the requirements of these guidelines. The consultant shall initiate and maintain continuous contact with the MHD during the course of the studies, and it shall be the responsibility of the MHD to provide technical assistance and to monitor the application of study findings to engineering work.

A submission of the “Preliminary Report on Relocation Needs and Resources” shall be made by the consultant to the MHD, prior to the consultant’s submission to the Division of the Preliminary Draft Environmental Impact Statement or Environmental Impact Statement or Environmental Assessment. The consultant should submit this report early enough to allow the consultant to perform additional work as may be required prior to submission of the overall preliminary draft statement or environmental assessment. The Relocation Planning Section, Right of Way Bureau, may prepare whatever synopsis or summary findings of the submitted material deemed appropriate, and shall instruct the consultant on the materials to be included in

Exhibit No. 16-1

the draft statement or environmental assessment.

The consultant should submit this report early enough to allow the consultant to perform additional work as may be required prior to submission of the overall preliminary draft statement or environmental assessment. The Relocation Planning Section, Right of Way Bureau, may prepare whatever synopsis or summary findings of the submitted material deemed appropriate, and shall instruct the consultant on the materials to be included in the draft statement or environmental assessment.

## APPENDIX II

The following is a guide to the kinds of information that may be obtained from the census permit an evaluation of the affected neighborhood:

1. Population characteristics

- total population 1970; changes 1960-1970
- racial composition 1970; significant presence of ethnic groups; changes 1960-1970
- age distribution 1970; change in proportion of persons under 18, over 62; changes 1960-1970
- education, median number of year completed, % high school graduates, % school attendees
- enrolled in college, 1970; changes 1960-1970
- predominant occupational types, 1970; changes 1960-1970

2. Income characteristics

- median household income 1970; median income of families 1970; median income of unrelated individuals, 1970
- % distribution by \$5,000 increments; % paying 25% or less of income for rent for each \$5,000 increment
- % of all households with income below poverty level; % homeowners with income below poverty level; % households heads over 65 with income below poverty level; % unrelated individuals with income below poverty level

3. Residential mobility and transportation

- proportion of persons in residence less than two years, two to five years, six to ten, eleven to twenty, over twenty years; median length of residence; changes 1950-1970
- auto ownership 1970, by owners, renters, means of transportation to work

4. Housing characteristics

- total dwelling units
- % 1 - unit structures; 2-unit ; 5-49; 50 plus, 1970 changes, 1960-1970
- owner-occupied 1970; change 1960-1970
- renter-occupied 1970; change 1960-1970
- % vacant 1970; change 1960-1970
  - vacant and for sale, 1970, number and %
  - vacant less than 6 months, %
  - median price asked

vacant for rent, 1970, number and %

vacant less than 2 months, %

median price asked

--median number of rooms per dwelling unit; average number of rooms per d/u

--median number persons per d/u (by owners and renters)

--condition of stock--% lacking some or all plumbing

--overcrowding: 1.01 or more persons per room; change 1960-1970

--value of owner-occupied units-median and % distribution 1970

--contract rent and gross rent-median and % distribution 1970

## Chapter 17

**LETTERHEAD**

LOCATION: \_\_\_\_\_

PROJECT: \_\_\_\_\_

PARCEL NO: \_\_\_\_\_. \_\_\_\_\_

**NOTICE OF INTENT TO ACQUIRE**

Dear

This is to advise you that it is the intent of the MassDOT Highway Division to acquire your property located at . \_\_\_\_\_

Should it be necessary for you to move before the Commonwealth initiates negotiations for the purchase of your property, this letter will protect your eligibility to receive benefits, under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR part 24), as amended.

I would caution you that in the event this portion of the project is cancelled prior to your move, you should not proceed with your move, and relocation assistance would not be available.

If you have questions on the relocation process, please call your assigned relocation at (617) 973- \_\_\_\_\_ or the Relocation Administrator at (617) 973-7900.

Sincerely,

SFW , Director  
Right of Way Bureau

(EXHIBIT # 17-2 Revised 10/1/00)

**MASSDOT HIGHWAY DIVISION**  
**PRELIMINARY SURVEY OF HOUSING NEEDS AND PREFERENCES**

CITY/TOWN: \_\_\_\_\_ ROUTE: \_\_\_\_\_

SURVEY NO: \_\_\_\_\_

F/A PROJECT NUMBER: \_\_\_\_\_

I. **IDENTIFICATION:** \_\_\_\_\_

NAME, HEAD OF HOUSEHOLD \_\_\_\_\_

ADDRESS \_\_\_\_\_

CODE: FAMILY INDIVIDUAL JOINT HOUSEHOLD

II. **HOUSEHOLD COMPOSITION**

NAME	MARITAL STATUS	RELATION TO HSHLD. HD.	AGE	VETERAN STATUS	EMPLOYD	NAME & GRADE OF SCHOOL
------	----------------	------------------------	-----	----------------	---------	------------------------

1. **(HEAD)** \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

III. **EMPLOYMENT**

HEAD OF HOUSEHOLD--STATUS: EMPLOYED RETIRED BASIS: FULL TIME SEASONAL

DISABLED UNEMPLOYED PART TIME IRREGULAR

**TYPE OF WORK OF HOUSEHOLD MEMBERS**

NAME _____	TYPE OF WORK _____	NAME AND ADDRESS OF EMPLOYER _____
<b>(HEAD)</b> _____		

## PRELIMINARY SURVEY OF HOUSING NEEDS AND PREFERENCES

IV. HOUSEHOLD INCOME (MONTHLY)

TYPE	AMOUNT HEAD HOUSEHOLD	AMOUNT SPOUSE	OTHERS (NAME)
EMPLOYMENT			
GROSS MONTHLY WAGES			
SELF-EMPLOYED INCOME			
NON EMPLOYMENT			
INTEREST, DIVIDENDS			
MONTHLY WITHDRAWAL FROM SAVINGS TO MEET EXPENSES			
PENSIONS, SOCIAL SECURITY, INSURANCE PAYMENTS, V.A., DISABILITY, ECT.			
PUBLIC ASSIST. (SPECIFY)			
OTHER(I.E RENTAL INCOME			
TOTAL MONTHLY INCOME (ALL SOURCES)			

PRESENT HOUSING \_\_\_\_\_

TYPE OF STRUCTURE (1F, 2F, 3F, ETC.) \_\_\_\_\_ FLOOR \_\_\_\_\_ | TENANT \_\_\_\_\_

NUMBER OF ROOMS \_\_\_\_\_ SUBTENANT —

OWNER \_\_\_\_\_

NUMBER OF BEDROOM — PORCHES, OTHER AMENITIES \_\_\_\_\_  
(FIREPLACE, DEN, PATIO, ETC)

APPROX. SF LIVING SPACE \_\_\_\_\_

TENANT \_\_\_\_\_

MONTHLY RENT PAYMENT \_\_\_\_\_

PAID TO. |

INCLUDES	YES	NO	COST
HEAT			
ELECTRICITY			
GAS			
WATER			
MAINTENANCE SERVICE			
GROSS MHTLY HOUSING CST.			

OWNER

ITEM	AMOUNT	ITEM	AMOUNT
BALANCE OF MORTGAGE		HEAT	
MONTHLY MORTGAGE PAYMENT		ELECTRICITY	
PRINCIPAL		GAS	
INTEREST		WATER	
TAXES		INSURANCE	
INSURANCE (ESCROW)		TOTAL UTILITIES	
TOTAL		LESS MONTHLY INCOME	
GROSS MONTHLY HOUSING COST			

## **PRELIMINARY SURVEY OF HOUSING NEEDS AND PREFERENCES**

### **VI. PRESENT NEIGHBORHOOD**

**NO. OF YEARS LIVED IN PRESENT HOME** \_\_\_\_\_ **NO. OF YEARS IN  
NEIGHBORHOOD** \_\_\_\_\_ **NO OF YRS. IN SAME COMMUNITY** \_\_\_\_\_  
**PREVIOUS ADDRESS** \_\_\_\_\_  
**RELATIVES NEARBY** \_\_\_\_\_  
**FRIENDS NEARBY** \_\_\_\_\_

**PARTICIPATION IN COMMUNITY GROUPS** \_\_\_\_\_

**NEIGHBORHOOD ASSETS** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NEIGHBORHOOD LIABILITIES** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IS THERE A CHARACTERISTIC OF THIS NEIGHBORHOOD THAT IS PARTICULARLY  
IMPORTANT TO YOU ?** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SPECIAL FEATURES OF A NEIGHBORHOOD TO BE CONSIDERED IN  
RELOCATION** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ADDITIONAL COMMENTS** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **VII. REHOUSING PREFERENCES**

**TYPE OF HOUSING DESIRED:** \_\_\_\_\_  
**PREFER TO OWN** \_\_\_\_\_ **PREFER TO RENT** \_\_\_\_\_

## PRELIMINARY SURVEY OF HOUSING NEEDS AND PREFERENCES

<u>PUBLIC OR PUBLICLY-ASSISTED</u>	<u>PRIVATE RENTAL</u>	<u>PRIVATE SALES</u>
<b>APPEAR ELIGIBLE Y or N</b>	<b>APARTMENT</b>	<b>1 FAMILY, 2 FAMILY, 3 FAMILY, MULTI UNIT, OTHER</b>
<b>FAMILY</b>	<b>LT. HOUSEKEEPING</b>	
<b>ELDERLY</b>	<b>ROOM</b>	
<b>PARTICULAR PROJECT PREFERRED</b>	<b>OTHER</b>	
<b>EVER APPLIED BEFORE, RESULT</b>	<b>STRUCTURE TYPE 1F , 2F , 3F, MULTI UNIT, OTHER</b>	
<b>PUBLICLY ASSISTED SALES HOUSING DESIRED (IF AVAILABLE)</b>	<b>FLOOR PREFERRED</b>	

**IF PURCHASE DESIRED, DOES HOUSEHOLD FEEL ABLE TO AFFORD DOWN PAYMENT?  
ABOUT HOW MUCH?**

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**TRANSPORTATION:**

**OWN AUTO** \_\_\_\_\_

**MEANS OF TRANSPORTATION TO WORK** \_\_\_\_\_

**SCHOOLS** \_\_\_\_\_ **SHPOPPING** \_\_\_\_\_ **OTHER** \_\_\_\_\_

**NEED TO BE WITHIN WALKING DISTANCE OF ANY PARTICULAR FACILITIES**


**LOCATION PREFERENCES (RANK 1ST, 2ND, 3RD, ETC.) COMMENTS**

**SAME NEIGHBORHOOD**

**OTHER NEIGHBORHOOD**

**ANY IN SAME CITY OR TOWN**

**OTHER COMMUNITY**

**ANY SPECIAL NEED OR PREFERENCE FOR A PARTICULAR LOCATION**


PRELIMINARY SURVEY OF HOUSING NEEDS AND PREFERENCES

**VIII. MISCELLANEOUS**

**NEAREST RELATIVE OR FRIEND**

NAME \_\_\_\_\_ RELATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

BEST TIME TO CONTACT RELOCATEE \_\_\_\_\_

ANY SPECIAL NEEDS TO BE CONSIDERED (E.G. ill health, day care,  
need for first floor dwelling, etc.)  
\_\_\_\_\_

IMPORTANT CHURCH OR ORGANIZATION AFFILIATION \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DOES SERVICE REFERRAL APPEAR TO BE NEEDED? WHAT KIND(S)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REMARKS BY INTERVIEWER \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTERVIEW \_\_\_\_\_

TIME OF INTERVIEW \_\_\_\_\_

SPOUSE PRESENT \_\_\_\_\_

OTHER HOUSEHOLD MEMBERS PRESENT \_\_\_\_\_

SIGNATURE OF \_\_\_\_\_

INTERVIEWER: \_\_\_\_\_

# MHD – Right of Way Bureau, Business Relocation Unit

## Commercial Site Occupant Record

1 of 3 Pages

Project: \_\_\_\_\_ Parcel(s): \_\_\_\_\_ FAP: \_\_\_\_\_ LO/ Order Date: \_\_\_\_\_

Business Name: \_\_\_\_\_ Address: \_\_\_\_\_

Tel: \_\_\_\_\_ Chief Officer/ Auth Agent: \_\_\_\_\_

Federal Identification No: \_\_\_\_\_ Number of Employees: \_\_\_\_\_

Sole Proprietor: \_\_\_\_\_ Partnership: \_\_\_\_\_ Corp: \_\_\_\_\_ Building Owner: \_\_\_\_\_

Tenant: \_\_\_\_\_ Sub Tenant: \_\_\_\_\_

Fixtures – Owner: \_\_\_\_\_ Leased: \_\_\_\_\_

### Type of Business

Date Occupancy Began: \_\_\_\_\_ Retail: \_\_\_\_\_ Wholesale: \_\_\_\_\_ Mfg: \_\_\_\_\_ Office: \_\_\_\_\_ Garage: \_\_\_\_\_

Warehouse: \_\_\_\_\_ Other: \_\_\_\_\_ Description: \_\_\_\_\_

Special License Req.: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ Obtained By: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

### Owner

Outstanding Mortgage: \$\_\_\_\_\_ Source: \$\_\_\_\_\_ Insurance:\$\_\_\_\_\_ Water:\$\_\_\_\_\_

Principal: \$\_\_\_\_\_ Taxes:\$\_\_\_\_\_ Heat:\$\_\_\_\_\_ Gas:\$\_\_\_\_\_

Interest: \$\_\_\_\_\_ Insurance: \$\_\_\_\_\_ Elect:\$\_\_\_\_\_ Other:\$\_\_\_\_\_

Other Loans: \_\_\_\_\_

### Tenant

Monthly Rent:\$\_\_\_\_\_ Paid To: \_\_\_\_\_

Includes	Yes	No	Amount	
Heat	____	____	\$_____	
Elect	____	____	\$_____	
Gas	____	____	\$_____	
Water	____	____	\$_____	
Maint Serv	____	____	\$_____	Total Amount: \$_____

**EXHIBIT NO. 17-5**

### **Tenant Insurance**

Amount:\$ \_\_\_\_\_ Expires: \_\_\_\_\_

Terms of Lease and Special Provisions: \_\_\_\_\_

### **Employee Transportation**

Number: Walk to Work\_\_\_\_\_ Drive\_\_\_\_\_ Public Transportation\_\_\_\_\_

### **Site Specs**

Build: \_\_\_\_\_ SF Occupied Number of Floors: \_\_\_\_\_ Used for: \_\_\_\_\_

Land Area: \_\_\_\_\_ SF Used for: \_\_\_\_\_

Parking Availability: \_\_\_\_\_ Curb\_\_\_\_\_ Off-Street\_\_\_\_\_ Capacity\_\_\_\_\_ Size of Lot\_\_\_\_\_

Off Site location Y/N: \_\_\_\_\_ Build: \_\_\_\_\_ SF Land: \_\_\_\_\_ SF Used for: \_\_\_\_\_

### **Special Equipment**

Elevator\_\_\_\_\_ Capacity\_\_\_\_\_ Conveyor\_\_\_\_\_ Lift Trucks\_\_\_\_\_ Dollies\_\_\_\_\_

Other\_\_\_\_\_

*Loading Facilities:* Curb\_\_\_\_\_ Off- Street\_\_\_\_\_ Covered Dock\_\_\_\_\_ Inside Platform\_\_\_\_\_

*RR Track Siding:* Open Yard\_\_\_\_\_ Alongside Build\_\_\_\_\_ Mat of RR cars accommodated\_\_\_\_\_

*Special Handling:* Hoists\_\_\_\_\_ Cranes\_\_\_\_\_ Other\_\_\_\_\_

**EXHIBIT NO. 17-5**

### ***Relocation Preferences***

Location Desired:

---

Reason for Preference:

---

Rent \_\_\_\_\_ Buy \_\_\_\_\_ Build \_\_\_\_\_ Max Monthly Payments \$\_\_\_\_\_  
Desired S.F. \_\_\_\_\_

Number of Stories \_\_\_\_\_ Off Street Loading: Y \_\_\_\_\_ N \_\_\_\_\_ Employee / Customer parking \_\_\_\_\_/\_\_\_\_\_

Rail Siding Required: Y \_\_\_\_\_ N \_\_\_\_\_ Number of Freight Cars to be Accommodated: \_\_\_\_\_

Special Equipment:

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Relocation Issues / Problems / Preferences:

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---

---

Comments:

---

---

---

---

PERSON INTERVIEWED

---

TITLE

---

Interviewer

---

Date

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
RELOCATION GENERAL INFORMATION SHEET**

CLAIMANT: \_\_\_\_\_ F.A.P. NO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ PARCEL NO: \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_ ORDER: \_\_\_\_\_

**TELEPHONE NO:** \_\_\_\_\_ **DATED:** \_\_\_\_\_

**CLAIMANT:** \_\_\_\_\_ **SOC. SEC. NO.:** \_\_\_\_\_

SPOUSE: \_\_\_\_\_ SOC.SEC.NO: \_\_\_\_\_

**STATUS:** OWNER OF RECORD:

CIRCLE ONE: UNDER 62 - 62 AND OVER CITY/TOWN EMPLOYED:

CIRCLE ONE: UNDER 62 - 62 AND OVER CITY/TOWN EMPLOYED: \_\_\_\_\_

**PERIOD OF OCCURANCY:**      **YEARS**      **MONTHS**

**PERIOD OF OCCUPANCY:**    **YEARS** \_\_\_\_\_ **MONTHS** \_\_\_\_\_

TENANT: MONTHLY GROSS INCOME \$ AVERAGE MONTHLY EXPENSES PAST 6 MONTHS

TENANT: AVERAGE MONTHLY RENTAL PAST 3 MONTHS \$\_\_\_\_\_ HEATED  
\$\_\_\_\_\_ UNHEATED  
RENT SUPPLEMENTED BY PUBLIC AGENCY

RENT SUPPLEMENTED BY PUBLIC AGENCY: \_\_\_\_\_

HOW MUCH \$\_\_\_\_\_ NAME OF AGENCY: \_\_\_\_\_

OTHER OCCUPANTS      RELATIONSHIP      AGE      SEX

1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

## MINIMUM HOUSING REQUIREMENTS:

NO. ROOMS: \_\_\_\_\_ NO. BEDROOMS: \_\_\_\_\_ LOT SIZE: \_\_\_\_\_ SQ. FOOT AREA: \_\_\_\_\_

**RELOCATION ASSISTANCE REQUESTED:** \_\_\_\_\_ **BROCHURE:** \_\_\_\_\_

PERSON INTERVIEWED: \_\_\_\_\_ DATE \_\_\_\_\_

INTERVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**REMARKS:**

(EXHIBIT # 17-6 Revised 1/18/11)

**BUSINESS UNIT - GENERAL INFORMATION**

F.A.P. \_\_\_\_\_ CLAIMANT \_\_\_\_\_

L.O/ORDER \_\_\_\_\_ OWNER'S NAME \_\_\_\_\_

PARCEL NO. \_\_\_\_\_ CITY/TOWN \_\_\_\_\_

F.I.D. NO. \_\_\_\_\_ S.S.NO. \_\_\_\_\_

CLAIMANT STATUS \_\_\_\_\_ DATE OF OCCUPANCY \_\_\_\_\_

ADDRESS \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_.

TELEPHONE NUMBER: HOME \_\_\_\_\_ BUSINESS \_\_\_\_\_

TYPE OF CLAIM \_\_\_\_\_ TYPE OF BUSINESS \_\_\_\_\_

DESCRIPTION \_\_\_\_\_

**WHAT IS TO BE MOVED** \_\_\_\_\_  
\_\_\_\_\_

NO. OF OCCUPANTS/EMPLOYEES \_\_\_\_\_ AREA/SPACE REQUESTED \_\_\_\_\_

BENEFITS EXPLAINED \_\_\_\_\_ BROCHURE \_\_\_\_\_ OPTIONS EXPLAINED \_\_\_\_\_

ASSIGNMENT OF FUNDS REQUESTED \_\_\_\_\_

MORTGAGE ASSISTANCE REQUESTED \_\_\_\_\_

AUTHORIZED REPRESENTATIVE \_\_\_\_\_

ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_

PHOTOS TAKEN \_\_\_\_\_ BY \_\_\_\_\_ DATE \_\_\_\_\_

COMPILED BY \_\_\_\_\_ DATE \_\_\_\_\_

APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SUBJECT PROPERTY**

CLAIMANT \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/TOWN \_\_\_\_\_

F.A.P # \_\_\_\_\_

PARCEL NO. \_\_\_\_\_ STATUS COMPUTATION

STATUS OPTION

PERIOD OF OCCUPANCY \_\_\_\_ YEARS \_\_\_\_ MONTHS \_\_\_\_ DAYS

DATE OF NOTICE OF INTENT TO

DATE OF RECORDING \_\_\_\_ ACQUIRE

DATE OF INITIATION

OF NEGOTIATIONS \_\_\_\_ DATE REQUIRED TO VACATE

AVG. MOS. RENTAL OVER

PAST 3 MONTHS

\$ \_\_\_\_ HEATED

\$ \_\_\_\_ UNHEATED

F.M.V. OF ACQUIRED PROPERTY

\$

F.M.V. ALLOCABLE TO OWNER

\$

ECONOMIC RENT

\$ \_\_\_\_ HEATED

\$ \_\_\_\_ UNHEATED

**DESCRIPTION OF PROPERTY**

TYPE OF STRUCTURE \_\_\_\_\_ NO. OF STORIES

NO. OF ROOMS \_\_\_\_ OCCUPIED \_\_\_\_ LAND AREA

SQUARE FOOT AREA \_\_\_\_ LOT SIZE

FLOOR/APT. \_\_\_\_ AGE \_\_\_\_ D.S.S.

KITCHEN \_\_\_\_ CONDITION

LIVING ROOM

DINING ROOM

BEDROOM

BATHROOM

OTHER

COMPILED BY

# ***RESIDENTIAL RELOCATION BROCHURE***

**COMMONWEALTH OF MASSACHUSETTS**

**MassDOT Highway Division**

**Right of Way Bureau**

**Regulations set forth herein are applicable to properties taken subsequent to  
JANUARY 4, 2005**

**(Revised 01/24/2011)**

EXHIBIT NO. 17-9

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## **INTRODUCTION**

The purpose of this brochure is to provide a brief outline of relocation benefits available to individuals (collectively **displacee**) displaced as a result of a MassDOT Highway Division (herein The Division) project. These relocation benefits are provided pursuant to Public Law 91-646 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24), Massachusetts General Laws, Ch. 79, 79A, and 81 §7J, and Massachusetts Regulation 760 CMR Part 27.

Since each displacee will have relocation issues that are unique to their residential situation and may not be able to be addressed in this brochure, The Division Right of Way Bureau will assign a Relocation Agent(s) to each displacee.

It is important that each displacee establish a close working relationship with the Relocation Agent(s) to ensure compliance with the relocation regulations and to facilitate reimbursement of relocation expenses.

Prior to the Division's eminent domain acquisition of the displacee's property, each displacee will be contacted and interviewed by a Relocation Agent(s). During the meeting with the Relocation Agent(s), the displacee should inform the Relocation Agent(s) of all of their relocation needs so that the Relocation Agent(s) can fully assist in the relocation process and ensure that Federal and/or state rules, regulations and guidelines have been met.

The Relocation Agent(s) will assist each displacee with their relocation to a new residence. Services available through the Relocation Agent(s) may include (when applicable):

Lists of available residential properties being offered for sale and/or lease, which may be considered as alternative sites.

Site maps and other pertinent information on available properties and services offered by city, state and federal agencies.

Additionally, a relocation field office may be set up (when necessary) and displacees will be informed of its location. If it is not necessary for a field office to be set up, local The Division Right of Way Agents may be assigned to be local contacts to assist with some of the needs of the displacees.

Displacees are allowed to continue to occupy the acquired property for at least four (4) months after receiving a Notice to Vacate from The Division. The Notice to Vacate is not sent until after The Division has acquired the property by eminent domain.

Please visit the Massachusetts Department of Transportation website (click on the Division link) for more information about projects in your community at [www.eot.state.ma.us](http://www.eot.state.ma.us)

Please visit the Federal Highway Administration website, where the Federal Regulations referred to herein can be found in their entirety, at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

**ALWAYS MAINTAIN CONTACT WITH THE RELOCATION AGENT(S) ASSIGNED TO YOU.**

## I. DEFINITIONS

### **Decent, Safe and Sanitary Dwelling:**

The term decent, safe and sanitary dwelling means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for a good cause by the Federal Agency funding the project:

- Be structurally sound, weather tight and in good repair;
- Contain a safe electrical wiring system that is adequate for lighting and other devices;
- Contain a heating system capable of sustaining a healthy temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;
- Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policy of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local housing codes, the policies of such Agencies;
- There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, a bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to a potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;
- Contains unobstructed egress to safe, open space at ground level; and
- For a person with a disability, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by such a displaced person.

49 CFR §24.2(a)(8)

### **Comparable Dwelling:**

The term comparable replacement dwelling means a dwelling which is:

- Decent, safe and sanitary;
- Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range

of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling.

Adequate in size to accommodate the occupants;

In an area not subject to unreasonable adverse environmental conditions;

In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

Currently available to the displaced person on the private market.

However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance; and

Within the financial means of the displaced person.

A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, increased mortgage interest and incidental, plus any additional amount required to be paid under replacement housing of last resort.

A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid as replacement housing of last resort.

### **Displaced Person:**

The term displaced person means any person who moves from the real property or moves his or her personal property from the real property (this includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act) as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

49 CFR §24.2(a)(9)

## **II. ELIGIBILITY FOR RELOCATION PAYMENTS**

DO NOT MOVE BEFORE THE INITIATION OF NEGOTIATIONS. MOVING PRIOR TO THE INITIATION OF NEGOTIATIONS MAY JEOPARDIZE YOUR ELIGIBILITY FOR RELOCATION BENEFITS.

Eligibility for relocation payments for both the owner and any tenants begins on the date of the Initiation of Negotiations between the owner of the acquired property and The Division. The Initiation of Negotiations is the date upon which delivery occurs of the initial written offer of just compensation by the Agency (The Division) to the owner or the owner's representative to purchase the real property for the project or the date on a notice of intent to acquire presented to the owner and/or tenant.

If the The Division identifies buildings, structures and/or other improvements (including removable buildings, equipment, and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made, a statement shall identify any separately held ownership interest in the property (e.g. a tenant-owned improvement), and so indicate that such interest is not covered by the offer.

An item will only be classified as a tenant-owned improvement if both the fee owner and tenant-owned improvement owner agree to this classification or if the lease indicates a tenant-owned improvement designation. In these instances, if the fee owner disclaims all interest in the tenant-owned improvements, then The Division will inform the fee owner and tenant of their individual interests and submit separate offers to the parties involved.

## **III. ELIGIBLE RELOCATION PAYMENTS**

Displacees may be eligible for two types of relocation benefits: moving expenses and replacement housing payments.

### **Moving Expenses**

All tenants and owner-occupants are eligible for moving expenses. It is the responsibility of the displacee to choose the moving method that best suits their needs.

If a displacee owns or rents a residential dwelling, occupies the dwelling on the eligibility date and the property is subsequently acquired, then the displacee is eligible for one of the following three moving payments:

#### **An actual cost payment**

This is a reimbursement payment based on the actual, reasonable moving and related costs to move the personal property and household goods and/or items on the property being taken.

The Relocation Agent(s) will obtain three estimates from professional moving companies. A displacee may choose any moving company, but the reimbursement amount will be based on the lowest responsible estimate.

Moving expenses are limited to a distance of 50 miles unless the displacee obtains a written authorization from the Division to move beyond 50 miles.

The displacee contracts with a commercial mover (either the mover that provided the low bid amount or another commercial mover) to move the personal property, pays the mover, submits the required documentation and then is reimbursed by the Division for the amount paid to the commercial mover, with the maximum eligible reimbursement amount not to exceed the amount allowed in the lowest estimate obtained by the Division.

The displacee may also opt not to hire a commercial mover and move the personal property themselves. The Division can reimburse for actual costs incurred, with the maximum eligible reimbursement amount not to exceed the amount allowed in the lowest estimate obtained by the Division, when the displacee submits the required documentation. However, the Division will not provide compensation for the time of the displacee(s) that was spent coordinating, facilitating or performing the move.

#### **A fixed schedule payment**

This is a payment based upon a fixed sum, which varies depending on the number of rooms in the dwelling.

The following chart outlines the amounts allowed for a fixed schedule moving payment:

##### *Furnished Unit*

First room \$300.00

Each additional room, add \$50.00 per room

##### **Furnished Unit      Unfurnished Unit**

One room	\$500.00	\$250.00
Two rooms	\$650.00	\$300.00
Three rooms	\$800.00	\$450.00
Four rooms	\$950.00	\$500.00
Five rooms	\$1100.00	\$550.00
Six rooms	\$1250.00	\$600.00

Seven rooms	\$1400.00	\$650.00
Eight rooms	\$1550.00	\$700.00

Each additional room, add \$150.00 per room

#### **A combination of the two types of moving payments**

The actual cost payment and the fixed schedule payment may be combined where the Relocation Agent(s) feels that the displacee will not be able to complete their residential move by either one of the moving options alone. In this instance, the actual cost reimbursement payment method may be used for certain identified items (the method of reimbursement would remain as outlined above) and the fixed schedule payment may be used for remaining rooms on the premises.

#### **Replacement Housing Payments**

A replacement housing payment is a relocation benefit that a displacee may be entitled to for the purposes of supplementing some of the increased costs with regard to their new living arrangement that may be caused by the taking. The amount that the displacee is entitled to under this benefit is determined by whether the displacee is an owner or a tenant and by the length of time a displacee has resided at that location prior to the eligibility date.

##### **If the displacee is an owner-occupant for more than 180 days:**

A displaced person is considered an owner-occupant for more than 180 days if the person has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations and purchases and occupies a decent, safe and sanitary replacement dwelling.

A replacement housing payment for an owner-occupant for more than 180 days is not to exceed \$22,500. That amount is the sum of the following three benefits:

- Cost Differential

The cost differential payment is a supplemental payment which is the difference between the amount paid for a displacee's dwelling, and the amount the displacee paid for a decent, safe and sanitary comparable replacement dwelling.

- Interest Rate Differential

The interest rate differential payment is provided to offset an increase in mortgage payments on a displacee's new property as a result of any increase in the interest rate. The payment is determined by the difference in the interest rates, and the subsequent increase in the cost of the mortgage, based on the acquisition amount (not replacement amount).

- Incidental Expenses

The incidental expense payment is made for actual verified expenses that are a result of procuring a new mortgage for the replacement dwelling. Eligible items for reimbursement may include:

Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

Appraisal, lender, FHA, or VA application fees;

Loan origination or assumption fees that do not represent prepaid interest;

Professional home inspection, certification of structural soundness and termite inspection;

Credit report;

Owner's and mortgagee's evidence of title, title insurance;

Escrow agent's fee;

State revenue or documentary stamps, sales or transfer taxes; and/or

Other costs as The Division determines to be incidental to the purchase.

If a owner-occupant for more than 180 days decides not to purchase a dwelling, but instead to rent a decent, safe and sanitary dwelling, they are eligible for a rental assistance payment 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, shall be multiplied by 42, however the amount of this rental assistance payment shall not be greater than what could have been received if they had purchased a replacement dwelling.

If the displacee is an owner-occupant for more than 90 days:

A displaced person is considered an owner-occupant for more than 90 days if the person has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations and purchases and occupies a decent, safe and sanitary replacement dwelling.

A replacement housing payment for an owner-occupant for more than 90 days is not to exceed \$5,250. That amount is the sum of the following two benefits (please note that the interest rate differential benefit as part of the replacement housing payment is not available to owner-occupants of more than 90 days):

- Cost Differential

The cost differential payment is a supplemental payment which is the difference between the amount paid for a displacee's dwelling, and the amount the displacee paid for a decent, safe and sanitary comparable replacement dwelling.

- Incidental Expenses

The incidental expense payment is made for actual verified expenses that are a result of procuring a new mortgage for the replacement dwelling. Eligible items for reimbursement may include:

Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

Appraisal, lender, FHA, or VA application fees;

Loan origination or assumption fees that do not represent prepaid interest;

Professional home inspection, certification of structural soundness and termite inspection;

Credit report;

Owner's and mortgagee's evidence of title, title insurance;

Escrow agent's fee;

State revenue or documentary stamps, sales or transfer taxes; and/or

Other costs as The Division determine to be incidental to the purchase.

If a owner-occupant for more than 90 days decides not to purchase a dwelling, but instead to rent a decent, safe and sanitary dwelling, they are eligible for a rental assistance payment 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, shall be multiplied by 42, however the amount of this rental assistance payment shall not be greater than what could have been received if they had purchased a replacement dwelling.

If the displacee is an owner-occupant for less than 90 days:

A displaced person is considered an owner-occupant for less than 90 days if the person has actually owned and occupied the displacement dwelling

for less than 90 days immediately prior to the initiation of negotiations and purchases and occupies a decent, safe and sanitary replacement dwelling.

For an owner-occupant for less than 90 days, there is not a replacement housing payment benefit available.

If the displacee is a tenant for more than 90 days:

A displaced person is considered a tenant for more than 90 days if the person has lawfully and actually occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations and rents, or purchases, and occupies a decent, safe and sanitary replacement dwelling.

A replacement housing payment for a tenant for more than 90 days is not to exceed \$5,250. The amount of the payment is determined by comparing the actual rent that was being paid by the displacee at the acquired property and the rent the displacee would have to pay for a comparable rental dwelling available on the market. The difference, if any, shall be multiplied by 42 and that amount (not to exceed \$5,250) will be the maximum amount allowed as the replacement housing supplement.

If the displacee opts to purchase a decent, safe and sanitary dwelling, the entire amount they are eligible for can be used as a down payment assistance payment.

If the displacee opts to rent a decent, safe and sanitary dwelling, the replacement housing payment they are entitled to shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the monthly rent for a decent, safe and sanitary replacement dwelling actually occupied by the displaced person, not to exceed the maximum amount allowed as the replacement housing supplement determined by The Division or \$5,250.

If the displacee is a tenant for less than 90 days:

A displaced person is considered a tenant for less than 90 days if the person has lawfully and actually occupied the displacement dwelling for less than 90 days immediately prior to the initiation of negotiations and rents, or purchases, and occupies a decent, safe and sanitary replacement dwelling.

For a tenant for less than 90 days, there is not a replacement housing payment benefit available.

Please note that the above guidelines are only for acquisitions that contain an actual dwelling upon them. If the land taken contains a mobile home, the requirements are slightly different; please consult a Relocation Agent(s) to assist you with eligibility regarding displacees residing in a mobile home.

### **III. REPLACEMENT HOUSING PAYMENT OF LAST RESORT**

A replacement housing payment of last resort may be available whenever a project cannot proceed on a timely basis because there is no available comparable decent,

safe and sanitary housing within a reasonably proximity to the area where property is being acquired and/or within the monetary limits for owners or tenants.

At no time can a displaced person who chooses to rent a decent, safe and sanitary dwelling be forced to expend more than 30% of the displaced person's average monthly gross household income, as evidenced by documentation from the displacee. The displacee's average gross monthly income will be taken into consideration when determining eligibility for a replacement housing payment.

#### **IV. INELIGIBLE MOVING AND REPLACEMENT HOUSING PAYMENT EXPENSES**

No moving or replacement housing payment will include any of the following, either in part or in full:

- The cost of moving any structure or other real property improvement;
- Interest on a loan to cover moving expenses;
- Personal injury;
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before The Division;
- Costs for storage of personal property on real property already owned or leased by the displacee;
- Interest costs of a personal loan; and/or
- Any other item that The Division reasonably deems to be ineligible.

#### **V. FILING A RELOCATION CLAIM**

Any claim for reimbursement of a relocation payment shall be supported by detailed invoices and copies of cancelled checks. If the Division disproves all or part of a payment claimed or refuses to consider the claim on its merits, it shall promptly notify the claimant in writing of its determination and the procedures for appealing that determination.

All claims for which a relocation payment shall be filed with the Division no later than 18 months after:

- For tenants – the date of displacement
- For owners – the date of displacement or the date of the final payment for the acquisition of
  - the real property, whichever is later.

After the Relocation Agent(s) completes the displacee's claim, it is presented to The Division's relocation section head for review. It is then forwarded to the The Division Commissioner with a recommendation for payment. Once the documentation and amount of the payment have been approved, it is then forwarded to the Division's Fiscal Management section and payment is made after the check is issued by the State Treasurer's Office.

In every step of the relocation process, it is strongly recommended that the displacee obtain and retain all cancelled checks (copies of both the front and back), receipts, invoices, daily sign-in sheets, bills of work and/or labor, lease(s), auction/trade-in costs, copies of advertisements, and other documentation relating to relocation-related transactions.

RELOCATION COSTS APPROVED FOR REIMBURSEMENT WILL NOT BE FORWARDED TO THE COMMISSIONER (AND THUS PAYMENT CANNOT BE MADE TO THE DISPLACEE) UNTIL AFTER A PROPERLY COMPLETED TAXPAYER IDENTIFICATION FORM (I.R.S. FORM W-9) IS RECEIVED BY M.H.D. FROM THE DISPLACEE.

If the displacee is in arrears on monthly Use & Occupancy charges (please contact the Property Management section for more information), then the Division may deduct the outstanding fees from displacee's relocation claim and therefore reduce the relocation payment.

Payments pursuant to a relocation claim are not considered to be Federal Financial Assistance.

## **VI. HAZARDOUS MATERIAL DISPOSAL**

Disposal of hazardous and/or flammable material is not an eligible relocation expense. Therefore, the displacee is reminded that any material that could be considered hazardous material should be removed. The relocation cost will be included in the actual moving expense category, if moved to the replacement location. However, if the Division is required to dispose of any of this material, the cost of the disposal may be subtracted from the actual, reasonable moving and related expense portion of the claim.

## **VII. PAYMENT PROCEDURE**

After the Relocation Agent(s) completes the displacee's claim package, it is presented to the Administrator for approval. After the Administrator's approval, documentation for the payment of the approved amount is then forwarded to The Division's Fiscal Management section and payment is made after a check is issued by the State Treasurer's Office. If there is an ineligible cost submitted, the displacee is provided with written notification and explanation of why the submitted costs were deemed ineligible.

RELOCATION COSTS APPROVED BY ADMINISTRATOR WILL NOT BE FORWARDED TO THE FISCAL MANAGEMENT SECTION (AND THUS PAYMENT CANNOT BE MADE TO THE DISPLACEE) UNTIL AFTER A PROPERLY COMPLETED TAXPAYER IDENTIFICATION FORM (I. R. S. FORM W-9) IS RECEIVED BY THE DIVISION FROM THE DISPLACEE.

## **VIII. APPEAL PROCEDURE**

If a displacee has been denied a relocation payment, or if a displacee believes payment should be in a greater amount than was approved by the Administrator, then the displacee should file an appeal with the Division Hearing Officer designated by the Division Administrator to review appeals:

Administrative Law Judge  
MassDOT Highway Division  
10 Park Plaza  
Boston, MA 02116

An appeal should be submitted in the following form:

This letter serves as an appeal of the amount I recently received as a relocation payment, related to a land taking made on \_\_\_\_\_ (date) \_\_\_\_\_ in the City/Town of \_\_\_\_\_. Please contact me at the below address:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

**APPEALS MUST BE FILED WITHIN 60 DAYS OF THE DATE THE DISPLACEE RECEIVES WRITTEN NOTIFICATION OF THE DECISION BY THE DIVISION'S ADMINISTRATOR.**

After the the Division Hearing Officer hears the appeal and makes a decision regarding a claim, if the displacee is not satisfied with that decision, a further appeal may be made to the Department of Housing and Community Development Bureau of Relocation. A request for a review of the appeal decision made by the the Division Hearing Officer may be submitted to:

Director  
Department of Housing and Community Development  
Bureau of Relocation  
100 Cambridge Street, Suite 300  
Boston, MA 02114

In addition, if at any time during the relocation process a displacee feels that they are not receiving all the benefits that they are entitled to under the Federal and State laws, the displacee may contact Director at the Bureau of Relocation at 617-573-1408.

**X. CONCLUSION**

In conclusion, the Relocation Section at the Division is dedicated to making this as smooth of a transition as possible. We are committed to ensure that you receive any and all benefits that you are eligible for under Federal and/or State law. Please remember that it is important for each displacee to establish a close working relationship with your Relocation Agent(s) to ensure compliance with the relocation regulations and to facilitate reimbursement of relocation expenses. The Division looks forward to a successful and timely relocation of your family.

## ***Business Relocation Brochure***

**Commonwealth of Massachusetts  
MassDOT Highway Division  
Right of Way Bureau**

**Regulations set forth herein are applicable to properties taken subsequent to  
JANUARY 4, 2005**

**(Revised 01/14/11)**

**EXHIBIT NO. 17-10**

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## **INTRODUCTION**

The purpose of this brochure is to provide a brief outline of relocation benefits available to businesses, farm operators, and non-profit organizations (collectively **displacee**) displaced as a result of a MassDOT Highway Division project (herein the "The Division"). These relocation benefits are provided pursuant to Public Law 91-646 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24), Massachusetts General Laws, Ch. 79, 79A, and 81 §7J, and Massachusetts Regulation 760 CMR Part 27.

Since each displacee will have relocation issues that are unique to their type of business and may not be able to be addressed in this brochure, the Right of Way Bureau (herein ROW) will assign a Relocation Agent(s) to each displacee.

It is important that each displacee establish a close working relationship with the Relocation Agent(s) to ensure compliance with the relocation regulations and to facilitate reimbursement of relocation expenses.

Prior to the Division's eminent domain acquisition of the displacee's property, each displacee will be contacted and interviewed by a Relocation Agent(s). During the meeting with the Relocation Agent(s), the displacee should inform the Relocation Agent(s) of all of their relocation needs so that the Relocation Agent(s) can fully assist in the relocation process and ensure that Federal and/or state rules, regulations and guidelines have been met.

The Relocation Agent(s) will assist each displacee with their relocation to a new location. Services available through the Relocation Agent(s) may include (when applicable):

Lists of available commercial properties being offered for sale and/or lease, which may be considered as alternative sites.

Site maps and other pertinent information on available properties and services offered by city, state and federal agencies.

Additionally, a relocation field office may be set up (when necessary) and displacees will be informed of its location. If it is not necessary for a field office to be set up, local the Division Right of Way Agents may be assigned to be local contacts to assist with some of the needs of the displacees.

Displacees are allowed to continue to occupy the acquired property for at least four (4) months after receiving a Notice to Vacate from ROW. The Notice to Vacate is not sent until after the the Division has acquired the property by eminent domain.

Please visit the Massachusetts Department of Transportation website (click on the the Division link) for more information about projects in your community at [www.eot.state.ma.us](http://www.eot.state.ma.us)

Please visit the Federal Highway Administration website, where the Federal Regulations referred to herein can be found in their entirety, at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

**ALWAYS MAINTAIN CONTACT WITH THE RELOCATION AGENT(S) ASSIGNED TO YOU.**

## I. DEFINITIONS

### **Business:**

The term *business* means any lawful activity, except a farm operation, that is conducted:

- Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacturing, processing, and/or marketing of products, commodities, and/or other personal property;
- Primarily for the sale of services to the public;
- Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

49 CFR §24.2(a)(4)

### **Non-Profit Organization:**

The term *non-profit organization* means an organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

49 CFR §24.2(a)(19)

### **Farm Operation:**

The term *farm operator* 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.

49 CFR §24.2(a)(12)

### **Contribute Materially:**

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 agency (ROW) determines to be more equitable, a business or farm operation:

- Had average annual gross receipts of at least \$5,000.00; or
- Had average annual net earnings of at least \$1,000.00; or
- Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, the Agency (ROW) may approve the use of other criteria as determined appropriate.

49 CFR §24.2(a)(7)

## **II. ELIGIBILITY FOR RELOCATION PAYMENTS**

**DO NOT MOVE BEFORE THE INITIATION OF NEGOTIATIONS. MOVING PRIOR TO THE INITIATION OF NEGOTIATIONS MAY JEOPARDIZE YOUR ELIGIBILITY FOR RELOCATION BENEFITS.**

Eligibility for relocation payments for both the owner and any tenants begins on the date of the Initiation of Negotiations between the owner of the acquired property and the Massachusetts Division of Highways. The Initiation of Negotiations is the date upon which delivery occurs of the initial written offer of just compensation by the Agency (ROW) to the owner or the owner's representative to purchase the real property for the project or the date on a notice of intent to acquire presented to the owner and/or tenant.

If the Division identifies buildings, structures and/or other improvements (including removable buildings, equipment, and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made, a statement shall identify any separately held ownership interest in the property (e.g. a tenant-owned improvement), and so indicate that such interest is not covered by the offer.

An item will only be classified as a tenant-owned improvement if both the fee owner and tenant-owned improvement owner agree to this classification or if the lease indicates a tenant-owned improvement designation. In these instances, if the fee owner disclaims all interest in the tenant-owned improvements, then the Division will inform the fee owner and tenant of their individual interests and submit separate offers to the parties involved.

## **III. ELIGIBLE RELOCATION PAYMENTS**

Relocated businesses *may* be eligible for relocation benefits in *one* of the two following categories:

### **CATEGORY 1: Payment for Actual, Reasonable Moving & Related Expenses**

The following is a list of moving benefits that a business may be eligible for:

- Searching expenses for a replacement site.

The searching expenses payment is a reimbursement for actual, reasonable expenses, as determined by ROW, and may not exceed \$2,500.00. These costs may include transportation, meals and lodging away from home; time spent searching based on reasonable salary or earnings; 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 site); time spent obtaining permits and attending zoning hearings; and time spent negotiating the purchase of a replacement site based on reasonable salary or earnings.

Documentation verifying salary (e.g. copies of payroll records, pay stubs, tax forms) must be submitted to the Division in order for the person(s) to be compensated at their hourly rate.

All expenses submitted by the displacee in a claim for this item must be supported by receipted bills. For time spent searching, the displacee must submit a certified statement of the time spent searching and the actual, reasonable wage rate of the person(s) doing the searching.

- Actual, reasonable moving expenses.

The actual, reasonable moving expenses payment may include transportation of the displaced person and personal property for a distance of 50 miles or less (unless the Division determines that relocation beyond 50 miles is justified); packing, crating, unpacking and uncrating the personal property; disconnecting, dismantling, removing, reassembling and reinstalling personal property (including machinery, equipment, substitute personal property and connections to utilities available within the building); and modifications to personal property necessary to adapt to the replacement site including those mandated by Federal, State or local law.

Moving procedures and eligibility are discussed more thoroughly beginning on page 9 of this brochure.

- Storage of personal property for no longer than 12 months (unless the Division determines that a longer period is necessary).
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- Replacement value of property lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced employee) where insurance covering such losses, theft or damage is not reasonably available.
- Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation.

The actual direct loss of tangible personal property payment shall consist of the lesser of the fair market value in place of the item as is for continued use, less the proceeds from its sale (to be eligible, the claimant shall make a good faith effort to sell the personal property) OR the estimated cost to move and reinstall the item 50 miles without any allowance for storage.

- Purchase of substitute personal property.

If an item of personal property, which is used as a 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 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 the estimated cost to move and reinstall the replaced item but with no allowance for storage.

At the Division's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

- Relettering of signs and replacement stationary on hand at the time of displacement that are made obsolete as a result of the move.

- Business reestablishment benefit payment

This payment is for small businesses only. A small business is defined as a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity [49 CFR §24.2(a)(24)]. The business reestablishment benefit payment, not to exceed \$10,000.00, may include reimbursement for reasonable and necessary expenses

actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site. Reestablishment expenses must be reasonable and necessary, as determined by ROW, and includes (but is not limited to) repairs or improvements to the replacement property as required by Federal, state or local law, code or ordinance; modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business; construction and installation costs for exterior signing to advertise the business; redecoration or replacement of soiled or worn surfaces at the replacement site (e.g. paint, paneling, carpeting); advertisement of replacement location; estimated increase costs of operation during the first two years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance payments and utility charges, excluding impact fees; and any other items that the Division considers to be essential to the reestablishment of the business.

The business reestablishment benefit payment will not include purchase of capital assets (e.g. office furniture, filing cabinets, machinery, trade fixtures); purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of operation; 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 to the household income; and any other items that the Division determines not to be reasonable and necessary.

- Connections to available nearby utilities from the right-of-way to improvements at the replacement site.
- 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 market fees (excluding any fees or commissions directly related to the purchase or lease of such site).
- Professional services as the Division determines to be actual, reasonable and necessary for planning the move of the personal property, moving the personal property and reinstalling the relocated personal property at the replacement location. A scope of work for move planning services (including detailed list of work to be preformed by the move planner and hourly rate) need to be submitted, prior to the commencement of these services, in order to obtain the Division approval for reimbursement of these services.
- Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by ROW.
- The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- The low value / high bulk payment.

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 ROW, the allowable moving cost payment shall not exceed the lesser of the amount which would be received if the property were sold at the site OR the replacement cost of a comparable quantity delivered to a new business location (e.g. stockpiled sand, gravel, minerals, metals).

- Other moving related expenses that are not listed as ineligible and that the Division determines to be reasonable and necessary.

The following is a list of moving and related expenses that may be considered *ineligible* as actual, reasonable moving and related expenses:

- The cost of moving any structure or any other real property improvement in which the displaced person reserved ownership.
- Interest on a loan to cover moving expenses.
- Loss of goodwill.
- Loss of profits.
- Loss of trained employees.
- Any additional operating expenses of a business or farm operation incurred because of operating in a new location, except as outlined under the business reestablishment benefit payment.
- Personal injury.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before ROW.
- Costs for storage of personal property on the real property already owned or leased by the displaced person.
- Refundable security and utility deposits.

**- OR -**

**CATEGORY 2: Fixed Payment for Moving Expenses ("In Lieu of")**

As an alternative to receiving payment based on the actual, reasonable moving and related expenses (Category 1 above), a displacee may instead receive a fixed payment for moving expenses. Displacees choosing this option are not eligible for either any of the actual, reasonable moving and related expenses outlined above in Category 1 above. The payment to an eligible business may not be less than \$1,000.00, nor more than \$20,000.00.

A displaced *business* may be eligible for this payment if the following criteria is met:

- 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; and

- The business cannot be relocated without a substantial loss of its existing patronage (clients or net earnings); and
- The business is not a part of a commercial enterprise having more than three other entities which are not being acquired by ROW, and which are under the same ownership and engaged in the same or similar business; and
- The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others; and
- The business contributed materially to the income of the displaced person during the two taxable years prior to displacement.

The fixed payment for moving expenses for a displaced business shall be equal to one-half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Net earnings include any compensation obtained from the business by its owner, the owner's spouse and dependents. The displaced person shall furnish the Division proof of net earnings through income tax returns, certified financial statements or other reasonable evidence, which the Division determines is satisfactory.

A displaced *farm* may be eligible for this payment if the following criteria is met:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- The partial acquisition caused a substantial change in the nature of the farm operation.

The fixed payment for moving expenses for a displaced farm shall be equal to one-half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Net earnings include any compensation obtained from the farm by its owner, the owner's spouse and dependents. The displaced person shall furnish the Division proof of net earnings through income tax returns, certified financial statements or other reasonable evidence, which the Division determines is satisfactory.

A displaced *nonprofit organization* may be eligible for this payment if the following criteria is met:

- The nonprofit organization cannot be relocated without a substantial loss of existing patronage (membership or clientele).

The fixed payment for moving expenses for a displaced nonprofit organization shall be equal to the average of two years annual gross revenues less administrative expenses.

#### **IV. MOVING**

Prior to the acquisition, there will be an appraiser that will visit the property in order to prepare a Real and Personal Property Report. In that report, the appraiser will determine what is real property (and therefore monetarily compensated in the acquisition price for the property) and what is personal property (not monetarily compensated in the acquisition price and therefore requires to be moved through the Relocation section). The Relocation section will only provide compensation for moving items that are deemed to be personal property by the appraiser in that Real and Personal Property Report.

In addition, prior to the move taking place, there must be a detailed inventory completed of all the property that is said to be personal by the appraiser. All personal property will be numbered, described and the quantity will be indicated. If there is an item that the business owner elects not to be moved, that item(s) should be indicated on the inventory as peronal property not to be moved. This inventory will be compiled by the Relocation Agent(s) with the assistance of the property owner.

If the items listed on the personal property inventory report require the use of tradesmen (e.g. plumbers, electricians, carpenters, etc.), the business owner should inform the Relocation Agent(s) so the inventory can be subdivided to reflect the specific responsibilities for each separate category of tradesmen required in order to secure the proper bids for each catagory.

The personal inventory report should also include a breakdown indicating the sequence of events which are anticipated, such as disconnect, remove, load, transport, unload, reset, and reconnect. The completed personal property inventory must be verified, dated and signed by the displacee or their authorized agent and verified, dated and signed by the relocation agent.

The Relocation section will then solicit qualified, reputable commercial movers and/or tradesmen to give bids and then obtain at least two bids for the cost to move the perosnal property a distance of 50 miles or less (unless the Division determines that relocation beyond 50 miles is justified). The business is also permitted to solicit their own moving bid, if desired, and submit that tothe Divisionfor review and consideration. Subject to the Division's discretion, if the move is considered to be an uncomplicated move, only one bid needs to be obtained. The lowest responsible bid will set the high limit of eligibility for the reimbursement of the displacee's actual reasonable moving expenses. This amount will be reviewed and authorized by the Business Relocation Claims Advisory Committee as the maximum eligible reimbursement amount allowed for that move.

The displacee will then be issued an Authorization to Move by the Business Relocation Claims Advisory Committee, which is a formal approval for the displacee to relocate the personal property and which indicates a monetary amount which is the maximum eligible reimbursement amount (unless unforeseen circumstances arise which the displacee can document). The amount shown in the authorization to move is based on the lowest responsible bid submitted, however it is the business owner's responsibility to select the mover.

**MOVING PRIOR TO RECEIVING THE AUTHORIZATION TO MOVE WILL JEOPARDIZE DISPLACEE'S ELIGIBILITY FOR RELOCATION BENEFITS.**

## **V. TYPES OF MOVES**

There are four options available for completing the physical move of a business from their current location to a new location: a commercial move, a self move, a combination commercial move and self move or negotiated self move. **IT IS THE BUSINESS OWNER'S RESPONSIBILITY TO SELECT THE METHOD THAT BEST SUITS THE NEEDS OF THEIR RELOCATION.**

### **Commercial Move**

The displacee contracts with a commercial mover (either the mover that provided the low bid amount or another commercial mover) to move the personal property, pays the mover, submits the required documentation and then is reimbursed by the Division for the amount paid to the commercial mover, with the maximum eligible reimbursement amount not to exceed the amount allowed in the Authorization to Move.

### **Self Move**

The displacee moves their own personal property. This type of move must be supported by receipted bills for labor and equipment, payroll records and daily account of the monitored move process. Hourly 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. The maximum amount that the business will be compensated for the move is the amount allowed in the Authorization to Move.

### **Combination Commercial Move and Self Move**

The displacee moves some of their own personal property and contracts with a commercial mover (either the mover that provided the low bid amount or another commercial mover) to move some of the personal property. The displacee pays the mover for the items moved, submits the required documentation and then is reimbursed by the Division for the amount paid to the commercial mover. The displacee also submits receipted bills for labor and equipment, payroll records and daily accounts of the monitored move process for the items moved. The maximum eligible reimbursement and the maximum amount that the business will be compensated for the move will not be more than the amount allowed in the Authorization to Move.

### **Negotiated Self Move**

The displacee moves their own personal property. This type of move can be utilized providing that the Division has obtained at least three bids from qualified movers based on the inventory list. The adjusted amount for the negotiated self move is obtained by deducting the percentage allocated for profit and overhead from the lowest bid amount. Upon acceptance of this adjusted amount, the displacee shall sign a negotiated self move agreement form. Upon completion of the move, the Relocation Agent(s) will verify that the items have been relocated from the acquired property and the only documentation the displacee must provide is a False and Fraudulent Statement form. A payment in the amount of the adjusted amount for the negotiated self move will then be submitted.

## **VI. FILING A RELOCATION CLAIM**

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred. The following is a suggestion of what the Business Relocation Claims Advisory Committee may consider a fully supported claim:

Commercial move – the suggested records include bills of work and /or labor completed, itemized bills, copies of both sides of all cancelled checks, mover/contractor daily sign-in sheets and signed and receipted invoices by which payment has been made.

Self-move - the suggested records include evidence of social security number, rate of pay, hours and dates worked by all personnel, a signed statement from each employee indicating that he received wages for work on the relocation and an explanation of the duties each employee performed (e.g. truck driver, helper, packer). Similar records should be kept on all equipment used (e.g. trucks, fork lifts). The displacee must submit a signed statement that the wages claimed were actually paid.

Combination (commercial and self-move) move - the documentation required for each type (commercial or self) described above would also apply to that part of a combination move.

If the Division disproves all or part of a payment claimed or refuses to consider the claim on its merits, it shall promptly notify the claimant in writing of its determination and the procedures for appealing that determination.

All claims for which a relocation payment shall be filed with the Division no later than 18 months after:  
For tenants – the date of displacement  
For owners – the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

In every step of the relocation process, it is strongly recommended that the displacee obtain and retain all cancelled checks (copies of both the front and back), receipts, invoices, daily sign-in sheets, bills of work and/or labor, lease(s), auction/trade-in costs, copies of advertisements, and other documentation relating to relocation-related transactions.

If the displacee is in arrears on monthly Use & Occupancy charges (please contact the Property Management section for more information), then the Division may deduct the outstanding fees from displacee's relocation claim and therefore reduce the relocation payment.

Payments pursuant to a relocation claim are not considered to be Federal Financial Assistance.

## **VII. HAZARDOUS MATERIAL DISPOSAL**

Disposal of hazardous and/or flammable material is not an eligible relocation expense. Therefore, the displacee is reminded that any material that could be considered hazardous material should be removed. The relocation cost will be included in the actual moving expense category, if moved to the replacement location. However, if the Division is required to dispose of any of this material, the cost of the disposal may be subtracted from the actual, reasonable moving and related expense portion of the claim.

## **VIII. PAYMENT PROCEDURE**

After the Relocation Agent(s) completes the displacee's claim package, it is presented to the Division's Business Relocation Claims Advisory Committee for review and approval. The Business Relocation Claims Advisory Committee's recommendations are then forwarded to the Commissioner for approval. After the Administrator's approval, documentation for the payment of the approved amount is then forwarded to the Division's Fiscal Management section and payment is made after a check is issued by the State Treasurer's Office. If there is an ineligible cost submitted, the displacee is provided with written notification and explanation of why the submitted costs was deemed ineligible.

**RELOCATION COSTS APPROVED BY THE BUSINESS RELOCATION CLAIMS ADVISORY COMMITTEE WILL NOT BE FORWARDED TO THE ADMINISTRATOR (AND THUS PAYMENT CANNOT BE MADE TO THE DISPLACEE) UNTIL AFTER A PROPERLY COMPLETED TAXPAYER IDENTIFICATION FORM (I. R. S. FORM W-9) IS RECEIVED BY THE DIVISION FROM THE DISPLACEE.**

## **IX. APPEAL PROCEDURE**

If a displacee has been denied a relocation payment, or if a displacee believes payment should be in a greater amount than was approved by the Division's Business Relocation Claims Advisory Committee, then the displacee should file an appeal with the Division Hearing Officer designated by the Division Administrator to review appeals:

Administrative Law Judge  
MassDOT Highway Division  
10 Park Plaza  
Boston, MA 02116

An appeal should be submitted in the following form:

This letter serves as an appeal of the amount I recently received as a relocation payment, related to a land taking made on \_\_\_\_\_ (date) \_\_\_\_\_ in the City/Town of \_\_\_\_\_ . Please contact me at the below address:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

**APPEALS MUST BE FILED WITHIN 60 DAYS OF THE DATE THE DISPLACEE RECEIVES WRITTEN NOTIFICATION OF THE DECISION BY THE DIVISION'S BUSINESS RELOCATION CLAIMS ADVISORY COMMITTEE.**

After the Division Hearing Officer hears the appeal and makes a decision regarding a claim, if the displacee is not satisfied with that decision, a further appeal may be made to the Department of

Housing and Community Development Bureau of Relocation. A request for a review of the appeal decision made by the Division Hearing Officer may be submitted to:

Department of Housing and Community Development  
Bureau of Relocation  
100 Cambridge Street, Suite 300  
Boston, MA 02114

In addition, if at any time during the relocation process a displacee feels that they are not receiving all the benefits that they are entitled to under the Federal and State laws, the displacee may contact the Bureau of Relocation at 617-573-1408.

## **X. CONCLUSION**

In conclusion, the Relocation Section at the Division is dedicated to making this as smooth of a transition as possible. We are committed to ensure that you receive any and all benefits that you are eligible for under Federal and/or State law. Please remember that it is important for each displacee to establish a close working relationship with your Relocation Agent(s) to ensure compliance with the relocation regulations and to facilitate reimbursement of relocation expenses. The Division looks forward to a successful and timely relocation of your business.

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
RELOCATION COMPARABLE LISTING**

CLAIMANT \_\_\_\_\_ LISTING NO. \_\_\_\_\_  
F.A.P. \_\_\_\_\_ PARCEL NO. \_\_\_\_\_  
OWNER OF RECORD: \_\_\_\_\_  
ADDRESS OF LISTING \_\_\_\_\_ CITY/TOWN \_\_\_\_\_  
DISTANCE FROM SUBJECT PROPERTY \_\_\_\_\_ AVAILABLE \_\_\_\_\_  
INFORMATION OBTAINED FROM: \_\_\_\_\_  
AMT. OF RENT \$ \_\_\_\_\_ HEATED \$ \_\_\_\_\_ UNHEATED \$ \_\_\_\_\_  
LISTING PRICE\$ \_\_\_\_\_

**DESCRIPTION OF PROPERTY/DWELLING UNIT**

TYPE OF STRUCTURE \_\_\_\_\_ NO. OF STORIES \_\_\_\_\_ AGE \_\_\_\_\_  
FLOOR/APT. \_\_\_\_ LAND AREA. \_\_\_\_ LOT SIZE \_\_\_\_ CONDITION  
NO. OF ROOMS \_\_\_\_ SQUARE FT AREA \_\_\_\_ D.S.S. \_\_\_\_\_  
NO. OF BEDROOMS \_\_\_\_ SF \_\_\_\_ SF \_\_\_\_ SF \_\_\_\_ SF \_\_\_\_ SF \_\_\_\_  
1 2 3 4 5 6  
NO OF BATHS \_\_\_\_ KIT. \_\_\_\_ D.R. \_\_\_\_ L.R. \_\_\_\_ OTHER

(EXHIBIT # 17-11 Revised 1/18/11)

## **MASSDOT HIGHWAY DIVISION**

### DETERMINATION OF SUPPLEMENTAL RENTAL HOUSING PAYMENT

Occupant (Tenant):

F.A.P.:

Avg. Rent (Last 3 months including utilities): \$

PARCEL #:

Location of Property (Address, etc.):

#### **AVAILABLE COMPARABLE RENTAL HOUSING**

COMP #	Address or Location	Distance from Subject	Rent +	Utilities +	Total +	Most Comparable To Subject

#### **TENANT-OCCUPANT**

a. Monthly rent for Selected Comparable (Including Utilities ) \$\_\_\_\_ X 42 MONTHS = \$  
At displacement dwelling.

b. (1) Average Rent Paid (Including Utilities) at displacement dwelling \$\_\_\_\_ X 42 MONTHS \$  
=  
or if not reasonable equal to market rentals use (2) below

(2) Economic Rent (Including Utilities) \$\_\_\_\_ X 42 MONTHS = \$  
or if rent in (1) or (2) above exceed 30% of the person's gross monthly household Income  
use (3) below

(3) Average Monthly Household Income \$\_\_\_\_ X 30% = \$\_\_\_\_ X 42 MONTHS = \$  
(\* See 24.402(b)(iii))

(4) Welfare Assistance \$

c. Base Monthly Rent the lesser of(b.(1), (2),(3) or (4) above) \$

d. RENTAL HOUSING PAYMENT (difference between a and c) \$

#### **REASON FOR SELECTING COMPARABLE:** \_\_\_\_\_

**PRE-MOVE CERTIFICATION:** The undersigned, responsible for determining the above amount, certify that \$\_\_\_\_\_ is the amount of the Rent Supplement Payment. I understand that this amount may be used in connection with a Federal Aid Project and that I/We have no direct or indirect present or contemplated personal interest in this transaction nor will derive any benefit from the Rent Supplement Payment.

COMPILED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**POST-MOVE CERTIFICATION:** The undersigned, responsible for determining the above amount, certify that \$\_\_\_\_\_ is the amount of the Rent Supplement Payment. I understand that this amount may be used in connection with a Federal Aid Project and that I/We have no direct or indirect present or contemplated personal interest in this transaction nor will derive any benefit from the Rent Supplement Payment.

COMPILED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

## **REPLACEMENT HOUSING COMPUTATION (PURCHASE)**

**CLAIMANT:** F.A.P.:

**ADDRESS:** \_\_\_\_\_ **L.O./ORDER:** \_\_\_\_\_

**CITY/TOWN:** \_\_\_\_\_ **DATED:** \_\_\_\_\_

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**PARCEL NUMBER:**

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**F.M.V. OF ACQUIRED PROPERTY \$ \_\_\_\_\_  
ALLOCABLE TO OWNER**

#### **AVAILABLE COMPARABLE LISTINGS**

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#1 \$

#2 \_\_\_\_\_ \$ \_\_\_\_\_

**#3** \_\_\_\_\_ \$ \_\_\_\_\_

SELECTED COMPARABLE LISTING NO.( ) \$

**F.M.V. ALLOCABLE PORTION**

LIMIT OF REPLACEMENT HOUSING OFFER \$

**TENANT TO OWNER COMPUTATION (SHORT TERM OWNER AND/OR ANY TENANT)**

**(A) SELECTED COMPARABLE LISTING NUMBER ( ) \$**

(A) SELECTED COMPARABLE, LASTING NUMBER ( )  
**(B) CONVENTIONAL DOWN PAYMENT REQUIRED %**

**(B) CONVENTIONAL DOWN PAYMENT REQUIRED** % \$ \_\_\_\_\_  
**BREAKDOWN: ELIGIBLE AMOUNT \$** \$ \_\_\_\_\_

(C) COMPUTED LIMIT REPLACEMENT HOUSING OFFER (T/T)\$

(D) ELIGIBLE AMOUNT (LESSER OF (B) OR (C)) \$

(D) ELIGIBLE AMOUNT (LESSER OF (B) OR (C)) \$ \_\_\_\_\_  
INCIDENTAL EXPENSES \$ \_\_\_\_\_

**INCIDENTAL EXPENSES** \$ \_\_\_\_\_  
**MAXIMUM PAYMENT OF CLAIM** \$ \_\_\_\_\_

**MAXIMUM PAYMENT OF CLAIM \$** \_\_\_\_\_  
**ON FOR COMPARABLE**

ON FOR COMPARABLE:  
RIGHTS CERTIFICATION THIS UNDERSIGNED RESPONSIBLE

## **PRE-MOVE CERTIFICATION**

DETERMINING THE ABOVE AMOUNT, CERTIFY THAT \$ \_\_\_\_\_ IS THE AMOUNT OF THE REPLACEMENT HOUSING SUPPLEMENT PAYMENT. I UNDERSTAND THAT THIS AMOUNT MAY BE USED IN CONNECTION WITH A FEDERAL AID PROJECT AND THAT I/WE HAVE NO DIRECT OR INDIRECT PRESENT OR CONTEMPLATED PERSONAL INTEREST IN THIS TRANSACTION, NOR WILL DERIVE ANY BENEFIT FROM THE REPLACEMENT HOUSING SUPPLEMENT PAYMENT.

**COMPILED BY** \_\_\_\_\_ **DATE**

**APPROVED BY** \_\_\_\_\_ **DATE**

**POST-MOVE CERTIFICATION:** THE UNDERSIGNED, RESPONSIBLE FOR DETERMINING THE ABOVE AMOUNT, CERTIFY THAT \$ \_\_\_\_\_ IS THE AMOUNT OF THE REPLACEMENT HOUSING SUPPLEMENT PAYMENT. I UNDERSTAND THAT THIS AMOUNT MAY BE USED IN CONNECTION WITH A FEDERAL AID PROJECT AND THAT I/WE HAVE NO DIRECT OR INDIRECT PRESENT OR CONTEMPLATED PERSONAL INTEREST IN THIS TRANSACTION, NOR WILL DERIVE ANY BENEFIT FROM THE REPLACEMENT HOUSING SUPPLEMENT PAYMENT.

**COMPILED BY** \_\_\_\_\_ **DATE** \_\_\_\_\_

**APPROVED BY** \_\_\_\_\_ **DATE**

**COMMONWEALTH OF MASSACHUSETTS**  
**MASSDOT HIGHWAY DIVISION**  
**RIGHT OF WAY BUREAU**  
**RELOCATION ASSISTANCE CONTACT REPORT**

**ROW 700**

**TOWN/CITY:**  
**OWNER:**

**F.A.P #:**  
**PROJECT:**  
**PARCEL:**

**CONTACT WITH**

**AGENT/OWNER**\_\_\_\_\_ **ATTORNEY**:\_\_\_\_\_ **VISIT**:\_\_\_\_\_ **PHONE**:\_\_\_\_\_ **LETTER**:\_\_\_\_\_

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**RELOCATION AGENT**

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(EXHIBIT #17-14 Revised 7//09)

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY DEPARTMENT  
RELOCATION SECTION - D.S.S. INSPECTION

F.A.P \_\_\_\_\_  
PARCEL NO \_\_\_\_\_

CLAIMANT \_\_\_\_\_

STATUS \_\_\_\_\_

CITY/TOWN \_\_\_\_\_

DISPLACED FROM: \_\_\_\_\_

NO. IN FAMILY \_\_\_\_\_

DATE: _____	Address _____	NO. ROOMS _____	City/Town _____	State _____
RELOCATED TO _____			NO. BEDROOMS _____	

DATE: _____	Address _____	City/Town _____	State _____
		NO. ROOMS _____	NO. BEDROOMS _____

A decent, safe, and sanitary dwelling is one which meets ALL of the following minimum requirements for each of the following types of units.

**DWELLING:**

1. Conforms to State and Local Housing Codes and Ordinances relative to building, plumbing, and Housing and Occupancy \_\_\_\_\_
2. Has a continuing and adequate supply of potable safe water. \_\_\_\_\_
3. Has a kitchen with a sink equipped with hot and cold water, and an adequate sewage disposal system, and has utility service connections for a stove and refrigerator as well as adequate space to install such facilities \_\_\_\_\_
4. Has an adequate heating system which will maintain a 70-degree minimum temperature \_\_\_\_\_
5. Has a bathroom, well ventilated and lighted, containing a lavatory basin and bathtub or shower stall, connected to an adequate supply of hot and cold running water, and a flush closet, and properly connected to a sewage disposal system \_\_\_\_\_
6. Has an adequate and safe wiring system for lighting and other electrical services \_\_\_\_\_
7. Is structurally sound, in good repair, and adequately maintained \_\_\_\_\_
8. Has a safe, unobstructed means of egress leading to safe open space at ground level \_\_\_\_\_
9. Has 250 sq. ft. of habitable floor space for the occupant in a standard living unit and at least 100 sq. ft. of habitable floor space for each additional occupant. \_\_\_\_\_
10. For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwellings by such displaced person. \_\_\_\_\_

**SLEEPING ROOM:**

1. Meets with the requirements of 1,4,6,7,8 above and \_\_\_\_\_
2. Has lavatory, bath, and toilet facilities that provide privacy including a door that can be locked(if such facilities are separated from the room and) \_\_\_\_\_
3. Has at least 100 sq. ft. of habitable floor space for the first occupant and a minimum of 50 sq. ft. of habitable space for each additional occupant \_\_\_\_\_

**MOBILE HOMES:**

1. Meets the requirements of 1,2,3,4,5,6,7,8 and \_\_\_\_\_
2. Has a minimum of 150 sq. ft. of habitable floor space for the first occupant and a minimum of 70 sq. ft. of habitable floor space for each additional occupant \_\_\_\_\_

The undersigned relocation Advisor has made visual inspection of the new location indicated above and states that the new residence meets the requirements for decent, safe and sanitary housing as stated in the Massachusetts relocation guidelines. However the undersigned relocation advisor is not a licensed Certified Home Inspector.

Date Inspected \_\_\_\_\_ By \_\_\_\_\_ Relocation Agent \_\_\_\_\_

If not approved see reason below.  
\_\_\_\_\_  
\_\_\_\_\_

(EXHIBIT # 17-15 Revised 1/18/11)

LOCATION:  
PROJECT:  
F.A.P. #  
PARCEL NO:

Owner-Occupant of at Least 180 Days

Dear:

You are hereby notified that the "eligibility date" for your relocation benefit is \_\_\_\_\_ . You are also notified that the computed amount to which you may be eligible for the purchase of a replacement dwelling is \$ \_\_\_\_\_ , plus incidental expenses and interest differential, if applicable. This replacement housing supplement has been established after reviewing a number of comparable dwellings available on the market at this time. The following dwelling was determined to be the most comparable and, therefore, was utilized in computing the upper limit of the replacement housing supplement.

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(Address)

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(Price)

You are also given herewith a copy of the MassDOT Highway Division (MHD) Residential Relocation Brochure which contains an explanation of all your options and benefits, including eligible incidental benefits and the interest differential payment, if applicable and the requirements and documentation necessary to be reimbursed for same.

---

, Director  
Right of Way Bureau

I hereby acknowledge receipt of a copy of this letter, as well as a copy of the MHD Residential Relocation Brochure.

---

Claimant

I hereby certify that on \_\_\_\_\_, I delivered a copy of the above letter and a copy of the MHD Residential Relocation Brochure to the claimant.

---

Relocation Agent

(EXHIBIT # 17-16 Revised 1/24/11)

LOCATION:  
PROJECT:  
F.A.P. #  
PARCEL NO:

Owner-Occupant of at Least 90 Days,  
But Less Than 180 Day

Dear:

You are hereby notified that the "eligibility date" for your relocation benefit is \_\_\_\_\_ . You are also notified that the maximum down payment to which you may be entitled for the purchase of a replacement dwelling is \$5,250.00, or if you choose to rent, the rental replacement housing supplement to which you may be entitled is \$ \_\_\_\_\_ .

The down payment benefit is a lump sum of \$5,250.00 to which you may be entitled if you purchase a replacement dwelling. This down payment amount must be applied to the purchase price of the replacement dwelling or related incidental expenses. The rental replacement housing payment was established after reviewing a number of comparable dwellings available on the market at this time. The following dwelling was determined to be the most comparable and, therefore, was utilized in computing the upper limit of the rental replacement housing supplement.

---

(Address)

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(Rent Per Month Including Utilities)

You are also given herewith a copy of the MassaDOT Highway Division (MHD) Residential Relocation Brochure which contains an explanation of your option to receive a down payment, which includes incidental expenses, to purchase replacement dwelling and the requirements therefore, or your option to rent a replacement dwelling.

---

, Director  
Right of Way Bureau

I hereby acknowledge receipt of a copy of this letter, as well as a copy of the MHD Residential Relocation Brochure.

---

Claimant

I hereby certify that on \_\_\_\_\_, I delivered a copy of the above letter and a copy of the MHD Residential Relocation Brochure to the claimant.

---

Relocation Agent

(EXHIBIT # 17-17 Revised 1/24/11)

LOCATION:  
PROJECT:  
F.A.P.#  
PARCEL NO:

Tenant-Occupant of at Least 90 Days

Dear

You are hereby notified that the "eligibility date" for your relocation benefit is \_\_\_\_\_ . You are also notified that the maximum rental replacement housing payment to which you may be entitled is \$\_\_\_\_\_. Should you choose to purchase a replacement dwelling, the maximum down payment to which you may be entitled is \$\_\_\_\_\_ .

The down payment benefit to which you may be entitled is a lump sum of \$5,250.00 which amount must be applied to the purchase price of the replacement dwelling or related incidental expenses. The rental replacement housing payment was established after reviewing a number of comparable dwellings available on the market at this time. The following dwelling was determined to be the most comparable and, therefore, was utilized in computing the upper limit of the rental replacement housing supplement.

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(Address)	Rent Per Month Including Utilities
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You are also given herewith a copy of the MassDOT Highway Division (MHD) Residential Relocation Brochure which contains an explanation of your option to rent a replacement dwelling and receive a rental replacement housing payment or your option to receive a down payment, which includes incidental expenses, to purchase a replacement dwelling and the requirements therefore.

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\_\_\_\_\_, Director  
Right of Way Bureau

I hereby acknowledge receipt of a copy of this letter, as well as a copy of the MDH Residential Relocation Brochure.

---

\_\_\_\_\_  
Claimant

I hereby certify that on \_\_\_\_\_, I delivered a copy of the above letter and a copy of the Residential Relocation Brochure to the claimant.

---

\_\_\_\_\_  
Relocation Agent

( EXHIBIT # 17-18 Revised 1/24/11)

LOCATION:  
PROJECT:  
F.A.P. #  
PARCEL NO:

Tenant or Owner-Occupant of Less Than 90 Days

Dear:

You are hereby notified that the "eligibility date" for your relocation benefit is \_\_\_\_\_ . You are also notified that, as you were in occupancy less than 90 days prior to the taking, you are only entitled to moving expenses.

You are also given herewith a copy of the MassDOT Highway Division (MHD) Residential Relocation Brochure which contains an explanation of your option to choose either a Fixed Relocation & Dislocation Allowance or an Actual Moving Expense payment and the requirements thereof.

---

, Director  
Right of Way Bureau

I hereby acknowledge receipt of a copy of this letter, as well as a copy of the MHD Residential Relocation Brochure.

---

Claimant

I hereby certify that on \_\_\_\_\_, I delivered a copy of the above letter and a copy of the MHD Residential Relocation Brochure to the claimant.

---

Relocation Agent

(EXHIBIT # 17-19 Revised 1/24/11)

LOCATION:

PROJECT:

F.A.P. #

PARCEL NO:

Business or Farm Operation  
Eligibility Date

Dear:

You are hereby notified that the "eligibility date" for your relocation benefit is \_\_\_\_\_ . You are also notified, that as a business or farm operation, you are entitled to actual, reasonable and related expenses for moving your personal property.

The amount of reimbursement for moving costs will be based on actual monies spent for eligible expenses, which have been properly documented and for which all regulations and procedures have been followed.

You are also given herewith a copy of the MassDOT Highway Division (MHD) Business Relocation Brochure which contains an explanation of actual, reasonable and related expenses, as well as all other options and benefits to which a business or farm operation is entitled under the relocation program.

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\_\_\_\_\_, Director  
Right of Way Bureau

I hereby acknowledge receipt of a copy of this letter, as well as a copy of the MHD Residential Relocation Brochure.

---

\_\_\_\_\_  
Claimant

I hereby certify that on \_\_\_\_\_, I delivered a copy of the above letter and a copy of the MHD Residential Relocation Brochure to the claimant.

---

\_\_\_\_\_  
Relocation Agent

(EXHIBIT # 17-20 Revised 1/24/11)

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
NOTICE OF TAKING**

**Date:**

**To:**

Notice is hereby given that by an Order of Taking dated \_\_\_\_\_, certain land and/or rights in land were acquired by the Division for State Highway purposes in the City/Town of \_\_\_\_\_. The Order of Taking was recorded on \_\_\_\_\_ in the County Registry of Deeds, located in \_\_\_\_\_. Plans showing the State Highway and the land acquired are on file in that Registry, and in the Boston office of the Division of Highways, Room 6160. A copy of the plan showing the parcel(s) acquired is enclosed.

For damages to the parcel(s) of land described below, the Division has awarded to the supposed owner(s) of land,

The sum of \_\_\_\_\_, subject to proof of title. The Division reserves the right to amend the Award at any time prior to payment, for good cause. This payment may be reduced, if the City or Town exercises its right to claim a portion for real estate taxes.

The right to damages vested on \_\_\_\_\_, the date on which the Order of Taking was recorded in the Registry of Deeds above-described, and payment will be tendered to you within sixty (60) days of that date.

Land and/or rights in land taken (the nature of which may be identified from the list on page 3) are shown on the plan described in the Order of Taking, and are as follows:

<b><u>Parcel No.</u></b>	<b><u>Land Area</u></b>	<b><u>Interest Taken</u></b>
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**EXHIBIT NO. 17-21**

Notice of Taking  
Page 2 of 3

Owner(s) and/or persons in possession are hereby given thirty (30) days from the date of this Notice of Taking to vacate the parcel(s) which have been acquired, and to remove their personal property from these parcel(s). However, for residential takings, occupants will not be required to move earlier than 120 days from the date a comparable replacement dwelling is made available.

The law provides that a person entitled to damages may accept payment in full settlement, or payment pro tanto, from the Division of Highways. A pro tanto payment is one which is accepted and collected

without prejudice to, or waiver or surrender of, any right to bring a legal action for a larger sum in court. The law provides that a person whose property has been taken may petition for the assessment of damages to the Superior Court for the County in which the property was situated within three (3) years after the right to damages has vested.

**The Division of Highways will make available a check for the payment of said damages, and this check will be tendered to you by mail.**

The Commonwealth of Massachusetts, through its Division of Highways, assumes no responsibility for any injury sustained on the acquired property, to either persons or their property, from any cause whatsoever.

If a representative of the Division of Highway's Right of Way Bureau (located at 10 Park Plaza - Room 6160, Boston, MA 02116) has not already called on you, one will do so in order to discuss with you the subject of damages and other matters pertaining to the acquisition of your property, including the Division's relocation assistance, and relocation payments, programs.

Before any payment can be made a "W-9" Tax Reporting Form, and a release of all encumbrances (including private mortgages, leases, inheritance tax lien, betterments, tax taking, etc.) must be received by this Bureau. For mortgages held by Massachusetts Banks, the mortgagee will also be listed on the award check.

Questions regarding this Notice of Taking should be directed to the Administrative Manager at (617) 973-7900.

**MASSACHUSETTS HIGHWAY DIVISION**

**By: \_\_\_\_\_**  
**, Director**  
**Right of Way Bureau**

**EXHIBIT NO . 17-21**

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
NOTICE TO VACATE**

**For Tenants,  
Licensees or  
Permittees**

**WHEREAS**, the Commonwealth of Massachusetts, Acting through its Highway Division, and in accordance with the applicable provisions of Chapter 79 and Chapter 81 of the General Laws, as amended by an Order of taking dated , and recorded on in the County Registry of Deeds, did take land, or an interest in land, located in the City/Town of County, Massachusetts, identified in the Order of Taking and described as follows:

**Parcel No.(s)**      **Land Area(s):**      **Interest(s) Acquired:**

**AND WHEREAS**, title to the said land taken or to the interest in land acquired by the Commonwealth vested in the Commonwealth of Massachusetts on , the date of the recording of the Order of Taking:

**NOW THEREFORE**, you are hereby ordered to vacate all or any part of the above premises now occupied by you, and remove your personal property therefrom, on or before four (4) month from the date of this Notice of Taking (.....)

However, for residential Takings, occupants(s) will not be required to move earlier than 120 days from the date a comparable dwelling is made available.

**DIVISION OF HIGHWAYS**

**BY: \_\_\_\_\_**  
**Director, Right of Way Bureau**

Certified Mail  
cc: -Property Management

**EXHIBIT NO. 17-22**

## RESIDENTIAL MOVING OPTIONS (FIXED or ACTUAL)

CLAIMANT \_\_\_\_\_ F.A.P. \_\_\_\_\_

ADDRESS \_\_\_\_\_ PARCEL NO. \_\_\_\_\_

CITY/TOWN \_\_\_\_\_ ROUTE NO. \_\_\_\_\_

DATE OF MOVE \_\_\_\_\_ LO/ORDER DATED \_\_\_\_\_

STATUS OF CLAIMANT \_\_\_\_\_ S.S#\_(\_\_\_\_\_)\_\_\_\_\_

ROOMS OCCUPIED BY CLAIMANT \_\_\_\_\_ S.S#\_(\_\_\_\_\_)\_\_\_\_\_

ROOMS FURNISHED BY CLAIMANT \_\_\_\_\_

OPTION: FIXED RATE SCHEDULE (SEE BELOW) \$\_\_\_\_\_

ACTUAL REASONABLE MOVING EXPENSES \$\_\_\_\_\_  
(RECIEPTED BILLS REQUIRED)

### FIXED RATE SCHEDULE

unfurn- ished	1	2	3	4	5	6	7	8	ADDITIONAL RM. ADD
	ROOM	ROOMS	\$100,00						
	\$250	\$400	\$550	\$650	\$750	\$850	\$950	\$1050	

FURNISHED FIRST ROOM \$225.00 EACH ADDITIONAL ROOM ADD \$35.00 – DORMITORY OCCUPANT \$50.00

MOBIL HOMES-SAME AS UNFURNISHED UNITS/MOVING OF MOBILE HOME ITSELF (ACTUAL/REASONABLE)

ADDRESS MOVED TO \_\_\_\_\_

CITY/TOWN \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

DISTANCE FROM ACQUIRED PROPERTY \_\_\_\_\_ MILES

CERTIFICATION: I CERTIFY THAT BOTH OPTIONS HAVE BEEN EXPLAINED TO ME, THAT I HAVE  
MADE THE ABOVE INDICATED CHOICE OF MY OWN FREE WILL.

SIGNATURE OF CLAIMANT \_\_\_\_\_ DATE \_\_\_\_\_

INTERVIEWED BY \_\_\_\_\_ DATE \_\_\_\_\_

APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_

I hereby certify that I have completed the above noted move and submit this claim for reimbursement.

DATE RECEIVED \_\_\_\_\_ ACTUAL REASONABLE COSTS : \_\_\_\_\_

DATE MOVED \_\_\_\_\_ FIXED RATE SCHEDULE : \_\_\_\_\_

SIGNATURE OF CLAIMANT: \_\_\_\_\_ DATE: \_\_\_\_\_

RELOCATION AGENT SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

## REPLACEMENT PROPERTY

CLAIMANT \_\_\_\_\_ F.A.P.  
NEW ADDRESS \_\_\_\_\_ L.O./ORDER  
CITY/TOWN \_\_\_\_\_ DATED  
STATE \_\_\_\_\_ PARCEL NO.  
STATUS \_\_\_\_\_ TELE. NO. \_\_\_\_\_ DATE OF PURCHASE  
OWNER OF RECORD \_\_\_\_\_ DATE/OCCUPANCY  
RENTAL \$ \_\_\_\_\_ HEATED \$ \_\_\_\_\_ UNHEATED \$  
PURCHASE PRICE \$ \_\_\_\_\_ DOWN PAYMENT \$  
MORTGAGE BALANCE \$ \_\_\_\_\_ TERM \_\_\_\_\_ INTEREST RATE \_\_ %  
MORTGAGEE:  
ADDRESS:  
REGISTRY OF DEEDS \_\_\_\_\_ BOOK \_\_\_\_ PAGE

### DESCRIPTION OF REPLACEMENT PROPERTY/DWELLING:

TYPE OF STRUCTURE \_\_\_\_\_ NO.OF STORIES

AGE:

FLOOR/APT. \_\_\_\_\_ LAND AREA \_\_\_\_\_ CONDITION  
NO. OF ROOMS \_\_\_\_\_ SQUARE FOOT AREA \_\_\_\_\_ D.S.S.  
NO. OF BEDROOMS \_\_\_\_\_ SF \_\_\_\_\_ SF \_\_\_\_\_ SF \_\_\_\_\_ SF \_\_\_\_\_ SF  
1      2      3      4      5      6

NO OF BATHS \_\_\_\_\_ KIT \_\_\_\_\_ D.R. \_\_\_\_\_ L.R. \_\_\_\_\_ OTHER  
COMPILED BY \_\_\_\_\_ DATE

COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

PAYMENT CLAIM

FAP NO.: \_\_\_\_\_ CLAIMANT(S): \_\_\_\_\_ PARCEL NO. \_\_\_\_\_

ORDER/LAYOUT: \_\_\_\_\_ DATED: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

ADDRESS OF REPLACEMENT PROPERTY: \_\_\_\_\_ CITY/TOWN: \_\_\_\_\_ STATE: \_\_\_\_\_

DURATION OF OCCUPANCY: \_\_\_\_\_ TYPE OF OCCUPANCY: \_\_\_\_\_

FROM: \_\_\_\_\_ FROM: \_\_\_\_\_

TO: \_\_\_\_\_ TO: \_\_\_\_\_

YEARS	MONTHS DAYS	REGISTRY	BOOK	PAGE
CONTROLLING DATES	MONTH DAY YEAR	PAYMENT SCHEDULE		AMOUNT
ELIGIBILITY DATE: _____		1. RH/RS VOTED	\$ _____	
PROPERTY VACATED: _____		2. RH/RS ELIGIBLE	\$ _____	
RH TO BE OCCUPIED BY: _____		3. INCID EXPENSES	\$ _____	
CLAIM TO BE FILED BY: _____		4. INTEREST DIFF	\$ _____	
		5. TOTAL 2, 3, 4	\$ _____	
		6. LESS AMT.PREV. PD.\$	_____	
		7. AMT. OF CLAIM	\$	_____

DATE OF THIS CLAIM: \_\_\_\_\_

Payment of this claim in the amount shown in "Amt. of Claim" is hereby requested and this claim form is signed under the penalties of perjury. I/we CERTIFY that all information submitted herewith or included herein is true and correct; that I/We have not submitted any other claim for or received payment of any compensation for the benefit claimed herein except as shown in Box entitled "Less Amt. Prev. Pd." Finally I/We understand that the funds with which I/We are to be paid are being provided in whole or in part by the Federal Government.

SS# \_\_\_\_\_ CLAIMANT: \_\_\_\_\_  
SS# \_\_\_\_\_ CLAIMANT: \_\_\_\_\_

**FOR DEPARTMENT USE ONLY**

I/We CERTIFY that I/We have examined this claim and the substantiation documentation and determined that this claim for payment was submitted within the time limit prescribed by law; and that this claim conforms in all respects to the applicable provisions of State and/or Federal laws.

This claim is approved for payment as follows:

Amt. Approved Payment \$ \_\_\_\_\_ Date of Approval \_\_\_\_\_

Approved by \_\_\_\_\_ Reviewed by: \_\_\_\_\_

Date this claim paid: \_\_\_\_\_

**MASSDOT HIGHWAY DIVISION**  
**ASSIGNMENT OF RELOCATION PAYMENT**

City/Town

Parcel No:

F.A.P# :

Project:

Claimant:

(herein called the "claimant")of

intending to claim a Relocation Payment, hereby requests and authorizes the MassDOT Highway Division (MHD), to pay on the Claimant's behalf, to (herein called the "Assignee") of an amount made payable in the name of the Assignee to be determined in full payment of

(\$ ).

The specific amount payable is to be determined by the MHD's Administrator in accordance with prevailing regulations governing Relocation Payments, after satisfactory performance of the work, and upon presentation to the Right of Way Bureau of a invoice from the Assignee. Such invoice shall be made out together with all bills showing type of work performed, number of hours worked, rates per hour, material costs from each contractor and sub-contractor used in the relocation move. Claimant shall certify that the work has been satisfactorily completed. Any obligation to the Assignee in excess of the amount approved and voted by the MHD Administrator will become the sole responsibility of the Claimant.

The Claimant and Assignee acknowledge that the MHD has reserved the right to deny a Relocation Payment to the Claimant or to his Assignee. The Claimant and Assignee further acknowledge that the Department does not guarantee the amount or time of payment under this agreement.

The Claimant and the Assignee certify that neither has given or promised additional undisclosed payment, rebate, bonus, or commission and neither will receive such undisclosed payment, rebate, bonus or commission as an inducement for the consummation of this transaction.

The Claimant and the Assignee understand that the selection of the Assignee and the acceptance of the materials used and the work performed is the sole responsibility of the Claimant and that MHD is not responsible for the performance or quality of material and workmanship.

The Claimant and Assignee authorize MHD to issue any and all payments made the subject of this assignment payable to the Assignee.

The Claimant authorizes MHD to deduct any payment under this assignment from the total Relocation Payment now due or hereafter to become due from the Commonwealth of Massachusetts, in connection with this claim only, and the Claimant and the Assignee agree to execute forms as may be necessary to qualify for such payment.

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_.

Claimant's Signature & Title\_\_\_\_\_ Date\_\_\_\_\_

Assignee's Signature & Title\_\_\_\_\_ Date\_\_\_\_\_

(EXHIBIT # 17-27 Revised 1/18/11)

**COMMONWEALTH OF MASSACHUSETTS  
HIGHWAY DIVISION  
RIGHT OF WAY BUREAU**

**WAIVER OF EXCESS PAYMENT OVER COURT JUDGMENT**

, Director  
**Right of Way Bureau**  
**Massachusetts Highway Department**  
**10 Park Plaza -- Room 6160**  
**Boston, MA 02116**

**Dear DIRECTOR,**

If I file a land damages petition which results in an increase in the "Award of Damages" I received for the acquisition of my property, then you are hereby authorized to make the necessary adjustment in the "Replacement Housing Payment" to which I may be entitled under the provisions of Public Law 91-646 "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", as amended, since the Replacement Housing Payment is based (in part) on the Award of Damages received for the acquisition of my property.

If I have already received my Replacement Housing Payment then I agree to allow the Massachusetts Division of Highways to make the appropriate deduction from the additional damages (excluding interest, real estate tax, and costs) I receive as a result of the land damages petition.

**Signature of Property Owner                      Social Security No. Date**

**Signature of Property Owner                      Social Security No. Date**

**Current Street Address                      City/State/Zip**  
=====

**==  
Layout Number \_\_\_\_\_ City Project**

**Layout Date \_\_\_\_\_ Project**

**F.A.P. No.**

**Address of Acquired Property**

**Parcel No.(s)**

CLAIMANT:

LOCATION:

PARCEL NO:

F.A.P. NO:

Page 1 of 3

Format for Computation of Interest Payments

Required Information

1. Outstanding balance of mortgage on acquired dwelling. \$ \_\_\_\_\_.
2. Outstanding balance of mortgage on replacement dwelling. \$ \_\_\_\_\_.
3. Lesser of Line 1 or Line 2. \$ \_\_\_\_\_.
4. Number of months remaining until last payment is due for mortgage on acquired dwelling. \$ \_\_\_\_\_.
5. Number of months remaining until last payment is due for mortgage on replacement dwelling. \$ \_\_\_\_\_.
6. Lesser of Line 4 or Line 5. \$ \_\_\_\_\_.
7. Annual interest rate of mortgage on acquired dwelling. \_\_\_\_\_ %
8. Annual interest rate of mortgage on replacement dwelling (or, if it is lower, the prevailing annual interest rate currently charged by mortgage lending institutions in the general area in which the replacement dwelling is located). \_\_\_\_\_ %
9. Prevailing interest rate paid on savings deposits by commercial banks. \_\_\_\_\_ %
10. If applicable, any debt service costs on the loan on the replacement dwelling, such as points paid by the purchaser which are not reimbursable as an incidental expense. \$ \_\_\_\_\_.

(EXHIBIT # 17-29 Revised 7/4/00)

Developing of Monthly Payment Figures

- A. Monthly payment required to amortize a loan  
of \$ \_\_\_\_\_ in \_\_\_\_\_ months at an  
(Line 3) (Line 6)  
annual interest rate of \_\_\_\_\_ %  
(Line 7) \$ \_\_\_\_\_.
- B. Monthly payment required to amortize a loan  
of \$ \_\_\_\_\_ in \_\_\_\_\_ months at an  
(Line 3) (Line 6)  
annual interest rate of \_\_\_\_\_ %  
(Line 8) \$ \_\_\_\_\_.
- C. Monthly payment required to amortize a loan  
of \$ \_\_\_\_\_ in \_\_\_\_\_ months at an  
(Line 3) (Line 6)  
annual interest rate of \_\_\_\_\_ %  
\$ \_\_\_\_\_.

Calculation of Interest Payment

- Step 1      Subtract A from B
- Monthly payment based on rate of  
replacement dwelling (B) \$ \_\_\_\_\_.
- Monthly payment based on rate for  
acquired dwelling (A) \$ \_\_\_\_\_.
- Result (Difference) \$ \_\_\_\_\_.
- Step 2      Divide result (difference) of Step 1  
by C (carry to 5 decimal places) \$ \_\_\_\_\_.
- Result (difference) from Step 1 \$ \_\_\_\_\_.
- Monthly payment based on savings rate C \$ \_\_\_\_\_.
- Result (Quotient) \$ \_\_\_\_\_.

(EXHIBIT # 17-29 Revised 7/4/00)

Step 3	Multiply outstanding balance of mortgage on acquired dwelling by result (quotient) of Step 2:	\$ _____.
	Outstanding Balance (from Line 3)	\$ _____.
	Result (quotient) of Step 2	\$ _____.
	Result Product	\$ _____.
Step 4	Add to result (product) of Step 3 any debt service costs on the loan on the replacement dwelling:	
	Result (product) of Step 3, first mortgage	\$ _____.
	*Sum or difference, as applicable	\$ _____.
	Add debt service costs on loan on replacement dwelling (Line 10)	\$ _____.
	Amount of interest payment	\$ _____.

\*If there is more than one outstanding mortgage on an acquired dwelling, the discounted value of each mortgage must be determined. To do this a separate computation is made to each mortgage through Step 3. A consolidated Step 4 is then completed.

(EXHIBIT # 17-29 Revised 7/4/00)

**INCIDENTIAL EXPENSES**FAP \_\_\_\_\_  
CITY/TOWN \_\_\_\_\_CLAIMANT \_\_\_\_\_  
PARCEL NUMBER \_\_\_\_\_

801 LOAN ORIGINATION FEE \_\_\_\_\_

802\*LOAN DISCOUNT (CAUTION SEE BELOW) \_\_\_\_\_

803 APPRAISAL FEE \_\_\_\_\_

804 CREDIT REPORTS \_\_\_\_\_

805 LENDERS INSPECTION FEE \_\_\_\_\_

806 MORTGAGE INSURANCE APPLICATION FEE \_\_\_\_\_

1101 SETTLEMENT/CLOSING FEE \_\_\_\_\_

1102 ABSTRACT/TITLE SEARCH \_\_\_\_\_

1103 TITLE EXAMINATION \_\_\_\_\_

1104 TITLE INSURANCE BINDER \_\_\_\_\_

1105 DOCUMENT PREPARATION \_\_\_\_\_

1106 NOTARY FEES \_\_\_\_\_

1107 ATTORNEY'S FEES \_\_\_\_\_

1108 TITLE INSURANCE \_\_\_\_\_

1111 MLC REQUESTS \_\_\_\_\_

1112 FLOOD CERTIFICATION \_\_\_\_\_

1113 CERTIFIED COPIES \_\_\_\_\_

1201 RECORDING FEES \_\_\_\_\_

1301 SURVEY \_\_\_\_\_

1302 PEST INSPECTION \_\_\_\_\_

OTHER \_\_\_\_\_

OTHER \_\_\_\_\_

OTHER \_\_\_\_\_

OTHER \_\_\_\_\_

TOTAL AMOUNT OF CLAIM \$ \_\_\_\_\_

No fee, cost, charge or expense is reimbursable as incidental expenses which is determined to be a part of the debt service, or finance charge under the TRUTH IN LENDING ACT, Title Public Law 90-321, and REGULATION Z issued pursuant thereto by the Board of Governors of the Federal System.

**CERTIFICATION: I certify under the penalties of perjury that all statements contained herein are true and correct; and that all options and procedures have been explained to me.**

DATE \_\_\_\_\_  
DATE \_\_\_\_\_COMPILED BY: \_\_\_\_\_ DATE \_\_\_\_\_  
APPROVED BY: \_\_\_\_\_ DATE \_\_\_\_\_

(EXHIBIT # 17-30 Revised 7/3/00)

THE COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
INTEROFFICE MEMORANDUM

FROM: , Chief Administrative Law Judge

TO:

DATE:

RE: Relocation Appeal Board

---

**CLAIMANT:**

**DESCRIPTION OF CLAIM:**

A Statement of Claim has been filed by the above Contractor.  
Please supply my office with any information you may have regarding this claim.

PM/jd Enclosures

EXHIBIT NO. 17-31

**RELOCATION PAYMENT APPEALS BOARD  
OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE**

CLAIMANT:

CLAIM:

**NOTICE OF HEARING**

The Parties are hereby notified that a hearing on the above mentioned claim has been scheduled for at in Room 7376, 10 Park Plaza, Boston.

All Parties are requested to be present with all witnesses and all supporting documents not previously submitted. All Parties may, but need not be, represented by counsel. Each Party may subpoena witnesses and documents for presentation at the hearing and any rights granted by M.G.L. Chapter 16, S. 5B, are available to all Parties at the hearing.

Sincerely,

Chief Administrative Law Judge

NOTICE SENT TO: cc:  
Adm.  
Ch. Eng.  
Dir. ROW  
Ch. Counsel's Office

**EXHIBIT NO. 17-32**

## INTEROFFICE MEMORANDUM

TO: MassDOT Highway Division  
FROM: , Ch. Adm. Law Judge  
DATE:  
RE: Board of Relocation Appeals

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The attached is a copy of my report and recommendation on the claim of - - - - -

Please place this report and recommendation on the Docket Agenda WEDNESDAY, , for action of the Massachusetts Highway Commission acting as the Board of Relocation Appeals.

Respectfully submitted,

Chief Administrative Law Judge

Attachment  
CC:  
Administrator  
Secretary's Office

Chief Engineer  
Chief Counsel

**MassDot Highway Division • Ten Park Plaza, Boston, MA 02116-3973- (617) 973-7500**  
EXHIBIT NO. 17-33

**COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
BOARD OF RELOCATION APPEALS**

Date:

Claim:

Recommendation

DATE , Item #

XXXXXXX, Inc. aggrieved by MHD's determination associated with relocation assistance, appealed to MHD's Board of Relocation Appeals.

The appeal of XXXXXXXXX, Inc. for its claim for additional compensation for its relocation from Boston to, Medford, in the amount of \$XXXXXXXXXX, should be approved in the lesser amount of \$XXXXXXX.

FOR DEPARTMENT SECRETARY

Item #                      Date

EXHIBIT NO. 17-34

**49 CFR Part 24 Appendix B - Statistical Report**  
**Federal Highway Administration as Lead Agency**  
*[This information is collected pursuant to 49 CFR Part 24.9(c)]*

**1. Report Coverage.** This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program. Identify the entity providing the statistics for this report.

	State	
	From	To
	Month	
	Year	
Report all SHA or equivalent Projects.	Total SHA Projects	
Report all LPA or equivalent Projects.	Total LPA Projects	
Total of all SHA and LPA projects. > > [Automatically Calculated]	Total Projects	0
Total number of LPA or equivalent entities reporting.	Total LPAs Reporting	
Report all parcels acquired by SHA or equivalent. A parcel should relate to the physical property, not ownerships and not to different property interests.	Total SHA Parcels Acquired	
Report all parcels acquired by LPA or equivalent and not included in above count. A parcel should relate to ownerships and not to different property interests.	Total LPA Parcels Acquired	
Total of all parcels acquired. > > [Automatically Calculated]	Total Parcels Acquired	0
Of the total number of parcels acquired by SHA or equivalent, report the number of parcels acquired through condemnation.	SHA Condemned Parcels	
Of the total number of parcels acquired by LPA or Equivalent, report the number of parcels acquired through condemnation.	LPA Condemned Parcels	
Total number of parcels acquired through condemnation. > > [Automatically Calculated]	Total Condemned Parcels	0
Of the total number of parcels acquired by SHA or equivalent, report the number of parcels acquired through administrative settlement.	SHA Administratively Settled Parcels	
Of the total number of parcels acquired by LPA or equivalent, report the number of parcels acquired through administrative settlement.	LPA Administratively Settled Parcels	
Total number of parcels acquired through administrative settlement. > > [Automatically Calculated]	Total Administratively Settled Parcels	0
Report the total amount paid by the SHA for the total number of parcels acquired:	SHA Acquisition Costs	
Report the total amount paid by the LPA for the total number of parcels acquired:	LPA Acquisition Costs	
Total amount paid for the total number of parcels acquired: > > [Automatically Calculated]	Total Acquisition Costs	\$0
Report the number of owner-occupied households permanently displaced. This includes all families and individuals. A family is one household, and is not based on the number of people in the family unit.	Owner-Occupied Displacements	
Report the number of tenant-occupied households permanently displaced. This includes all families and individuals. A family is one household, and is not based on the number of people in the family unit.	Tenant-Occupied Displacements	
Total number of households permanently displaced. > > [Automatically Calculated]	Total Households Displaced	0
Report the total <u>number</u> of actual cost residential moving expenses.	Total Number of Actual Cost Residential Moving Expenses	
Report the total <u>amount paid</u> for actual cost residential moving expenses.	Total Actual Cost Residential Moving Expenses	

Report the total <b>number</b> of moving cost schedule payments for residential moving expenses.	Total Number of Residential Schedule Moving Cost Expenses	
Report the total <b>amount</b> paid for residential moving cost schedule expenses.	Total Residential Moving Cost Schedule Expenses	
Total <b>number</b> of residential moves. > > [Automatically Calculated]	Total Number of Residential Moves	0
Total <b>amount</b> paid for residential moving expenses (actual cost and moving cost schedule payments). > > [Automatically Calculated]	Total Residential Moving Expenses	\$0
Report the total <b>number</b> of residential replacement housing supplement payments (price differentials).	Total Number of Residential Replacement Housing Supplement Payments	
Report the total <b>amount</b> of residential replacement housing supplement payments (price differentials).	Total Amount of Residential Replacement Housing Supplement Payments	
Report the total <b>number</b> of increased interest payments.	Total Number of Increased Interest Payments	
Report the total <b>amount</b> of increased interest payments.	Total Amount of Increased Interest Payments	
Report the total <b>number</b> of payments for housing of last resort.	Total Number of Payments for Housing of Last Resort	
Report the total <b>amount</b> of payments for housing of last resort.	Total Amount of Payments for Housing of Last Resort	
Total <b>number</b> of residential replacement housing payments. > > [Automatically Calculated]	Total Number of Residential Replacement Housing Payments	0
Total <b>amount</b> of residential replacement housing payments. > > [Automatically Calculated]	Total Amount of Residential Replacement Housing Payments	\$0
Of the total <b>number</b> of households displaced, report the number of tenants that used a downpayment assistance payment.	Tenant Downpayment Assistance Payments	
Total <b>costs</b> of residential relocation expenses and payments (excluding agency administrative costs). > > [Automatically Calculated]	Total Amount of Residential Relocation Costs and Payments	\$0
Report the <b>number</b> of businesses, nonprofit organizations, and farms permanently displaced, including those that discontinued operations.	Total Number of NonResidential Displacements	

Report the total <b>amount</b> paid for nonresidential moving expenses (actual expenses and fixed payment).	Total Amount of Nonresidential Moving Expenses	
Report the total <b>amount</b> paid for nonresidential reestablishemnt expenses.	Toatal Reestablishement Expenses	
Total <b>costs</b> of nonresidential relocation expenses and payments (excluding Agency administrative expenses). > > [Automatically Calculated]	Total Amount of Nonresidential Relocation Costs and Payments	\$0
Report the total <b>number</b> of relocation appeals filed (both residential and nonresidential).	Total Number of Appeals	

EXHIBIT # 17-35





**Commonwealth of Massachusetts**  
**Request for Verification of Taxation Reporting Information**  
*(Massachusetts Substitute W-9 Format)*

Pursuant to IRS regulations, vendors & customers must furnish their Taxpayer Identification Number (*TIN*) to the Commonwealth. Vendors must complete, sign, and return this form before payments may be made.

**LEGAL NAME** (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I below.  
 (See **Specific Instructions** on the back page.)

**BUSINESS NAME-** If different from the above. (See **Specific Instructions** on the back page)

**LEGAL ADDRESS** – Number, Street, and apt. or suite no., City, State and ZIP code.

**REMITTANCE (PAYMENT) ADDRESS** (If different from the above) Number, Street, and apt. or suite no., City, State and ZIP code.

**PHONE #**

**FAX #**

<b>PART I- Taxpayer Identification Number (TIN) Verification</b>		<b>PART III- Update to existing W-9 Form</b>
Enter your Taxpayer Identification Number (TIN) in the appropriate box. Enter either <b>SSN OR EIN</b> . DO NOT ENTER BOTH. (See PART II.)		<input type="checkbox"/> A Request for Verification of Taxation Reporting Information has been previously filed with the Commonwealth under this TIN. This form will replace that form.  <i>Please attach supporting documentations specified in instructions on the back page under Updates.</i>
<b>Social Security Number (SSN)</b> <input type="text"/> <input type="text"/> <b>Employer Identification Number (EIN)</b> <input type="text"/> <input type="text"/>		

**PART II – What Name and Number to give to the requester (one type of account box MUST be checked)**

<b>TYPE OF ACCOUNT</b> Please check one	<b>NAME</b>	<b>TIN</b>	<b>ORGANIZATION TYPE</b>
<input type="radio"/> Individual	The Individual Name	SSN	I
<input type="radio"/> Sole Proprietorship	The Individual Name- The Owner	SSN or EIN	I
<input type="radio"/> Corporate	The corporation (including Canada & Mexico)	EIN	C
<input type="radio"/> Partnership	The Partnership	EIN	P
<input type="radio"/> A valid trust, estate, or pension trust	Legal entity. List first and circle the name of the legal trust, estate or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)	EIN	T
<input type="radio"/> Association, club, religious, charitable, educational, or other tax-exempt organization.	The Organization	EIN	O
<input type="radio"/> A broker or registered nominee	The broker or nominee	EIN	Any of the above except Individual

I have read and understand the Commonwealth of Massachusetts Request for Verification of Taxation Reporting Information

Please check this box

**Under penalties of perjury, I declare that I have examined this request and to the best of my knowledge and belief, all information I have supplied is true, correct, and complete.**

\_\_\_\_\_  
 Signature \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Signature

Date

**EXHIBIT NO. 17-37**

\_\_\_\_\_  
 Please print or type your name & title \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Date

# Commonwealth of Massachusetts

## Request for Verification of Taxation Reporting Information

### GENERAL INSTRUCTIONS

(Section references are to the Internal Revenue Code.)

**Purpose of Form** - A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report payments made to you for the sales of goods & services & real estate transactions. Use the Request for Verification of Taxation Reporting Information (*Massachusetts Substitute W-9 Format*) to furnish your correct TIN to the Commonwealth and, when applicable, (1) to certify that the TIN you are furnishing is correct (*or that you are waiting for a number to be issued*).

**How To Obtain a TIN** - If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5**, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or **Form SS-4**, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete the Request for Verification of Taxation Reporting Information if you do not have a TIN, write "Applied For" in the space for the TIN in Part 1, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. Note: Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Request for Verification of Taxation Reporting Information, include your TIN, sign and date the form, and give it to the requester.

### Penalties

**Failure to Furnish TIN** - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding** - If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of \$500.

**Criminal Penalty for Falsifying Information** - Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

### SPECIFIC INSTRUCTIONS

**Name** - If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card and your new last name.

**Sole proprietor** - You must enter your *individual* Name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the business name line.

**Other entities** - Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or legal document creating the entity. You may enter your business, trade, or "doing business as" name on the business line.

**Foreign Vendors** - If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed **Form W-8BEN** (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

**TIN "Applied For"** - Follow the instructions under How to Obtain a TIN, sign and date this form.

**Signature** - The form must be signed to be considered valid.

**Privacy Act Notice** - Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid, the acquisition of property. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return.

**Organizations Recognized by the Commonwealth as Tax Exempt** - Organizations seeking recognition of tax exempt status with the Commonwealth must provide documentation of the organization federal tax exempt status in the form of a ruling or determination letter issued by the Internal Revenue Service (IRS). The Commonwealth recognizes the following IRS tax exempt status organization rulings:

- . Section 501© (1 through 23)
- . Section 501 (d)
- . Section 501(e)
- . Section 501 (f)
- . Section 501(k)
- . Section 521 (a)

For more information on Tax-Exempt status, please see IRS Publication 557 (rev. Jan. 99).

**Updates to the Request for Verification of Vendor/Customer Taxation Reporting Information** - If any of the information requested on this form changes (*i.e.*, name or address changes), the payee must submit a new Request for Verification of Taxation Reporting Information with the updated information. Changes to name or TIN must be accompanied by IRS certification of Name & TIN.

If the payee receives notification from the IRS that an information return (*i.e.*, 1099-MISC) was filed on their behalf by the Commonwealth with incorrect spelling of their name and/or incorrect or missing TIN (commonly referred to as a "B-Notice" or IRS Form 8355), the payee must immediately complete a new Request for Verification of Taxation Reporting Information with the corrected information and attach a copy of the IRS Form 8355 to the form.

If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct (*legal*) name.

**If you have Questions on Completing this Form** - Please contact the Office of the State Comptroller

**By Phone:** (617) 973-2311 or 973-2655

### Completion of Form:

Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

### EXHIBIT NO. 17-37

**THE COMMONWEALTH OF MASSACHUSETTS**  
**OFFICE OF THE COMPTROLLER**  
**PAYMENT VOUCHER INPUT FORM**

**DOCUMENT ID**

TRANS	DEPT	R/ORG	NUMBER	PV DATE	ACCT PRIBUD FY	
PV	DPW					99

**\*INSTRUCTIONS TO VENDOR\***

FILL IN SHADED AREAS -  
 DIRECT INQUIRIES TO STATE  
 ORGANIZATION -  
 RETAIN A COPY

<b>ACTION</b> <b>(E) (M) E</b>	<b>SCH PAY DAT</b>	<b>OFF LIAB ACCT</b>	<b>VENDOR'S CERTIFICATION:</b> I hereby certify under perjury that the below goods were shipped or the service rendered as set forth.	<b>DEPARTMENT/ORGANIZATION</b>
				Massachusetts Highway Dept. ROW BUREAU - Rm 6160

<b>DOCUMENT TOTAL</b>		<b>DEPT</b>	<b>VENDOR INVOICE NO.</b>		<b>VENDOR CODE</b>	<b>EMP</b>									
		DPW													
<b>REFERENCE ORDER</b>		<b>LINE</b>	<b>QUANTITY</b>	<b>DESCRIPTION</b>				<b>UNIT PRICE</b>	<b>AMOUNT</b>						
<b>REFERENCE DOCUMENT</b>															
LN 01	TRANS PO	DEPT DPW	ORG	NUMBER	LINE 01	DEPT DPW	APPROP.	SUB	ORG.	S/ORG.	OBJ.	S/OBJ	PROG. 056N	TY G	OJ/CL/G C
ACTV	REPT CA	FUND	BS ACCT	DEPT DPW	<b>VENDOR INVOICE NO.</b>		<b>DESCRIPTION</b>								
MSA#		LN 1	DISC	DATES OF SERVICE		QUANTITY	AMOUNT		I/D	P/F					

**TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS**

I HEREBY CERTIFY UNDER THE PENALTIES OF PERJURY THAT ALL LAWS OF THE COMMONWEALTH GOVERNING DISBURSEMENTS OF PUBLIC FUNDS AND THE REGULATIONS THEREOF HAVE BEEN COMPLIED WITH AND OBSERVED.

PREPARED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

PHONE #: X

APPROVED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

ENTERED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

PAGE 1 OF

## RELOCATION PAYMENT RECORD

**COMMONWEALTH OF MASSACHUSETTS**

**RIGHT OF WAY**

**BUSINESS RELOCATION SECTION  
INVENTORY**

**CERTIFICATION REQUEST**

**OWNER :** \_\_\_\_\_

**CLAIMANT** \_\_\_\_\_ **L.O./ORDER:** \_\_\_\_\_

**CITY/TOWN** \_\_\_\_\_ **F.A.P #:** \_\_\_\_\_  
**PARCEL NO:** \_\_\_\_\_

**REQUEST FOR REVIEW APPRAISER'S CERTIFICATION**

**OF PERSONAL PROPERTY INVENTORY DATED** \_\_\_\_\_

**CONSISTING OF ITEMS ONE (1) THROUGH** \_\_\_\_\_  
**INCLUSIVE.**

**SUBMITTED BY:** \_\_\_\_\_ **DATED:** \_\_\_\_\_  
Relocation Agent

**REVIEW APPRAISER:** \_\_\_\_\_ **DATED:** \_\_\_\_\_

**APPROVED BY:** \_\_\_\_\_  
Review Section Supervisor

COMMONWEALTH OF MASSACHUSETTS  
RIGHT OF WAY BUREAU  
BUSINESS RELOCATION UNIT

REVIEW APPRAISER'S CERTIFICATION

---

CLAIMANT:\_\_\_\_\_ PARCEL NO:\_\_\_\_\_

CITY/TOWN:\_\_\_\_\_ L.O./ORDER:\_\_\_\_\_

FAP#\_\_\_\_\_

SUBMITTED BY:\_\_\_\_\_  
REVIEWING APPRAISER

DATE:\_\_\_\_\_

APPROVED BY:\_\_\_\_\_  
APPRAISAL ADMINISTRATOR

DATE:\_\_\_\_\_

(EXHIBIT # 17-41 Revised 7/4/00)

**B.R.C.A.C**  
**AUTHORIZATION TO MOVE**

THE BUSINESS RELOCATION CLAIM ADVISORY COMMITTEE HAS  
REVIEWED THE MOVING COST ESTIMATES SUBMITTED FOR

---

( NAME)

---

(ADDRESS)

AND HAS APPROVED AN AUTHORIZATION TO MOVE, NOT TO EXCEED THE  
AMOUNT OF \$\_\_\_\_\_.

**BUSINESS RELOCATION CLAIM ADVISORY COMMITTEE**

\_\_\_\_\_ DATE \_\_\_\_\_

(EXHIBIT # 17-42 Revised 7/4/00)

**LETTERHEAD**

**AUTHORIZATION TO MOVE**

**LOCATION:** \_\_\_\_\_  
**PROJECT:** \_\_\_\_\_  
**PARCEL:** \_\_\_\_\_  
**F.A.P # :** \_\_\_\_\_

**Joe Jones**  
123 South St  
Boston, MA 00000

**Gentlemen:**

**This is to acknowledge receipt of estimates submitted to the Department in connection with your request for a business relocation expense payment for**

**Based on the estimates submitted, you are hereby authorized to move for an amount not to exceed \$ \_\_\_\_\_. Payment will be based on actual, reasonable costs for which proper documentation is submitted and approved; proper documentation includes invoices with itemized breakdown of all expenses and cancelled checks establishing for same. Should additional work not included in the specifications be necessary, the Department may take them into consideration in adjusting reimbursement for moving costs.**

**You are required to notify this Bureau, in writing, of your intent to move at least seven (7) days in advance of the proposed moving date, in order to allow Department personnel to observe and monitor the actual moving operation.**

Sincerely,

**Director, Right of way Bureau**

(EXHIBIT # 17- 43 Revised 1/24/11)

COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

INTENT TO VACATE

LOCATION:

PROJECT:

PARCEL NO:

F.A.P. NO:

I, \_\_\_\_\_ OF \_\_\_\_\_  
HEREBY NOTIFY THE HIGHWAY  
DIVISION, RIGHT OF WAY BUREAU, OF MY INTENTION TO BEGIN VACATING MY  
SITE ON OR ABOUT \_\_\_\_\_.

CLAIMANT: \_\_\_\_\_

CLAIMANT : \_\_\_\_\_

DATE: \_\_\_\_\_

( EXHIBIT # 17-44 Revised 7/4/00)

LOCATION: \_\_\_\_\_  
PROJECT: \_\_\_\_\_  
PARCEL #: \_\_\_\_\_  
F.A.P #: \_\_\_\_\_

**MASSDOT HIGHWAY DIVISION**

**RIGHT OF WAY BUREAU**

**CERTIFICATION OF PRE-MOVE INSPECTION**

I certify that I have inspected the premises of \_\_\_\_\_  
Claimant

located \_\_\_\_\_ at  
Street City/Town

on \_\_\_\_\_ and further certify that all items (#1

through # ) as contained on their inventory dated

were located on the above premises at this time.

**REMARKS**

\_\_\_\_\_  
Business Relocation Agent

\_\_\_\_\_  
Date

(EXHIBIT # 17-45 Revised 7/4/00)

LOCATION: \_\_\_\_\_  
PROJECT: \_\_\_\_\_  
PARCEL #: \_\_\_\_\_  
F.A.P #: \_\_\_\_\_

MASSDOT HIGHWAY DIVISION

RIGHT OF WAY BUREAU

CERTIFICATION OF POST-MOVE INSPECTION

I certify that I have inspected the premises of

Claimant

\_\_\_\_\_ located at \_\_\_\_\_  
(New Site Address)

on \_\_\_\_\_ and further certify that all items (#1  
Date

through # ) as contained on their inventory dated

were moved and are located on the above premises at this time.

REMARKS

RELOCATION AGENT

Date

(EXHIBIT # 17-46 Revised 1/24/11)

**MASSDOT HIGHWAY DIVISION  
BUSINESS RELOCATION PAYMENT FORM  
Claim for Actual Reasonable Moving and Related Expenses**

Page 1 of 2

INSTRUCTIONS: This claim form is for use in applying for a relocation payment for actual moving and related expenses. Please submit this form with all accompanying documentation, including invoices and cancelled checks, to support each category of your claim. Your relocation advisor will be available to discuss this form with you and to answer your questions. The advisor will describe the documentation needed to support your claim. If the full amount of your claim is not approved, the Division will provide you with a written explanation. If you are not satisfied with the determination you may appeal the decision and the appeal process will be explained to you.

**SECTION I: General Information**

CLAIMANT:

TELEPHONE NO.:

ADDRESS:

CITY/TOWN:

F.I.D. NO.:

TYPE OF CLAIM:

MOVE START:

MOVE COMPLETED:

NEW ADDRESS:

CITY/TOWN:

**SECTION II: Certification**

I certify under the penalties of perjury that this claim in the total amount of \$         and supporting documentation/information, have been explained by me and are true and complete; that I have not submitted any other claim for any expense listed and that I have not been paid for any such expense from any other source.

Signature of Claimant:

Title:

Date:

FOR DEPARTMENT USE ONLY

Date Received by MHD:	date	Name:
Date Reviewed by BRCAC:	date	Amt.                      \$ Approved:
Date Reviewed by B.O.C.:	date	Amt.                      \$ Approved:
Date Payment Was Sent:	date	Amt. Paid:              \$

EXHIBIT NO. 17-47

Date

96-xxxx-G  
File Nos.: AD-2.1.2  
LM-1.2  
LM-3.xx.x

ADDRESS

RE: Contract No. 96159/Work Project 14  
Business Relocation Payment and Computation of Payment Form

Dear Mr. \_\_\_\_\_:

Enclosed please find the MassDOT Highway Division's (MHD) Business Relocation Payment form (RF-003) for your signature and to be returned to my office, and the Computation of Payment form (RF-004) for your file.

The Computation of Payment form reflects the total lump sum payment approved/disapproved by the MHD, Business Relocation Claims Advisory Committee (BRCAC), relative to the COMPANY NAME, Actual, Reasonable, Moving and Related Expense Claim I (Assignment of Business Relocation and Claim II, and the breakdown as recommended by XXXXXXXXXXXX).

If you have any questions regarding the above, please contact Me at (617) XXX-XXXX.

Yours Truly,

Relocation Specialist

(Exhibit # 17-47 Revised 1/24/11)

**LOCATION:** \_\_\_\_\_  
**PROJECT:** \_\_\_\_\_  
**PARCEL:** \_\_\_\_\_  
**F.A.P #** \_\_\_\_\_

**THE COMMONWEALTH OF MASSACHUSETTS**  
**MASSDOT HIGHWAY DIVISION**  
**PENALTY FOR FALSE OR FRAUDULENT STATEMENT**

U. S. .C. TITLE 18, Sec. 1001, provided: "Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willingly falsifies...or makes any false, fictitious or fraudulent statement or entry shall be fined \$10,000.00 or imprisoned not more than five years, or both."

Chapter 268 of the General Laws of Massachusetts provides that whoever signs and issues a written statement verified by oath shall be guilty of perjury and subject to criminal penalties thereof if such statement is willfully made in a material matter.

I certify under the penalties and provisions of U. S. C. Title 18, Sec. 1001, and chapter 268 of the General Laws of Massachusetts, and any other applicable laws, that this claim and the Schedules and information submitted herewith and made a part hereof have been examined and approved by me and are true, correct, and complete to the best of my knowledge and that I understand that, apart from the penalties and provisions of any applicable law, falsification of any item in this claim or submitted herewith, may result in forfeiture of the entire claim. I/We further certify that I/We will not receive/accept any reimbursement or compensation from any other source for any bills or receipts submitted herewith. Furthermore, I certify that the undersigned is a lawful resident in the United States.

Signed \_\_\_\_\_ day of \_\_\_\_\_

Signature of Claimant: \_\_\_\_\_

**MASSDOT HIGHWAY DIVISION  
INCIDENTAL SEARCHING EXPENSE CERTIFICATION**

I, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_, certify that the attached claim for searching expenses in the amount of \$\_\_\_\_\_ is for the actual time spent searching for a replacement site by myself and other representatives of the company or realtors/agents engaged for this purpose.

Date

Authorized Representative

(EXHIBIT # 17-49 Revised 1/24/11)

CLAIMANT: \_\_\_\_\_ PROJECT: \_\_\_\_\_ PARCEL #: \_\_\_\_\_  
F.A.P #\_\_\_\_\_

**MASDOT HIGHWAY DIVISION**  
**INCIDENTAL SEARCHING EXPENSE FORM**

## I. SEARCHING EXPENSES

**Submitted by:**

Name \_\_\_\_\_

## Title

Date

(EXHIBIT # 17-49 Revised 1/24/11)



RIGHT OF WAY BUREAU

RELOCATION PAYMENT PROCEDURES FOR BUSINESS CLAIMS

CLAIMANT: \_\_\_\_\_ F.A.P. NO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ PARCEL NO: \_\_\_\_\_

F.I.D. NO: \_\_\_\_\_ L.O./ORDER: \_\_\_\_\_

S.S.NO: \_\_\_\_\_ DATED: \_\_\_\_\_

---

TYPE OF CLAIM (CIRCLE ONE)

COMM.MOVE /SEFL MOVE / NEG. SELF MOVE / IN LIEU OF / MOVING EXP.FINDING

---

- |                              |                              |                              |   |
|------------------------------|------------------------------|------------------------------|---|
| <input type="checkbox"/> 1.  | COMM. SITE OCCUPANT RECORD   | <input type="checkbox"/> 19. | ACTUAL DIRECT LOSS OF PERSONAL PROPERTY |
| <input type="checkbox"/> 2.  | BUS. GENERAL INFORMATION     | <input type="checkbox"/> 20. | SUBSTITUTE EQUIP.BENEF                  |
| <input type="checkbox"/> 3.  | REAL/PERSONAL PROP. REPORT   | <input type="checkbox"/> 21. | MOVING EXPENSE FINDING                  |
| <input type="checkbox"/> 4.  | PERSONAL PROPERTY INVENTORY  | <input type="checkbox"/> 22. | ASSIGNMENT OF FUNDS FORM                |
| <input type="checkbox"/> 5.  | CERTIFICATION REQUEST FORM   | <input type="checkbox"/> 23. | POST MOVE INSPECTION                    |
| <input type="checkbox"/> 6.  | REVIEW APPR'S CERTIFICATION  | <input type="checkbox"/> 24. | LETTER SATISFACT. WK.                   |
| <input type="checkbox"/> 7.  | INTENT TO VACATE LETTER      | <input type="checkbox"/> 25. | FALSE & FRAUDULENT STATE.               |
| <input type="checkbox"/> 8.  | SPECIFICATIONS               | <input type="checkbox"/> 26. | RECT. BILLS & CANCELLED CKS             |
| <input type="checkbox"/> 9.  | ESTIMATES (2)                | <input type="checkbox"/> 27. | BUSINESS PAYMENT CLAIM FORM             |
| <input type="checkbox"/> 10. | PRE MOVE INSPECTION          | <input type="checkbox"/> 28. | SUMMARY OF CLAIM TO BRCAC               |
| <input type="checkbox"/> 11. | REQUEST FOR AUTH. TO MOVE    | <input type="checkbox"/> 29. | BRCAC APPROVAL FORM                     |
| <input type="checkbox"/> 12. | AUTH. TO MOVE BY BRCAC       | <input type="checkbox"/> 30. | ADMINISTRATOR'S APPROVAL                |
| <input type="checkbox"/> 13. | LETTER OF AUTH. TO CLAIMANT  | <input type="checkbox"/> 31. | PAYMENT VOUCHER/COPY OF CK              |
| <input type="checkbox"/> 14. | W-9 TAX FORM                 | <input type="checkbox"/> 32. | 700 REPORT FORMS                        |
| <input type="checkbox"/> 15. | ACTUAL/REASONABLE COMM. MOVE | <input type="checkbox"/> 33. | ABANDON OF PERS. PROP. FORM             |
| <input type="checkbox"/> 16. | SELF MOVE                    | <input type="checkbox"/> 34. | MEMO TO PROP. MGMNT/KEYS                |
| <input type="checkbox"/> 17. | NEGOTIATED SELF MOVE         | <hr/> RELOCATION AGENT       |   |
| <input type="checkbox"/> 18. | IN LIEU OF MOVE              | <hr/>                        |   |

DATE

(EXHIBIT # 17-51 Revised 1/24/11)

THE COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION

INTEROFFICE MEMOANDUM

---

TO: ADMINISTRATOR

FROM: , DEPUTY DIRECTOR, ROW BUREAU

DATE:

RE: BUSINESS RELOCATION CLAIM

---

DOCUMENTATION NO.

APPROPRIATION NO.

LOCATION:

F.A.P. NO.

CLAIMANT:

PARCEL NO.

ORDER DATE:

Has submitted a claim in the amount of \$ \_\_\_\_\_ for actual, reasonable, and related expenses. The claimant occupied as an owner/tenant, the premises located at \_\_\_\_\_ in \_\_\_\_\_ and has now moved their personal property to \_\_\_\_\_ in \_\_\_\_\_

Based upon duly submitted and property supported documentation as approved by the Business Relocation Claim Advisory Committee on it is recommended that this claim be approved in the amount of \$ \_\_\_\_\_ as partial/final payment.

Recommended By:

, Deputy Director  
Right of Way Bureau

Approved By:

, Director  
Right of Way Bureau

**EXHIBIT NO. 17-52**

**BUSINESS CLAIM REVIEW**

F.A.P. No:

CLAIMANT'S NAME:

ORDER:

OWNER'S NAME:

PARCEL NO:

LOCATION:

**DATE SUBMITTED FOR REVIEW:**

We, the members of the Business Relocation Claim Advisory Committee, constituting a quorum,

this date have reviewed the claim of \_\_\_\_\_

submitted by the Relocation Assistance Section with all data as submitted by the claimant as per the

State and Federal requirements and find the claimant's documentation for relocation expenses

incurred in moving his business personality (to be) duly submitted and properly supported

by reason of \_\_\_\_\_

and therefore recommend the claim in the amount of \$ \_\_\_\_\_ be approved as a

(final/partial) payment.

**BUSINESS RELOCATION CLAIM ADVISORY COMMITTEE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

**(Exhibit #17-53 Revised 1/24/11)**





COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

SELF – MOVE

DOCUMENTATION CHECKLIST

LOCATION:

PROJECT:

PARCEL:

FAP NO.

INCLUDED

N/A

1. ACTUAL MOVING EXPENSES:

(A) STATEMENT GIVING NAMES OF EACH EMPLOYEE  
ENGAGED IN THE MOVE, SOCIAL SECURITY NUMBERS,  
TOTAL HOURS WORKED, RATES PER HOUR AND TOTAL  
AMOUNTS PAID WITH SIGNATURES OF EACH EMPLOYEE  
RECEIVING MONEY.

(B) STATEMENT SIGNED AND CERTIFIED BY CLAIMANT  
VERIFYING ALL MONIES PAID TO THE EMPLOYEES  
WAS FOR WORK IN CONNECTION WITH THE ACTUAL  
RELOCATION OF THE CERTIFIED INVENTORY.

2. REMOVAL & REINSTALLATION CHARGES

(A) RECEIPTED BILLS

(B) CANCELLED CHECKS

(C) LETTERS OF SATISFACTORY WORK

(D) BREAKDOWN OF CLAIM

(E) PENALTY FOR FALSE AND FRAUDULENT STATEMENT

3. EXPLANATION OF DATES, PLACES VISITED, NUMBER OF HOURS,  
RATES AND PERSON OR PERSONS CONDUCTING SEARCH

---

CLAIMANT'S SIGNATURE

DATE

CITY/TOWN

---

PARCEL NO.

---

**EXHIBIT NO. 17-55**

COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU

**SELF-MOVE BREAKDOWN OF CHARGES**

**BILLED**

MOVING	\$ _____
ELECTRICAL	\$ _____
PLUMBING	\$ _____
CARPENTRY	\$ _____
RIGGING	\$ _____
OTHER TRADES	\$ _____
	\$ _____
	\$ _____
	\$ _____
SEARCHING EXPENSES	\$ _____

---

CLAIMANT'S SIGNATURE

---

DATE

---

CITY/TOWN

---

PARCEL NO.

**EXHIBIT NO. 17-56**

**MASSDOT HIGHWAY DIVISION**  
**NEGOTIATED SELF-MOVE AGREEMENT LETTER**

CLAIMANT: \_\_\_\_\_ DATE: \_\_\_\_\_

PARCEL: \_\_\_\_\_

LOCATION: \_\_\_\_\_

F.A.P.: \_\_\_\_\_

I hereby agree to accept an amount of \$XX,XXX.XX as reimbursement for a self-move in connection with the relocation of my business, which amount will include any removal and reinstallation charges.

In addition, should it become necessary, I understand that I am entitled to Incidental Searching Fees, and Business Re-establishment Benefit Expenses in connection with same, provided I justify these charges with the appropriate documentation.

CLAIMANT'S SIGNATURE

DATE

(Exhibit #17-57 Revised 1/24/11)

**AUTHORIZATION TO MOVE  
NEGOTIATED SELF-MOVE**

DATE:

CITY:

PROJECT:

PARCEL NO(S):

F.A.P. NO:

CLAIMANT'S NAME:

ADDRESS:

AUTHORIZED AMOUNT: \$

Moving Cost:	\$
Reestablishment Expense:	\$
Searching Expense:	\$ _____

**TOTAL ESTIMATED RELOCATION COST: \$**

This is to inform you that a moving bid(s) have been solicited in connection with your request for a business relocation expense payment for moving from \_\_\_\_\_ to \_\_\_\_\_.

In accordance with Massachusetts General Law, (MGL) Chapter 79A and Massachusetts Division of Highways (the Division) Procedures, you are hereby authorized to move for an amount not to exceed \$\_\_\_\_\_ as per your Negotiated Self-Move Agreement Letter. (This authorized amount includes additional eligible relocation expenses as listed above). Other expenses such as obsolete stationery etc. are eligible for payment subject to submittal of proper documentation. For your information, attached is a listing of the documentation required in order to process your relocation expense claim for payment.

This permission is given to you under the condition that you do not lease, rent, or otherwise permit the occupancy of the premises once you vacated by you.

You are required to notify MHD, in writing, of your intent to move at least thirty (30) days in advance of the proposed moving date, in order to allow MHD personnel to observe the actual moving operations.

Disposal of hazardous and flammable material is not an eligible relocation expense. Therefore, you are reminded that you should move any material that could be considered hazardous material to your replacement location. This will be included under actual moving expenses if moved to your replacement location. However, if the MDH is required to dispose of any of this material, the cost of the disposal will be subtracted from your Actual, Reasonable, Moving and Related Expense Claim.

Also, should you be in arrears of the Use & Occupancy fees (U&O), etc. the department will deduct the outstanding U&O fees from the relocation claim.

Sincerely,

Gerald L. Solomon, Director  
Right of Way Bureau

(Exhibit # 17-58 Revised 10-1-00)

**MASSDOT HIGHWAY DIVISION**  
**BUSINESS RELOCATION CLAIM**  
**MOVING EXPENSE FINDING**

CLAIMANT:

LOCATION:

PARCEL NO.:

FEDERAL AID PROJECT NO.: \_\_\_\_\_

Upon inspection of the Certified Inventory dated \_\_\_\_\_  
and Specifications dated \_\_\_\_\_. I have made a  
moving Expense Finding in the Total amount of \$\_\_\_\_\_.

Signature

Title

Date

**NOTE:** ATTACH DOCUMENTATION

**(Exhibit #17-59 Revised 10-6-00)**

**MASSDOT HIGHWAY DIVISION**

**ACCEPTANCE OF MOVING EXPENSE FINDING**

**NOT TO EXCEED \$2,500.00**

CLAIMANT:

ADDRESS:

PARCEL NO.:

FAP #:

Upon completion of my business relocation move, I agree to accept the Moving Expense Finding in the amount of \$\_\_\_\_\_ as payment on my Business Relocation move.

CLAIMANT'S SIGNATURE

DATE

**(Exhibit 17-60 Revised 12-7-00)**

DATE: \_\_\_\_\_

CITY: \_\_\_\_\_

PARCEL: \_\_\_\_\_

F.A.P NO: \_\_\_\_\_

AUTHORIZATION TO MOVE  
(MOVING EXPENSE FINDING)

BASED ON THE MOVING EXPENSE FINDING, YOU ARE HEREBY AUTHORIZED TO MOVE FOR THE AMOUNT NOT TO EXCEED \$ \_\_\_\_\_. PAYMENT WILL BE MADE UPON COMPLETION OF THE MOVE.

THIS PERMISSION IS GIVEN TO YOU WITH THE PROVISION THAT YOU DO NOT LEASE, RENT, OR OTHERWISE PERMIT THE OCCUPANCY OF THE PREMISES BY ANYONE ELSE, ONCE IT IS VACATED BY YOU.

SHOULD ADDITIONAL WORK NOT INCLUDED BE NECESSARY, THE DIVISION MAY TAKE IT INTO CONSIDERATION IN ADJUSTING REIMBURSEMENT FOR MOVING COSTS. IN CASE OF A SELF-MOVE, THE MAXIMUM ALLOWABLE AMOUNT MAY NOT EXCEED THE AUTHORIZED AMOUNT AS SHOWN.

YOU ARE REQUIRED TO NOTIFY MHD, IN WRITING, OF YOUR INTENT TO MOVE AT LEAST THIRTY (30) DAYS IN ADVANCE OF THE PROPOSED MOVING DATE, IN ORDER TO ALLOW MHD PERSONNEL TO OBSERVE THE ACTUAL MOVING OPERATIONS.

DISPOSAL OF HAZARDOUS AND FLAMMABLE MATERIAL IS NOT AN ELIGIBLE RELOCATION EXPENSE. THEREFORE, YOU ARE REMINDED THAT YOU SHOULD MOVE ANY MATERIAL THAT COULD BE CONSIDERED HAZARDOUS TO YOUR REPLACEMENT LOCATION. THIS WILL BE INCLUDED UNDER ACTUAL MOVING EXPENSES IF MOVED TO YOUR REPLACEMENT LOCATION. HOWEVER, IF THE MHD IS REQUIRED TO DISPOSE OF ANY OF THIS MATERIAL, THE COST OF THE DISPOSAL WILL BE SUBTRACTED FROM YOUR ACTUAL, REASONABLE, MOVING AND RELATED EXPENSE CLAIM.

IN ADDITION, SHOULD YOU BE IN ARREARS OF THE USE AND OCCUPANCY FEES (U&O), ETC. THE DIVISION WILL DEDUCT THE OUTSTANDING U&O FEES FROM THE RELOCATION CLAIM.

SINCERELY,

, DIRECTOR  
RIGHT OF WAY BUREAU

COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
ACTUAL DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY DETERMINATION

CLAIMANT: \_\_\_\_\_ DATE: \_\_\_\_\_

PARCEL: \_\_\_\_\_ LOCATION \_\_\_\_\_ F.A.P NO. \_\_\_\_\_

CLAIMANT IS ELIGIBLE FOR ACTUAL DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY  
IN ACCORDANCE WITH ONE OF THE FOLLOWING METHODS (1) \_\_\_\_\_ (2) \_\_\_\_\_

(1) IF SALE IS AFFECTED AND PERSONAL PROPERTY IS NOT TO BE REPLACED, THE  
FOLLOWING METHOD IS USED AND REIMBURSEMENT SHALL BE THE LESSER OF:

(A) FMV OF PERSONAL PROPERTY FOR CONTINUED USE AT DISPLACEMENT  
SITE. \$\_\_\_\_\_

MINUS NET PROCEEDS OF SALE \$\_\_\_\_\_

(B) ESTIMATED COST OF \$\_\_\_\_\_ MOVING ITEMS  
\$\_\_\_\_\_

ELIGIBLE AMOUNT OF ACTUAL DIRECT LOSS OF  
TANGIBLE PERSONAL PROPERTY. \$\_\_\_\_\_

(2) IF SALE IS NOT AFFECTED, THE FOLLOWING METHOD IS USED AND REIMBURSEMENT  
SHALL BE THE LESSER OF:

(A): FMV OF PERSONAL PROPERTY FOR CONTINUED USE AT DISPLACEMENT SITE.  
\$\_\_\_\_\_

PLUS COST OF ATTEMPTED SALE \$\_\_\_\_\_

(B) ESTIMATED COST OF MOVING ITEMS \$\_\_\_\_\_

PLUS COST OF ATTEMPTED SALE \$\_\_\_\_\_

ELIGIBLE AMOUNT OF ACTUAL DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY  
\$\_\_\_\_\_

---

CLAIMANT'S SIGNATURE

DATE

RELOCATION AGENT'S SIGNATURE

---

COMMONWEALTH OF MASSACHUSETTS  
MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
PURCHASE OF SUBSTITUTE PERSONAL PROPERTY DETERMINATION

CLAIMANT: \_\_\_\_\_ DATE: \_\_\_\_\_

PARCEL: \_\_\_\_\_ LOCATION: \_\_\_\_\_ F.A.P NO. \_\_\_\_\_

CLAIMANT IS ELIGIBLE FOR A PURCHASE OF SUBSTITUTE PERSONAL PROPERTY PAYMENT AS FOLLOWS:

(1) IF PERSONAL PROPERTY IS TO BE REPLACED, THE FOLLOWING METHOD IS USED AND REIMBURSEMENT SHALL BE THE LESER OF

(A) REPLACEMENT COST: \$\_\_\_\_\_

MINUS NET PROCEEDS OF SALE      \$\_\_\_\_\_ =\_\_\_\_\_  
OR TRADE-IN ALLOWANCE

(B) ESTIMATED COST OF MOVING ITEMS      =\_\_\_\_\_

ELIGIBLE AMOUNT OF SUBSTITUTE PERSONAL PROPERTY      =\_\_\_\_\_

---

CLAIMANT'S SIGNATURE      DATE      RELOCATION AGENT'S SIGNATURE

**EXHIBIT 17-63 (REVISED 4-11-01)**

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
INTENT TO FILE FOR AN "IN LIEU OF FIXED PAYMENT"

LOCATION: \_\_\_\_\_  
PROJECT: \_\_\_\_\_  
PARCEL NO: \_\_\_\_\_  
F.A.P NO.\_\_\_\_\_

DATE: \_\_\_\_\_

RIGHT OF WAY BUREAU  
MASS. HIGHWAY DEPT.  
10 PARK PLAZA – RM. 6160  
BOSTON, MA 02116

DEAR SIR:

I HAVE BEEN INFORMED BY THE RELOCATION SECTION OF YOUR DIVISION THAT I MAY FILE FOR A "IN LIEU OF (FIXED) PAYMENT, AND AM AWARE OF THE CRITERIA NEEDED TO MEET THE ELIGIBILITY REQUIREMENTS FOR THIS TYPE OF PAYMENT.

PLEASE BE INFORMED OF MY INTENTION TO FILE A CLAIM FOR AN " IN LIEU OF (FIXED) PAYMENT.

SINCERELY,

---

\_\_\_\_\_  
OWNER/CLAIMANT

---

\_\_\_\_\_  
BUSINESS NAME

MASSDOT HIGHWAY DIVISION  
BUSINESS OPTION  
(IN LIEU OF ACTUAL COST)

F.A.P. \_\_\_\_\_ CLAIMANT\_\_\_\_\_

PARCEL NO. \_\_\_\_\_ CITY/TOWN\_\_\_\_\_

CERTIFICATION: I certify that \_\_\_\_\_ cannot be relocated without a substantial loss of its existing patronage; that the business is not a part of a commercial enterprise having any other establishment being acquired by the State; (and the business contributes materially to my income.) I therefore request payment in lieu of actual moving cost of not less than \$1000.00 nor more than \$20,000.00

DATE BUSINESS OPERATIONS BEGAN: \_\_\_\_\_ DATE CEASED:  
NUMBER OF MONTHS IN BUSINESS: \_\_\_\_\_

A. IN BUSINESS TWO (2) YEARS OR MORE:

Annual Net Earnings (1st year prior)...( ) \$ \_\_\_\_\_  
Annual Net Earnings (2nd year prior)...( ) \$ \_\_\_\_\_  
Average Annual Net Earnings \$ \_\_\_\_\_  
MAXIMUM PAYMENT OF CLAIM \$ \_\_\_\_\_

B. IN BUSINESS LESS THAN TWO (2) YEARS BUT MORE THAN ONE (1) YEAR

Annual Net Earnings (1st year prior)...( ) \$ \_\_\_\_\_  
Average Monthly Earnings for ( ) Months Times 12  
Will Equal Annual Net Earnings for Second Year \$ \_\_\_\_\_  
Average Annual Net Earnings \$ \_\_\_\_\_  
MAXIMUM PAYMENT OF CLAIM \$ \_\_\_\_\_

C. IN BUSINESS LESS THAN ONE (1) YEAR:

Average Monthly Earnings for ( ) Months Times 12  
Will Equal Annual Net Earnings \$ \_\_\_\_\_  
MAXIMUM PAYMENT OF CLAIM \$ \_\_\_\_\_

**TOTAL AMOUNT OF THIS CLAIM \$ \_\_\_\_\_**

NOTE: Use either A, B, or C above for computation of Payment.

DOCUMENT USED TO CERTIFY EARNINGS:

1. I.R.S. Form 1040
2. Certified Financial Statement
3. Affidavit of Owner

DATE OF CLAIM \_\_\_\_\_ CLAIMANT \_\_\_\_\_

RELOCATION AGENT \_\_\_\_\_ DATE \_\_\_\_\_

APPROVED/DISAPPROVED \_\_\_\_\_ RELOCATION SUPERVISOR \_\_\_\_\_ DATE \_\_\_\_\_

REMARKS:

OWNER'S ELECTION NOT TO RELOCATE SIGN

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SIGN LOCATION: \_\_\_\_\_

PARCEL NO: \_\_\_\_\_

F.A.P. NO: \_\_\_\_\_

DATE OF ACQUISITION OF REAL PROPERTY: \_\_\_\_\_

I, \_\_\_\_\_ owner of a displaced sign above referred to, hereby elect not to relocate said sign but claim reimbursement in an amount equal to the lesser of:

- |     |   |          |
|-----|---|----------|
| (1) | The depreciated reproduction cost of the sign as determined by the MassDOT Highway Division, less proceeds from the sale: | \$ _____ |
| (2) | The estimated cost of moving the sign:  | \$ _____ |

Lesser Amount \$ \_\_\_\_\_

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20.

---

Witness

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Owner

**(Exhibit 17-66 Revised 1/24/11)**

**RIGHT OF WAY BUREAU**

**RELOCATION PAYMENT PROCEDURE FOR RESIDENTIAL HOUSING  
CLAIMS**

**CLAIMANT:** \_\_\_\_\_ **F.A.P. NO:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ **PARCEL NO:** \_\_\_\_\_

**CITY/TOWN:** \_\_\_\_\_ **L.O./ORDER:** \_\_\_\_\_

**S.S. NO:** \_\_\_\_\_ **DATED:** \_\_\_\_\_

**OWNER TO OWNER – TENANT TO TENANT - TENANT TO OWNER – OWNER TO TENANT  
UNDERLINE (ONE)**

- 
- |   |  |
|---|--|
| <input type="checkbox"/> 1. PRELIMINARY SURVEY OF HOUSING NEEDS                 | <input type="checkbox"/> 14. MORTGAGE DATA SHEET – (O)                             |
| <input type="checkbox"/> 2. RELOC. GENERAL INFO. SHEET                          | <input type="checkbox"/> 15. MORTGAGE INT. DIFF. FORM - (O)                        |
| <input type="checkbox"/> 3. CERTIFICATE OF LEGAL RESIDENCY IN THE UNITED STATES | <input type="checkbox"/> 16. FALSE & FRAUDULENT STATEMENT                          |
| <input type="checkbox"/> 4. VENDOR CODE/W-9 TAX FORM                            | <input type="checkbox"/> 17. WAIVER OF EXCESS PAYMENT – (O)                        |
| <input type="checkbox"/> 5. SUBJECT PROPERTY & PHOTO                            | <input type="checkbox"/> 18. PAYMENT CLAIM FORM                                    |
| <input type="checkbox"/> 6. COMPARABLE LISTING & PHOTOS (3)                     | <input type="checkbox"/> 19. RELOC. & DISLOC. CLAIM FORM                           |
| <input type="checkbox"/> 7. REPLACEMENT HOUSING COMP. (P/R)                     | <input type="checkbox"/> 20. BRD. VOTE FOR M & D, FIXED RATE OR ACTUAL MOVING COST |
| <input type="checkbox"/> 8. BOARD OF COMMISSIONER'S VOTE                        | <input type="checkbox"/> 21. REQUEST FOR ASSIGNMENT OF FUNDS                       |
| <input type="checkbox"/> 9. LETTER RE. RHS ELIGIBLE AMOUNT                      | <input type="checkbox"/> 22. MOVER'S ESTIMATES (2)                                 |
| <input type="checkbox"/> 10. REPLACEMENT PROPERTY & PHOTO                       | <input type="checkbox"/> 23. PAYMENT VOUCHER/COPY OF CHECK                         |
| <input type="checkbox"/> 11. D.S.S. INSPECTION                                  | <input type="checkbox"/> 24. 700 REPORT FORMS                                      |
| <input type="checkbox"/> 12. AFFIRMATION OF RENT (T)                            | <input type="checkbox"/> 25. VACATE FORM TO PROPERTY MGMT.                         |
| <input type="checkbox"/> 13. INCIDENTAL EXPENSES (O)                            | <input type="checkbox"/> 26. ABANDONMENT OF PERS. PROPERTY FORM                    |

**RELOCATION AGENT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**MassDOT Highway Division  
Right of Way Bureau**

**Certificate of Legal Residency in the United States**

In accordance with Public Law 105-117, 105<sup>th</sup> Congress and Title 49, Code of Federal Regulation Part 24, all persons seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify that he/she and/or other members of the household are citizens, nationals or aliens who are lawfully present in the United States.

**Residential Displacements**

A. Individual: I certify that I am: a citizen of the United States \_\_\_\_\_

(or)

I certify that I am: an alien lawfully present in the United States \_\_\_\_\_

(or)

B. Family: I certify that there are \_\_\_\_\_ persons in my household and that are Citizens of the United States and \_\_\_\_\_ are aliens lawfully present in the United States.

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**Non-Residential Displacements**

C. Sole Proprietorship: I certify that I am a citizen of the United States \_\_\_\_\_

(or)

I am an alien lawfully present in the United States \_\_\_\_\_

(or)

I am a non-U.S. citizen not present in the United States\_\_\_\_\_

D. Partnership: I certify that there are \_\_\_\_\_ partners in the partnership and that \_\_\_\_\_ are citizens of the United States, \_\_\_\_\_ are aliens lawfully present in the United States, and \_\_\_\_\_ are non-U.S. citizens not present in the United States.

E. Corporations: I certify that \_\_\_\_\_ is established pursuant to MA State law and is authorized to conduct business in the U.S.

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(Your signature constitutes certification)

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(Date)

NOTE: The MassDOT Highway Division or its agents may request documentation or other credible evidence in addition to this certificate. In addition, inquiries to the Immigration and Naturalization Services (INS) may take place.

(EXHIBIT #17-68 – Revised 3/1/01)

## Chapter 18

## FEDERAL-AID POLICY GUIDE

December 9, 1991, Transmittal 1

23 CFR 751 OPI: HRW-10

## SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT

### PART 751 - JUNKYARD CONTROL AND ACQUISITION

Sec.

751.1 Purpose.

751.3 Applicability.

751.5 Policy.

751.7 Definitions.

751.9 Effective control.

751.11 Nonconforming junkyards.

751.13 Control measures.

751.15 Just compensation.

751.17 Federal participation.

751.19 Documentation for Federal participation.

751.21 Relocation assistance.

751.23 Concurrent junkyard control and right-of-way projects.

751.25 Programming and authorization.

Authority: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted. Source: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

#### **Sec. 751.1 Purpose.**

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein. [40 FR 12260, Mar. 18, 1975]

#### **Sec. 751.3 Applicability.**

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Inter-state Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such high-ways. This part does not apply to the Urban System.

#### **Sec. 751.5 Policy.**

In carrying out the purposes of this part:

- (a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);
- (b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and
- (c) Nonconforming junkyards should be relocated only as a last resort.

#### **Sec. 751.7 Definitions.**

For purposes of this part, the following definitions shall apply:

- (a) Junkyard. (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or

## EXHIBIT NO. 18-1

- (b) operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.
- (2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.
- (3) An Illegal Junkyard is one which was established or is maintained in violation of State law.
- (4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.
- (b) Junk. Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.
- (c) Main traveled way. The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
- (d) Industrial zones. Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of Part 750, Subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.
- (e) Unzoned industrial areas. An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

**Sec. 751.9 Effective control.**

- (a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:
- (1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.
- (2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).
- (3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section. **EXHIBIT NO. 18-1**

- (4) Expeditoriously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.
- (b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.
- (c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

#### **Sec. 751.11 Nonconforming junkyards.**

Subject to the provisions of Sec. 751.9 above, the following requirements for the maintenance and continuance of a non-conforming junkyard apply:

- (a) The junkyard must have been actually in existence at the time the State law or regulations became effective as distinguished from a contemplated use, except where a permit or similar specific State governmental action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.
- (b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyards, worthless junk, and the like are not similarly protected.
- (c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.
- (d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulations and must continue to be lawfully maintained.
- (e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.
- (f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

#### **Sec. 751.13 Control measures.**

- (a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose.
- (c) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site. **EXHIBIT NO. 18-1**

- c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used in fencing or screening.
- (d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.
- (e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

**Sec. 751.15 Just compensation.**

- (a) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.
- (b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in Sec. 751.11 must pertain at the time of the taking or removal in order to establish a right to just compensation.

**Sec. 751.17 Federal participation.**

- (a) Federal funds may participate in 75 percent of the costs of control measures incurred in carrying out the provisions of this part including necessary studies for particular projects, and the employment of fee landscape architects and other qualified consultants.
- (b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the costs of applying the State standards on a statewide basis. Where State standards require control of junkyards in zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, but such projects should be deferred until the work in the areas where control is required has progressed well toward completion.
- (c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements or temporary rights of entry, necessary to accomplish the purposes of this part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.
- (d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screening standards established in this Part or due to changed conditions.
- (e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the case of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable land rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where the acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost (cost of acquisition less a credit after disposal) of a site obtained for this purpose.

**EXHIBIT NO. 18-1**

- (f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to nonconforming under revised State regulations and policy pursuant to this part.
- (g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.
- (h) Federal funds shall not participate in:
  - (1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;
  - (2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;
  - (3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;
  - (4) Costs of maintaining screening devices after they have been erected; or
  - (5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

**Sec. 751.19 Documentation for Federal participation.**

The following information concerning each eligible junkyard must be available in the States' files to be eligible for Federal participation in the costs thereof:

- (a) Satisfactory evidence of ownership of the junk or junkyard or both.
- (b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.
- (c) Evidence that the necessary property interests have passed to the State and that the junk has been screened, relocated, removed or disposed of in accordance with the provisions of this part.
- (d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

**Sec. 751.21 Relocation assistance.**

Relocation assistance benefits pursuant to 49 CFR part 24 are available for:

- (a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, a payment in lieu of such expenses.
- (b) Relocation assistance in locating a replacement business.
- (c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.
- (d) Replacement housing payments if the acquisition of the dwelling is found by FHWA to be necessary for the federally assisted junkyard control project.

[40 FR 8551, Feb. 28, 1975, as amended at 50 FR 34094, Aug. 23, 1985; 54 FR 47076, Nov. 9, 1989]

**Sec. 751.23 Concurrent junkyard control and right-of-way projects.**

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

**EXHIBIT NO. 18-1**

**Sec. 751.25 Programming and authorization.**

- (a) Junkyard control projects shall be programmed in accordance with the provisions of Part 630, Subpart A of this chapter. Such projects may include one or more junkyards.
- (b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:
  - (1) The zoning and validation of the legal status of each junkyard on the project;
  - (2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;
  - (3) The real property interest to be acquired in order to implement the control measures;
  - (4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and
  - (5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

**EXHIBIT NO. 18-1**

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**TITLE XX.**  
**PUBLIC SAFETY AND GOOD ORDER.**

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**CHAPTER 140B. CONTROL OF CERTAIN JUNKYARDS.**

**Section 1. Definitions.**

Section 1. The following terms as used in this chapter shall, unless a different meaning clearly appears from the context, have the following meanings:

- (a) "Junk", old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
- (b) "Automobile graveyard", any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- (c) "Junkyard", an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.
- (d) "Interstate system", that portion of the national system of interstate and defense highways located within the commonwealth, as officially designated or as may hereafter be so designated, by the state department of highways, and approved by the Secretary of Commerce, pursuant to the provisions of Title 23, United States Code.
- (e) "Primary system", that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state department of highways, and approved by the Secretary of Commerce, pursuant to the provisions of Title 23, United States Code.
- (f) "Department", the state department of highways.
- (g) "Commissioner", the commissioner of the state department of highways.

**Section 2. Establishment or maintenance of junkyards; locations.**

Section 2. No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or primary highway, unless such junkyard is:

- (a) screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or otherwise removed from sight, or
- (b) located within an area which is zoned for industrial use under authority of law, or
- (c) located within an unzoned industrial area, which area shall be determined from actual land uses and defined by regulations promulgated by the commissioner, or
- (d) is not visible from the main traveled way of the system.

**Section 3. Rules and regulations.**

Section 3. The department may promulgate such rules and regulations governing the location, planting, construction and maintenance of the screens or fences, including the materials used in screening or fencing, as may be required by this chapter.

**EXHIBIT NO. 18-2**

**Section 4. Screening or relocation of junkyards.**

Section 4. If the department determines that the topography of the area adjoining the highway does not permit adequate screening of such junkyards or that the screening of such junkyards is not economically feasible, it may acquire by purchase or otherwise or take by eminent domain under chapter seventy-nine such land or interests in land as it deems necessary to secure the relocation, removal or disposal of the junkyards. The department shall pay the costs of such relocation, removal or disposal as approved by said department. If the department determines it to be in the best interests of the commonwealth, it may acquire by purchase or otherwise or take by eminent domain under chapter seventy-nine such land or interests in land as may be necessary to provide adequate screening of such junkyards.

**Section 5. Entry and inspection of junkyards.**

Section 5. The commissioner, or an agent authorized by him, may at any time enter upon any premises used by any person licensed to carry on business under section fifty-four or fifty-nine of chapter one hundred and forty to ascertain if such person is conducting said business in conformity with the provisions of section two.

**Section 6. Penalty for refusal to allow commissioner to enter.**

Section 6. A licensee under section fifty-four or fifty-nine of chapter one hundred and forty, or any other person in charge of the licensed premises, who refuses to allow the commissioner or his authorized agent to enter said premises, or any person who wilfully hinders, obstructs or prevents the commissioner or his authorized agent from entering said premises or from making the examination authorized by section five shall be punished by a fine of not more than two hundred dollars.

**Section 7. Non-conforming junkyard as nuisance; abatement.**

Section 7. Any junkyard which does not conform to the requirements of this chapter shall be deemed a nuisance and the department may make application to the superior court for the county in which such junkyard is established or maintained for an injunction to abate such nuisances.

**Section 8. Violation; enforcement penalties.**

Section 8. No person shall operate or maintain a junkyard in violation of the provisions of this chapter.

The state police and the police of the cities and towns shall enforce this chapter. Any person violating any provision of this chapter the punishment for which is not otherwise provided shall, upon conviction of the first offense, be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days, or both such fine and imprisonment; and shall upon conviction of a second or subsequent offense be fined not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment; provided, however, that any person who violates the provisions of this chapter and of section sixty-eight of chapter one hundred and forty shall be prosecuted in accordance with the provisions of said section sixty-eight and upon conviction be subject to the penalty provided in said section.

**EXHIBIT NO. 18-2**

**Section 9. Agreements with federal government.**

Section 9. The department is hereby authorized to enter into agreements with the Secretary of Commerce of the United States as provided by Title 23, United States Code, relative to the control of junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the commonwealth to comply with the terms of such agreement.

**Section 10. Expenditure of federal funds.**

Section 10. In order to carry out the purposes and provisions of this chapter and of Title II of the Federal Highway Beautification Act of 1965, the department may expend any funds made available for the laying out, construction, reconstruction, resurfacing, relocation or improvement of highways notwithstanding any provision of law to the contrary.

**EXHIBIT NO. 18-2**

**Right of Way Bureau**  
**JUNKYARD DATA**

CITY/TOWN _____		RTE. NO. _____		DIST _____	DATE _____
Location of Junkyard	Owner		License No. & Class	Zoning	Remarks
	Land	Junkyard			

ROW JC-1

MDH ROW AGENT

DATE

**MassDOT Highway Division**  
**Right of Way Bureau**  
**JUNKYARD INVENTORY**

---

CITY/TOWN \_\_\_\_\_ RTE. NO. \_\_\_\_\_ DIST \_\_\_\_\_ DATE \_\_\_\_\_

Locus \_\_\_\_\_  
\_\_\_\_\_

Owner Land \_\_\_\_\_

Owner Junkyard \_\_\_\_\_

Operator \_\_\_\_\_

Type of Operation \_\_\_\_\_  
\_\_\_\_\_

Extent of Land Use \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Zoning: Legal \_\_\_\_\_ Illegal \_\_\_\_\_

Type of License: Class I \_\_\_\_\_ Class II \_\_\_\_\_ Class III \_\_\_\_\_

Permit Numbers \_\_\_\_\_

Compiled By \_\_\_\_\_

PHOTOS

PHOTOS

---

MDH ROW AGENT

---

DATE

**LETTERHEAD**

Dear Sir:

It has been determined that you have established/operate/maintain a junkyard located at \_\_\_\_\_ in the City/Town of \_\_\_\_\_, in violation of Chapter 140B of the Massachusetts General Laws.

You are hereby given thirty days notice, commencing upon the date of receipt of notification of the violation, to conform with the provisions and requirements of the said Chapter 140B.

Attention is directed to the penalties of the law as stated in Section 8 of Chapter 140B.

Very truly yours,

Chief Engineer

**EXHIBIT NO. 18-5**

**ROW-JC-3**

M.G.L. - Chapter 93D, Section 7 GENERAL LAWS OF MASSACHUSETTS

TITLE XV.  
REGULATION OF TRADE.

CHAPTER 93D. CONTROL OF OUTDOOR ADVERTISING ADJACENT TO THE INTERSTATE AND PRIMARY HIGHWAY SYSTEMS.

Chapter 93D: Section 7. Federal agreements.

Section 7. The department is hereby authorized to enter into an agreement with the United States Secretary of Transportation, as provided by Title 23 of the United States Code, to establish standards for size, lighting and spacing of signs, displays and devices described in subsections (d) and (e) of section two, and to define an unzoned commercial or industrial area for the purposes of said section, and to take action in the name of the commonwealth to comply with the terms of such agreement.

The department is further authorized to enter into an agreement with the Secretary of Transportation as provided by said Title 23 of the United States Code, relating to the establishment of information centers at safety rest areas, and to take action in the name of the commonwealth to comply with the terms of such agreement.

EXHIBIT NO. 18-6

Federal Agreement

AGREEMENT FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM

THIS AGREEMENT made and entered into this thirty-first day of December, 1971, by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the ADMINISTRATOR and the Commonwealth of Massachusetts, acting by and through the Massachusetts Department of Public Works, hereinafter referred to as the DEPARTMENT.

WITNESSETH:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve beauty; and

WHEREAS, Section 131(d) of Title 23, United States Code authorizes the Secretary of Transportation to enter into agreements with the several states to determine the size, lighting and spacing of signs, displays and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas zoned industrial or commercial under authority of State Law or in unzoned commercial or industrial area, also to be determined by agreement, PROVIDED that wherever a bona fide State, County or Local Zoning authority has made a determination of customary use as to size, lighting and spacing, such determination may be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect the public investment on the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 30 of Chapter 81 of the General Laws authorizes the Department to make all contracts and agreements and do all other things necessary to cooperate with the United States in the construction and maintenance of highways, under an Act of Congress approved July 11, 1916 as amended and supplemented, and make any agreement or contracts that may be required to secure federal aid under said act or other acts in amendment thereof; and

WHEREAS, Article 50 of the Amendments of the Constitution of the Commonwealth of Massachusetts authorized the regulation of advertising on public way; in public places and on private property within public view; and

WHEREAS, Section 7 of Chapter 93D of the General Laws, as most recently enacted by Chapter 1070 of the Acts of 1971, authorizes the Department to enter into an agreement with the United States Secretary of Transportation, as provided by Title 23 of the United States Code, to establish standards for size, lighting, and spacing of outdoor advertising signs, displays and devices described in Subsection 2(d) and (e) of said Chapter 93D and to define an unzoned commercial or industrial area for the purpose of said subsections, and further authorized the Department to take action in the name of the Commonwealth of Massachusetts to comply with the terms of such agreement; and

WHEREAS, Section 7 of Chapter 93d of the General Laws, as most recently enacted by Chapter 1070 of the Acts of 1971, authorizes the Department to enter into an agreement with the United States Code, relating to the establishment of information centers as safety rest areas, and to take action in the name of the Commonwealth of Massachusetts to comply with the terms of such agreement; and

WHEREAS, Section 131(b) of Title 23, United States Code provides that Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate and primary system of outdoor advertising signs, displays and devices which are within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 percentum of the amounts which would otherwise be apportioned to such state under Section 104 of Title 23, United States Code until such time as such State shall provide for such effective control; and

WHEREAS, the DEPARTMENT desires to implement and carry out the provisions of Chapter 93D of the General Laws and of Section 131 of Title 23, United States Code and the national policy in order that the Commonwealth of Massachusetts will remain eligible to receive the full amount of all Federal-aid highway funds to be appropriated to such State on or after January 1, 1968 under Section 104 of Title 23, United States Code;

NOW THEREFORE, the parties hereto do mutually agree as follows:

DEFINITIONS:

ACT means Section 131 of Title 23, United States Code, commonly referred to as Title I of the Highway Beautification Act of 1965.

ZONED COMMERCIAL or INDUSTRIAL AREAS means those areas which are zoned for business, commerce or industry pursuant to local zoning ordinance, by-law, regulation or enabling State legislation.

UNZONED COMMERCIAL or INDUSTRIAL AREAS means any area within 660 feet of the nearest edge of the right-of-way of the Interstate and Federal-aid primary system which is not zoned by state or local law or ordinance, but which is used for commercial or industrial activity. A sign will be considered to be located within an unzoned commercial or industrial area if there are two or more separate businesses, industrial or commercial activities conducted on the property of the proposed location of the billboard, sign or other device or on other properties within a distance of 500 feet (measured from the nearest edge of the commercial or industrial activity) from such proposed location, including properties on the opposite side of the highway within 500 feet of a point thereon directly opposite such proposed location, except as the Outdoor Advertising Board may determine the area consisting of the portions of all properties within a distance of 500 feet from a point on the opposite side of the highway directly opposite such proposed location, to be predominantly residential or agricultural in use. Commercial or industrial activities for purposes of unzoned industrial and commercial areas shall mean those activities generally recognized as commercial or industrial by local zoning authorities in the state, except that none of the following activities shall be considered commercial or industrial:

Outdoor Advertising Structures;  
Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, the operation of wayside fresh produce stands;  
Transient or temporary activities;  
Activities more than 660 feet from the nearest edge of the right-of-way;  
Activities conducted in a building principally used as a residence;  
Activities not visible from the main traveled way;  
Railroad tracks and minor sidings;  
Activities normally and regularly in operation less than 3 months per year. Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of more than 9 months, than any signs located within the former unzoned areas shall become nonconforming;  
On Limited Access Highways, those activities which are directly accessible only therefrom;  
Dumps, gravel pits, and land fill operations.

INTERSTATE SYSTEM means that portion of the national system of interstate and defense highways located within the Commonwealth of Massachusetts, as officially designated, or as may hereafter so designated by the DEPARTMENT and approved by the Secretary of Transportation pursuant to the provisions of Title 23, United States Code.

FEDERAL-AID PRIMARY HIGHWAY SYSTEM means that portion of connected main highways as officially so designated or as may be hereafter so designated by the DEPARTMENT and approved by the Secretary of Transportation pursuant to Title 23, United States Code.

FREEWAY PRIMARY HIGHWAY SYSTEM means that part of the Federal aid primary highway system, which is subject to limited access restrictions.

TRAVELED WAY means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

MAIN-TRAVELED WAY means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions in a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

SIGN means any outdoor sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard or any other device designed, intended, or used to advertise or inform, any part of the advertising or informative content of which is visible from any place on the main-traveled way of an Interstate or primary highway.

STRUCTURE means any sign support device, including, but not limited to, buildings.

ERECT means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish; provided, however, that it shall not include any of the foregoing activities when they are performed incidentally in changing any advertising message or during the customary maintenance of the sign structure.

MAINTAIN means to change the advertising message, and to allow to exist in a state of good repair, and includes modification when modification is approved by the Outdoor Advertising Board.

MODIFICATION means any raising or lowering, changing of location or enlarging of any existing sign, only to bring into conformance with the approval of the Outdoor Advertising Board.

VISIBLE means capable of being seen without visual aid by a person of normal visual acuity.

ADJACENT AREA means an area which is contiguous to and within 660 feet to the nearest edge of the right-of-way of any Interstate or primary highway.

INFORMATION AREA means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing information in the specific interest of the traveling public; or informing the public of places of interest within the State, of maintaining maps, of permitting displays, including informational directories and advertising pamphlets, and of providing such other information as may be desirable under the supervision and control of the DEPARTMENT or other authorized agency of the Commonwealth.

REST AREA means an area or site established and maintained within the right-of-way of an Interstate or primary highway under supervision and control of the DEPARTMENT or other authorized agency of the Commonwealth for the convenience of the traveling public.

THICKLY SETTLED DISTRICT means a commercial or industrial zoned or unzoned area where business buildings or houses are less than 200 feet apart along the street for a quarter mile or over.

SCOPE OF AGREEMENT:

This agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate and primary system within the Commonwealth of Massachusetts in which outdoor advertising signs, displays and devices may be visible from the main traveled way of said systems.

**DEPARTMENT CONTROL:**

The DEPARTMENT hereby agrees that in all areas within the scope of this agreement, the DEPARTMENT shall effectively control, or cause to be controlled in accordance with law, the erection and maintenance of outdoor advertising signs, displays and devices lawfully in existence on or erected subsequent to the effective date of this agreement other than those advertising the sale or lease of the property on which they are located or activities conducted thereon in accordance with the following criteria:

Whenever a bona fide State, County or local zoning authority has made a determination of customary use as to size, lighting and spacing, such determination will be accepted in lieu of controls provided by this agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority; provided such determination is enforced and is consistent with the purposes of the Highway Beautification Act of 1965 and that the DEPARTMENT submits certification to the ADMINISTRATOR as notice of effective control.

In all other zoned and unzoned commercial and industrial areas, the following criteria shall apply:

**GENERAL**

The following signs shall not be permitted:

Signs which imitate or resemble any official traffic sign, signal or device.

Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

Signs which are structurally unsafe or in disrepair.

**SIZE OF SIGNS**

The maximum area for any advertising sign shall be 1200 square feet; the maximum length shall be 60 feet; the maximum height shall be 25 feet.

All dimensions include border, trim, cutouts, and extensions, but exclude base or apron supports and other structural members.

The area shall be measured by the smallest square, triangle, rectangle, circle or combination thereof which will encompass the entire advertising sign including any extensions or ornamentation's beyond usual border and trim.

Back-to-back signs will be considered as one structure with the maximum area, length and height permitted for each side.

A V-type sign structure will be considered as one structure so that the total combination areas, the total combined lengths, and height shall not exceed the maximum area, length or height permitted for a single sign.

**EXHIBIT NO. 18-6**

A sign structure may contain one or two signs facing the same direction if the total combined areas, combined lengths and heights do not exceed the maximum area, length or height permitted on a single sign.

#### SPACING OF SIGN STRUCTURES

The Interstate and Federal-Aid Primary Highway System:

Sign structures may not be located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

Signs may not be located within 300 feet of State or other public parks, playgrounds, forests, reservations, and scenic areas designated as such by the Department of Public Works or by any other State agency having and exercising the authority to so designate.

Interstate Highways and Freeway Primary Highways:

Spacing between signs along each side of the highways shall be a minimum of 500 feet.

No sign may be located adjacent to or within 500 feet of an interchange or intersection at grade, information center, or rest area measured along the Interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way. This subsection (b) does not apply in cities and towns of over 50,000 population.

Federal-Aid Primary Highways, Not Including Freeway Primary Highways:

Spacing between signs along each side of a highway in thickly settled districts shall be a minimum of 100 feet, but not in such concentration as to be determined to be "nesting" by the Outdoor Advertising Board.

In other than thickly settled districts, spacing between signs shall be a minimum of 100 feet, but not in such concentration as to be determined to be "nesting" by the Outdoor Advertising Board.

Explanatory Notes:

In any commercial or industrial zoned or unzoned area, as defined in this agreement, back-to-back or V-type signs will be permitted along Federal-aid primary highways and considered as one structure.

Spacing between sign structures does not apply where they are separated by a building or other obstruction so that only one sign structure is visible from any point on a highway at any one time, except on Interstate and Freeway Primary highways.

The above standards are to be considered the minimum standards for spacing and shall not prevent the Outdoor Advertising Board from enforcing standards which are more restrictive.

#### LIGHTING

Signs may be illuminated, but the following signs shall not be permitted:

Signs which contain, include or are illuminated by any flashing, intermittent, or moving light or lights, except those giving public service information such as time, date, temperature, weather or similar information.

Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle.

Signs which are so illuminated that they obscure or interfere with the color of effectiveness of an official traffic sign device or signal. Lighted signs shall also be subject to any other provisions relating to the lighting of advertising devices which are visible from highways under the jurisdiction of the Commonwealth.

#### INTERPRETATION:

The provisions contained herein shall constitute the minimum acceptable standards for effective control of signs, displays and devices within the scope of this agreement.

The standards and criteria set forth in Section III of this agreement shall apply to signs lawfully in existence on or erected subsequent to the effective date of this agreement.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress, the parties reserve the right to renegotiate this agreement or to modify it to conform with any amendment.

EFFECTIVE DATE: This agreement shall have an effective date of December 31, 1971.

#### ADDENDUM TO AGREEMENT

AMENDMENT TO AGREEMENT DATED DECEMBER 31, 1971, BY AND BETWEEN THE UNITED STATES OF AMERICA AND THE COMMONWEALTH OF MASSACHUSETTS FOR CARRYING OUT THE NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING.

WHEREAS, the Commonwealth of Massachusetts is desirous of exempting from compliance with the criteria of the agreement those outdoor advertising signs which were legally erected in the agreed upon commercial and industrial areas prior to December 31, 1971, effective day of the agreement.

NOW THEREFORE, the parties agree that this agreement shall be and is hereby amended, as follows:

1.) Strike the section entitles "II - SCOPE OF AGREEMENT" in December 31, 1971 agreement and insert in place thereof, the following:

#### II. SCOPE OF AGREEMENT:

This agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate and primary systems within the Commonwealth of Massachusetts and in which areas outdoor advertising signs, displays and devices erected in such commercial and industrial areas subsequent to December 31, 1971. This agreement shall not apply to outdoor advertising signs, displays and devices lawfully in existence in such unzoned or zoned commercial and industrial areas on December 31, 1971, if such sign, display or device is still in existence on the effective date of this addendum (September 25th, 1980)

EXHIBIT NO. 18-6

2.) In the section entitled "IV. INTERPRETATION" in the December 31, 1971, agreement, strike the second paragraph and insert in place therefor the following:

"The standards and criteria set forth in Section III of this agreement shall apply to signs erected subsequent to the effective date of this agreement."

IN WITNESS WHEREOF, the Commonwealth of Massachusetts has caused this addendum to be duly in its name and behalf by its Department of Public Works under authority of Chapter 93D, of the General Laws of Massachusetts and the United States has caused the same to be duly signed in its name and behalf by the United States Department of Transportation as of the dates specified.

The effective date of this addendum is the 25th day of September 1980.

This Page Last Updated Aug-2-2000

**EXHIBIT NO. 18-6**

M.G.L. - Chapter 93D, Section 7 GENERAL LAWS OF MASSACHUSETTS

TITLE XV.  
REGULATION OF TRADE.

CHAPTER 93D. CONTROL OF OUTDOOR ADVERTISING ADJACENT TO THE INTERSTATE AND PRIMARY HIGHWAY SYSTEMS.

Chapter 93D: Section 7. Federal agreements.

Section 7. The department is hereby authorized to enter into an agreement with the United States Secretary of Transportation, as provided by Title 23 of the United States Code, to establish standards for size, lighting and spacing of signs, displays and devices described in subsections (d) and (e) of section two, and to define an unzoned commercial or industrial area for the purposes of said section, and to take action in the name of the commonwealth to comply with the terms of such agreement.

The department is further authorized to enter into an agreement with the Secretary of Transportation as provided by said Title 23 of the United States Code, relating to the establishment of information centers at safety rest areas, and to take action in the name of the commonwealth to comply with the terms of such agreement.

EXHIBIT NO. 18-7

Federal Agreement

AGREEMENT FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM

THIS AGREEMENT made and entered into this thirty-first day of December, 1971, by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the ADMINISTRATOR and the Commonwealth of Massachusetts, acting by and through the Massachusetts Department of Public Works, hereinafter referred to as the DEPARTMENT.

WITNESSETH:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve beauty; and

WHEREAS, Section 131(d) of Title 23, United States Code authorizes the Secretary of Transportation to enter into agreements with the several states to determine the size, lighting and spacing of signs, displays and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas zoned industrial or commercial under authority of State Law or in unzoned commercial or industrial area, also to be determined by agreement, PROVIDED that wherever a bona fide State, County or Local Zoning authority has made a determination of customary use as to size, lighting and spacing, such determination may be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect the public investment on the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 30 of Chapter 81 of the General Laws authorizes the Department to make all contracts and agreements and do all other things necessary to cooperate with the United States in the construction and maintenance of highways, under an Act of Congress approved July 11, 1916 as amended and supplemented, and make any agreement or contracts that may be required to secure federal aid under said act or other acts in amendment thereof; and

WHEREAS, Article 50 of the Amendments of the Constitution of the Commonwealth of Massachusetts authorized the regulation of advertising on public way; in public places and on private property within public view; and

WHEREAS, Section 7 of Chapter 93D of the General Laws, as most recently enacted by Chapter 1070 of the Acts of 1971, authorizes the Department to enter into an agreement with the United States Secretary of Transportation, as provided by Title 23 of the United States Code, to establish standards for size, lighting, and spacing of outdoor advertising signs, displays and devices described in Subsection 2(d) and (e) of said Chapter 93D and to define an unzoned commercial or industrial area for the purpose of said subsections, and further authorized the Department to take action in the name of the Commonwealth of Massachusetts to comply with the terms of such agreement; and

WHEREAS, Section 7 of Chapter 93d of the General Laws, as most recently enacted by Chapter 1070 of the Acts of 1971, authorizes the Department to enter into an agreement with the United States Code, relating to the establishment of information centers as safety rest areas, and to take action in the name of the Commonwealth of Massachusetts to comply with the terms of such agreement; and

WHEREAS, Section 131(b) of Title 23, United States Code provides that Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate and primary system of outdoor advertising signs, displays and devices which are within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 percentum of the amounts which would otherwise be apportioned to such state under Section 104 of Title 23, United States Code until such time as such State shall provide for such effective control; and

WHEREAS, the DEPARTMENT desires to implement and carry out the provisions of Chapter 93D of the General Laws and of Section 131 of Title 23, United States Code and the national policy in order that the Commonwealth of Massachusetts will remain eligible to receive the full amount of all Federal-aid highway funds to be appropriated to such State on or after January 1, 1968 under Section 104 of Title 23, United States Code;

NOW THEREFORE, the parties hereto do mutually agree as follows:

DEFINITIONS:

ACT means Section 131 of Title 23, United States Code, commonly referred to as Title I of the Highway Beautification Act of 1965.

ZONED COMMERCIAL or INDUSTRIAL AREAS means those areas which are zoned for business, commerce or industry pursuant to local zoning ordinance, by-law, regulation or enabling State legislation.

UNZONED COMMERCIAL or INDUSTRIAL AREAS means any area within 660 feet of the nearest edge of the right-of-way of the Interstate and Federal-aid primary system which is not zoned by state or local law or ordinance, but which is used for commercial or industrial activity. A sign will be considered to be located within an unzoned commercial or industrial area if there are two or more separate businesses, industrial or commercial activities conducted on the property of the proposed location of the billboard, sign or other device or on other properties within a distance of 500 feet (measured from the nearest edge of the commercial or industrial activity) from such proposed location, including properties on the opposite side of the highway within 500 feet of a point thereon directly opposite such proposed location, except as the Outdoor Advertising Board may determine the area consisting of the portions of all properties within a distance of 500 feet from a point on the opposite side of the highway directly opposite such proposed location, to be predominantly residential or agricultural in use. Commercial or industrial activities for purposes of unzoned industrial and commercial areas shall mean those activities generally recognized as commercial or industrial by local zoning authorities in the state, except that none of the following activities shall be considered commercial or industrial:

Outdoor Advertising Structures;  
Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, the operation of wayside fresh produce stands;  
Transient or temporary activities;  
Activities more than 660 feet from the nearest edge of the right-of-way;  
Activities conducted in a building principally used as a residence;  
Activities not visible from the main traveled way;  
Railroad tracks and minor sidings;  
Activities normally and regularly in operation less than 3 months per year. Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of more than 9 months, than any signs located within the former unzoned areas shall become nonconforming;  
On Limited Access Highways, those activities which are directly accessible only therefrom;  
Dumps, gravel pits, and land fill operations.

INTERSTATE SYSTEM means that portion of the national system of interstate and defense highways located within the Commonwealth of Massachusetts, as officially designated, or as may hereafter so designated by the DEPARTMENT and approved by the Secretary of Transportation pursuant to the provisions of Title 23, United States Code.

FEDERAL-AID PRIMARY HIGHWAY SYSTEM means that portion of connected main highways as officially so designated or as may be hereafter so designated by the DEPARTMENT and approved by the Secretary of Transportation pursuant to Title 23, United States Code.

FREEWAY PRIMARY HIGHWAY SYSTEM means that part of the Federal aid primary highway system, which is subject to limited access restrictions.

TRAVELED WAY means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

MAIN-TRAVELED WAY means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions in a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

SIGN means any outdoor sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard or any other device designed, intended, or used to advertise or inform, any part of the advertising or informative content of which is visible from any place on the main-traveled way of an Interstate or primary highway.

STRUCTURE means any sign support device, including, but not limited to, buildings.

ERECT means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish; provided, however, that it shall not include any of the foregoing activities when they are performed incidentally in changing any advertising message or during the customary maintenance of the sign structure.

MAINTAIN means to change the advertising message, and to allow to exist in a state of good repair, and includes modification when modification is approved by the Outdoor Advertising Board.

MODIFICATION means any raising or lowering, changing of location or enlarging of any existing sign, only to bring into conformance with the approval of the Outdoor Advertising Board.

VISIBLE means capable of being seen without visual aid by a person of normal visual acuity.

ADJACENT AREA means an area which is contiguous to and within 660 feet to the nearest edge of the right-of-way of any Interstate or primary highway.

INFORMATION AREA means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing information in the specific interest of the traveling public; or informing the public of places of interest within the State, of maintaining maps, of permitting displays, including informational directories and advertising pamphlets, and of providing such other information as may be desirable under the supervision and control of the DEPARTMENT or other authorized agency of the Commonwealth.

REST AREA means an area or site established and maintained within the right-of-way of an Interstate or primary highway under supervision and control of the DEPARTMENT or other authorized agency of the Commonwealth for the convenience of the traveling public.

THICKLY SETTLED DISTRICT means a commercial or industrial zoned or unzoned area where business buildings or houses are less than 200 feet apart along the street for a quarter mile or over.

SCOPE OF AGREEMENT:

This agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate and primary system within the Commonwealth of Massachusetts in which outdoor advertising signs, displays and devices may be visible from the main traveled way of said systems.

EXHIBIT NO. 18-7

**DEPARTMENT CONTROL:**

The DEPARTMENT hereby agrees that in all areas within the scope of this agreement, the DEPARTMENT shall effectively control, or cause to be controlled in accordance with law, the erection and maintenance of outdoor advertising signs, displays and devices lawfully in existence on or erected subsequent to the effective date of this agreement other than those advertising the sale or lease of the property on which they are located or activities conducted thereon in accordance with the following criteria:

Whenever a bona fide State, County or local zoning authority has made a determination of customary use as to size, lighting and spacing, such determination will be accepted in lieu of controls provided by this agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority; provided such determination is enforced and is consistent with the purposes of the Highway Beautification Act of 1965 and that the DEPARTMENT submits certification to the ADMINISTRATOR as notice of effective control.

In all other zoned and unzoned commercial and industrial areas, the following criteria shall apply:

**GENERAL**

The following signs shall not be permitted:

Signs which imitate or resemble any official traffic sign, signal or device.

Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

Signs which are structurally unsafe or in disrepair.

**SIZE OF SIGNS**

The maximum area for any advertising sign shall be 1200 square feet; the maximum length shall be 60 feet; the maximum height shall be 25 feet.

All dimensions include border, trim, cutouts, and extensions, but exclude base or apron supports and other structural members.

The area shall be measured by the smallest square, triangle, rectangle, circle or combination thereof which will encompass the entire advertising sign including any extensions or ornamentation's beyond usual border and trim.

Back-to-back signs will be considered as one structure with the maximum area, length and height permitted for each side.

A V-type sign structure will be considered as one structure so that the total combination areas, the total combined lengths, and height shall not exceed the maximum area, length or height permitted for a single sign.

**EXHIBIT NO. 18-7**

A sign structure may contain one or two signs facing the same direction if the total combined areas, combined lengths and heights do not exceed the maximum area, length or height permitted on a single sign.

#### SPACING OF SIGN STRUCTURES

The Interstate and Federal-Aid Primary Highway System:

Sign structures may not be located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

Signs may not be located within 300 feet of State or other public parks, playgrounds, forests, reservations, and scenic areas designated as such by the Department of Public Works or by any other State agency having and exercising the authority to so designate.

Interstate Highways and Freeway Primary Highways:

Spacing between signs along each side of the highways shall be a minimum of 500 feet.

No sign may be located adjacent to or within 500 feet of an interchange or intersection at grade, information center, or rest area measured along the Interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way. This subsection (b) does not apply in cities and towns of over 50,000 population.

Federal-Aid Primary Highways, Not Including Freeway Primary Highways:

Spacing between signs along each side of a highway in thickly settled districts shall be a minimum of 100 feet, but not in such concentration as to be determined to be "nesting" by the Outdoor Advertising Board.

In other than thickly settled districts, spacing between signs shall be a minimum of 100 feet, but not in such concentration as to be determined to be "nesting" by the Outdoor Advertising Board.

Explanatory Notes:

In any commercial or industrial zoned or unzoned area, as defined in this agreement, back-to-back or V-type signs will be permitted along Federal-aid primary highways and considered as one structure.

Spacing between sign structures does not apply where they are separated by a building or other obstruction so that only one sign structure is visible from any point on a highway at any one time, except on Interstate and Freeway Primary highways.

The above standards are to be considered the minimum standards for spacing and shall not prevent the Outdoor Advertising Board from enforcing standards which are more restrictive.

#### LIGHTING

Signs may be illuminated, but the following signs shall not be permitted:

Signs which contain, include or are illuminated by any flashing, intermittent, or moving light or lights, except those giving public service information such as time, date, temperature, weather or similar information.

Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle.

Signs which are so illuminated that they obscure or interfere with the color of effectiveness of an official traffic sign device or signal. Lighted signs shall also be subject to any other provisions relating to the lighting of advertising devices which are visible from highways under the jurisdiction of the Commonwealth.

#### INTERPRETATION:

The provisions contained herein shall constitute the minimum acceptable standards for effective control of signs, displays and devices within the scope of this agreement.

The standards and criteria set forth in Section III of this agreement shall apply to signs lawfully in existence on or erected subsequent to the effective date of this agreement.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress, the parties reserve the right to renegotiate this agreement or to modify it to conform with any amendment.

EFFECTIVE DATE: This agreement shall have an effective date of December 31, 1971.

#### ADDENDUM TO AGREEMENT

AMENDMENT TO AGREEMENT DATED DECEMBER 31, 1971, BY AND BETWEEN THE UNITED STATES OF AMERICA AND THE COMMONWEALTH OF MASSACHUSETTS FOR CARRYING OUT THE NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING.

WHEREAS, the Commonwealth of Massachusetts is desirous of exempting from compliance with the criteria of the agreement those outdoor advertising signs which were legally erected in the agreed upon commercial and industrial areas prior to December 31, 1971, effective day of the agreement.

NOW THEREFORE, the parties agree that this agreement shall be and is hereby amended, as follows:

1.) Strike the section entitles "II - SCOPE OF AGREEMENT" in December 31, 1971 agreement and insert in place thereof, the following:

#### II. SCOPE OF AGREEMENT:

This agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate and primary systems within the Commonwealth of Massachusetts and in which areas outdoor advertising signs, displays and devices erected in such commercial and industrial areas subsequent to December 31, 1971. This agreement shall not apply to outdoor advertising signs, displays and devices lawfully in existence in such unzoned or zoned commercial and industrial areas on December 31, 1971, if such sign, display or device is still in existence on the effective date of this addendum (September 25th, 1980)

**EXHIBIT NO. 18-7**

2.) In the section entitled "IV. INTERPRETATION" in the December 31, 1971, agreement, strike the second paragraph and insert in place therefor the following:

"The standards and criteria set forth in Section III of this agreement shall apply to signs erected subsequent to the effective date of this agreement."

IN WITNESS WHEREOF, the Commonwealth of Massachusetts has caused this addendum to be duly in its name and behalf by its Department of Public Works under authority of Chapter 93D, of the General Laws of Massachusetts and the United States has caused the same to be duly signed in its name and behalf by the United States Department of Transportation as of the dates specified.

The effective date of this addendum is the 25th day of September 1980.

This Page Last Updated Aug-2-2000

**EXHIBIT NO. 18-7**

**MassDOT Highway Division**

**Right of Way Bureau**

**SIGN DATA      OUTDOOR ADVERTISING**

CITY/TOWN \_\_\_\_\_ COUNTY \_\_\_\_\_ ROUTE \_\_\_\_\_ DIST \_\_\_\_\_ DATE \_\_\_\_\_

Location of Sign \_\_\_\_\_

Owner of Sign \_\_\_\_\_

Address \_\_\_\_\_

Owner of Land \_\_\_\_\_

Address \_\_\_\_\_

Determination of Legality: Legal \_\_\_\_\_ 'Illegal \_\_\_\_\_

Size \_\_\_\_\_ Feet X \_\_\_\_\_ Feet

Height Above Ground \_\_\_\_\_ Feet

Zoning \_\_\_\_\_

Notice to Remove: Date Sent:

To owner of sign \_\_\_\_\_

To owner of land \_\_\_\_\_

Action:

By owner of sign \_\_\_\_\_

By owner of land \_\_\_\_\_

By Commonwealth \_\_\_\_\_

Final Disposition \_\_\_\_\_

PHOTO

MDH ROW AGENT

DATE

**LETTERHEAD**

Dear Sir:

It has been determined that you are the owner of a sign located at:

Under the provisions of Chapter 93D of the Massachusetts General Laws it has been established that the sign is illegal and as such constitutes a public nuisance. Notice is hereby given as provided by Chapter III, Sections 123 to 125 inclusive, requiring its removal within 3 days of receipt of this notice. Attention is directed to the penalties assessable for noncompliance.

If the sign is not removed within this period it will be removed by MassDOT Highway Division personnel and the cost of the removal will be billed to you.

Very truly yours,

District Highway Director

Date served \_\_\_\_\_ By \_\_\_\_\_

By Certified Mail (  )

Personal Service (  )

Leaving at Residence or Business Address (  )

**EXHIBIT 18-10**

**LETTERHEAD**

Dear Sir:

It has been determined that you are the ( ) owner of property ( ) owner of sign located at:

Under the provisions of Chapter 93D of the Massachusetts General Laws it has been established that the sign is illegal and as such constitutes a public nuisance. Notice is hereby given as provided by Chapter III, Sections 123 to 125 inclusive, requiring its removal within 15 days of the mailing of this order. Attention is directed to the penalties for non-compliance.

If the sign is not removed within this period it will be removed by MassDOT Highway Division personnel and the cost of the removal will be billed to you.

Very truly yours,

Chief Engineer

Certified Mail  
Return Receipt Requested

**EXHIBIT NO. 18-11**

## **LETTERHEAD**

District Highway Director  
District \_\_\_\_\_  
Address

Please be advised that the 15 day removal notice period has expired for the owner of sign located at:

Under the provisions of Chapter 93D of the Massachusetts General Laws it has been established that the sign is illegal and as such constitutes a public nuisance. Notice has been given as provided by Chapter III, Sections 123 to 125 inclusive, requiring its removal within 15 days.

The sign was not removed within that period. You are hereby instructed to provide for it's immediate removal.

Very truly yours,

Chief Engineer

## **EXHIBIT NO. 18-12**

## **LETTERHEAD**

Dear Sir:

In response to your request for an opinion as to the validity of issuing a sign permit to the following listed applicants in connection with the limiting aspects of the Massachusetts General Laws (MGL) Chapter 93D and the Federal/State Agreement Criteria for signs located within a business or commercially zoned area, a diligent inspection of the area and review of the application indicate:

1. The following sign applications, if approved, will not violate the provisions of either M.G.L. Chapter 93D or the Federal/State Agreement Criteria:

<u>Application Number</u>	<u>Applicant</u>
---------------------------	------------------

2. The following sign applications, if approved, will violate the provisions of M.G.L. Chapter 93D for the below stated reason:

<u>Application Number</u>	<u>Applicant</u>
---------------------------	------------------

3. The following sign applications, if approved, will violate the provisions of the Federal/State Agreement Criteria for the below stated reason:

<u>Application Number</u>	<u>Applicant</u>
---------------------------	------------------

4. The following sign applications have been determined to be outside the control areas specified in M.G.L. Chapter 93D and therefore the Department considers the permit application and possible insurance to be the sole responsibility of the Outdoor Advertising Board:

<u>Application Number</u>	<u>Applicant</u>
---------------------------	------------------

In addition, it is the Division's position that the issuance of a permit for signs listed in section 1. above is the sole responsibility of the Outdoor Advertising Section and the finding of the Division that the proposal does not violate the law or the Federal/State Agreement Criteria should not in any way be construed as approval for issuance of the permit or as a directive to issue the permit.

Very truly yours,

Chief Engineer

## **EXHIBIT NO. 18-13**

## Chapter 19



## Commonwealth of Massachusetts

MassDOT Highway Division

### Individual Structure Record

City/Town: \_\_\_\_\_ Route: \_\_\_\_\_ Layout: \_\_\_\_\_ Date: \_\_\_\_\_ Recorded: \_\_\_\_\_

Address of Property: \_\_\_\_\_ PROJIS/PARS# \_\_\_\_\_

Parcel No.: \_\_\_\_\_ Former Owner: \_\_\_\_\_ F.A.P. No.: \_\_\_\_\_

Type of Structure - Residential Commercial Industrial Special Purpose

<u>General Description and Condition</u>		<u>STRUCTURE</u>
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
<u>Inspected By:</u> _____	<u>Date:</u> _____	

Recommendations for Rental or Disposal: \_\_\_\_\_

<u>Purchase -</u>	<u>Yes</u>	<u>No</u>	<u>Buy Back Figure</u>	<u>\$</u>	<u>Approved By</u>	<u>Date</u>	<u>To Owner</u>
<u>Concurrence by Owner</u>		<u>Offer to Board</u>		<u>Approved</u>	<u>Owner Notified</u>		
<u>Payment Rec'd</u>	_____	<u>Surety Rec'd</u>	_____	<u>Amount</u>	<u>\$</u>	<u>To be Removed By</u>	<u>Cleared</u>

Site Inspected By \_\_\_\_\_ Date \_\_\_\_\_ Surety Returned to Owner \_\_\_\_\_  
Remarks \_\_\_\_\_

Sealed Bids- Yes No Minimum Acceptable Bid \$ Advertised \_\_\_\_\_ Publication/s \_\_\_\_\_  
Bids Opened \_\_\_\_\_ No. Received \_\_\_\_\_ High Bidder \_\_\_\_\_ Amount of Bid \_\_\_\_\_ \$ \_\_\_\_\_  
Address of High Bidder \_\_\_\_\_ Amount of Surety \_\_\_\_\_ \$ \_\_\_\_\_  
Submitted to Board \_\_\_\_\_ Approved \_\_\_\_\_ Removal Completion Date \_\_\_\_\_ Actual Compl Date \_\_\_\_\_  
Site Inspected Date \_\_\_\_\_ Date \_\_\_\_\_ Surety Returned \_\_\_\_\_  
Remarks \_\_\_\_\_

Rentals- Yes No No. of Units \_\_\_\_\_ (See Rental and Lease Card)  
Rental Term Expiration Date \_\_\_\_\_ Building Vacated \_\_\_\_\_

Demolition - Yes No To be Vacated By \_\_\_\_\_ Eviction Necessary \_\_\_\_\_ Eviction Notice Sent \_\_\_\_\_  
Remarks \_\_\_\_\_

Actual Vacancy Date \_\_\_\_\_ Released for Demolition \_\_\_\_\_

Remarks - (Special Problems) \_\_\_\_\_

EXHIBIT NO. 19-1

## MASTER STRUCTURE SPREAD SHEET

EXHIBIT 19-2

## MASTER STRUCTURE SPREAD SHEET

Commonwealth of Massachusetts  
MassDOT Highway Division

Right of Way Bureau

**INTEROFFICE MEMORANDUM**

**TO:** , Property Management Administrator

**FROM:** , Property Management Agent

**DATE:**

**RE:** Structure Recommendation

---

The property management section has completed the securing the structure and shutting off the utilities at 8 Spring Street in the town of Carver. Due to the fair condition and good construction of the house I am recommending:

Sale to the former owner.

Sale by sealed bid.

Demolition.

Should you have any questions I can be reached at X - .

**EXHIBIT NO. 19-3**

**THE COMMONWEALTH OF MASSACHUSETTS**  
**MASSDOT HIGHWAY DIVISION**  
**INTEROFFICE MEMORANDUM**

---

TO: , Construction Engineer  
FROM: , Deputy Director, ROW Bureau  
DATE:  
RE: RELEASE OF STRUCTURE(S) FOR DEMOLITION

---

CITY/TOWN:	PROJECT:
FAP#:	PROJIS/PARS#:
PARCEL #	STRUCTURE DESCRIPTION
ITEM # FORMER OWNER	
PROPERTY ADDRESS	
=====	
112.01	

Prepared by Structures Manager

Deputy Director  
Right of Way Bureau

cc: F.H.W.A.  
Property Management (3)  
District Highway Director

Exhibit no. 19-3A

MASSDOT HIGHWAY DIVISION  
**RIGHT OF WAY BUREAU**  
**PROPERTY MANAGEMENT REPORT**

TOWN/CITY \_\_\_\_\_ PROJECT \_\_\_\_\_  
FAP#: \_\_\_\_\_ PARS/PROJIS# \_\_\_\_\_  
PARCEL (S) \_\_\_\_\_ CONTACT WITH \_\_\_\_\_  
DATE \_\_\_\_\_ TIME \_\_\_\_\_ BY: PHONE \_\_\_\_\_ VISIT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROPERTY MANAGEMENT REPRESENTATIVE

EXHIBIT NO 19-4

# SERVICE CONTRACT INPUT FORM

# COMMONWEALTH OF MASSACHUSETTS COMPTROLLER'S DIVISION

DEPARTMENT/ORGANIZATION NAME MASSACHUSETTS HIGHWAY DEPT. -							ROW BUREAU									
<b>DOCUMENT ID</b>																
TRANS SC	DEPT DPW	R/ORG	NUMBER	SM DATE	ACCTG PRD	BUD FY	ACTION: E	ENTRY (E)								
VENDOR CODE:			NAME:				COMMENTS:		VEND TYPE:		25					
READY PAYMENT NUMBER:			READY PAYMENT START DATE:			READY PAYMENT END DATE:										
DOCUMENT TOTAL:		CONTRACT RENEWAL AMOUNT:			FY OUTSIDE PAYMENT:		ANNUALIZATION:									
<b>REFERENCED DOC ID</b>																
LN	TRANS	DEPT DPW	ORG	NUMBER	LN	REF SERVICE AGMT:		DEPT	ORG	S/ORG	APPROP		SUB	OBJ	S/OBJ	PROG
	STATUS	TY	PROJ/CL/GRC	RPTG	S/CODE	S/UNIT	DATES OF SERVICE		OUT-YR OBLIGATION							
	NUM UNITS		I/D	RATE			I/D	LINE AMOUNT			I/D	P/F	READY PAYMENT:			
	1															
<b>REFERENCED DOC ID</b>																
LN	TRANS	DEPT	ORG	NUMBER	LN	REF SERVICE AGMT		DEPT	ORG	S/ORG	APPROP		SUB	OBJ	S/OBJ	PROG
	STATUS	TY	PROJ/CL/GRC	RPTG	S/CODE	S/UNIT	DATES OF SERVICE		OUT-YR OBLIGATION							
	NUM UNITS		I/D	RATE			I/D	LINE AMOUNT			I/D	P/F	READY PAYMENT:			
	1															
<b>REFERENCED DOC ID</b>																
LN	TRANS	DEPT	ORG	NUMBER	LN	REF SERVICE AGMT		DEPT	ORG	S/ORG	APPROP		SUB	OBJ	S/OBJ	PROG
	STATUS	TY	PROJ/CL/GRC	RPTG	S/CODE	S/UNIT	DATES OF SERVICE		OUT-YR OBLIGATION							
	NUM UNITS		I/D	RATE			I/D	LINE AMOUNT			I/D	P/F	READY PAYMENT:			
THE UNDERSIGNED AUTHORIZED SIGNATORY APPROVING THIS DOCUMENT CERTIFIES THAT THIS AND ANY ATTACHMENTS ARE ACCURATE AND COMPLETE AND COMPLY WITH ALL GENERAL & SPECIAL LAWS AND REGULATIONS.																
PREPARED BY: _____ TITLE: _____ DATE: _____ APPROVED BY: _____ TITLE: _____ DATE: _____ ENTERED BY: _____ TITLE: _____ DATE: _____																
PAGE ____ OF ____																



DEVAL L. PATRICK

GOVERNOR

TIMOTHY P. MURRAY

LT. GOVERNOR

JEFFREY B. MULLAN

SECRETARY & CEO



November 10, 2009

AC091110.FV

**CHELMSFORD:** Request to Purchase Commonwealth-owned Property  
Route 3 North @ Billerica Road

Mr.  
Company  
Road  
, Massachusetts

Dear:

We are in receipt of your correspondence and accompanying information, relative to your request to purchase a parcel of MassDOT-owned property, located off Route 3 North, at Billerica Road, in Chelmsford, Massachusetts.

Please be advised, if you wish to proceed with this request, this letter details the steps we are required to follow, in order for this land to be declared as surplus to the future needs of the Massachusetts Department of Transportation (MassDOT).

Upon receipt of your deposit check and a signed copy of this letter, we will begin an internal survey or "canvass" of other sections of the MassDOT Highway Division, to insure that the land you are interested in is no longer needed for highway or highway-related purposes. If there are no objections to that canvass, we will make a recommendation to the Division Administrator, to declare the property "surplus to MassDOT needs", and then refer the request to our real estate section within the Massachusetts Department of Transportation (MassDOT). MassDOT has been given the authority to administer the public bidding statutes in connection with the disposition of all surplus land under our jurisdiction.

The Office of Real Estate and Asset Development will prepare a Request for Proposal (RFP), the availability of which will be advertised for three (3) consecutive weeks in a newspaper publication in the city or town where the affected property is located. The RFP will also be available for any abutter or other interested party. All sealed bids will be received in the Office of Real Estate and will be opened on a specific date and time, designated within the initial RFP packet. The property is then awarded to the entity designated by the Office of Real Estate as the "most qualified bidder".

MassDOT must have the property appraised for its highest and best use, the expense of which shall be paid for by the successful bidder. We may also require Federal Highway Administration approval, if Federal Highway funds were involved with the original acquisition of this property.

**EXHIBIT NO. 19-6**

**Request to Purchase Commonwealth-owned Property**

[www.mass.gov/massdot](http://www.mass.gov/massdot)

TEN PARK PLAZA • BOSTON, MA 02116-3969 • PHONE: 617.973.7000 • FAX: 617.973.8031 • TDD: 617.973.7306

**Off Route 3 North @ Billerica Road  
November 10, 2009**

If you are successful in acquiring this property, a revised highway alteration layout plan and written instrument, together with a parcel description which meets MassDOT layout specifications, will also be required to be prepared by a certified engineer, also at your expense.

Following approval of the alteration plan, MassDOT will then prepare a deed and other required documents and the transaction documents are recorded at the appropriate Registry of Deeds.

We require an initial deposit of \$500.00, in order to cover the cost of processing this request. The deposit is refundable and will be applied to the purchase price if you are successful in this action, or returned if you are not successful in this matter. Please sign and return a copy of this letter, along with the deposit check, acknowledging your understanding of this process.

The check must be made payable to the Massachusetts Department of Transportation and mailed to my attention at:

MassDOT / Right of Way Bureau  
Ten Park Plaza - Room 6160  
Boston, Massachusetts 02116

I have assigned your request to Right of Way Agent, XXXX. If you have any further questions regarding this process, you may call Mr. XXXX directly during regular business hours, at (617) 973-XXXX.

The Massachusetts Department of Transportation thanks you for your interest in potentially acquiring this property and welcomes the opportunity to be of service to you.

Sincerely,

Property Management Administrator  
MHD/Right of Way Bureau

cc: Peter O'Connor, Deputy Administrator for Real Estate

Your Signature: \_\_\_\_\_

Phone # \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT NO. 19-6**

# **ENVIRONMENTAL NOTIFICATION FORM**

## **A. SUMMARY**

A. Project Identification

B. Project Name \_\_\_\_\_  
Address/Location \_\_\_\_\_

City/Town \_\_\_\_\_

C. Project Proponent \_\_\_\_\_  
Address \_\_\_\_\_

3. Est. Commencement \_\_\_\_\_. Est. Completion \_\_\_\_\_.  
Approx. Cost \$ \_\_\_\_\_. Status of Project Design \_\_\_\_% Complete.

D. Amount (if any) of bordering vegetated wetlands, salt marsh, or tidelands to be dredged, filled,  
removed, or altered (other than by receipt of runoff) as a result of the project. Acres \_\_\_\_  
\_\_\_\_\_ square feet.

E. This project is categorically included and therefore requires preparation of an EIR.

Yes \_\_\_\_ No \_\_\_\_?

B. Narrative Project Description

Describe project and site.

Copies of the complete ENF may be obtained from (proponent or agent):

Name: \_\_\_\_\_ Firm/Agency: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

1987

THIS IS AN IMPORTANT NOTICE. COMMENT PERIOD IS LIMITED.

For Information, call (617) 727-5830

**EXHIBIT NO. 19-7**

- |   |  |                      |                      |
|---|--|----------------------|----------------------|
| C.  | List the State or Federal agencies from which permits or other actions have been/will be sought:   |                      |                      |
|   | Agency Name  | Permit               | Date filed; file no. |
| D.  | List any government agencies or programs from which the proponent will seek financial assistance for this project:   |                      |                      |
|   | Agency Name  | Funding Amount       |                      |
| E.  | Areas of potential impact (complete Sections II and III first, before completing this sections).   |                      |                      |
|   | 1. Check all areas in which, in the proponent's judgment, an impact of this project may occur. Positive impacts, as well as adverse impacts, may be indicated. |                      |                      |
|   | Construction<br>Impacts  | Long Term<br>Impacts |                      |
| Inland Wetlands .....                             | .....  | .....                | .....                |
| Coastal Wetlands Beaches .....                    | .....  | .....                | .....                |
| Tidelands .....                                   | .....  | .....                | .....                |
| Traffic .....                                     | .....  | .....                | .....                |
| Open Space/Recreation .....                       | .....  | .....                | .....                |
| Historical/Archaeological .....                   | .....  | .....                | .....                |
| Fisheries/Wildlife .....                          | .....  | .....                | .....                |
| Vegetation Trees .....                            | .....  | .....                | .....                |
| Agricultural Lands .....                          | .....  | .....                | .....                |
| Water pollution .....                             | .....  | .....                | .....                |
| Water Supply/Use .....                            | .....  | .....                | .....                |
| Solid Waste .....                                 | .....  | .....                | .....                |
| Hazardous Materials .....                         | .....  | .....                | .....                |
| Air Pollution .....                               | .....  | .....                | .....                |
| Noise .....                                       | .....  | .....                | .....                |
| Wind/Shadow .....                                 | .....  | .....                | .....                |
| Aesthetics .....                                  | .....  | .....                | .....                |
| Growth Impacts .....                              | .....  | .....                | .....                |
| Community/Housing and the Build Environment ..... | .....  | .....                | .....                |
| Other (Specify)                                   |  |                      |                      |

2. List the alternatives which have been considered.

EXHIBIT NO. 19-7

F. Has this project been filed with EOEA before? No \_\_\_\_\_ Yes \_\_\_\_\_ EOEA No. \_\_\_\_\_

#### G. WETLANDS AND WATERWAYS

1. Will an Order of Conditions under the Wetlands Protection Act (c.131s.40) or a License under the Waterways Act (c.91) be required?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Has a local Order of Conditions been:
  - a. issued? Date of issuance \_\_\_\_\_; DEQE File No. \_\_\_\_\_.
  - b. appealed? Yes \_\_\_\_\_ No \_\_\_\_\_
3. Will a variance from the Wetlands or Waterways Regulations be required? Yes \_\_\_\_\_;  
No \_\_\_\_\_.

#### F. PROJECT DESCRIPTION

G. Map; site plan. Include an original 8½ X 11 inch or larger section of the most recent U.S.G.S. 7.5 minute series scale topographic map with eh project area location and boundaries clearly shown. If available, attach a site plan of the proposed project.

B. State total area of project: \_\_\_\_\_ acres.

Estimate the number of acres (to the nearest 1/10 acre) directly affected that are currently:

1. Developed.....	_____ acres	6. Tidelands.....	_____
Acres			
2. Open Space		7. Productive Resources	
Woodlands Recreation._____ Acres		Agriculture.....	_____
Acres		Forestry.....	_____ acres
3. Wetlands.....	_____ acres	8. Other.....	_____
4. Floodplain.....	_____ acres		
acres			
5. Coastal Area.....	_____ Acres		

C. Provide the following dimensions, if applicable:

	Existing	Increase	Total
Length in miles .....	_____	_____	_____
Number of Housing Units.....	_____	_____	_____
Number of Stories.....	_____	_____	_____
Gross Floor Area in square feet.....	_____	_____	_____
Number of parking spaces.....	_____	_____	_____
Total of Daily vehicle trips to and from site (Total Trip Ends) .....	_____	_____	_____
Estimated Average Daily Traffic on road(s) serving site.....	_____	_____	_____
1.			
2.			
3.			

H. TRAFFIC PLAN. If the proposed project will require any permit for access to local roads or state highway, attach a sketch showing the location and layout of the proposed driveway(s).

### III. ASSESSMENT OF POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS

*Instructions:* Explain direct and indirect adverse impacts, including those arising from general construction and operations. For every answer explain why significant adverse impact is considered likely or unlikely to result. Positive impact may also be listed and explained.

Also, state the source of information or other basis for the answers supplied. Such environmental information should be acquired at least in part by field inspection.

#### A. Open Space and Recreation

1. Might the project affect the condition, use, or access to any open space and/or recreation area?  
Explanation and Source:

2. Is the project site within 500 feet of any public open space, recreation, or conservation land?  
Explanation and Source:

#### B. Historic and Archaeological Resources

1. Might any site or structure of historic significance be affected by the project? (Prior consultation with Massachusetts Historical Commission is advised.)  
Explanation and Source:

2. Might any archaeological site be affected by the project? (Prior consultation with Massachusetts Historical Commission is advised.)  
Explanation and Source

#### C. Ecological Effects

1. Might the project significantly affect fisheries or wildlife, especially any rare or endangered species? (Prior consultation with the Massachusetts Natural Heritage Program is advised).  
Explanation and Source:

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- I. Might the project significantly affect vegetation, especially any rare or endangered species of plant? (Prior consultation with the Massachusetts Natural Heritage Program is advised.) (Estimate approximate number of mature trees to be removed: \_\_\_\_\_)

Explanation and Source:

- J. Agricultural Land. Has any portion of the site been in agricultural use within the last 15 years?

If yes, specify use and acreage.

Explanation and Source:

D. Water Quality and Quantity

- K. Might the project result in significant changes in drainage patterns?

Explanation and source:

- L. Might the project result in the introduction of any pollutants, including sediments, into marine waters, surface fresh waters or ground water?

Explanation and source:

3. Does the project involve any dredging? No \_ Yes \_\_\_\_\_ Volume \_\_\_\_\_. If 10,000 cy or more, attach completed Standard Application Form for Water quality Certification, Part I (314 CMR 9.02(3), 9.90, DEQE Division of Water Pollution Control).

**EXHIBIT NO 19-7**

- M. Will any part of the project be located in flowed or filled tides, Great ponds, or other waterways? (Prior consultation with the DEQE and CZM is advised.)  
Explanation and source:

5. Will the project generate or convey sanitary sewage? No \_\_\_\_\_ Yes \_\_\_\_\_  
If Yes, Quantity: \_\_\_\_\_ gallons per day  
Disposal by: (a) Onsite septic systems..... No \_\_\_\_\_ Yes \_\_\_\_\_  
(b) Public sewerage systems (location; average and peak daily flows to treatment works)..... No \_\_\_\_\_ Yes \_\_\_\_\_

Explanation and Source:

- N. Might the project result in an increase in paved or impervious surface over a sole source aquifer or an aquifer recognized as an important present or future source of water supply?  
Explanation and Source:

- O. Is the project in the watershed of any surface water body used as a drinking water supply?  
Explanation and Source:

- P. Are there any public or private drinking water wells within a ½-mile radius of the proposed project?  
Explanation and Source:

**EXHIBIT NO. 19-7**

Q. Does the operation of the project result in any increased consumption of water?

Approximate consumption \_\_\_\_\_ gallons per day. Likely water source(s) \_\_\_\_\_

Explanation and Source:

R. Solid Waste and Hazardous Materials

S. Estimate types and approximate amounts of waste materials generated, e.g., industrial, domestic, hospital, sewage sludge, construction debris from demolished structures. How/ where will such waste be disposed of?

Explanation and Source:

T. Might the project involve the generation, use, transportation, storage, release, or disposal of potentially hazardous materials?

Explanation and Source:

U. Has the site previously been used for the use, generation, transportation, storage, release, or disposal of potentially hazardous materials?

Explanation and Source:

V. Energy Use and Air Quality

W. Will space heating be provided for the project? If so, describe the type, energy source, and approximate energy consumption.

Explanation and Source:

**EXHIBIT NO. 19-7**

X. Will the project require process heat or steam? If so, describe the proposed system, the fuel type, and approximate fuel usage.

Explanation and Source:

Y. Does the project include industrial processes that will release air contaminants to the atmosphere? If so, describe the process (type, material released, and quantity released).

Explanation and Source:

Z. Are there any other sources of air contamination associated with the project (e.g. automobile traffic, aircraft traffic, volatile organic compound storage, construction dust)?

Explanation and Source:

AA. Are there any sensitive receptors (e.g. hospitals, schools, residential areas) which would be affected by air contamination caused by the project?

Explanation and Source:

BB. Noise

CC. Might the project result in the generation of noise?

(include any source of noise during construction or operation, e.g. engine exhaust, pile driving, traffic.)

Explanation and Source:

DD. Are there any sensitive receptors (e.g., hospitals, schools, residential areas) which would be affected by any noise caused by the project?

Explanation and Source:

EE. Is the project a sensitive receptor, sited in an area of significant ambient noise?

Explanation and Source:

FF. Wind and Shadow

GG. Might the project cause wind and shadow impacts on adjacent properties?

Explanation and Source:

HH. Aesthetics

II. Are there any proposed structures which might be considered incompatible with existing adjacent structures in the vicinity in terms of size, physical proportion and scale, or significant differences in land use?

Explanation and Source:

JJ. Might the project impair visual access to waterfront or other scenic areas?

Explanation and Source:

**KK. CONSISTENCY WITH PRESENT PLANNING**

Discuss consistency with current federal, state and local land use, transportation, open space, Recreation and environmental plans and policies. Consult with local or regional planning Authorities where appropriate.

**LL. FINDINGS AND CERTIFICATION**

**MM.** The public notice of environmental review has been/will be published in the following Newspaper(s):

(NAME) \_\_\_\_\_ (Date) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**NN.** This form has been circulated to all agencies and persons as required by 301 CMR 11.24.

<hr/> (Date)	<hr/> Administrator, MHD	<hr/> Date	<hr/> Signature of person preparing ENF (if different from above)
<hr/> Date		<hr/> Signature of Responsible Officer Or Project Proponent	
<hr/> Name (print or type)		<hr/> Name (print or type)	
<hr/> Address _____		<hr/> Address _____	
<hr/> Telephone Number _____		<hr/> Telephone Number _____	

**MASSDOT HIGHWAY DIVISION**

**INTEROFFICE MEMORANDUM**

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TO: , Director of Fiscal Management

FROM: , Administrative Manager - ROW Bureau

DATE:

RE: TRANSMITTAL OF FUNDS

---

Enclosed please find check # \_\_\_\_\_ dated \_\_\_\_\_ issued  
by \_\_\_\_\_ Bank in the amount of \$ 000.00 .  
FOR: PURCHASE OF STRUCTURE

- PROPERTY DISPOSITION
- ENHANCEMENT VALUE
- GOOD FAITH DEPOSIT
- PROPERTY RENTAL

Also enclosed is the Division Administrators approval of  
\_\_\_\_\_.

The FAP # is \_\_\_\_\_ and the Cost Code # is \_\_\_\_\_.

If you have further questions please contact me directly  
or call @ 973- .

**EXHIBIT NO. 19-8**

**OFFER TO PURCHASE**

To the MassDOT Highway Division

Attention: Right of Way Bureau, 10 Park Plaza, Room 6160  
Boston, MA 02116-3973

I hereby offer to purchase for \$ \_\_\_\_\_ the following structure(s) from the Commonwealth of Massachusetts, located on Parcel No. \_\_\_\_\_ of Layout No. \_\_\_\_\_ in the Town/City of \_\_\_\_\_, formerly the property of \_\_\_\_\_; located at \_\_\_\_\_; and to remove said structure(s) from the State Highway location on or before \_\_\_\_\_ 20 \_\_\_\_\_.

It is understood and agreed that if this offer is accepted, it will be accepted on the conditions that the structures be removed within the time specified; that the structures may not be sold while still within the State Highway location; that the structures must be entirely removed to sill level; that all combustible material must be removed and all foundation walls, cellar floor broken into pieces and cellar hole filled with inorganic material to ground level as soon as structure is removed; that the MassDOT assumes no responsibility for changes at any time in the condition of the structures, that a separate certified check or money order for \$ \_\_\_\_\_ is required as a surety of performance; and that the surety may be declared forfeit and the structure repossessed at any time while the structures are within the State highway location upon breach of any of the foregoing conditions.

NOTE: Type of structure(s) \_\_\_\_\_

Payment of the purchase price by certified check, and a separate certified check, in the amount of the surety, payable to the MassDOT Highway Division will be submitted within one week of written notice that this offer has been accepted.

Witness: \_\_\_\_\_

Date \_\_\_\_\_ 20 \_\_\_\_

The above offer is hereby approved and accepted.

MassDOT \_\_\_\_\_

Highway \_\_\_\_\_

Division \_\_\_\_\_

**RIGHT OF WAY BUREAU**

**SALE PRICE OF STRUCTURE TO BE REMOVED**

From: \_\_\_\_\_

Attention of: \_\_\_\_\_ 20\_\_\_\_\_  
Deputy Director

Layout No.: \_\_\_\_\_ City/Town \_\_\_\_\_

F.A. Proj. No.: \_\_\_\_\_ Project \_\_\_\_\_

Parcel No.: \_\_\_\_\_ Owner \_\_\_\_\_

Pars/Projis #: \_\_\_\_\_

In this case the former owner is interested in regaining title to the following structures: \_\_\_\_\_

For the purpose of removing them from within the limits of the State Highway Layout.

Review Board Figure\_\_\_\_\_

Review Appraiser Figure\_\_\_\_\_

Department Appraisal\_\_\_\_\_

Adjusted Value of Structure\_\_\_\_\_

Suggested Price for Structure\_\_\_\_\_

Remarks:

Respectfully submitted,

Photo

Approved by,

Deputy Director

**Exhibit no. 19-10**

**RIGHT OF WAY BUREAU**  
**MOVEMENT OF STRUCTURES**  
**Preliminary Requirements**

It is the responsibility of the bidder to obtain necessary street moving permits from each City or Town involved and the MassDOT Highway Division (if a State highway is to be used); to provide their own land; to engage their own building mover; to take care of all their public utilities; and to move the building within the specified time of sixty days.

Town/City \_\_\_\_\_ Former Owner \_\_\_\_\_  
Location of Structure(s) \_\_\_\_\_ Structure(s) to be moved \_\_\_\_\_ House \_\_\_\_\_

To be moved to \_\_\_\_\_

Do you own land at above site? \_\_\_\_\_ If not, do you have option to buy above land? \_\_\_\_\_  
Do you have reasonable assurance that  
Will new site meet zoning requirements? \_\_\_\_\_ authorities would permit relocation? \_\_\_\_\_

Have you estimates from reliable movers? \_\_\_\_\_

Name(s) of movers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: The MassDOT Highway Division will not recognize the sale of the building to any third person and if such a sale should be made, reserves the right to repossess the building while it is within the State Highway Layout.

The movement of this building as described above may not be permitted if it appears not feasible, or if excessive damage is to be caused to shade trees or for any other reason in the public interest.

Understanding the above, I desire to move the building as proposed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: Please sketch on the reverse side of this form the proposed route over which the structure(s) would be moved designating the name of all streets and highways to be used

ROW 610 Rev 11/74

**EXHIBIT NO. 19-11**

DEPARTMENT USE ONLY
Project _____
Layout _____ Order _____
Parcel No. _____

INTER OFFICE CORRESPONDENCE

MASSACHUSETTS HIGHWAY DIVISION

FROM: , Deputy Director - R/W Bureau

ATTENTION: Division Administrator April 29, 2011

SUBJECT: XXXX - Sale of Structure for Removal  
Route  
F.A.P.:  
PARS #:

The Right of Way Bureau advertised the house for sale in ten different newspapers along Route X on the South Shore. An open house for inspection of the property was held on Friday, XXXX,. On Tuesday, XXXX,XXX bids were received for the purchase and removal of this single family home at 15 Spring Street in Carver.

There was only one bid received in the amount of Eighteen Hundred and Fifty (\$ 1,850.00) Dollars for the property at Street from Mr. of Circle in XXXX. In addition, the Department will save approximately \$ X,XXX.00 in demolition costs.

The proposed new location where the house will be moved has been determined to be outside the project area.

Therefore, the Right of Way Bureau recommends the acceptance of the bid for the sale of Street to XXXXX pending submittal of the appropriate documentation.

Recommended by:

Deputy Director  
Right of Way Bureau

Approved by:

Director, Right of Way Bureau

cc: Property Management Files

EXHIBIT NO. 19-12

LETTERHEAD

April 29, 2011

TOWN - Route  
Parcel:  
Formerly Owned By:  
Description: Single family wood framed dwelling  
FAP# PROJIS/PARS#

Mr.  
Circle  
, MA  
Dear Mr.:

The MassDOT Highway Division Administrator has approved (see enclosed) acceptance of your offer of HUNDRED (\$ X,XXX.00) DOLLARS for the purchase and removal by you of the structure(s) located on the above parcel(s).

In accordance with the terms of your agreement, you are required, within one week of receipt of this letter, to forward Treasurer's checks made payable as follows:

- 1) Purchase Price Balance - Treasurer's Check in the amount of HUNDRED (\$ X,XXX.00) DOLLARS, payable to the MassDOT Highway Division.
- 2) Surety - Treasurer's Check in the amount of (\$ X.XXX.00) DOLLARS, payable to "MassDOT Highway Division or XXXX."

This second check is required as surety for the performance of your agreement to remove the structure(s) from within the State Highway Layout on or before the agreed date: XXX; and your further agreement to remove all combustible material from the site, and all foundation walls, cellar floor broken into pieces filled with inorganic material to ground level as soon as the structure is removed. Upon satisfactory performance of your agreement, the surety check will be returned to you.

Sincerely,

Deputy Director  
Right of Way Bureau

EXHIBIT NO. 19-13

**MHD LETTERHEAD**

DATE

PROPOSER/BIDDER

Dear PROPOSER:

An inspection of the property, formerly known as \_\_\_\_\_  
\_\_\_\_\_, has determined that you have successfully completed the terms of your bid for the  
purchase and removal of the structure at \_\_\_\_\_ IN \_\_\_\_\_  
\_\_\_\_\_. Those terms included demolition of the foundation and leveling to grade.

Enclosed please find your surety check # \_\_\_\_\_ in the amount of THREE  
THOUSAND (\$3,000.00) DOLLARS.

Thank you for your interest.

Sincerely,

Deputy Director  
Right of Way Bureau

**EXHIBIT NO. 19-14**

MASSDOT HIGHWAY DIVISION  
PROCEDURAL FORM FOR SUBMITTING SEALED BIDS FOR  
PURCHASE AND REMOVAL OF STRUCTURES

SEALED BIDS WILL BE ACCEPTED SUBJECT TO THE FOLLOWING CONDITIONS:

UPON NOTIFICATION TO THE SUCCESSFUL BIDDER IN WRITING BY THE DIVISION, ANY AND ALL STRUCTURES MUST BE REMOVED FROM THE PREMISES WITHIN THE HIGHWAY LAYOUT AND WITHIN THE TIME SPECIFIED BY THE DEPARTMENT.

TIME OF REMOVAL IS OF THE ESSENCE. THE DIVISION ASSUMES NO RESPONSIBILITY FOR CHANGES AT ANY TIME IN THE CONDITION OF THE STRUCTURE AFTER THE DATE OF INSPECTION, AS ADVERTISED.

THE STRUCTURE MAY NOT BE SOLD WHILE STILL WITHIN THE STATE HIGHWAY LOCATION; THE STRUCTURE MUST BE ENTIRELY REMOVED TO GROUND LEVEL; ALL COMBUSTIBLE MATERIAL MUST BE REMOVED AND ALL FOUNDATION WALLS, THE CELLAR FLOOR BROKEN INTO PIECES AND THE CELLAR HOLE FILLED WITH INORGANIC MATERIAL TO GROUND LEVEL IMMEDIATELY AFTER THE STRUCTURE IS REMOVED. THE DEPARTMENT MUST APPROVE FILL MATERIAL.

THE SUCCESSFUL BIDDER SHALL NOTIFY THE DISTRICT HIGHWAY ENGINEER, IN WRITING, AT LEAST THREE (3) DAYS BEFORE THE STRUCTURE IS TO BE MOVED.

A CERTIFIED PERSONAL CHECK OR A CASHIER'S CHECK PAYABLE TO THE MASSDOT HIGHWAY DIVISION FOR 10% OF THE BID, OR \$100.00, WHICHEVER IS GREATER, MUST ACCOMPANY THE BID AND WILL BE RETURNED TO THE UNSUCCESSFUL BIDDERS. IN THE EVENT THE SUCCESSFUL BIDDER FAILS TO PAY THE BALANCE OF THE BID AND POST THE REQUIRED SURETY WITHIN ONE (1) WEEK FROM NOTIFICATION THAT HIS BID HAS BEEN ACCEPTED, THE DEPOSIT MAY BE FORFEITED AND THE DIVISION RESERVES THE RIGHT TO IMMEDIATELY DISPOSE OF THE PROPERTY BY ANY MEANS ADVANTAGEOUS TO THE DIVISION.

THE HIGH BIDDER WILL ALSO BE REQUIRED TO POST AS SURETY, A CERTIFIED PERSONAL CHECK OR A CASHIER'S CHECK, IN THE AMOUNT OF \$ 3,000.00 WHICH WILL BE LIABLE TO FORFEITURE FOR FAILURE TO REMOVE THE STRUCTURE WITHIN THE TIME SPECIFIED, OR FOR PARTIAL REMOVAL; OR LEAVING THE SITE IN AN UNSATISFACTORY CONDITION.

THE DIVISION WILL NOT RECOGNIZE ASSIGNMENTS, AND RESERVES THE RIGHT, WHILE STRUCTURE(S) IS WITHIN THE HIGHWAY LOCATION, TO REPOSSESS AND DISPOSE OF THE PROPERTY TO ITS BENEFIT, UPON BREACH OF THE ABOVE CONDITIONS.

FORMS (ROW 610, ROW 612, ROW 042) MUST BE SIGNED BY BIDDER AND SUBMITTED

ROW 612

---

Bidders Signature

**EXHIBIT NO. 19-15**

MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU  
SEALED BID FORM  
FOR PURCHASE AND REMOVAL OF STRUCTURES

CITY/TOWN \_\_\_\_\_ LAYOUT \_\_\_\_\_ PARCEL No. \_\_\_\_\_

PROJIS/PARS \_\_\_\_\_ FAP# \_\_\_\_\_

ADDRESS OF STRUCTURE (S) \_\_\_\_\_

TO: MASSACHUSETTS DIVISION OF HIGHWAYS

MY FULL BID FOR THE PURCHASE AND REMOVAL OF THE STRUCTURE(S) IS \$ \_\_\_\_\_

SIGNATURE OF BIDDER \_\_\_\_\_

PLEASE TYPE OR PRINT:

BIDDER'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY/TOWN: \_\_\_\_\_

HOME PHONE No.: \_\_\_\_\_ WORK PHONE No.: \_\_\_\_\_

HOW TO SUBMIT YOUR BID:

1. READ AND SIGN PROCEDURAL FORM FOR SUBMITTING SEALED BIDS ROW 612.
2. COMPLETELY FILL OUT FORM FOR MOVEMENT OF STRUCTURES ROW 610 REV. 11/74.
3. THEN COMPLETELY FILL OUT THIS SEALED BID FORM ROW 042 REV. 11/74.
4. PLACE THESE THREE COMPLETED AND SIGNED FORMS AND A CASHIER'S CHECK OR CERTIFIED PERSONAL CHECK (PAYABLE TO THE MASSDOT HIGHWAY DIVISION IN THE AMOUNT OF EITHER 10% OF YOUR BID OR \$100.00, WHICHEVER IS GREATER, IN AN ENVELOPE AND SEAL IT).
5. ON THE OUTSIDE OF THIS SEALED ENVELOPE, PRINT: "BID FOR STRUCTURE (FORMER OWNER'S NAME) (NUMBER AND STREET OF STRUCTURE) (CITY/TOWN)"
6. ALSO PRINT YOUR NAME AND ADDRESS IN THE UPPER LEFT-HAND CORNER.
7. THEN PLACE THIS SEALED ENVELOPE IN A LARGER BLANK ENVELOPE AND SEAL SAME.
8. ON THE OUTSIDE OF THIS BLANK ENVELOPE, PRINT ON THE FOLLOWING:

MASSDOT HIGHWAY DIVISION CASHIER'S OFFICE, ROOM 5441  
10 PARK PLAZA  
BOSTON, MASSACHUSETTS 02116

(MAIL OR DELIVER EARLY ENOUGH TO BE RECEIVED BY THE DATE AND TIME SPECIFIED.)  
THE DIVISION RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS.

FOR ANY FURTHER ASSISTANCE PLEASE CONTACT THE PROPERTY MANAGEMENT SECTION OF THE MASSDOT HIGHWAY DIVISION, RIGHT OF WAY BUREAU, 10 PARK PLAZA, BOSTON, MA 02116

## **MASSDOT HIGHWAY DIVISION**

CITY/TOWN: \_\_\_\_\_

PROJECT: \_\_\_\_\_

FAP#: \_\_\_\_\_

PROJIS #: \_\_\_\_\_

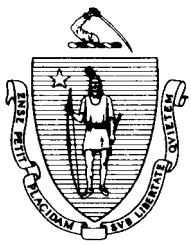
### **ASBESTOS/LEAD PAINT NOTIFICATION FORM**

The building located at \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_ Massachusetts (the “Building”) may contain asbestos. You are hereby notified, as a prospective purchaser of the Building, that it will be your duty as owner of the Building to comply with all applicable federal and state laws and regulations, including but not limited to, the Massachusetts Clean Air Act – Massachusetts General Laws Chapter 111, 310 CMR 7.15, the Federal Clean Air Act – 42 U.S.C. § 7401 et seq. and 40 CFR Part 60, which may govern your ownership of the Building if the Building contains asbestos. These laws and regulations may require that you (I) provide appropriate notice to the Massachusetts Department of Environmental Protection and/or the United States Environmental Protection Agency prior to your transfer, destruction or renovation of the Building and/or (ii) remove and dispose of asbestos in conformance with specific procedures.

I, \_\_\_\_\_, have been so informed and notified.

Date: \_\_\_\_\_

### **EXHIBIT NO. 19-17**



AR GEO PAUL CELLUCCI  
GOVERNOR

JANE SWIFT  
LIEUTENANT GOVERNOR

WILLIAM D. O'LEARY  
SECRETARY

HOWARD K. KOH, MD, MPH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
Childhood Lead Poisoning Prevention Program  
56 Roland Street, Suite 100  
Boston, Massachusetts 02129  
(617) 284-8400 / 800-532-9571

CHILDHOOD LEAD POISONING PREVENTION PROGRAM (CLPPP)  
PROPERTY TRANSFER LEAD PAINT NOTIFICATION

Under Massachusetts and federal law, this notification package must be given to buyers and tenants with an option to buy homes built before 1978. This package must be given in full to meet state and federal requirements. It may be copied, as long as the type size is not made smaller. Every seller and any real estate agent involved in the sale must give this package before the signing of a purchase and sale agreement, a lease with an option to purchase, or, under state law, a memorandum of agreement used in foreclosure sales. Sellers and agents must also tell the buyer or tenant with an option to buy any information they know about lead in the home. They must also give a copy of any lead inspection report, risk assessment report, Letter of Compliance or Letter of Interim Control. **This package is for compliance with both state and federal lead notification requirements.**

Real estate agents must also tell buyers and tenants with an option to buy that under the state Lead Law, a new owner of a home built before 1978 in which a child under six will live or continue to live must have it either delead or brought under interim control within 90 days of taking title. This package includes a check list to certify that the buyer or tenant with an option to buy has been fully notified by the real estate agent. This certification should be filled out and signed by the buyer or tenant with an option to buy before the signing of a purchase and sale agreement, a lease with an option to purchase or a memorandum of agreement used in a foreclosure sale. It should be kept in the real estate agent's files. After getting notice, the buyer or tenant with an option to buy has at least 10 days, or longer if agreed to by the seller and buyer, to have a lead inspection or risk assessment if he or she chooses to have one, except in cases of foreclosure sales. There is no requirement for a lead inspection or risk assessment before a sale. A list of private lead inspectors and risk assessors licensed by the Department of Public Health is attached.

Sellers and real estate agents who do not meet these requirements can face a civil penalty of up to \$1,000 under state law; a civil penalty of up to \$10,000 and possible criminal sanctions under federal law, as well as liability for resulting damages. In addition, a real estate agent who fails to meet these requirements may be liable under the Massachusetts Consumer Protection Act.

The property transfer notification program began in 1988 and has been very successful. It provides information you need to protect your child, or your tenants' child, from lead poisoning. Massachusetts has a tax credit of up to \$1,500 for each unit delead. There are also a number of grants and no-interest or low-interest loans available for deleading. It's up to you to do your part toward ending lead poisoning.

PLEASE TAKE THE TIME TO READ THIS DOCUMENT. LEAD POISONING IS THE NATION'S NUMBER ONE ENVIRONMENTAL DISEASE AFFECTING CHILDREN. DON'T GAMBLE WITH YOUR CHILD'S FUTURE.

## **What is lead poisoning? How do children become lead poisoned?**

Lead poisoning is a disease. It is most dangerous for children under six years old. In young children, too much lead in the body can cause permanent harm to the brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children's bodies can slow growth and cause learning and behavioral problems. The main way children get lead poisoned is by swallowing lead paint dust. They do not have to chew on leaded surfaces or eat paint chips to become poisoned. Most childhood lead poisoning is caused by children's normal behavior of putting their hands or other things, such as toys, in their mouths. If their hands or these objects have touched lead dust, this may add lead to their bodies. Children can also be exposed to lead from such other sources as lead-contaminated soil or water, but these sources alone rarely cause lead poisoning. Lead can be found in soil near old, lead-painted houses. If children play in bare, leaded soil, or eat vegetables or fruit grown in such soil, or if leaded soil is tracked into the home and gets on children's hands or toys, lead may enter their bodies.

## **What are the symptoms of lead poisoning? How is it detected?**

Most lead poisoned children have no special symptoms. The only way to find out if a child is lead poisoned is to have his or her blood tested. The Massachusetts Lead Law requires all children between 9 months and 4 years old to be screened annually for lead. If your child has been exposed to lead, or if you do not know if your child under age six has been screened for lead, ask your child's doctor, other health care provider or your local board of health for a simple screening test of your child.

## **What is the treatment for lead poisoning?**

Treatment of a lead poisoned child starts with finding and removing the lead hazards to which the child is exposed. This will include a lead inspection of the child's home, and if lead hazards are identified, deleading of the home. Medical treatment depends on the child's blood lead level and the child's response to the removal of the lead source. Parents will be taught about protecting their child from lead exposure. They will need to watch the child's progress through frequent blood tests. If necessary, the child may receive special drugs to help rid his body of excess lead. With this treatment, drugs are given daily for as long as several weeks. Sometimes this must be done more than once. A child who has been lead poisoned will need a lot of blood tests for a year or more. He or she should be tested for learning problems before starting school.

## **Are children under six years old the only ones at risk of lead poisoning?**

No. Young children are usually more easily and seriously poisoned than older children or adults, but lead is harmful to everyone. Lead in the body of a pregnant woman can hurt her baby before birth. Older children and adults who live in older housing with lead paint hazards may become exposed to lead and could potentially develop lead poisoning through home renovation. Most lead poisoning in adults is caused by work-related exposure or home renovation. Even hobby supplies, such as stained glass, bullets and fishing sinkers, can expose people to lead. Lead poisoning in adults can cause high blood pressure, problems having children for both men and women, digestive problems, nerve disorders, memory loss and problems concentrating, and muscle and joint pain. Adults who have any of these symptoms and who have been exposed to lead should consider being screened for lead. Those who are regularly exposed to lead through their work are required by law to have their blood tested once a year for lead.

## **What are the dangers of lead paint in homes, and when was it used?**

Lead paint in homes causes almost all childhood lead poisoning. Lead is so harmful that even a small amount of fine lead dust that cannot be seen can poison a child. Lead paint covered by layers of nonleaded paint can still poison children, especially when it is disturbed, such as through normal wear and

tear, or home repair work. When such lead paint is on moving surfaces, such as windows, fine lead dust is released through normal use. This dust settles, where it can be easily picked up on children's toys and fingers. Household paint with poisonous (now illegal) levels of lead was in use in Massachusetts from the 1690s until 1978. In 1978, the U.S. government banned lead from house paint. Lead can be found in all types of pre-1978 homes: homes in cities, suburbs or the countryside; private housing and state or federal public housing; single-family and multi-family homes. The older the house, the more likely it is to contain lead paint. The older the paint, the higher the likely lead content.

### **Can routine home repairs cause lead poisoning?**

There can be a danger of lead poisoning whenever painted surfaces inside or outside the home are scraped for repainting, or woodwork is stripped or removed, or windows or walls are removed. This is because lead paint is found in almost all Massachusetts homes built before 1978, and so many of Massachusetts' homes are old. Do not use power sanders, propane torches or heat guns to remove leaded paint, as these methods create a lot of lead dust and fumes. Temporarily move your family (especially children and pregnant women) out of the home while the work is being done and cleaned up, or at a minimum, tape up plastic sheets to completely seal off the work area. Get a lead inspection done, so that you will know which surfaces have lead paint and need extra care when preparing for and doing home repair work, and during cleanup afterwards. Do not do repairs in older homes without learning about safe ways to do the work to reduce the danger of lead dust. Hundreds of cases of childhood and adult lead poisoning result each year from do-it-yourself home projects.

### **How does the owner of a home built before 1978 in which a child under six years old lives meet the requirements of the Massachusetts Lead Law?**

The first step is to have a lead inspection or risk assessment done. A licensed lead inspector will test the surfaces of the home for lead and give the owner a written report that states where there is lead in amounts considered a violation by state law, and record any lead hazards that must be corrected. A risk assessor, who is a specially licensed lead inspector, will do a lead inspection plus a risk assessment, during which he or she checks the home for the most serious lead hazards that must be fixed for interim control. (See question about interim control, below.) Only a licensed deleader may do high-risk work, such as removing lead paint or repairing chipping and peeling lead paint. Either a deleader, the owner or someone who works for the owner (an agent) can do certain other deleading and interim control tasks.(See next question.) An owner or agent must get special training to perform the deleading tasks they may do. After the work is done, the lead inspector or risk assessor returns to check the home. He or she may take dust samples to test for lead and makes sure the home has been properly cleaned up. If everything is fine, he or she gives the owner a Letter of Compliance or a Letter of Interim Control. After getting one of these letters, the owner must take reasonable care of the property, mainly by making sure there is no peeling lead paint.

### **Can I do some of the deleading myself?**

In Massachusetts, the owner or someone who works for the owner (an agent) can do certain deleading activities. These include covering surfaces with certain materials; removing certain building parts; capping baseboards; installing vinyl siding on the exterior, and applying encapsulants. Encapsulants are special liquid coatings made to be long-lasting barriers over lead paint. Before any of these deleading tasks are done, the owner must first have a lead inspection done and whoever is going to do the work must get special training. Contact CLPPP for information about this training. In addition, owners or their agents can perform structural repairs and lead dust cleaning for interim control. Before doing this work, owners and agents should get and read CLPPP's interim control booklet.

### **Is there financial help for deleading?**

There is a state income tax credit of up to \$1,500 per unit for full deleading. A credit of up to \$500 per unit is available for interim control work that also contributes to full deleading. There are also grants and no-interest, deferred loans, or low-interest loans available to eligible property owners. These funds are available through the U.S. Department of Housing and Urban Development, the Massachusetts Executive Office of Communities and Development, the Massachusetts Housing Finance Authority, local city and town community development planning departments, and banks.

## **Does deleading improve the value of my property?**

Many homeowners have found that the benefits of deleading are not unlike the benefits of other home improvement projects. Replacement windows and doors can save the homeowner money because they are more energy efficient. Having a legally deleaded home, whether it is a single-family or multi-family, owner-occupied or rental unit, can make it easier to sell or rent, often at a better price.

## **What surfaces must be deleaded for full compliance with the Massachusetts Lead Law?**

Owners of homes built before 1978 where children under six years of age live must have the following lead hazards corrected to get a Letter of Compliance:

- any peeling, chipping or flaking lead paint, plaster or putty;
- intact lead paint, other coating or putty on moveable parts of windows with sills five feet or less from the floor or ground and those surfaces that come in contact with moveable parts;
- intact lead paint or other coating on "accessible mouthable surfaces." These surfaces generally include woodwork, such as doors, door jambs, stairs and stair rails, and window casings.

## **What is interim control?**

Interim control is a set of temporary measures that property owners can take to correct urgent lead hazards, especially peeling or chipping lead paint and lead dust. These steps protect residents from lead poisoning until the home is fully deleaded. Homes in good condition may need little or no work to get interim control status. Owners then have up to two years before they have to fully delead the home. For that period, they are free from strict liability under the state Lead Law should a child become lead poisoned in the home. In addition to the repair of peeling and chipping lead paint and the cleaning of lead dust, other work may be necessary for interim control. This includes fixing water leaks or other damage that makes lead paint peel and chip; making window wells smooth and easy to clean; making windows work properly and deleading any badly chipping and peeling lead-painted surfaces.

Property owners interested in interim control must hire a licensed risk assessor. He or she will then decide what work, if any, needs to be done to get a Letter of Interim Control. The original Letter of Interim Control is good for one year. The property owner can have the home reinspected before the end of that year, and if all conditions are met, the home can be recertified for another year. By the end of the second year, the home must be deleaded, if a child under six still lives there, for the owner to remain free of strict liability.

## **Does my family have to be out of the house during deleading or interim control work?**

Residents must be out of the house for the entire time that a deleader is doing deleading work inside a home, and for some of the deleading work by owners and their agents. Residents may stay at home, but out of the work area, while a deleader, property owner or owner's agent without a deleader's license does certain other deleading tasks, or such interim control work as structural repairs or lead dust cleaning. Residents who have been out of the house may not return until the deleading work that made it necessary for them to leave is complete, the home is cleaned up, and a lead inspector or risk assessor has checked and found this work has been properly done. For complete details, contact CLPPP.

## **Are there any exemptions to the Massachusetts Lead Law?**

The Lead Law applies only to homes built before 1978 in which a child under six lives. Any home or apartment having fewer than 250 square feet of living space, or which is in a rooming house, is exempt, as long as no child under age six is living there. Finally, homes rented for 31 days or less for vacation or recreational purposes are also exempt, as long as there is no chipping or peeling lead paint in the home and the renter has received the Short-Term Vacation Rental Notification.

## **What are the requirements of the state Lead Law if there is a lease with an option to buy?**

When there is a lease with an option to buy a home built before 1978 in effect, the owner of the property must have it delead or brought under interim control if a child under six lives there. If the tenant with an option to buy such a home proceeds to purchase it, he or she becomes responsible for meeting the requirements of the Lead Law if a child under six lives there after the purchase.

## **How can I find out about how lead inspections, risk assessments and deleading should be done?**

All lead inspections, risk assessments and deleading must be done according to the Regulations for Lead Poisoning Prevention and Control, 105 Code of Massachusetts Regulations 460.000 and the Deleading Regulations, 454 CMR 22.00. For full information, homeowners may get these regulations at the State House Book Store, State House, Boston, MA 02133. The phone number is (617) 727-2834.

Lead inspectors and risk assessors licensed by the Department of Public Health have been trained and are experienced in using the state-approved methods for testing for lead paint. These methods are the following: use of a solution of sodium sulfide, a portable x-ray fluorescence machine or lab tests of paint samples removed from the home. Deleaders licensed by the Department of Labor and Workforce Development have been trained to use safe methods to prepare for and do deleading work, and clean up afterwards. They may delead using any of the following methods: removing paint, removing building parts, covering and encapsulating. When removing paint, they cannot use certain very dangerous methods, such as open flame burning, dry abrasive blasting or power sanding without a special vacuum attachment.

## **How do I get a lead inspection or risk assessment?**

Included as part of this notification package is a listing of private licensed lead inspectors organized alphabetically, and private licensed risk assessors, similarly organized. Ask to see the inspector or risk assessor's license, to make sure it is current. You should arrange for the inspection or risk assessment as quickly as possible after deciding you want one. If you do have an inspection or risk assessment, you must give the seller a copy of the report.

## **What is the best time to delead or undertake interim control?**

The best time to delead a home or bring it under interim control is when the home is vacant, so that residents will not be exposed to lead and household furnishings will not be contaminated with lead. In addition, it often is efficient, and reduces costs, to combine deleading with other repair work being done to a vacant home.

## **What is a Letter of Compliance and a Letter of Interim Control?**

Under the state Lead Law, a Letter of Compliance is a legal letter that says either that there are no lead paint hazards or that the home has been deleaded. The letter is signed and dated by a licensed lead inspector. A Letter of Interim Control is a legal letter that says work necessary to make a home temporarily safe from lead hazards has been done. It is signed and dated by a licensed risk assessor. A Letter of Interim

Control is good for one year, but can be renewed for one more year. The owner must fully delead the home and get a Letter of Compliance by the end of the second year if a child under six still lives there. The Lead Law does not require the removal of all lead paint from a home. An owner who gets a Letter of Compliance or Letter of Interim Control must take reasonable care to keep up the home, mainly by making sure there is no chipping or peeling lead paint. If an owner fails to take reasonable steps to maintain the home, he or she may become liable for damages to a child lead poisoned as a result of the owner's breach of that duty of reasonable care.

## **RENTAL PROPERTY INFORMATION**

### **What liability do rental property owners have if they don't comply with the state Lead Law?**

If a property owner of a home built before 1978 in which a child under six lives fails to delead or bring the home under interim control, and a child is lead poisoned as a result, the property owner is strictly liable for all damages. An owner is not strictly liable for lead poisoning if a Letter of Compliance or Letter of Interim Control is in effect. Strict liability means owners may be liable even if they did not know lead paint was in the home. Since harm to the kidneys and blood cells, delays in growth, learning disabilities and emotional and behavioral disturbances resulting from lead poisoning can have life-long effects, monetary damages awarded against an owner responsible for a child's lead poisoning can be substantial. Failing to delead or bring under interim control a home to which the Lead Law applies is also an emergency public health matter, and can carry criminal penalties. An owner who is notified by a public agency of Lead Law violation in a property he or she owns, and who willfully fails to correct the dangerous conditions, is also subject to punitive damages, which are three times the actual damages found. These provisions are in addition to any other legal rights the lead-poisoned child may have.

### **Can I avoid state Lead Law requirements by not renting to a family with children under six?**

The Massachusetts Lead Law makes it illegal to refuse to rent to families with children under six, or evicting or refusing to renew the lease of families with children under six, because of lead paint. Discrimination against families with young children is also a violation of the U.S. Fair Housing Act and the Massachusetts anti-discrimination statute. Parents cannot waive the rights of their children to live in lead-safe housing or agree to assume risks of lead exposure. Owners who violate these laws face heavy penalties. The Massachusetts Commission Against Discrimination investigates and prosecutes cases of discrimination against families with children because of lead paint.

It is also illegal for lenders to deny financing because a home has lead paint, or because financing could trigger future duties under the Lead Law. This does not restrict the right of a lender to process or deny a mortgage application in accordance with accepted underwriting practices and criteria.

### **If I am considering buying a pre-1978 house to rent out, and a child under six lives in one of the apartments, should I have at least that unit and common areas inspected for lead now?**

Yes. If there are children under six living in such an apartment and the apartment does not have a Letter of Compliance or Letter of Interim Control, buyers should find out whether or not the apartment has lead hazards and will have to be brought into compliance with the state Lead Law. This information will be important in deciding whether to buy the property and at what price. As noted above, new owners have 90 days from the date of taking title to have such an apartment delead or brought under interim control. Therefore, they should arrange deleading or interim control work to begin as soon as possible after taking title, to be sure the work is done within 90 days.

### **Can a landlord delay a tenancy to bring a home into compliance with the state Lead Law?**

A landlord who will be deleading a home or bringing it under interim control may delay the start of the tenancy up to 30 days. This can be done as long as a lease between the landlord and the new tenant does not exist. During this delay period, the new tenants are responsible for their living expenses. If there is a signed lease, however, the landlord is responsible for temporary housing during relocation necessary for deleading work.

### **Must a landlord arrange temporary housing for a tenant while a rental home is being deleaded?**

Under the state Lead Law, tenants have to be relocated for the time that certain deleading work is taking place inside the home. They may not return until that work is done, the home is cleaned up, and a licensed lead inspector or risk assessor checks and finds it is fine for residents to move back in.

The landlord and tenant are responsible for working out an acceptable plan for alternative housing if it is necessary. The landlord may move the tenant to another place to live, which may be another house, apartment, motel or hotel. The landlord is responsible for paying the tenant's reasonable moving costs and any temporary housing costs over and above the rent of the home being deleaded. During the time the home is being deleaded, the tenant remains responsible for paying the normal rent they would pay for this period as their share of the cost of temporary housing. The Lead Law states the temporary housing must not cause undue economic or personal hardship to the tenant.

### **What is tenant notification?**

The goal of the federal and state requirements for tenant notification is to help reduce lead poisoning by giving all tenants of homes built before 1978 information about lead in their home. The program also educates tenants and landlords about the dangers of lead poisoning, its prevention, and the Massachusetts Lead Law. Tenant notification applies to all tenants, whether or not they have a child under six living with them.

Before renting a home, landlords, managing agents or any real estate agent involved in the rental must give new tenants copies of any existing lead forms for the home. These include lead inspection reports, risk assessment reports, a Letter of Compliance (no matter how old) or a Letter of Interim Control. If the landlord or agent does not have any or all of these forms for the home, he or she simply does not give them. In addition, the landlord or agent must give new tenants the Tenant Lead Law Notification. This form addresses lead poisoning, specific prevention tips for parents, the requirements of the Lead Law and an explanation of the lead forms. Attached to the Tenant Lead Law Notification is the Tenant Certification form. This is to be filled out and signed by both the tenant and the landlord or agent. Each party gets a copy to keep. **These forms have been approved to satisfy both state and federal lead notification requirements.** Landlords or agents may choose to include the Tenant Lead Law Notification/Tenant Certification form in a written lease, instead of using a separate form.

Landlords and agents who fail to carry out their tenant notification obligations are liable for damages caused by their failure to do so, and are subject to a fine of up to \$1,000.

## **INSURANCE INFORMATION**

### **How can an owner of rental housing in Massachusetts built before 1978 get insurance to cover potential lead liability?**

The answer depends on the number of units that the property owner wishes to insure, and whether the property owner lives in the building for which insurance is sought. An owner-occupant who insures four or fewer units may be covered by homeowners insurance. Generally, the property owner who is not an owner-occupant will need to get commercial liability insurance, as will an owner-occupant who wishes to insure more than four units.

Homeowners insurance may be available from several different sources: the regular, "admitted" market, the FAIR Plan or the "surplus lines" market. The regular, "admitted" market is the usual market for

insurance. The FAIR Plan offers homeowners insurance to property owners unable to find coverage in the regular market. The "surplus lines" market is a less regulated, and generally more expensive market. It provides insurance to those who cannot find coverage elsewhere.

Under state Division of Insurance regulations, if an insurer in the regular market decides to write homeowners insurance on rental housing for which a Letter of Compliance or Letter of Interim Control is in effect, the insurer must provide coverage of lead paint liability arising from those premises. **Neither the state Lead Law nor the insurance regulations require a regular market insurer to write liability insurance, including homeowners insurance, on a particular property.** If a Letter of Compliance or Letter of Interim Control is in effect for only part of a property, the coverage for lead liability will extend to only that part of the property. Such insurance will also apply to any common areas covered by the Letter of Compliance or Letter of Interim Control. It will not, however, extend to injuries resulting from gross or willful negligence. The FAIR Plan's coverage of lead liability is subject to the same regulations that apply to the regular market.

An insurer in the regular market, or the FAIR Plan, may ask the property owner to prove that there is a Letter of Compliance or a Letter of Interim Control for the home sought to be insured. Once the proof is provided, coverage for lead liability will apply as of the date of the Letter. If the Fair Plan determines that a given property is eligible for insurance, or if a regular market insurer elects to insure certain premises, either may exclude lead liability coverage on any part of the property it insures to which no Letter of Compliance or Letter of Interim Control applies. If either the Fair Plan or a regular market insurer uses such an exclusion, it must offer the owner of the premises the chance to buy back the excluded coverage. There is an additional charge for the lead liability "buyback" coverage. The amount of this charge is regulated by the Division of Insurance.

In the surplus lines market, there is no requirement to cover lead liability arising from premises to which a Letter of Compliance or Letter of Interim Control applies. Surplus lines insurers generally exclude coverage of lead liability, do not offer the buyback coverage, and charge higher prices than the regular market.

Since the FAIR Plan does not provide commercial liability insurance, property owners who need to get such coverage (as opposed to homeowners insurance) must get it from either the regular market or the surplus lines market. Commercial liability insurance from the surplus lines market, like homeowners insurance from that market, usually will exclude coverage of lead liability, will not include the buyback option, and will cost more than regular market coverage.

While a regular market insurer can decline to write commercial liability insurance on a given property, once such an insurer decides to write such coverage, it must then insure lead liability arising from any part of the property covered by a Letter of Compliance or Letter of Interim Control. If such an insurer chooses to insure a property, it may exclude coverage of lead liability on any part of the premises for which no Letter of Compliance or Letter of Interim Control is in effect. If such insurer applies such an exclusion, it must offer the property owner the opportunity to buy back the excluded coverage. The lead liability insurance regulations described above as applicable to regular market homeowners insurance also apply to commercial liability insurance from the regular market.

Owners of rental housing should try to get coverage for lead liability, whether they have met the requirements of the Lead Law or not, by seeking regular market coverage through insurance agents, or by contacting direct writing companies that are listed in the telephone directory, before resorting either to the FAIR Plan or the surplus lines market.

### **If I own and occupy a single-family house, does my homeowners insurance cover lead liability?**

Under the state lead liability insurance regulations, coverage of lead liability cannot be excluded from regular market and FAIR Plan homeowners insurance policies on single-family owner-occupied homes. Instead, lead liability coverage is included in such policies. However, a family member covered by a homeowners policy cannot make a lead liability claim against another family member covered by the same policy. The requirements of the lead liability insurance regulations do not apply to homeowners coverage from the surplus lines market.

## **How are new owners affected by the lead liability insurance regulations?**

If a buyer of rental housing built before 1978 meets the state Lead Law's requirements and gets a Letter of Compliance or Letter of Interim Control within 90 days after becoming the owner, then, under certain conditions, they will be able to get coverage for lead liability for the period they owned the property before they deleaded or brought it under interim control. This will happen if a regular market insurer chooses to provide liability coverage on the property. Such an insurer is required to provide lead liability coverage to a new owner who obtains a Letter of Compliance or Letter of Interim Control within 90 days after becoming the owner of the property. Such coverage will go back to the time that the new owner took title to the property, unless the liability insurance went into effect sometime after the taking of title. In the latter case, the coverage of lead liability will extend back to the time that the liability insurance held by the new owner first went into effect on the premises. The rule for new owner lead liability insurance coverage for the FAIR Plan is the same as for the regular market. These special rules for lead liability insurance for new owners do not apply to insurance from the surplus lines market.

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## **What happens next?**

That's up to you. At this point, you should be well informed about lead poisoning, the effects of lead hazards in the home, and your responsibilities under the Massachusetts Lead Law. In the past, the Department of Public Health has had to devote its childhood lead poisoning resources to provide services to the thousands of Massachusetts children who were poisoned, as well as to providing services to children whose blood lead levels are elevated, to prevent them from becoming lead poisoned. Between the Department's work and the preventive deleading carried out by property owners, we have been successful at reducing the number of lead poisonings among young children in Massachusetts. All of us at the Department are hopeful that we will continue that partnership, in which the correction of lead hazards in the homes of young children *before* those children are lead poisoned is so important.

## **Where can I get more information on lead poisoning?**

Massachusetts Department of Public Health  
Childhood Lead Poisoning Prevention Program (CLPPP)  
(For more copies of this form, and full range of  
information on owners' and tenants' rights and  
responsibilities under the state Lead Law, financial help  
for owners, safe renovation work, and soil testing)  
617-753-8400, 1-800-532-9571

Massachusetts Department of Labor  
and Workforce Development  
(List of licensed deleaders)  
617-727-7047, 1-800-425-0004  
Massachusetts Housing Finance Agency  
(Get the Lead Out loan program information)  
617-854-1000

U.S. Environmental Protection Agency  
Region 1 (New England)  
(Information about federal laws on lead)  
617-565-3420

National Lead Information Center  
(General lead poisoning information)  
1-800-LEAD-FYI

U.S. Consumer Product Safety  
Commission  
(Information about lead in consumer products)  
1-800-638-2772

## **PROPERTY TRANSFER NOTIFICATION CERTIFICATION**

This form is to be signed by the prospective purchaser before signing a purchase and sale agreement or a memorandum of agreement, or by the lessee-prospective purchaser before signing a lease with an option to purchase for residential property built before 1978, for compliance with federal and Massachusetts lead-based paint disclosure requirements.

### **Required Federal Lead Warning Statement:**

Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

### **Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check ( i ) or ( ii ) below):

(i) \_\_\_\_\_ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

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(ii) \_\_\_\_\_ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check ( i ) or ( ii ) below):

(i) \_\_\_\_\_ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (circle documents below).Lead Inspection Report; Risk Assessment Report; Letter of Interim Control; Letter of Compliance

(ii) \_\_\_\_\_ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards inthe housing.

### **Purchaser's or Lessee Purchaser's Acknowledgment (initial)**

(c) \_\_\_\_\_ Purchaser or lessee purchaser has received copies of all documents circled above.

(d) \_\_\_\_\_ Purchaser or lessee purchaser has received no documents.

(e) \_\_\_\_\_ Purchaser or lessee purchaser has received the Property Transfer Lead Paint Notification.

(f) \_\_\_\_\_ Purchaser or lessee purchaser has (check ( i ) or ( ii ) below):

(i) \_\_\_\_\_ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessmentor inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) \_\_\_\_\_ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

### **Agent's Acknowledgment (initial)**

(g) \_\_\_\_\_ Agent has informed the seller of the seller's obligations under federal and state law for lead-basedpaint disclosure and notification, and is aware of his/her responsibility to ensure compliance.

(h) \_\_\_\_\_ Agent has verbally informed purchaser or lessee-purchaser of the possible presence of dangerous levels of lead inpaint, plaster, putty or other structural materials and his or her obligation to bring a property into compliance with theMassachusetts Lead Law -- either through full deleading or interim control -- if it was built before 1978 and a child under sixyears old resides or will reside in the property.

### **Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they haveprovided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

# MASSDOT HIGHWAY DIVISION

APPLICANT INFORMATION					
APPLICANT NAME (LAST-FIRST-MIDDLE)					
HOME ADDRESS (STREET & NO)			HOW LONG?		
CITY-STATE-ZIP					
PREVIOUS HOME ADDRESS (INCLUDE CITY, STATE & ZIP)			HOW LONG?		
HOME PHONE NO.		BIRTH DATE	NO. OF DEPENDENTS		
SOCIAL SECURITY NO.		DRIVERS LICENSE NO. AND STATE			
EMPLOYER (AGENCY DEPT) DATE OF EMPLOYMENT		POSITION			
BUSINESS ADDRESS					
BUSINESS PHONE NO.		GROSS INCOME <input type="checkbox"/> WEEKLY \$ <input type="checkbox"/> MONTHLY	SUPERVISOR'S NAME		
PREVIOUS EMPLOYER ) OF EMPLOYMENT		POSITION		DATE	
PREVIOUS BUSINESS ADDRESS					
NAME OF NEAREST RELATIVE NOT LIVING WITH YOU RELATIONSHIP					
ADDRESS			TEL. NO.		
OTHER REFERENCE			TEL. NO.		
OTHER INCOME \$		PER	SOURCE(S) OF OTHER INCOME:		

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

ALIMONY, CHILD SUPPORT, SEPARATE MAINTENANCE RECEIVED UNDER  COURT ORDER  
 WRITTEN AGREEMENT  ORAL UNDERSTANDING \$ PER MONTH

ALIMONY, CHILD SUPPORT, SEPARATE MAINTENANCE RECEIVED UNDER  COURT ORDER  
 WRITTEN AGREEMENT  ORAL UNDERSTANDING \$ PER MONTH

**TELL US ABOUT YOUR CREDITWORTHINESS** Failure to disclose all creditors is grounds for rejection. **THIS SECTION MUST BE COMPLETED FULLY.** (If more space is needed, use a separate sheet.)

HOME <input type="checkbox"/> RENT <input type="checkbox"/> OWN	DATE PURCHASED	PURCHASE PRICE	MORTGAGE BALANCE	MARKET VALUE	MONTHLY PAYMENTS
IF YOU OWN YOUR HOME PROOF OF OWNERSHIP MAY BE REQUIRED		LANDLORDS NAME OR FINANCED BY		PHONE NUMBER	\$
AUTOS MAKE (1)		YEAR	IF FINANCED BY WHOM	BALANCE OWED \$	\$
(2)				BALANCE OWED \$	\$
OTHER CREDITORS		ACCOUNT NUMBER	UP-TO-DATE ?	BALANCE OWED	
CREDIT UNION					\$
OTHER CREDIT UNION					\$
CREDIT CARD					\$
CREDIT CARD					\$
OTHER					\$
OTHER					\$
OTHER					\$
OTHER MONTHLY EXPENSES (INCLUDE UTILITIES, TRANSPORTATION, CLOTHING, FOOD, INSURANCE, ETC.)				TOTAL MONTHLY EXPENSES \$ \$	\$

<input type="checkbox"/> RENT <input type="checkbox"/> OWN	PURCHASED	PRICE	BALANCE	VALUE	PAYMENTS
IF YOU OWN YOUR HOME PROOF OF OWNERSHIP MAY BE REQUIRED		LANDLORDS NAME OR FINANCED BY		PHONE NUMBER	\$
AUTOS (1)	MAKE	YEAR	IF FINANCED BY WHOM	BALANCE OWED \$	\$
(2)				BALANCE OWED \$	\$
OTHER CREDITORS		ACCOUNT NUMBER	UP-TO-DATE ?	BALANCE OWED	
CREDIT UNION					\$
OTHER CREDIT UNION					\$
CREDIT CARD					\$
CREDIT CARD					\$
OTHER					\$
OTHER					\$
OTHER					\$
OTHER MONTHLY EXPENSES (INCLUDE UTILITIES, TRANSPORTATION, CLOTHING, FOOD, INSURANCE, ETC.)					\$
TOTAL MONTHLY EXPENSES \$ \$					

HOME	DATE	PURCHASE	MORTGAGE	MARKET	MONTHLY
HAVE YOU <input type="checkbox"/> YES EVER FILED BANKRUPTCY <input type="checkbox"/> NO		HAVE YOU ANY <input type="checkbox"/> YES LEGAL PROCEEDINGS AGAINST YOU? <input type="checkbox"/> NO		HAVE YOU EVER APPLIED FOR CREDIT IN ANY OTHER NAME <input type="checkbox"/> YES IF YES, IN WHAT NAME <input type="checkbox"/> NO TO WHOM	
				HAVE YOU <input type="checkbox"/> YES EVER FILED BANKRUPTCY <input type="checkbox"/> NO	
				HAVE YOU ANY <input type="checkbox"/> YES LEGAL PROCEEDINGS AGAINST YOU? <input type="checkbox"/> NO	
Have you ever applied for credit in any other name <input type="checkbox"/> Yes if yes, in what name <input type="checkbox"/> No To Whom					

**Exhibit no. 19-18**

Pursuant to Massachusetts law, the management shall not make any inquiry concerning the race, creed, or, national origin, sex, age (except if a minor), ancestry or marital status of the applicant, or concerning the fact that the applicant is a veteran or a member of the armed forces or is blind. The undersigned warrants and represents that all statements herein are true and agrees to execute upon presentation a Tenancy at Will agreement in the usual form, a copy of which the applicant has received or has had the occasion to examine, which agreement may be terminated by the lessor if any statement herein made is not true.

I/We present this application truly and correctly stated to the best of my/our knowledge and for the purpose of renting from the MassDOT Highway Division, I/We have no other debts. You are authorized to check me/our credit and employment history to answer questions about my/our credit experience or contact any individual having knowledge of my/our whereabouts should I/We become delinquent.

AMOUNT OF MONTHLY RENT (EXCLUDING ALL UTILITIES) OFFERED \$ \_\_\_\_\_

\_\_\_\_\_  
Applicant \_\_\_\_\_ Date \_\_\_\_\_  
Spouse/Co-Applicant \_\_\_\_\_ Date \_\_\_\_\_

**CITY/TOWN:**\_\_\_\_\_ **PROJECT:**\_\_\_\_\_

**LAYOUT:**\_\_\_\_\_ **PROJIS/PARS:**\_\_\_\_\_

**FAP#:**\_\_\_\_\_

**Exhibit no. 19-18**

**MASSDOT HIGHWAY DIVISION**

**INTEROFFICE MEMORANDUM**

File:

---

**TO:** Division Administrator

**FROM:** , Deputy Director

**DATE**

---

**RE:** Rental of Acquired Properties  
**F.A.P.:** Cost Code:

---

In accordance with the FHWA approved Right of Way manual, the Property Management Section states “...establish the charge for use and occupancy as the lesser of either (a) the recommended rate reduced by 20% for short-term occupier, or (b) 25 % of the gross monthly family income.”

Therefore, it is recommended that the listed “Charge to Short Term Occupier or Income Reduced Rate” for Parcel Number \_\_\_\_\_ be approved as to the rental rate for the occupants of the properties to be acquired as listed below commencing \_\_\_\_\_:

Name	Address	Use and Occupancy Charge	Charge to short Occupier	Income Reduced Rate
------	---------	-----------------------------	-----------------------------	------------------------

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**Recommended by:**

---

Deputy Director  
Right of Way Bureau

**Approved by:**

---

Director  
Right of Way Bureau

**EXHIBIT NO. 19-19**

**LETTERHEAD**

DATE

OCCUPANT ADDRESS

Dear OCCUPANT:

On (RECORD/FILE DATE), the MassDOT Highway Division (MHD) acquired the property you occupy by eminent domain for highway purposes. Payment to you for this acquisition is scheduled for (PAYMENT DATE). By law, MDH is now required to collect a fair market rental charge for the use and occupancy of this property.

This rental charge begins immediately after payment is made to you and will continue until the date you vacate the property and present all keys to MDH authorized personnel. Any arrearage for Use and Occupancy Charges will be deducted from any relocation benefits.

For the property you occupy at \_\_\_\_\_ (Parcel Number \_\_\_\_) in \_\_\_\_\_, Massachusetts, the monthly rental, or "Use and Occupancy Charge", has been set at \_\_\_\_\_ (\$ 0.00 ) Dollars per month, and it begins on (PAYMENT DATE) or the actual date of payment, whichever occurs later, *provided all documentation necessary for payment has been properly forwarded to MHD. This Use and Occupancy Charge includes water and sewer charges and no other utilities.*

Payments are to be made by certified check, registered check, or money order, payable to the "MassDOT Highway Division" and mailed to:

MassDOT Highway Division  
Commonwealth Master Lockbox  
P.O. Box 3584  
Boston, MA 02241-3584

Please sign one copy of this letter at the bottom, and return it in the enclosed envelope. If you have any questions concerning this matter, please contact \_\_\_\_\_ in our Property Management Section at (617) 973-7965.

Sincerely,

---

Deputy Director, Right of Way Bureau

SIGNATURE\_\_\_\_\_

DATE\_\_\_\_\_

Certified Mail - Return Receipt Requested

**EXHIBIT NO. 19-20**

**LETTERHEAD**

DATE

ADDRESS

Dear :

On \_\_\_\_\_, the MassDOT Highway Division (MHD) acquired the property you occupy by eminent domain for highway purposes. By law, MHD is now required to collect a fair market rental charge for the use and occupancy of this property.

This rental charge begins on \_\_\_\_\_, 1and will continue until the date you vacate the property and present all keys to MHD Property Management personnel.

For the property you occupy at \_\_\_\_\_(Parcel Number \_\_\_\_\_) in \_\_\_\_, Massachusetts, the monthly rental, or "Use and Occupancy Charge", has been set at \_\_\_\_\_(\$ \_\_\_\_\_.00 ) per month. This Use and Occupancy Charge includes no other utilities.

Payments are to be made by certified check, registered check, or money order, payable to the "MassDOT Highway Division" and mailed to:

MassDOT Highway Division  
Commonwealth Master Lockbox  
P.O. Box 3584  
Boston, MA 02241-3584

Please endorse one copy of this letter at the bottom, and return it in the enclosed envelope. If you have any questions concerning this matter, please contact \_\_\_\_\_ in our Property Management Section at (617) 973-7965.

Sincerely,

Deputy Director, Right of Way Bureau

SIGNATURE\_\_\_\_\_ DATE\_\_\_\_\_

Certified Mail - Return Receipt Requested

**EXHIBIT NO 19-21**

**MASSDOT HIGHWAY DIVISION  
RIGHT OF WAY BUREAU**

**TO:** , Fiscal Management  
**FROM:** , Structures Manager  
**DATE:**  
**SUBJECT:** Customer Information for Rentals

**CUSTOMER/TENANT NAME:**

**FEDERAL I.D.#:**

**PROPERTY ADDRESS:**

**PARCEL NUMBER:**

**PHONE NUMBER:**

**BILLING ADDRESS:**

**BILLING FREQUENCY:** MONTHLY

**EFFECTIVE START DATE:**

**EXPIRATION DATE:** TENANT AT WILL

**RENTAL AMOUNT:**

**REVENUE SOURCE:**

**ACCOUNT NUMBER:**

**FEDERAL AID PROJECT #:**

**COST CODE / PARS #:**

**REMARKS:** SEE ENCLOSED ADMINISTRATOR APPROVAL

**EXHIBIT NO. 19-22**

LEASE

This Indenture of Lease made on the date written below, by and between the Massachusetts Department of Transportation (MassDOT) acting under the authority of Chapter 25 of the Acts of 2009, as Lessor, and having a usual place of business at as Lessee.

Witnesseth, That in consideration of the rent and/or covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor does hereby devise and lease unto the Lessee the following premises.

Description of Premises\*

Use of Premises

The airspace of the leased premises shall be used for The Lessee covenants not to manufacture or store flammable, explosive or hazardous material or use the premises for any purpose which is deemed by the Federal Highway Administration (hereinafter referred to as FHWA) or the Lessor to be a hazard to highway or non-highway users.

The Lessee agrees to comply with all State, County and Municipal Laws and ordinances concerning the use of the premises and to restore the premises to its present condition upon termination or this lease.

The Lessee agrees that prior to any change in the authorized use of the premises, the Lessee shall first receive written approval from the Lessor and concurrence by the FHWA.

- \* A detailed three dimensional description is to be included in this lease agreement, except when the surface area beneath an elevated structure or adjacent to a highway is to be used for recreation, public park, beautification, parking or motor vehicles, public mass transit facilities and similar uses.

EXHIBIT NO. 19-23

### General Design

No construction shall commence on the leased premises until the Lessor and the FHWA shall have approved the general design for the use of the premises including any facilities to be constructed. Such plans, maps and sketches as may be necessary to set out the pertinent features of the proposed use in relation to the highway facility shall, after review and acceptance by the Lessor and the FHWA become a part of this agreement.

The Lessee agrees that prior to making any significant revision in the design or construction of a facility on the leased premises, the Lessee shall receive prior approval of the Lessor subject to concurrence by the FHWA.

### Term of Lease

The term of this lease shall commence on \_\_\_\_\_ and  
continue for a term of \_\_\_\_\_ ending on \_\_\_\_\_  
provided, however, that in the event the leased area shall be needed for highway purposes, the Lessor may terminate this lease and all rights hereunder by giving the Lessee 30 days notice of termination by certified mail.

### Rent Payable

The Lessee covenants and agrees to pay a monthly rental of \_\_\_\_\_ payable the first day of \_\_\_\_\_ and the first day of each month thereafter. Payment to be made by either a Bank Cashier's or Treasurer's Check, Certified Check, Registered Check or Money Order made payable to the MassDOT and forwarded to the Office of Supervisor of Fiscal Management, MassDOT, Room 5150, 10 Park Plaza, Boston, Massachusetts 02116.

### Maintenance and Repairs

The Lessee covenants that the area leased and any structures located therein will be kept in good condition and repair both as to safety and appearance and that such maintenance will be accomplished at no costs to the MassDOT and in a manner so as to cause no unreasonable interference with highway use.

It is agreed and understood that in the event the Lessee shall fail in its maintenance obligations under the terms of this lease, the Lessor may enter the premises to perform such work at the Lessee's expense.

### Utilities

The Lessee agrees that this lease is subject to any existing easements, licenses and permits granted to public or private utilities, and further agrees to permit said utilities, their agents, employees, servants or contractors to enter said premises to perform all necessary, regular and emergency repairs and maintenance.

#### Liabilities of Lessee

The Lessee covenants and agrees to pay all charges for water, electricity, gas, telephone, local, State and Federal taxes affecting said premises, and will save the MassDOT harmless and indemnified against any injury, less or damage to any person or property on said premises arising out of or in consequence of the acts of said Lessee, its agents, employees or contractors.

For the aforementioned protection and for indemnification of the MassDOT adequate insurance shall be kept in force as may be deemed necessary by the FHWA or the Lessor.

#### Assignment or Subletting

The Lessee agrees not to assign its interest in this lease or sublet the whole or any part of said premises without first obtaining approval in writing of the Lessor and the consent of the FHWA.

#### Sign Displays

The Lessee agrees that on premise signs, displays or devices that may be authorized by the Lessor shall be restricted to those indicating ownership and type of activity being conducted within the leased area and shall be subject to reasonable restrictions with respect to number, size, location and design by regulation of the Lessor.

#### Reservation by Lessor

The lessee covenants and agrees that the Lessor and authorized FHWA representatives shall have the right to pass in, on and over the leased premises for the purpose of inspection, maintenance, repair and/or replacement of the highway facilities and area when deemed necessary.

#### EXHIBIT NO. 19-23

#### Airspace Facilities and Structures

All construction, use and/or occupancy of airspace facilities within the right of way limits under the terms of this lease shall be in compliance with State and local building laws, the State Building Code, the fire laws and the rules and regulations of the Board of Fire Prevention Regulations, and local zoning bylaws and ordinances. All airspace facilities shall be fire resistant and so designed and constructed as to permit access for the purpose of inspection, maintenance and reconstruction of the highway facility when necessary. Construction of any airspace facility shall not require any changes in the alignment or profile of the existing highway nor shall the design, occupancy or use of any structure over or under the highway allow fumes, vapors, odors, drippings, droppings or discharges of any kind to adversely affect the use safety, appearance or enjoyment of the highway.

Prior to the construction of any airspace facility or structure under the terms of this lease the Lessee agrees to submit for approval of the Lessor and the FHWA an emergency evacuation plan in case of a major accident endangering the occupants of such airspace facility or structure.

The Lessee agrees and covenants that any use of the leased premises that may be located beneath the established grade line of the highway shall provide sufficient vertical and horizontal clearances for the construction operation, maintenance ventilation and safety of the highway facility, and the Lessee also agrees and covenants to install such bumper stops, guard rail, curbing and such other devices as may be deemed necessary by the Lessor and FHWA to protect columns, abutments and other structural supports of the highway facility located within the leased premises.

The Lessee agrees and covenants that any use of the leased premises above the established grade line of the highway shall not extend below the minimum vertical clearances prescribed by FHWA policies relating to the management of airspace on Federal-aid highways for non-highway purposes except as may be necessary for columns, foundations or other support structures. Piers, columns or any other portion of airspace facilities shall not be erected so as to interfere with visibility, sight distances, safety and the free flow of traffic. All structural supports shall be located to clear the vertical and horizontal highway dimensions established by the Lessor and the shoulder and walks of outer highways. No supports may be located in medians or in the outer separation of the highway within right of way limits except as provided in this lease agreement and no supports shall be located in ramp gores or in a position so as to interfere with necessary signing for the proper use of the ramps. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highways.

#### Additional Facilities

If the use of the leased premises necessitates installation of additional highway facilities and/or protective devices such as lighting, ventilation, signing and marking special warning and communication devices, additional curbing, bumper stops, guard rails or other facilities or devices, they will be provided without cost to the Federal Government or the Lessor.

### Parking

It is agreed and understood that use of the Leased premises for parking of motor vehicles shall be accordance with a parking design plan previously submitted and approved by the Lessor and the Federal Highway Administration; that all costs for plantings, screenings, surfacing, lighting, fencing, striping, curbs, guard rails, bumper stops and other devices for the protection of columns, shall be borne by the Lessee and that access to the leased area will be maintained for fire protection, fire fighting apparatus and other emergency vehicles.

### Termination Upon Default by Lessee

Provided always, and these presents are upon this condition, that the authorized uses will be subject to revocation for:

- (a) violation of condition of use;
- (b) cessation of use; or
- (c) abandonment of facilities

Provided further; and these presents are upon condition, namely, that if the Lessee shall neglect or fail to perform or observe any of the covenants herein contained; and on its part to be performed and observed, then the Lessor may, immediately, or at any time thereafter, and without demand or notice, enter into and upon the premises and expel the Lessee and those claiming through or under him, remove their effects without being guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for preceding breach of covenant, and upon entry as aforesaid, this lease shall terminate, and the Lessee in the event of such termination, will indemnify the Lessor against any loss it might incur by reason of such termination.

### Retention of Scenic Beauty

THE Lessee agrees that nothing shall be placed in the leased area that will endanger the retention of the scenic beauty within the intent of Title III of the Highway Beautification Act of 1965.

### Special Provisions

The Lessor and the Lessee agree to the following special provisions and/or conditions:

Discrimination Provisions

The Lessee for himself, his representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land", that, (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation -Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Lessor shall have the right of terminate this lease and reenter and repossess said land and the facilities thereon, and hold the same as if this lease had never been made or issued.

In Witness Whereof, the MassDOT has caused these presents to be executed in its name, under the supervision and control of its Board, and

## Massachusetts Department of Transportation

Lessee

Approved as to from:

## Assistant Attorney General

Approved \_\_\_\_\_

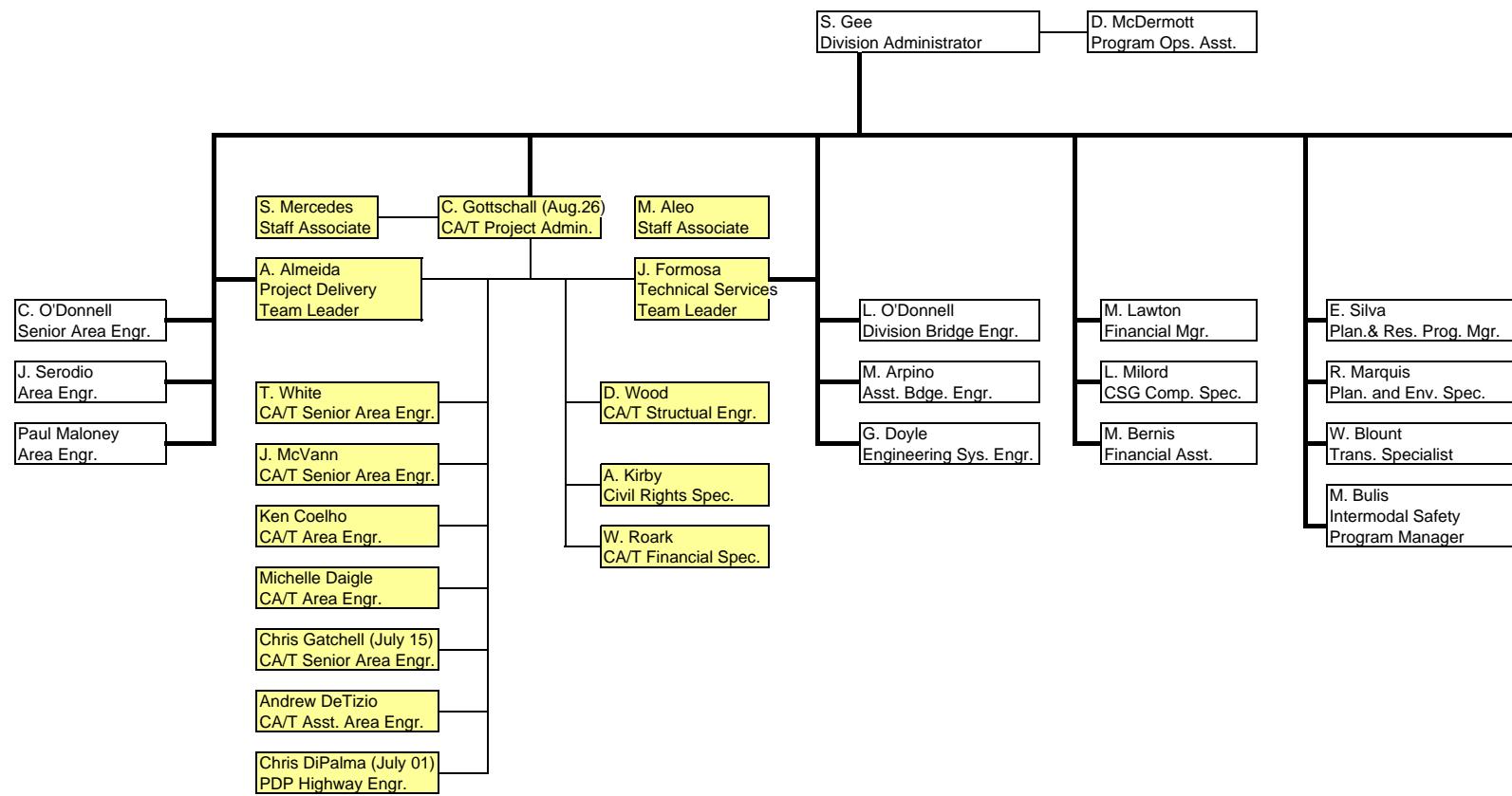
## GOVERNOR

**EXHIBIT NO. 19-23**

## Chapter 20

7/10/2001

FHWA  
MASSACHUSETTS DIVISION



FTP = 30.0

Shading = FHWA oversight on the Central Artery/Tunnel Project

# **Right-of-Way Program Administration**

## **Project and Program Oversight Agreement Between The Massachusetts Highway Department and The Federal Highway Administration Massachusetts Division**

This right-of-way project and program oversight agreement is in accordance with Section 106 of Title 23 United States Code (USC), project approval and oversight. The Massachusetts Highway Department (MHD) would like to continue to take advantage of the opportunities afforded state highway agencies under Section 106. These opportunities are in regards to the Federal Highway Administration's (FHWA) approval and oversight on and off the National Highway System (NHS). MHD will take advantage of these opportunities by utilizing the oversight management options described below.

### **1. OVERSIGHT:**

**Interstate System:** FHWA will maintain full right-of-way oversight responsibility as outlined in 23 CFR and 49 CFR Part 24. The following approval actions or authorizations will be required by the FHWA Massachusetts Division Office:

- Requests for right-of-way project authorization and obligation of federal funds for all right-of-way activities including requests for advance acquisitions for hardship and protective buying and including requests for functional replacement of publicly owned facilities
- Prior to advertising for construction, the right-of-way statement and certification when the project right-of-way has not been *secured and/or vacated* [reference 23 CFR 635.309(b),(c)]
- Requests for credits toward the non-federal share of the project construction costs for early acquisitions, donations, or other contributions applied to the project
- Requests for federal land transfers under 23 CFR 710.601
- Requests for direct federal acquisitions (applicable for Interstate and defense access roads only) under 23 CFR 710.603
- All disposals of excess right-of-way including disposals of access control
- All airspace agreements
- Leasing of real property acquired with Title 23 U.S.C. funds

**EXHIBIT NO. 20-2**

**National Highway System (excluding the Interstate):** FHWA will maintain full right-of-way oversight responsibility as outlined in 23 CFR and 49 CFR Part 24 for all projects with an estimated construction cost in excess of \$5 million. For all other projects/program activities, the following approval actions or authorizations will be required by the FHWA Massachusetts Division Office:

- Requests for right-of-way project authorization and obligation of federal funds for all right-of-way activities including requests for advance acquisitions for hardship and protective buying and including requests for functional replacement of publicly owned facilities
- Prior to advertising for construction, the right-of-way statement and certification when the project right-of-way has not been *secured and/or vacated* [reference 23 CFR 635.309(b), (c)]
- Requests for credits toward the non-federal share of the project's construction costs for early acquisitions, donations, and other contributions to the project
- Requests for federal land transfers under 23 CFR 710.601
- Disposals of excess right-of-way including access control *at less than fair market value* where the original right-of-way was acquired with federal funds (***others at MHD's option***)
- Airspace/rental agreements *involving less than fair market rental* where the original right-of-way was acquired with federal funds (***others at MHD's option***)
- Commercialization/full service rest area development proposals (***at MHD's option***)

**Non-NHS Projects:** FHWA will maintain full right-of-way oversight responsibility as outlined in 23 CFR and 49 CFR Part 24 for all projects with an estimated construction cost in excess of \$10 million. For all other projects/program activities, the following approval actions or authorizations will be required by the FHWA Massachusetts Division Office:

- Requests for right-of-way project authorization and obligation of federal funds for all right-of-way activities including requests for advance acquisitions for hardship and protective buying and including requests for functional replacement of publicly owned facilities
- Requests for credits toward the non-federal share of the project construction costs for early acquisitions, donations, or other contributions applied to the project
- Requests for federal land transfers under 23 CFR 710.601
- Disposals of excess right-of-way including access control *at less than fair market value* where the original right-of-way was acquired with federal funds (***others at MHD's option***)
- Airspace/rental agreements *involving less than fair market rental* where the original right-of-way was acquired with federal funds (***others at MHD's option***)

## **2. CONTROL DOCUMENTS:**

**Right of Way Manual:** The requirements to develop and maintain a Right-of-Way Manual is contained in 23 CFR 710.201(c). The Manual sets out MHD's basic operating policy statements, and it specifies the manner in which the State will apply the right-of-way requirements of Title 23 and 49 CFR Part 24 in accordance with specific State law. The Manual must address both NHS and non-NHS projects and will continue to be approved by the FHWA. Specifically, the following approval actions will be required by the FHWA Massachusetts Division:

- MHD will prepare and make available to FHWA an up-to-date Right-of-Way Operations Manual for review and approval no later than January 1, 2001
- Every five (5) years thereafter, the Commissioner or designated representative shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulations.
- MHD shall update the Manual periodically to reflect changes in operations and make the updated changes available to FHWA Massachusetts Division for review and comment and/or approval as appropriate.

## **3. METHODOLOGY OF OVERSIGHT AND STEWARDSHIP OF PROGRAM:**

The FHWA Massachusetts Division Office will monitor the right-of-way program in cooperation and coordination with the MHD Right of Way Bureau. Monitoring will be primarily through the use of joint State/FHWA process and Quality Assurance Reviews (QAR) reviews that will be scheduled on a year-to-year basis. Selection of joint reviews will be a coordinated effort with both offices emphasizing the use of risk assessment methods. These reviews will address Title 23 and 49 CFR Part 24 requirements including exempt and non-exempt NHS and non-NHS projects.

The FHWA Massachusetts Division Office and the MHD Right of Way Bureau will maintain close communications to ensure timely technology transfer, discussions of new and evolving policies and good business practices, and maintain involvement in early project activities. The FHWA Massachusetts Division will be available for technical assistance and coordination of training activities.

#### **4. FEDERAL LAWS AND REGULATIONS**

MHD will follow all applicable federal laws and regulations including:

The 1970 Uniform Relocation Assistance and Real Property  
Acquisition Policies Act, as amended  
The 1964 Civil Rights Act  
Title 23 U.S.C. Highways  
49 CFR, Part 24 (Government-wide Uniform Act Regulations)  
23 CFR, Part 710 (Right-of-Way Administration Regulations)

#### **5. CERTIFICATION:**

It is hereby certified that MHD will follow all control documents, federal and state laws, regulations, and directives for the acquisition of right-of-way and any resultant relocation assistance and payments to displaced families and businesses on all federal-aid projects as well as other right-of-way program activities.

#### **6. EFFECTIVE DATE:**

This agreement affirms that MHD and the Massachusetts Division of FHWA will operate in the aforementioned manner beginning on January 1, 2001.

**Approved:**

-----  
Matthew J. Amorello  
Commissioner  
Massachusetts Highway Department

**Date** \_\_\_\_\_

**Approved:**

-----  
Stanley Gee  
Division Administrator  
FHWA Massachusetts Division

**Date** January 23, 2001

Office of Real Estate Services - Uniform Act  
Real Estate Services  
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970  
as amended  
(1)Public Law 91-646  
91st Congress, S. 1  
January 2, 1971  
(2)As amended by Public Law 100-17,  
Apr. 2, 1987, Title IV, Uniform  
Relocation Act Amendments of 1987.)  
(3)As amended by Public Law 102-240,  
Dec. 18, 1991, Sec. 1055, Relocation Assistance Regulations Relating to the  
Rural Electrification Administration.)  
(4)As amended by Public Law 105-117,  
Nov 21, 1997, Sec.104; an Alien not lawfully present in the United States)  
An Act  
Title I - General Provisions Sec. 101General Provisions  
Sec. 102Effect Upon Property Acquisition  
Sec. 103Certification  
Sec. 104Displaced Persons NOT Eligible for Assistance  
  
Title II - Uniform Relocation Assistance Sec. 201Declaration of Findings  
and Policy  
Sec. 202Moving and Related Expenses  
Sec. 203Replacement Housing for Homeowner  
Sec. 204Replacement Housing for Tenants and Certain Others  
Sec. 205Relocation Planning, Assistance Coordination, and Advisory  
Services  
Sec. 206Housing Replacement by Federal Agency as Last Resort  
Sec. 207State Required to Furnish Real Property Incident to Federal  
Assistance  
Sec. 208State Acting as Agent for Federal Program  
Sec. 209Public Works Programs and Projects of the Government of the  
District of Columbia of Washington Metropolitan Area Transit Authority  
Sec. 210Requirements for Relocation Payments and Assistance of Federally  
Assisted Program; Assurances of Availability of Housing  
Sec. 211Federal Share of Costs  
Sec. 212Administration - Relocation Assistance in Programs Receiving  
Federal Financial Assistance  
Sec. 213Duties of Lead Agency  
Sec. 215Planning and Other Preliminary Expenses for Additional Housing  
Sec. 216Payments Not to be Considered as Income  
Sec. 218Transfers of Surplus Property  
Sec. 220Repeals  
Sec. 221Effective Date  
  
Title III - Uniform Real Property Acquisition Policy Sec. 301Uniform  
Policy on Real Property Acquisition Practices  
Sec. 302Buildings, Structures, and Improvements  
Sec. 303Expenses Incidental to Transfer of Title to United States  
Sec. 304Litigation Expenses  
Sec. 305Requirements for Uniform Land Acquisition Policies; Payments of  
Expenses Incidental to Transfer of Real Property to State; Payment of  
Litigation Expenses in Certain Cases  
Sec. 306Repeals  
Sec. 418Effective Date

AN ACT

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

[Back to Top](#)

TITLE I--GENERAL PROVISIONS

SEC. 101. As used in this Act--

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)--

(i) any person who moves from real property, or moves his personal property from real property-

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in section 101(7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 202(a) and (b) and 205 of this title, any person who moves from real property, or moves his personal property from real property--

EXHIBIT NO. 20-3

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or  
(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include-

- (i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;
- (ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily--

- (A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
- (B) for the sale of services to the public;
- (C) by a nonprofit organization; or
- (D) solely for the purposes of section 202 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) 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.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term "comparable replacement dwelling" means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

- (12) The term "lead agency" means the Department of Transportation.
- (13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

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#### EFFECT UPON PROPERTY ACQUISITION

SEC. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

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#### CERTIFICATION

SEC. 103. (a) Notwithstanding sections 210 and 305 of this Act, the head of a Federal agency may discharge any of his responsibilities under this Act by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this Act.

(b) (1) The head of the lead agency shall issue regulations to carry out this section.

(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this Act.

(c) (1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.

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#### DISPLACED PERSONS NOT ELIGIBLE FOR ASSISTANCE

SEC. 104.(a) IN GENERAL - Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States.

##### (b) DETERMINATIONS OF ELIGIBILITY

(1) PROMULGATION OF REGULATIONS- Not later than 1 year after the date of enactment of this section, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

(2) CONTENTS OF REGULATIONS- Regulations promulgated under paragraph (1) shall

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- (A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;
  - (B) prohibit a displacing agency from discriminating against any displaced person;
  - (C) ensure that each eligibility determination is fair and based on reliable information; and
  - (D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c).
- (c) EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP- If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this Act if the displaced person would be eligible for the assistance but for subsection (a).
- (d) LIMITATION ON STATUTORY CONSTRUCTION- Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.

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## TITLE II--UNIFORM RELOCATION ASSISTANCE

### DECLARATION OF FINDINGS AND POLICY

SEC. 201. (a) The Congress finds and declares that--

- (1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;
  - (2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;
  - (3) the displacement of businesses often results in their closure;
  - (4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and
  - (5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.
- (b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) It is the intent of Congress that--

- (1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs born by States and State agencies in providing relocation assistance;
- (2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

- (3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and
- (4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (P.L. 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964.

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#### MOVING AND RELATED EXPENSES.

SEC. 202. (a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of--

- (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
- (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;
- (3) actual reasonable expenses in searching for a replacement business or farm; and
- (4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than \$1,000 nor more than \$20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) (1) Except as otherwise provided by Federal law--

- (A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;
- (B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

- (C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).
- (2) For purposes of this subsection, the term--
- (A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue--
- (i) to be a non-routine relocation expense;
- (ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and
- (iii) to meet such other requirements as the lead agency may prescribe in such regulations; and
- (B) "utility facility" means--
- (i) any electric, gas, water, steam power, or materials transmission or distribution system;
- (ii) any transportation system;
- (iii) any communications system (including cable television); and
- (iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system; located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

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#### REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. (a) (1) In addition to payments otherwise authorized by this title, the head of the displacing agency shall make an additional payment not in excess of \$22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

- (A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.
- (B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.
- (C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

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#### REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204 (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

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#### RELOCATION PLANNING, ASSISTANCE COORDINATION, AND ADVISORY SERVICES

SEC. 205 (a) Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

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(b) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to--

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of--

(A) a major disaster as defined in section 102(2) of the Disaster Relief Act of 1974;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this title with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

(f) Notwithstanding section 101(6) of this Act, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

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#### HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 203 and 204 on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

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#### STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE (LOCAL COOPERATION)

SEC. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first \$25,000 of the cost of providing such payments and assistance.

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#### STATE ACTING AS AGENT FOR FEDERAL PROGRAM

SEC. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

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#### PUBLIC WORKS PROGRAMS AND PROJECTS OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

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#### REQUIREMENTS FOR RELOCATION PAYMENTS AND ASSISTANCE OF FEDERALLY ASSISTED PROGRAM; ASSURANCES OF AVAILABILITY OF HOUSING

SEC. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such displacing agency that--

- (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;
- (2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;
- (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

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#### FEDERAL SHARE OF COSTS.

SEC. 211 (a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) No payment or assistance under this title or title III of this Act shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305. [42 U.S.C. 4631]

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#### ADMINISTRATION--RELOCATION ASSISTANCE IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

SEC. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

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DUTIES OF LEAD AGENCY

- SEC. 213. (a) The head of the lead agency shall--
- (1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this Act;
  - (2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 104;
  - (3) ensure that displacing agencies implement section 104 fairly and without discrimination in accordance with section 104(b)(2)(B);
  - (4) ensure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;
  - (5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and
  - (6) perform such other duties as may be necessary to carry out this Act.
- (b) The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure--
- (1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;
  - (2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and
  - (3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.
- (c) The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and the Rural Electrification Administration only with respect to relocation assistance under this title and title I.

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PLANNING AND OTHER PRELIMINARY EXPENSES FOR ADDITIONAL HOUSING

- SEC. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons.

Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per cent of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

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#### PAYMENTS NOT TO BE CONSIDERED AS INCOME

SEC. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance).

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#### TRANSFERS OF SURPLUS PROPERTY

SEC. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

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#### REPEALS

SEC. 220. (a) The following laws and parts of laws are hereby repealed:

- (1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234).
- (2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).
- (3) Section 2680 of title 10, United States Code.
- (4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)).
- (5) Section 114 of the Housing Act of 1949 (2 U.S.C. 1465).
- (6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8).

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(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307).

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495).

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section.

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#### EFFECTIVE DATE

SEC. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

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#### TITLE III--UNIFORM REAL PROPERTY ACQUISITION POLICY

##### UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

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The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine.

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#### BUILDINGS, STRUCTURES, AND IMPROVEMENTS

SEC. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

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(b) (1) for the purpose of determining just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner and the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

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#### EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO UNITED STATES

SEC. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for--

- (1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;
- (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and
- (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

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#### LITIGATION EXPENSES

SEC. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such 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 is that the Federal agency cannot acquire the real property by condemnation; or
- (2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

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(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

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REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

SEC. 305. (a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such acquiring agency that--

- (1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and
- (2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

(b) For purposes of this section, the term "acquiring agency" means--

- (1) a State agency (as defined in section 101(3)) which has the authority to acquire property by eminent domain under State law, and
- (2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

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REPEALS

SEC. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

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EFFECTIVE DATE.

SEC. 418. The amendment made by section 412 of this title (to the extent such amendment prescribes authority to develop, publish, and issue regulations) shall take effect on the date of the enactment of this title. This title and the amendments made by this title (other than the amendment made by section 412 to such extent) shall take effect on the effective date provided in such regulations but not later than 2 years after such date of enactment.

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1. Original text appears in regular typeface.
2. Amended text is displayed in boldface.
3. Amended text is in section 213(c) in regular typeface.
4. Amended text section 104 & 213(a)(2)(3) in bold italics.

EXHIBIT NO. 20-3

Sec. 131. Control of outdoor advertising

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State transportation departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any State transportation department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State transportation department shall be entitled to such payments unless the State maintains the control required under such agreement: Provided, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part.

The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$2,000,000 for the fiscal year ending June 30, 1970, not to exceed \$27,000,000 for the fiscal year ending June 30, 1971, not to exceed \$20,500,000 for the fiscal year ending June 30, 1972, and not to exceed \$50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. Subject to approval by the Secretary in accordance with the program of projects approval process of section 105, (FOOTNOTE 1) a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment. Funds apportioned to a State under section 104 of this title shall not be treated for purposes of the preceding sentence as being available to the State for making such a payment except to the extent that the State, in its discretion, expends such funds for such a payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per cent of the just compensation for such removal (including all relocation costs).

(q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) Removal of Illegal Signs. -

(1) By owners. - Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) By states. - If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.

(s) Scenic Byway Prohibition. - If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section. In designating a scenic byway for purposes of this section and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, a State may exclude from such designation any segment of a highway that is inconsistent with the State's criteria for designating State scenic byways. Nothing in the preceding sentence shall preclude a State from signing any such excluded segment, including such segment on a map, or carrying out similar activities, solely for purposes of system continuity.

(t) Primary System Defined. - For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

Footnotes

[1] See References in Text note below.

EXHIBIT NO. 20-4

Sec. 136. Control of junkyards

- (a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.
- (b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.
- (c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.
- (d) The term "'junk'" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
- (e) The term "'automobile graveyard'" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.
- (f) The term "'junkyard'" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.
- (g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.
- (h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.
- (i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.
- (j) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law. The Federal share of such compensation shall be 75 per centum.
- (k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

- (l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.
- (m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$3,000,000 for the fiscal year ending June 30, 1970, not to exceed \$3,000,000 for the fiscal year ending June 30, 1971, not to exceed \$3,000,000 for the fiscal year ending June 30, 1972, and not to exceed \$5,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

EXHIBIT NO. 20-5

Sec. 142. Public transportation

(a)

(1) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail) on Federal-aid highways for the transportation of passengers (hereafter in this section referred to as "'buses'"), so as to increase the traffic capacity of the Federal-aid systems for the movement of persons, the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service).

(2) In addition to the projects under paragraph (1), the Secretary may approve as a project on the [1] surface transportation program for payment from sums apportioned under section 104(b)(3) for carrying out any capital transit project eligible for assistance under chapter 53 of title 49, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.

(b) Sums apportioned in accordance with section 104(b)(4) shall be available to finance the Federal share of projects for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of this title.

(c) Accommodation of Other Modes of Transportation. - The Secretary may approve as a project on any Federal-aid system for payment from sums apportioned under section 104(b) modifications to existing highway facilities on such system necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.

(d) Metropolitan Planning. - Any project carried out under this section in an urbanized area shall be subject to the metropolitan planning requirements of section 134.

(e)

(1) For all purposes of this title, a project authorized by subsection (a)(1) of this section shall be deemed to be a highway project.

(2) Notwithstanding section 209(f)(1) of the Highway Revenue Act of 1956, the Highway Trust Fund shall be available for making expenditures to meet obligations resulting from projects authorized by subsection (a)(2) of this section and such projects shall be subject to, and governed in accordance with, all provisions of this title applicable to projects on the surface transportation program, except to the extent determined inconsistent by the Secretary.

(3) The Federal share payable on account of projects authorized by subsection (a) of this section shall be that provided in section 120 of this title.

(f) Availability of Rights-of-Way. - In any case where sufficient land or air space exists [2] within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the Secretary shall authorize a State to make such lands, air space, and rights-of-way available with or without charge to a publicly or privately owned authority or company or any other person for such purposes if such accommodation will not adversely affect automotive safety.

(g) The provision of assistance under subsection (a)(2) shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any non-supervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(h) Funds available for expenditure to carry out the purposes of subsection (a)(2) of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to chapter 53 of title 49.

(i) The provisions of section 5323(a)(1)(D) of title 49 shall apply in carrying out subsection (a)(2) of this section.

Footnotes

[1] So in original.

[2] So in original. Probably should be ''exists''.

EXHIBIT NO. 20-6

Sec. 323. Donations and credits

(a) Donations of Property Being Acquired. - Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine.

(b) Credit for Acquired Lands. -

(1) In general. - Notwithstanding any other provision of this title, the State share of the cost of a project with respect to which Federal assistance is provided from the Highway Trust Fund (other than the Mass Transit Account) may be credited in an amount equal to the fair market value of any land that -

(A) is lawfully obtained by the State or a unit of local government in the State;

(B) is incorporated into the project;

(C) is not land described in section 138; and

(D) the Secretary determines will not influence the environmental assessment of the project, including -

(i) the decision as to the need to construct the project;

(ii) the consideration of alternatives; and

(iii) the selection of a specific location.

(2) Establishment of fair market value. - The fair market value of land incorporated into a project and credited under paragraph

(1) shall be established in the manner determined by the Secretary, except that -

(A) the fair market value shall not include any increase or decrease in the value of donated property caused by the project; and

(B) the fair market value of donated land shall be established as of the earlier of -

(i) the date on which the donation becomes effective; or

(ii) the date on which equitable title to the land vests in the State.

(3) Limitation on applicability. - This subsection shall not apply to donations made by an agency of the Federal Government.

(4) Limitation on amount of credit. - The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project.

(c) Credit for Donations of Funds, Materials, or Services. - Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.

(d) Procedures. - A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 shall clearly indicate that -

- (1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;
  - (2) acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and
  - (3) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.
- (e) Crediting of Contributions by Units of Local Government Toward the State Share. - A contribution by a unit of local government of real property, funds, or material in connection with a project eligible for assistance under this title shall be credited against the State share of the project at the fair market value of the real property, funds, or material.

EXHIBIT NO. 20-7

FHWA - FAPG 23 CFR, Subchapter G, Engineering and Traffic Operations, Part 645 - Utilities, Subpart A - Utility Relocations, Adjustments, and Reimbursement

FEDERAL-AID POLICY GUIDE  
May 25, 2000, Transmittal 2923 CFR 645A  
OPI: HIBT

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 645 - UTILITIES

Subpart A - Utility Relocations, Adjustments, and Reimbursement  
Sec.

645.101 Purpose.

645.103 Applicability.

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645.113 Agreements and authorizations.

645.115 Construction.

645.117 Cost development and reimbursement.

645.119 Alternate procedure.

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

Source: 50 FR 20345, May 15, 1985, unless otherwise noted.

Sec. 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

Sec. 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State highway agency (SHA) for costs incurred under an approved and properly executed highway agency (HA)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/ utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR 710.203, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the SHA will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the SHA subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the SHA or HA are inapplicable, and it is intended that the FHWA be considered in the relative position of the SHA or HA.

Sec. 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

(a) Authorization - for Federal-aid projects authorization to the SHA by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

(b) Betterment - any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

(c) Cost of relocation - the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

(d) Cost of Removal - the amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

(e) Cost of salvage - the amount expended to restore salvaged utility property to usable condition after its removal.

(f) Direct Federal projects - highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

(g) Highway agency (HA) - that department, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

(h) Indirect or overhead costs - those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

(i) Relocation - the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(j) Salvage value - the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

(k) State highway agency - the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) Use and occupancy agreement - the document (written agreement or permit) by which the HA approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) Utility - a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

(n) Work order system - a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

Sec. 645.107 Eligibility.

(a) When requested by the SHA, Federal funds may participate, subject to the provisions of Sec. 645.103(d) of this part and at the pro rata share applicable, in an amount actually paid by an HA for the costs of utility relocations. Federal funds may participate in safety corrective measures made under the provisions of Sec. 645.107(k) of this part. Federal funds may also participate for relocations necessitated by the actual construction of a highway project made under one or more of the following conditions when:

(1) The SHA certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain,

(2) The utility occupies privately or publicly owned land, including public road or street right-of-way, and the SHA certifies that the payment by the HA is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicly owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the State, and is not required by law or agreement to move at its own expense, and the SHA certifies that the HA has the legal authority or obligation to make such payments.

(b) On projects which the SHA has the authority to participate in project costs, Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities other than those proposed under the provisions of Sec. 645.107(k) of this part, when State law prohibits the SHA from making payment for relocation of utility facilities.

(c) On projects which the SHA does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities necessitated by the actual construction of a highway project when the SHA certifies that such payment is based upon the provisions of Sec. 645.107(a) of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the HA or for utility safety corrective measures under the provisions of Sec. 645.107(k) of this part.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the HA, except for utilities owned by the political subdivision on projects which qualify under the provisions of Sec. 645.107(c) of this part in which case the costs of the utility are considered to be costs of the HA.

(e) The FHWA may deny Federal fund participation in any payments made by a HA for the relocation of utility facilities when such payments do not constitute a suitable basis for Federal fund participation under the provisions of Title 23, U.S.C.

(f) The rights of any public agency or political subdivision of a State under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the SHA in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by Sec. 645.107(a) and (c), the SHA may file a statement with the FHWA setting forth the conditions under which the SHA will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the SHA under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123.

(h) Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(i) When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the HA, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this regulation, Federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the SHA to proceed in accordance with 23 CFR 630, Subpart A, Federal-Aid Programs Approval and Project Authorization.

(k) Federal funds may participate in projects solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway user. Safety corrective measures should be developed in accordance with the provisions of 23 CFR 645.209(k).

(The information collection requirements in paragraph (g) of this section have been approved under OMB control number 2125-0515)

[50 FR 20345, May 15, 1985, as amended at 53 FR 24932, July 1, 1988]

#### Sec. 645.109 Preliminary engineering.

(a) As mutually agreed to by the HA and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

- (1) The HA's or utility's engineering forces;
- (2) An engineering consultant selected by the HA, after consultation with the utility, the contract to be administered by the HA; or,
- (3) An engineering consultant selected by the utility, with the approval of the HA, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the SHA in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable.

(c) The procedures in 23 CFR Part 172, Administration of Negotiated Contracts, may be used as a guide for reviewing proposed consultant contracts.

Sec. 645.111 Right-of-way.

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

(1) The utility has the right of occupancy in its existing location because it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the HA for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the HA on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and applicable right-of-way procedures in 23 CFR 710.203.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the disposal or removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR 710.203.

Sec. 645.113 Agreements and authorizations.

(a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the HA shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method proposed by the utility for developing relocation costs must be acceptable to both the HA and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the HA in connection with payments by the HA to the utility under the provisions of Sec. 645.107 of this regulation.

- (c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the HA and the FHWA with a clear description of the work required.
- (d) When the relocation involves both work to be done at the HA's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.
- (e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the HA and the FHWA.
- (f) When the estimated cost to the HA of proposed utility relocation work on a project for a specific utility company is \$100,000 or less, the FHWA may approve an agreement between the HA and the utility for a lump-sum payment without later confirmation by audit of actual costs. Lump-sum agreements in excess of \$100,000 may be approved when the FHWA finds that this method of developing costs would be in the best interest of the public.
- (g) Except as otherwise provided by Sec. 645.113(h), authorization by the FHWA to the SHA to proceed with the physical relocation of a utility's facilities may be given after:
- (1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved Statewide transportation improvement program.
- (2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR Part 771, Environmental Impact and Related Procedures, have been satisfied.
- (3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.
- (h) The FHWA may authorize the physical relocation of utility facilities before the requirements of Sec. 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of Sec. 645.107(i) of this regulation.
- (i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR 710.503, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.
- (j) When all efforts by the HA and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the SHA shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the SHA with the understanding that Federal funds will not be paid for work done by the utility until the SHA proposal has been approved by the FHWA.
- (k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.
- Sec. 645.115 Construction.

(a) Part 635, Subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the HA or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the HA's highway construction contract let by the HA as agreed to by the utility,

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the HA or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under Part 635, Subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in Sec. 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the HA. The special provisions of contracts let by the utility or the HA shall be explicit in this respect. The costs of force account work performed for the utility by the HA and of contract work performed for the utility under a contract let by the HA shall be reported separately from the costs of other force account and contract items on the highway project.

#### Sec. 645.117 Cost development and reimbursement.

(a) Developing and recording costs.

(1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the HA and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements.

Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(b) Direct labor costs. (1) Salaries and wages, at actual or average rates, and related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) Labor surcharges. (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) Overhead and indirect construction costs. (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, and actually incurred by the utility, and consistent with the provisions of 48 CFR part 31.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) Material and supply costs. (1) Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the HA or utility following an opportunity for HA inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

(f) Equipment costs. The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) Transportation costs. (1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

(h) Credits. (1) Credit to the highway project will be required for the cost of any betterments to the facility being replaced or adjusted, and for the salvage value of the materials removed.

(2) Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

- (3) No betterment credit is required for additions or improvements which are:
- (i) Required by the highway project,
  - (ii) Replacement devices or materials that are of equivalent standards although not identical,
  - (iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,
  - (iv) Required by law under governmental and appropriate regulatory commission code, or
  - (v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.
- (4) When the facilities, including equipment and operating facilities, described in Sec. 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.
- (5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.
- (i) Billings. (1) After the executed HA/utility agreement has been approved by the FHWA, the utility may be reimbursed through the SHA by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed HA/utility agreement.
  - (2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the SHA and the utility.
  - (3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.
- (The information collection requirements in paragraph (i) of this section have been approved under OMB Control Number 2125-0159.)
- Sec. 645.119 Alternate procedure.
- (a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the SHA is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.
  - (b) The scope of the SHA's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:
    - (1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.
    - (2) Utility relocations falling within the scope of Sec. 645.113 (h), (i), and (j), and Sec. 645.107(i) of this regulation.
  - (c) Each SHA is encouraged to adopt the alternate procedure and file a formal application for approval by the FHWA. The application must include the following:
    - (1) The SHA's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by Sec. 645.119(b), and the provisions of 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to establish the legal basis of the HA's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under Sec. 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with SHA policies and the provisions of this regulation, shall be retained by the SHA.

(2) A statement signed by the chief administrative officer of the SHA certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the SHA's utility policies and procedures submitted under Sec. 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The SHA's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the SHA to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The SHA must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under Sec. 645.119(c)(1).

(The information collection requirements in paragraph (c) of this section have been approved under OMB control number 2125-0533)

FHWA - FAPG 23 CFR 646A, Railroad-Highway Insurance Protection FEDERAL-AID POLICY  
GUIDE

December 9, 1991, Transmittal 1

23 CFR 646A

OPI: HNG-12

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 646 - RAILROADS

Subpart A - Railroad-Highway Insurance Protection

Sec.

646.101 Purpose.

646.103 Application.

646.105 Contractor's public liability and property damage insurance.

646.107 Railroad protective insurance.

646.109 Types of coverage.

646.111 Amount of coverage.

Authority: 23 U.S.C. 109(e), 120(d), 130, and 315; 49 CFR 1.48(b).

Source: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

Sec. 646.101 Purpose.

The purpose of this part is to prescribe provisions under which Federal funds may be applied to the costs of public liability and property damage insurance obtained by contractors:

(a) for their own operations, and

(b) on behalf of railroads on or about whose right-of-way the contractors are required to work in the construction of highway projects financed in whole or in part with Federal funds.

Sec. 646.103 Application.

(a) This part applies:

(1) To a contractors' legal liability for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(2) To the liability which may attach to railroads for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(3) To damage to property owned by or in the care, custody or control of the railroads, both as such liability or damage may arise out of the contractor's operations, or may result from work performed by railroads at or about railroad rights-of-way in connection with projects financed in whole or in part with Federal funds.

(b) Where the highway construction is under the direct supervision of the Federal Highway Administration (FHWA), all references herein to the State shall be considered as references to the FHWA.

Sec. 646.105 Contractor's public liability and property damage insurance.

(a) Contractors may be subject to liability with respect to bodily injury to or death of persons, and injury to, or destruction of property, which may be suffered by persons other than their own employees as a result of their operations in connection with construction of highway projects located in whole or in part within railroad right-of-way and financed in whole or in part with Federal funds. Protection to cover such liability of contractors shall be furnished under regular contractors' public liability and property damage insurance policies issued in the names of the contractors. Such policies shall be so written as to furnish protection to contractors respecting their operations in performing work covered by their contract.

(b) Where a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in his own behalf under contractor's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of, persons and injury to, or destruction of, property as a result of work undertaken by such subcontractors. In addition, the contractor shall provide for and on behalf of any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual contractor's public liability and property damage policies; or, in the alternative, each subcontractor shall provide satisfactory insurance on his own behalf to cover his individual operations.

(c) The contractor shall furnish to the State highway department evidence satisfactory to such department and to the FHWA that the insurance coverages required herein have been provided. The contractor shall also furnish a copy of such evidence to the railroad or railroads involved. The insurance specified shall be kept in force until all work required to be performed shall have been satisfactorily completed and accepted in accordance with the contract under which the construction work is undertaken.

Sec. 646.107 Railroad protective insurance.

In connection with highway projects for the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, railroad protective liability insurance shall be purchased on behalf of the railroad by the contractor. The standards for railroad protective insurance established by Secs. 646.109 through 646.111 shall be adhered to insofar as the insurance laws of the State will permit.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

Sec. 646.109 Types of coverage.

(a) Coverage shall be limited to damage suffered by the railroad on account of occurrences arising out of the work of the contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except

as noted in ec. 646.109(b)(4).

(b) Coverage shall include:

(1) Death of or bodily injury to passengers of the railroad and employees of the railroad not covered by State workmen's compensation laws;

(2) Personal property owned by or in the care, custody or control of the railroads;

(3) The contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) Negligence of only the following classes of railroad employees:

(i) Any supervisory employee of the railroad at the job site;

(ii) Any employee of the railroad while operating, attached to, or engaged on, work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; or

(iii) Any employee of the railroad not within (b)(4) (i) or (ii) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or governmental authority.

Sec. 646.111 Amount of coverage.

(a) The maximum dollar amounts of coverage to be reimbursed from Federal funds with respect to bodily injury, death and property damage is limited to a combined amount of \$2 million per occurrence with an aggregate of \$6 million applying separately to each annual period except as provided in paragraph (b) of this section.

(b) In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from Federal funds shall be allowed. These larger amounts will depend on circumstances and shall be written for the individual project in accordance with standard underwriting practices upon approval of the FHWA.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-9

FHWA - FAPG 23 CFR 652, Pedestrian and Bicycle Accommodations and Projects

FEDERAL-AID

POLICY GUIDE

December 9, 1991, Transmittal 1

23 CFR 652

OPI: HNG-14

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 652 - PEDESTRIAN AND BICYCLE ACCOMMODATIONS AND PROJECTS

Sec.

652. 1 Purpose.

652. 3 Definitions.

652. 5 Policy.

652. 7 Eligibility.

652. 9 Federal participation.

652. 11 Planning.

652. 13 Design and construction criteria.

Authority: 23 U.S.C. 109, 217, 315, 402(b)(1)(F); 49 CFR 1.48(b).

Source: 49 FR 10662, Mar. 22, 1984, unless otherwise noted.

Sec. 652.1 Purpose.

To provide policies and procedures relating to the provision of pedestrian and bicycle accommodations on Federal-aid projects, and Federal participation in the cost of these accommodations and projects.

Sec. 652.3 Definitions.

(a) Bicycle. A vehicle having two tandem wheels, propelled solely by human power, upon which any person or persons may ride.

(b) Bikeway. Any road, path, or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

(c) Bicycle Path (Bike Path). A bikeway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way.

(d) Bicycle Lane (Bike Lane). A portion of a roadway which has been designated by striping, signing and pavement markings for the preferential or exclusive use of bicyclists.

(e) Bicycle Route (Bike Route). A segment of a system of bikeways designated by the jurisdiction having authority with appropriate directional and informational markers, with or without a specific bicycle route number.

(f) Shared Roadway. Any roadway upon which a bicycle lane is not designated and which may be legally used by bicycles regardless of whether such facility is specifically designated as a bikeway.

(g) Pedestrian Walkway or Walkway. A continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

(h) Highway Construction Project. A project financed in whole or in part with Federal-aid or Federal funds for the construction, reconstruction or improvement of a highway or portions thereof, including bridges and tunnels.

(I) Independent Bicycle Construction Project (Independent Bicycle Project). A project designation used to distinguish a bicycle facility constructed independently and primarily for use by bicyclists from an improvement included as an incidental part of a highway construction project.

(j) Independent Pedestrian Walkway Construction Project (Independent Walkway Project). A project designation used to distinguish a walkway constructed independently and solely as a pedestrian walkway project from a pedestrian improvement included as an incidental part of a highway construction project.

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(k) Incidental Bicycle or Pedestrian Walkway Construction Project (Incidental Feature). One constructed as an incidental part of a highway construction project.

(l) Nonconstruction Bicycle Project. A bicycle project not involving physical construction which enhances the safe use of bicycles for transportation purposes.

(m) Snowmobile. A motorized vehicle solely designed to operate on snow or ice.

Sec. 652.5 Policy.

The safe accommodation of pedestrians and bicyclists should be given full consideration during the development of Federal-aid highway projects, and during the construction of such projects. The special needs for the elderly and the handicapped shall be considered in all Federal-aid projects that include pedestrian facilities. Where current or anticipated pedestrian and/or bicycle traffic presents a potential conflict with motor vehicle traffic, every effort shall be made to minimize the detrimental effects on all highway users who share the facility. On highways without full control of access where a bridge deck is being replaced or rehabilitated, and where bicycles are permitted to operate at each end, the bridge shall be reconstructed so that bicycles can be safely accommodated when it can be done at a reasonable cost. Consultation with local groups of organized bicyclists is to be encouraged in the development of bicycle projects.

Sec. 652.7 Eligibility.

(a) Independent bicycle projects, incidental bicycle projects, and nonconstruction bicycle projects must be principally for transportation rather than recreational use and must meet the project conditions for authorization where applicable.

(b) The implementation of pedestrian and bicycle accommodations may be authorized for Federal-aid participation as either incidental features of highways or as independent projects where all of the following conditions are satisfied.

(1) The safety of the motorist, bicyclist, and/or pedestrian will be enhanced by the project.

(2) The project is initiated or supported by the appropriate State highway agency(ies) and/or the Federal land management agency. Projects are to be located and designed pursuant to an overall plan, which provides due consideration for safety and contiguous routes.

(3) A public agency has formally agreed to:

(I) Accept the responsibility for the operation and maintenance of the facility,

(ii) Ban all motorized vehicles other than maintenance vehicles, or snowmobiles where permitted by State or local regulations, from pedestrian walkways and bicycle paths, and

(iii) Ban parking, except in the case of emergency, from bicycle lanes that are contiguous to traffic lanes.

(4) The estimated cost of the project is consistent with the anticipated benefits to the community.

(5) The project will be designed in substantial conformity with the latest official design criteria. (See Sec. 652.13.)

[49 FR 10662, Mar. 22, 1984; 49 FR 14729, Apr. 13, 1984]

Sec. 652.9 Federal participation.

(a) Independent walkway projects, independent bicycle projects and nonconstruction bicycle projects shall be financed with 100 percent Federal-aid primary, secondary or urban highway funds, provided the total amount obligated for all such projects in any one State in any fiscal year does not exceed \$4.5 million of Federal-aid funds or a lesser amount apportioned by the Federal Highway Administrator to avoid exceeding the annual \$45 million cost limitation on these projects for all States in a fiscal year. The Federal Highway Administrator may, upon application, waive this limitation for a State for any fiscal year. This limitation also applies to projects funded under Sec. 652.9(d). This limitation does not apply to projects of the type described in Sec. 652.9(c). The FHWA Offices of Direct Federal Programs and Engineering will coordinate projects of the type described in Sec. 652.9(d) to ensure that the annual cost limitations will not be exceeded.

(b) Specific eligibility requirements for Federal-aid participation in independent and nonconstruction projects are:

(1) An independent walkway project must be constructed on highway right-of-way or easement, or right-of-way acquired for this purpose. Independent walkway projects may be constructed separately or in conjunction with a Federal-aid highway construction project. Where an independent walkway project is located away from the Federal-aid highway right-of-way, it must serve pedestrians who would normally desire to use the Federal-aid route.

(2) An independent bicycle project may include the acquisition of land needed for the facility, or such projects may be constructed on existing highway right-of-way or easement acquired for this purpose. Independent bicycle projects may include construction of bicycle lanes, paths, shelters, bicycle parking facilities and other roadway and bridge work necessary to accommodate bicyclists.

(3) Nonconstruction bicycle projects must be related to the safe use of bicycles for transportation, and may include safety educational material and route maps for safe bicycle transportation purposes on construction bicycle projects shall not include salaries for administration, law enforcement, maintenance and similar items required to operate transportation networks and programs, but may include cost of staff or consultants for development of specific nonconstruction projects.

(c) Bicycle and pedestrian accommodations may also be constructed as incidental features of highway construction projects. These incidental features may be financed with the same type of Federal-aid funds, including funds of the type described in Sec. 652.9(d) (except Interstate construction funds) and at the same Federal share payable as a basic highway project. These accommodations are not subject to the funding limitations for independent walkway, independent bicycle and nonconstruction bicycle projects. In the case of the Interstate construction projects, Federal-aid Interstate construction funds may only be used to replace existing facilities that would be interrupted by construction of the project, or to mitigate specific environmental impacts. Interstate 4R funds provided by 23 U.S.C. 104(b)(5)(B) may be used only for incidental features. As incidental features, these accommodations must be part of a highway improvement and must be located within the right-of-way of the highway, including land acquired under 23 U.S.C. 319 (Scenic Enhancement Program).

(d) Funds authorized for Federal lands highways (forest highways, public lands highways, park roads, parkways, and Indian reservation roads which are public roads), forest development roads and trails (i.e., roads or trails under the jurisdiction of the Forest Service), and public lands development roads and trails (i.e., roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under his/her control), may be used for independent bicycle routes and independent walkway projects. These funds may not be used for nonconstruction bicycle projects.

Sec. 652.11 Planning.

Federally aided bicycle and pedestrian projects implemented within urbanized areas must be included in the transportation improvement program/annual (or biennial) element unless excluded by agreement between the State and the metropolitan planning organization.

Sec. 652.13 Design and construction criteria.

(a) The American Association of State Highway and Transportation Officials' "Guide for Development of New Bicycle Facilities, 1981" (AASHTO Guide) or equivalent guides developed in cooperation with State or local officials and acceptable to the division office of the FHWA, shall be used as standards for the construction and design of bicycle routes. Copies of the AASHTO Guide may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW, Suite 225, Washington, DC 20001.

(b) Curb cuts and other provisions as may be appropriate for the handicapped are required on all Federal and Federal-aid projects involving the provision of curbs or sidewalks at all pedestrian crosswalks.

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-10

FHWA - FAPG 23 CFR, Subchapter H, Right-of-Way and Environment, Part 710 -  
Right-of-Way and Real Estate, Subpart A - General

FEDERAL-AID POLICY GUIDE  
May 25, 2000, Transmittal 2923 CFR 710A  
OPI: HEPR

NOTE: Entire document consists of new material.

SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT

PART 710 - RIGHT-OF-WAY AND REAL ESTATE

Subpart A - General

Sec.

710.101 Purpose.

710.103 Applicability.

710.105 Definitions.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23 of the United States Code in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

Sec. 710.103 Applicability.

This part applies whenever Federal assistance under title 23 of the United States Code is used. The part applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: <http://www.fhwa.dot.gov/realestate/index.htm>

Sec. 710.105 Definitions.

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:  
Access rights. Means the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency. Means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

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

Air rights. Means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

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

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

Disposal. Means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

**Donation.** Means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

**Early acquisition.** Means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

**Easement.** Means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

**NHS.** Means the National Highway System as defined in 23 U.S.C. 103(b).

**Oversight agreement.** Means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

**Real property.** Means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

**Relinquishment.** Means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

**Right-of-way.** Means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

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

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

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

**State transportation department (STD).** Means the State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

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

**Uniform Act.** Means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at 49 CFR part 24.

FHWA - FAPG 23 CFR, Subchapter H, Right-of-Way and Environment, Part 710 -  
Right-of-Way and Real Estate, Subpart B - Program Administration

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SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT

PART 710 - RIGHT-OF-WAY - GENERAL

Subpart B - Program Administration

Sec.

710.201 State responsibilities.

710.203 Funding and reimbursement.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 710.201 State responsibilities.

(a) Organization. Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.

(b) Program oversight. The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

(c) Right-of-way (ROW) operations manual. Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:

(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.

(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) Compliance responsibility. The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.

(e) Adequacy of real property interest. The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

(f) Recordkeeping. The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:

- (i) 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
- (ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(g) Procurement. Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

(h) Use of other public land acquisition organizations or private consultants. The STD 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 under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

(i) Approval actions. Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

(j) Approval of just compensation. The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.

(k) Description of acquisition process. The STD shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.

#### Sec. 710.203 Funding and reimbursement.

(a) General conditions. The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in Sec. 710.501 for early acquisition:

- (1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);
- (2) The State has executed a project agreement;
- (3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and

(4) Costs have been incurred in conformance with State and Federal law requirements.

(b) 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:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

(ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning, right-of-way plan preparation, title work, and similar necessary right-of-way related work.

(iii) The cost to acquire real property, including incidental expenses.

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.

(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.

(2) Relocation assistance and payments. Payments made incidental to and associated with the displacement from acquired property under 49 CFR part 24.

(3) Damages. The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.

(4) Property management. The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) Payroll-related expenses and technical guidance. Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A-87 (available at <http://www.whitehouse.gov/omb/circulars>). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.

(6) Property not incorporated into a project funded under title 23 of the United States Code. The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) General. Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

(ii) Easements not incorporated into the right-of-way. The cost of acquiring easements outside the right-of-way for permanent or temporary use.

(7) Uneconomic remnants. The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) 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. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) Utility and railroad property.

- (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad-Highway Projects.
  - (ii) 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.
- (c) Withholding payment. The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.
- (d) Indirect costs. Indirect costs may be claimed under the provisions of OMB Circular A-87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-11B

FHWA - FAPG 23 CFR, Subchapter H, Right-of-Way and Environment, Part 710 -  
Right-of-Way and Real Estate, Subpart C - Project Development

FEDERAL-AID POLICY GUIDE  
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SUBCHAPTER H - RIGHT-OF-WAY ENVIRONMENT

PART 710 - RIGHT-OF-WAY - GENERAL

Subpart C - Project Development

Sec.

710.301 General.

710.303 Planning.

710.305 Environmental analysis.

710.307 Project agreement.

710.309 Acquisition.

710.311 Construction advertising.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

Sec. 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

Sec. 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 et seq.) project level conformity analysis. In

areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

**Sec. 710.307 Project agreement.**

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

**Sec. 710.309 Acquisition.**

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

**Sec. 710.311 Construction advertising.**

The State must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and approval of the ROW availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction.

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-11C

FHWA - FAPG 23 CFR, Subchapter H, Right-of-Way and Environment, Part 710 -  
Right-of-Way and Real Estate, Subpart D - Real Property Management

FEDERAL-AID POLICY GUIDE  
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SUBCHAPTER H - RIGHT-OF-WAY ENVIRONMENT

PART 710 - RIGHT-OF-WAY - GENERAL

Subpart D - Real Property Management

Sec.

710.401 General.

710.403 Management.

710.405 Air rights on the Interstate.

710.407 Leasing.

710.409 Disposals.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 710.401 General.

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23 of the United States Code funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

Sec. 710.403 Management.

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by Railroads in accordance with 23 CFR part 646.

(4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Use for transportation projects eligible for assistance under title 23 of the United States Code.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B. Sec. 710.405 Air rights on the Interstate.

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for non-highway purposes; 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 STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: <http://www.fhwa.dot.gov/realestate/index.htm>.

Sec. 710.407 Leasing.

(d) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless, nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

Sec. 710.409 Disposals.

(d) 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 Sec. 710.403(c).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

FHWA - FAPG 23 CFR, Subchapter H, Right-of-Way and Environment, Part 710 - Right-of-Way and Real Estate, Subpart E - Property Acquisition Alternatives

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SUBCHAPTER H - RIGHT-OF-WAY ENVIRONMENT

PART 710 - RIGHT-OF-WAY - GENERAL

Subpart E - Property Acquisition Alternatives

Sec.

710.501 Early acquisition.

710.503 Protective buying and hardship acquisition.

710.505 Real property donations.

710.507 State and local contributions.

710.509 Functional replacement of real property in public ownership.

710.511 Transportation enhancements.

710.513 Environmental mitigation.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 710.501 Early acquisition.

(a) Real property acquisition. The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) Eligible costs. Acquisition costs incurred by a State agency 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 State;
  - (2) The property was not land described in 23 U.S.C. 138;
  - (3) The property was acquired in accordance with the provisions of 49 CFR part 24;
  - (4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
  - (5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
    - (i) The decision on 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.
- (c) Reimbursement. In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:
- (1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and

(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

Sec. 710.503 Protective buying and hardship acquisition.

(a) General conditions. Prior to the STD obtaining final environmental approval, the STD 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 STD 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

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) Protective buying. The STD 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.

(c) Hardship acquisitions. The STD 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.

(d) Environmental decisions. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

Sec. 710.505 Real property donations.

(a) 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 STD. Prior to accepting the property, the owner must be informed by the agency 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 STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than \$2500, 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. 323(d).

(b) Credit for donations. Donations of real property may be credited to the State's matching share of the project. Credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) 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.

Sec. 710.507 State and local contributions.

(a) General. Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.

(b) Effective date. Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

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

(d) State contributions. Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:

(1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.

(e) Credit for local government contributions. A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

Sec. 710.509 Functional replacement of real property in public ownership.

(a) 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 State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

(b) Federal participation. Federal-aid funds may participate in functional replacement costs only if:

(1) Functional replacement is permitted under State law and the STD elects to provide it.

(2) The property in question is in public ownership and use.

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.

(4) The State 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.

(5) The FHWA concurs in the STD determination that functional replacement is in the public interest.

(6) The real property is not owned by a utility or railroad.

(c) Federal land transfers. Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

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(d) Limits upon participation. Federal-aid participation in the costs of functional replacement are limited to costs which are actually incurred in the replacement of the acquired land and/or facility and are:

(1) Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) Procedures. When a State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

Sec. 710.511 Transportation enhancements.

(a) General. Section 133(b) (8) of title 23 of the United States Code authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the Code of Federal Regulations (CFR), except as specified in paragraph (b)(3) of this section.

(b) Requirements.

(1) Displacements for TEA are subject to the Uniform Act.

(2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).

(4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and

(i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and

(ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. ("Federal approval of property acquisition" means the date of the approval of the environmental document or project authorization/agreement, whichever is earlier. "Involvement of the conservation organization" means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.)

(5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) Property management. Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

Sec. 710.513 Environmental mitigation.

EXHIBIT NO. 20-11E

- (a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.
- (b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federal-aid highway project.

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-11E

FHWA - FAPG 23 CFR, Subchapter H, Right-of-Way and Environment, Part 710 -  
Right-of-Way and Real Estate, Subpart F - Federal Assistance Programs

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SUBCHAPTER H - RIGHT-OF-WAY ENVIRONMENT

PART 710 - RIGHT-OF-WAY - GENERAL

Subpart F - Federal Assistance Programs

Sec.

710.601 Federal land transfer.

710.603 Direct Federal acquisition.

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 710.601 Federal land transfer.

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

- (1) The purpose for which the lands are to be used;
- (2) The estate or interest in the land required for the project;
- (3) The Federal-aid project number or other appropriate references;
- (4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
- (5) A map showing the survey of the lands to be acquired;
- (6) A legal description of the lands desired; and
- (7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

Sec. 710.603 Direct Federal acquisition.

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the STD with landowners;

(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, et seq.)

(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

- (1) The right to take possession of unoccupied properties;
- (2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;
- (3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;
- (4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:

- (1) Maintain control of access where applicable;
- (2) Accept title thereto;
- (3) Maintain the project constructed thereon;
- (4) Abide by any conditions which may set forth in the deed; and
- (5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.
  - (i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-11F

Federal Highway Administration - Airspace Guidelines

Real Estate Services

Federal Highway Administration

AIRSPACE GUIDELINES

to

23 CFR 710.405 - 710.407

December 21, 1999

The Federal Highway Administration (FHWA) has prepared this series of questions and answers to guide those who administer lands and property rights acquired as a result of a Federally-funded highway or transportation project under Title 23 U.S.C. For specific situations and project level guidance, we encourage the reader to contact the State Department of Transportation (STD) or the FHWA Division Office located in your State capital.

Introduction

In this guidance document, we will use the term "airspace lease" (lease) to cover the range of leases for highway air rights. Air rights is a legal term used in highway terminology to describe that area above or below the plane of the transportation facility and located within the right-of-way boundaries. The right to use this area by public entities or private parties for interim non-highway uses may be granted in airspace leases, as long as such uses will not interfere with the construction, operation or maintenance of the facility or anticipated future transportation needs. Private or public uses of airspace may occur, but the preservation of the nation's highway capacity is essential.

An airspace lease may range from a short term use with few or no tenant improvements to a long-term use with substantial structures. Lands held by the STD that are excess to highway needs are subject to different rules and are not discussed in this document. This guidance also does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way; relocations of railroads or utilities for which reimbursement is claimed; use of real property for bikeways and pedestrian walkways as covered in part 652 of 23 CFR, and highways not on the National Highway System (NHS).

The common element for successful airspace leasing activities is coordination among the various interested participants. A good highway airspace agreement must reflect legal, planning, environmental, design, construction, maintenance, insurance and safety requirements. Participants involved in evaluating a leasing proposal may include the proposed airspace user, affected sections of the STD, Local Public Agencies (LPA), and as appropriate, the FHWA. The following guidance sets forth the Federal requirements for use of airspace on the Federal-aid highway systems and ideas on how to most effectively protect this valuable public investment.

Federal Statutes and Regulations

This guidance is published in response to the revised 23 CFR Part 710 Subpart D on Real Property Management, as published on December 21, 1999, and is subject to the requirements of that regulation and other applicable requirements. For more information on these regulations and related issues see the FHWA web site at <http://www.fhwa.dot.gov/realestate/index.htm>

Additional Federal requirements that affect the potential leases of airspace are found within 23 U.S.C. and implementing regulations in 23 CFR. For example, some pertinent citations include 23 U.S.C. 109(a) {Standards}, 23 U.S.C. 116 {Maintenance} and 23 U.S.C. 156 {Proceeds from the Sale or Lease of Real Property}, as well as their implementing regulations in 23 CFR 1.23, 1.27 and elsewhere. Additional requirements may include the Manual on Uniform Traffic Control Devices (MUTCD) and other guides incorporated by reference in 23 CFR. For specific guidance on these requirements, contact your FHWA Division or STD.

EXHIBIT NO. 20-12

Question 710.405\_1: What is highway airspace?

Air space is that area located above or below the highway's established grade line, beneath an elevated highway structure, or adjacent to the roadway, and located within the approved right-of-way boundary. As used in these Guidelines, this includes the land and related rights held by the STD or LPA and available for such uses, subject to limitations under State law and procedures.

Question 710.405\_2: Who may lease highway airspace?

An individual, company, organization, or public agency may lease airspace upon approval from the STD and where appropriate, FHWA. All non-highway use of airspace will be covered by a properly written and approved airspace agreement (lease).

Question 710.405\_3: Does FHWA have final approval on leases of all airspace?

The FHWA has final approval on leases of airspace on Interstate systems. It is a very interested party on the lease of airspace on other highway systems, particularly on other roads on the National Highway System (NHS). (See discussion on Statutes & Regulations). When mentioned in this document, FHWA approval is normally required only for airspace leases on the Interstate system, unless the FHWA/State Oversight Agreement provides otherwise.

Question 710.405\_4: Are there fundamental restrictions against the lease of highway airspace?

Airspace cannot be leased if it is required currently or in the foreseeable future for safe operation and maintenance of the highway facility. If such conflicts exist, the existing airspace would be considered unavailable. The only exception may be for interim uses which are terminated when the airspace is needed for highway purposes.

Under no conditions shall airspace be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the STD or the FHWA to be a hazard to highway or non-highway users. This prohibition should not be construed to preclude the transverse or longitudinal installation of such items as petroleum pipelines that have been approved by the STD and where appropriate, FHWA.

Question 710.405\_5: What is the basic requirement for an airspace lease?

A State transportation department (STD) may approve non-highway airspace leases where it has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a Federal-aid system to grant such usage.

Question 710.405\_6: When is it necessary to determine the fair market value of airspace?

An STD should always determine the fair market value of airspace, and certainly if Federal funds have been used to acquire the highway right-of-way. The STD may receive fair market income from airspace leases, and use it for Title 23 (Transportation) purposes.

If sufficient available airspace exists within the publicly acquired rights-of-way of an Interstate highway, FHWA may authorize a STD to lease such airspace without charge to a publicly owned mass transit authority, or to another public agency for non-proprietary use for social, environmental or economic mitigation purposes.

Question 710.405\_7: What can the STD do with the net income from airspace leases?

Income received from the authorized use of airspace shall be the STD's responsibility. Credit to Federal funds is not required as long as the Federal pro-rata share of the project income is used for Title 23 (Transportation) eligible projects. (See 23 CFR 710.403 (e) for more details)

Question 710.405\_8: Can airspace be leased for public purposes?

Available airspace may be leased to a public agency for interim uses such as green strips, small parks, play areas, parking, public or quasi-public use which would integrate the highway into the local environment and enhance other publicly supported programs. Normally, the STD should retain supervision and jurisdiction over these interim land uses, but could enter into management agreements with local political subdivisions.

Question 710.405\_9: What information must be included in an airspace agreement?

The airspace agreement should be very specific and limited as to the exact rights and uses granted. Each of the following items must be included in an application:

Identification of the party responsible for developing and operating the airspace

A general statement of the proposed use

The proposed design for the use of the space, including any facilities to be constructed.

Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility.

Provision for vertical and horizontal access for maintenance purposes.

Other general requirements as term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this guidance.

Question 710.405\_10: What are the primary lease terms for an airspace agreement?

Each agreement should contain:

Provision to prohibit the transfer, assignment, or conveyance of the airspace rights to another party without prior STD approval with FHWA concurrence on Interstates.

Provision to revoke the agreement in the event that the airspace facility ceases to be used or is abandoned, or becomes necessary for highway purposes.

Provision to revoke the agreement if the terms of the lease are breached and such breach is not corrected within a reasonable length of time after written notice of noncompliance has been given. In the event the agreement is revoked, the STD may request the removal of the facility occupying the airspace. The removal shall be accomplished by the responsible party in a manner prescribed by the STD at no cost to the FHWA. An exception to facility removal is permitted when the improvements revert to the State upon termination of the agreement and the STD chooses to accept them.

Provision to allow STD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary. The manner of when and how these inspections are to be made should be specified in the airspace agreement.

Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will protect the highway's safety and appearance, and that such maintenance will cause no unreasonable interference with highway use.

Provisions assuring that the airspace user will be responsible for any resulting hazardous waste contamination without liability to the STD and FHWA.

Provisions to assure full understanding that the airspace user will not qualify for relocation benefits under the Uniform Act.

Question 710.405\_11: How specific must the maps or plans be?

An adequately detailed three-dimensional presentation must be prepared of the space to be used and the facility to be constructed. Maps and plans may not be required if the available airspace is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description, at the STD's discretion.

Question 710.405\_12: What are the insurance requirements?

Adequate liability insurance shall be required by the responsible party for the payment of any damages which may occur during construction and then use of the airspace facilities, thus holding the STD (or LPA) and FHWA harmless.

Question 710.405\_13: Are there any exceptions to the insurance requirement?

Insurance may not be required if the airspace is to be leased by a self-insured public or quasi-public agency. In such cases the requesting agency is assigned the 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.

Question 710.405\_14: What if revisions need to be made to the original proposal?

Any significant revision in the design or construction of a proposed facility shall require prior approval by the STD. When the revision impacts an Interstate highway facility, the STD will obtain concurrence from the FHWA.

Question 710.405\_15: Are there design requirements for leasing of highway airspace?

Design requirements are generally in the STD's manuals, FHWA regulations and guidance from organizations such as American Association of State Highway and Transportation Officials (AASHTO). Detailed guidance on design requirements is contained in STD manuals and FHWA regulations in 23 CFR Part 625, et. Seq. For guidance and interpretation on specific proposals, contact your STD and FHWA Division Office.

The following are major design criteria to be covered on a proposed airspace use:

Consideration shall be given to seismic design criteria to assure the future safety of the highway facility and of the airspace use

Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

The proposed use of airspace above the established gradeline of the highway shall not, at any location between two points established 2 feet beyond the two outer edges of the shoulder, extend below a horizontal plane which is at least 16 feet 6 inches above the gradeline of the highway, or the minimum vertical clearance plus 6 inches as approved by the State, except as necessary for columns, foundations or other support structures.

Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the STD, may be considered on an individual basis by the FHWA as appropriate.

Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the STD. Supports shall be clear of the shoulder or safety walks of the outer roadway.

However, supports may be located in the median or outer separation when the STD determines and the FHWA concurs that such medians and outer separations are of sufficient width.

All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the STD and the FHWA. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp.

Proposals may involve coordination with multiple offices within the STD such as Planning, Environment, Traffic, Operations, and Maintenance. Details of required approvals should be incorporated into the airspace agreement as appropriate.

Question 710.405\_16: What are the safety requirements for a lease of airspace? Full safety requirements are found in the STD's manuals, FHWA guidance and in national professional organization guidelines. For specific guidance and interpretation, contact your STD and FHWA Division Office. Examples of some key areas to consider include:

The design, occupancy, and use of any structure over or under a highway facility shall not interfere with the use, safety, appearance, nor the enjoyment of the facility nor produce fumes, vapors, odors, drippings, droppings, or discharges of any kind.

The use of airspace shall not result in either highway or nonhighway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

Appropriate safety precautions and features must be incorporated in the design to minimize the possibility of injury to users of either the highway facility or airspace due to highway or non-highway incidents.

Highway airspace facilities shall not be approved unless the plans contain adequate provisions, acceptable to the STD and the FHWA, for evacuation of the structures or facilities in case of a major incident endangering the occupants of such structures or facilities.

Any airspace facility shall be fire resistant in accordance with the provisions of applicable local codes or nationally accepted standards found acceptable by the STD and the FHWA.

Question 710.405\_17: Is it necessary to provide light and ventilation?

For detailed guidance on specific proposals, refer to STD manuals or FHWA regulations in 23 CFR Part 625, and then direct specific inquiries to the STD's specialists. Generally, however:

No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of a highway that will safely affect natural ventilation.

The STD shall determine such lengths for each particular case, subject to FHWA concurrence on Interstates. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway.

The underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the STD.

Question 710.405\_18: Can a lease of highway airspace change the alignment of the highway?

Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the STD and the FHWA as required.

Question 710.405\_19: What if it is beneficial to change the highway alignment?

The STD or the FHWA may approve a proposed airspace facility that alters but improves existing highway operation and maintenance, but such changes will be provided without cost to Federal funds.

Exceptions to the cost requirement may be made if the lease improvements of a proposed facility or other interim uses are for public or quasi-public purposes and would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund.

Question 710.405\_20: Does the STD need to access airspace after construction is complete?

Yes. Proposed airspace facilities will be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary. In the event the responsible party fails in its maintenance obligations, there will be provision for the STD to enter the premises to perform such work.

Question 710.405\_21: Can highway airspace be used to park motor vehicles?

Approval for the use and occupancy of highway airspace for the parking of motor vehicles will be granted only if proper consideration has been given to the need for the following:

Parking design or arrangement to assure orderly and functional parking.

Plantings or screening measures to improve the esthetics and appearance of the area.

Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

Access for fire protection and fire fighting equipment.

Question 710.405\_22: Can advertising signs be displayed within highway airspace?

On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but only those indicating ownership and type of on-premise activities. Any signs are subject to regulation by the STD and the FHWA for number, size, location, design, and other limitations of the MUTCD, the Highway Beautification Act (HBA) and the State-Federal sign control agreement. Local ordinances and requirements may also apply.

Question 710.405\_23: What other types of compliance issues apply to highway airspace?

There are a number of additional provisions that must be met when considering a proposed highway airspace use. Coordination within the STD, and with local government and other responsible agencies should be undertaken early in the airspace proposal consideration process to allow for adequate reviews and required approvals. The STD would be the best source for requirements under State law, as well as information on where to determine other applicable requirements. Some examples of essential Federal concerns about compliance include:

Appropriate provisions within your State's Civil Rights requirements with respect to Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

Conformity with the Americans with Disabilities Act (ADA).

Conformity with the governing provisions of the Federal Aviation Administration, Federal Rail Administration, Federal Transit Administration, and other Federal agencies whose approvals may be required.

Environmental clearances under the National Environmental Protection Act (NEPA) {such as for air and water quality, wetlands, etc.}, to the degree these apply, as well as historical and other Federally-protected issues related to a proposed airspace lease.

Question 710.405\_24: What are the STD obligations for management of airspace use?

The STD should maintain an inventory of all authorized uses of airspace. This inventory should include at least the following items for each authorized use of airspace:

Location by project, survey station, or other appropriate method.

Identification of the authorized user of the airspace.

A three-dimensional description or a metes and bounds description.

As-built construction plans of the highway facility at the location where the use of airspace was authorized.

Pertinent construction plans of the facility authorized to occupy the airspace.

A copy of the executed airspace agreement.

This page last modified on July 3, 2001

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-12

FEDERAL-AID POLICY GUIDE  
December 9, 1991, Transmittal 1

23 CFR 750A

OPI: HRW-1

**SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT**

**PART 750 - HIGHWAY BEAUTIFICATION**

**Subpart A - National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program**

Sec.

750.101 Purpose.

750.102 Definitions.

750.103 Measurements of distance.

750.104 Signs that may not be permitted in protected areas.

750.105 Signs that may be permitted in protected areas.

750.106 Class 3 and 4 signs within informational sites.

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750.108 General provisions.

750.109 Exclusions.

750.110 State regulations.

Authority: Sec. 12, Pub. L. 85-381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b). Source: 38 FR 16044, June 20, 1973, unless otherwise noted.

**Sec. 750.101 Purpose.**

(a) In section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, hereinafter called the "act," the Congress declared that:

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Inter-state and Defense Highways, hereinafter called the "Interstate System," it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such system by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Transportation.

(b) The standards in this part are hereby promulgated as provided in the act.

[38 FR 16044, June 20, 1973, as amended at 39 FR 28629,

Aug. 9, 1974]

**EXHIBIT NO. 20-13A**

**Sec. 750.102 Definitions.**

The following terms when used in the standards in this part have the following meanings:

- (a) Acquired for right-of-way means acquired for right-of-way for any public road by the Federal Government, a State, or a county, city, or other political subdivision of a State, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.
- (b) Centerline of the highway means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a nondivided Interstate Highway.
- (c) Controlled portion of the Interstate System means any portion which:
  - (1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);
  - (2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Transportation as provided in the act; and
  - (3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Transportation and the State highway department shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial.
- (d) Entrance roadway means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate Highway from the general road system within a State, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.
- (e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
- (f) Exit roadway means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate Highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.
- (g) Informational site means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.
- (h) Legible means capable of being read without visual aid by a person of normal visual acuity.
- (I) Maintain means to allow to exist.
- (j) Main-traveled way means the traveled way of an Interstate Highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
- (k) Protected areas means all areas inside the boundaries of a State which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, protected areas also means all areas inside the boundary of such State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.
- (l) Scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(m) Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(n) State means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(o) State law means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(p) Trade name shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(q) Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(r) Turning roadway means a connecting roadway for traffic turning between two intersection legs of an interchange.

(s) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

**Sec. 750.103 Measurements of distance.**

(a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under Sec. 750.107 (a)(2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

[38 FR 16044, June 20, 1973, as amended at 41 FR 9321, Mar. 4, 1976]

**Sec. 750.104 Signs that may not be permitted in protected areas.**

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of suchactivities.

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.

**Sec. 750.105 Signs that may be permitted in protected areas.**

(a) Erection or maintenance of the following signs may be permitted in protected areas:

Class 1 - Official signs. Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State of Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2 - On-premise signs. Signs not prohibited by State law which are consistent with the applicable provisions of this section and Sec. 750.108 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

Not more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway.

**EXHIBIT NO. 20-13A**

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.

**Class 3 - Signs within 12 miles of advertised activities.** Signs not prohibited by State law which are consistent with the applicable provisions of this section and Secs. 750.106, 750.107, and 750.108 and which advertise activities being conducted within 12 air miles of such signs.

**Class 4 - Signs in the specific interest of the traveling public.** Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and Secs. 750.106, 750.107, and 750.108 and which are designed to give information in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than 12 air miles from such sign may not be permitted unless the name of the advertised activity which is within 12 air miles of such sign is displayed as conspicuously as such trade name.

(c) Only information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation and places for camping, lodging, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

**Sec. 750.106 Class 3 and 4 signs within informational sites.**

(a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with Sec. 1.35 of this chapter. The location and frequency of such sites shall be as determined by agreements between the Secretary of Transportation and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites in protected areas in a manner consistent with the following provisions:

(1) No sign may be permitted which is not placed upon a panel.

(2) No panel may be permitted to exceed 13 feet in height or 25 feet in length, including border and trim, but excluding supports.

(3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the main-traveled way or a turning roadway.

(4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.

(5) Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

(6) No sign may be permitted which moves or has any animated or moving parts.

(7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

(8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

**EXHIBIT NO. 20-13A**

**Sec. 750.107 Class 3 and 4 signs outside informational sites.**

- (a) The erection or maintenance of the following signs may be permitted within protected areas, outside informational sites:
- (1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;
  - (2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.
  - (3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either paragraph (a)(1) or (2) of this section.
- (b) The erection or maintenance of signs permitted under paragraph (a) of this section may not be permitted in any manner inconsistent with the following:

- (1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

Distance from intersection	Number of signs
0-2 miles 0.	
2-5 miles 6.	
More than 5 miles Average of one sign/mile	

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

- (2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.
- (3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.
- (4) Such signs visible to Interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.
- (5) No such signs may be permitted in scenic areas.
- (6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.
- (c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

**Sec. 750.108 General provisions.**

No Class 3 or 4 signs may be permitted to be erected or maintained pursuant to Sec. 750.107, and no Class 2 sign may be permitted to be erected or maintained, in any manner inconsistent with the following:

**EXHIBIT NO. 20-13A**

- (a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.
- (b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.
- (c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.
- (d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.
- (e) No sign may be permitted which moves or has any animated or moving parts.
- (f) No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.
- (g) No sign may be permitted to exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

**Sec. 750.109 Exclusions.**

The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.

**Sec. 750.110 State regulations.**

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.

**EXHIBIT NO. 20-13A**

FEDERAL-AID POLICY GUIDE  
December 9, 1991, Transmittal 1

23 CFR 750B

OPI: HRW-1

**SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT**

**PART 750 - HIGHWAY BEAUTIFICATION**

**Subpart B - National Standards for Directional and Official Signs**

Sec.

750.151 Purpose.

750.152 Application.

750.153 Definitions.

750.154 Standards for directional signs.

750.155 State standards.

**Subpart C - [Reserved]**

**Sec. 750.151 Purpose.**

(a) In section 131 of title 23, United States Code, Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote safety and recreational value of public travel, and to preserve natural beauty.

(2) Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are issued as provided in Section 131 of title 23, United States Code.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

**Sec. 750.152 Application.**

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside of urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

[40 FR 21934, May 20, 1975]

**EXHIBIT NO. 20-13B**

**Sec. 750.153 Definitions.**

For the purpose of this part:

- (a) Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.
- (b) Main traveled way means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.
- (c) Interstate System means the National System of Interstate and Defense Highways described in Section 103(d) of title 23, United States Code.
- (d) Primary system means the Federal-aid highway system described in Section 103(b) of title 23, United States Code.
- (e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
- (f) Maintain means to allow to exist.
- (g) Scenic area means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.
- (h) Parkland means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
- (I) Federal or State law means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.
- (j) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.
- (k) Freeway means a divided arterial highway for through traffic with full control of access.
- (l) Rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.
- (m) Directional and official signs and notices includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.
- (n) Official signs and notices means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.
- (o) Public utility signs means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

**EXHIBIT NO. 20-13B**

(p) Service club and religious notices means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) Public service signs means signs located on school bus stop shelters, which signs:

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) Directional signs means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) State means any one of the 50 States, the District of Columbia, or Puerto Rico.

(t) Urban area means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

**Sec. 750.154 Standards for directional signs.**

The following apply only to directional signs:

(a) General. The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated or moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

**EXHIBIT NO. 20-13B**

(b) Size.(1) No sign shall exceed the following limits:

(I) Maximum area - 150 square feet.

(ii) Maximum height - 20 feet.

(iii) Maximum length - 20 feet.

(2) All dimensions include border and trim, but exclude supports.

(c) Lighting. Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) Spacing. (1) Each location of a directional sign must be approved by the State highway department.

(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(4)(i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) Selection method and criteria. (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection methods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23, United States Code, and this part.

## **EXHIBIT NO. 20-13B**

**Sec. 750.155 State standards.**

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and official signs and notices along the Federal-aid highway systems than these national standards.

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]

**EXHIBIT NO. 20-13B**

EXHIBIT NO. 20-13B1

FHWA - FAPG 23 CFR 750B, Non-Regulatory Supplement FEDERAL-AID POLICY GUIDE  
July 21, 1995, Transmittal 13

23 CFR 750B

NON-REGULATORY SUPPLEMENT

OPI: HRW-12

FLASHING LIGHTS ON OUTDOOR ADVERTISING SIGNS (23 CFR 750.154(c)). The term flashing lights is not limited to electric lights. It includes moving reflective disks that reflect light in a flashing manner and rotating slats that create the effect of flashing or moving light.

Related Sites:

Real Estate Services

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United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-13B1

## **SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT**

### **PART 750 - HIGHWAY BEAUTIFICATION**

#### **Subpart D - Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)**

Sec.

750.301 Purpose.

750.302 Policy.

750.303 Definitions.

750.304 State policies and procedures.

750.305 Federal participation.

750.306 Documentation for Federal participation.

750.307 FHWA project approval.

750.308 Reports.

Authority: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

Source: 39 FR 27436, July 29, 1974, unless otherwise noted.

#### **Sec. 750.301 Purpose.**

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

#### **Sec. 750.302 Policy.**

(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.

(b)(1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.

(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1975, by relocation, pursuant to the provisions of 23 CFR Sec. 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. 131 by the Federal-Aid Highway Amendments of 1974, P.L. 93-643, section 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR Sec. 750.707(b).

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programmed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

#### **Sec. 750.303 Definitions.**

(a) Sign. An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(b) Lease (license, permit, agreement, contract or easement). An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.

(c) Leasehold value. The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

(d) Illegal sign. One which was erected and/or maintained in violation of State law.

(e) Nonconforming sign. One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(f) 1966 inventory. The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) Abandoned sign. One in which no one has an interest, or as defined by State law.

#### **Sec. 750.304 State policies and procedures.**

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) Project priorities. The following order of priorities is recommended.

(1) Illegal and abandoned signs.

(2) Hardship situations.

(3) Nominal value signs.

(4) Signs in areas which have been designated as scenic under authority of State law.

(5) Product advertising on:

(i) Rural interstate highway.

(ii) Rural primary highway.

(iii) Urban areas.

#### **EXHIBIT NO. 20-13D**

(6) Nontourist-oriented directional advertising.

(7) Tourist-oriented directional advertising.

(b) Programing. (1) A sign removal project may consist of any group of proposed sign removals. The signs may be those belonging to one company or those located along a single route, all of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.

(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF-000B( ), continuing the numbering sequence which began with the sign inventory project in 1966.

(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.

(c) Valuation and review methods - (1) Schedules - formulas. Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.

(2) Appraisals. Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

(3) Leaseholds. When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) Severance damages. The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.304(h), and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.

(5) Review of value estimates. All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) Nominal value plan. (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to \$250 for each nonconforming sign, and up to \$100 for each nonconforming sign site.

(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

#### **EXHIBIT NO. 20-13D**

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) Programming and authorizations will be in accord with Sec. 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programmed and authorized as one project.

(e) Sign removal. The State's procedural statement should include provision for:

(1) Owner retention.

(2) Salvage value.

(3) State removal.

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 50 FR 34093, Aug. 23, 1985]

**Sec. 750.305 Federal participation.**

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.

(3) A duplicate payment for the site owner's interest of \$2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure submission.

(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement procedures. The State should maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under Sec. 750.308 of this regulation.

(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, the costs are eligible for Federal participation.

(b) Federal funds may not participate in:

**EXHIBIT NO. 20-13D**

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is \$2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.

(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.

(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

#### **Sec. 750.306 Documentation for Federal participation.**

The following information concerning each sign must be available in the State's files to be eligible for Federal participation.

(a) Payment to sign owner. (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in Sec. 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) Payment to the site owner.

(1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

**Sec. 750.307 FHWA project approval.**

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

- (a) A general description of the project.
- (b) The total number of signs to be acquired.
- (c) The total estimated cost of the sign removal project, including a breakdown of incidental, acquisition and removal costs.

**Sec. 750.308 Reports.**

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed. Forms are available at FHWA Division Offices located in each State.

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

**EXHIBIT NO. 20-13D**

FHWA - FAPG NS 23 CFR 750D, Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C 131 (Non-Regulatory Supplement, Attachment)FEDERAL-AID

POLICY GUIDE

December 9, 1991, Transmittal 1NS 23 CFR 750D  
Attachment

NON-REGULATORY SUPPLEMENT

ATTACHMENT

OPI: HRW-10

SIGN AND SITE VALUATION FORMULA AND SCHEDULE GUIDE FOR  
CONTROLLING OUTDOOR ADVERTISING PURSUANT TO 23 U.S.C. 131

INTRODUCTION

Sign and site valuation formulas and schedules for use in the highway beautification program are intended to minimize administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation, facilitate acquisition, and simplify program procedures.

This guide provides suggested procedures for the development of schedules and valuation techniques for the following:

- Standard Poster Panels
- Painted Bulletins
- Miscellaneous Signs
- Depreciation
- Gross Rent Multiplier
- Site Valuation
- Leasehold Value

The contents of this guide was developed by State and Federal representatives with the assistance of the outdoor advertising industry and is subject to modification, as additional valuation information becomes available.

METHOD OF DEVELOPING SIGN PAYMENT SCHEDULES

By contact with the industry and observation in the field, locate a suitable number of newly constructed signs.

Contact the companies that have constructed signs recently and obtain from them the direct and indirect costs of the specific sign construction. At the same time, request authority to audit the company's records to determine the validity of the data acquired. This initial study and data is crucial to the development of the valuation techniques set forth herein.

Field check each sign to determine whether it was built according to the company's plans, to determine the specific type of construction, including such things as wood or metal construction, illumination, one face, two face, and the area of the advertising face or faces.

Correlate the data obtained from the field and the verified construction data.

When adequate sign cost data has been collected from a sufficient number of signs, analyze the data to determine the cost of variable such as height, lighting, addition of a second face, reflectorization, quality and type of construction, and the appropriate form for schedules.

The data acquired should then be broken down into various categories and averaged to determine the appropriate costs and depreciation rates which can be used as a basis for the schedules.

In lieu of the above steps, a State may adopt another State's FHWA approved schedules after test auditing necessary adjustments as may be necessary to reflect local conditions due to labor costs, material costs, typical height above ground level, local ordinances and codes requiring special fire and wind protection, safety requirements during construction and other appropriate items affecting the cost of signs. A State may adopt another State's schedule after full consideration has been given to the above items to determine comparability of conditions and construction cost of signs.

Obtain and evaluate industry's position concerning the payment schedule concept and the resultant formula based on the analysis in paragraph 5 above.

#### PART I SCHEDULE 1: Standard Poster Panels

##### DEFINITION

An outdoor advertising device built on two or more posts imbedded into the ground or attached to the wall or roof of a building which is designed to support a flat surface of approximately 300 square feet upon which printed advertising or other messages are affixed by posting.

##### Direct Costs.

Material, labor, etc. \$/S.F. of Display Area

Construction material

Material handling

Construction labor

Engineering

Permits

Equipment costs

Indirect Costs (overhead or burden) attributable to construction.

Items to be considered: \$/S.F. of Display Area

Shop overhead

Insurance

Salaries

General office expense

Utilities (not including sign illumination)

Taxes

Business licenses

Site procurement

Management

Bad debts, interest and other expenses normal to sign construction

Profit (A sign fabricator or builder's profit is an appropriate item reflected in the cost of a sign and, therefore, should be included in the development of sign cost schedules. The level of profit should be determined on an individual State basis. The profit factor selected by the State must be based on valid statistical data or other reliable sources. Profit should not be added, however, to sign costs developed from complete audits because such audits contain all costs including profit--whether it is shown as profit per se or taken out in salaries and bonuses. So long as the audit includes all costs appropriate to sign construction, no separate addition of profit is necessary. The audit itself determines the level of profit. On the other hand, audits that disclose only partial costs, such as hourly wage rates and material costs, provide only part of the necessary information and should have other direct and indirect costs, including profit, added to them to complete the schedules. In the absence of support for profit as a separate element, one figure may be used to include both profit and overhead if such figure is available. Because a cost estimate should include both overhead and profit, a single figure may be even more useful than the single element of profit.)

EXHIBIT NO. 20-13D1

Adjustments

    Illumination, including power run-in

    Steel support

    Height

    Multiple face

    Other appropriate adjustments

PART II SCHEDULE 2: Painted Bulletins

DEFINITION

An outdoor advertising device built on one or more posts imbedded into the ground or attached to the wall or roof of a building which is designed to support one or more flat surfaces upon which at least one advertisement or other message is painted in whole or substantial part.

    Direct Costs

    CUT OUTMODULAR

        Material, Labor, etc.

    \$/S.F. of

    Display Area \$/S.F. of

    Display Area

    Construction material

    Material handling

    Construction labor

    Engineering

    Permits

    Equipment costs

        Art and Display

    \$/S.F. of Display Area \$/S.F. of Display Area

Indirect Costs (overhead or burden) attributable to construction.

    Shop overhead

    Insurance

    Salaries

    General office expense

    Utilities (not including sign illumination)

    Taxes

    Business licenses

    Site procurement (not including payment to landowner)

    Management

    Bad debts, interest and other expenses normal to sign construction

    Profit

        Adjustments

        \$/S.F. of Display Area

    Illumination, including power run-in

    Steel support

    Height

    Reflectorization

    Multiple face

    Other appropriate adjustments

PART III SCHEDULE 3: Miscellaneous Signs

DEFINITION

Factory-made signs produced for mass distribution, or small inexpensive signs characterized by "do-it-yourself" workmanship, that do not fit into the standard 300-square foot poster panel or painted bulletin categories.

EXHIBIT NO. 20-13D1

Direct Costs  
CUT OUTMODULAR  
Material, Labor, etc.

Construction material  
Material handling  
Construction labor  
Engineering  
Permits  
Equipment costs  
    Art and Display  
    \$/S.F. of Display Area \$/S.F. of Display Area

Indirect Costs (overhead or burden) attributable to construction.  
In those instances where these costs are applicable, use the appropriate costs under "Painted Bulletins."

Adjustments  
    \$/S.F. of Display Area

Illumination  
Steel Support  
Height  
Reflectorization  
Back to Back  
Other appropriate adjustments

#### Quantity Survey Method

As an alternative to the above, miscellaneous signs may also be estimated through use of a simplified quantity survey. Such methods should be supported with a table of current material costs developed through study of supplier's prices. A standard form should be used to list the basic components as line items and show their quantities, costs, and extended amounts. The list of basic components could include suppliers' prices for typically used sizes of dimensioned lumber, dur-a-ply or its equal, plywood, pipe, angle iron, I-beams, sheet metal, pressure treated poles and posts, fasteners, and other appropriate items.

Labor and overhead should be added to the material cost. These figures may be obtained from sign contractors or through audit of sign companies.

A list of adjustments should also be provided, such as in C above. They may be computed on an individual basis and include both direct and indirect costs. In addition to the adjustments in C above, this list could include adjustments for transportation, excavation and erection, and light or heavy copy.

NOTE: A lump-sum schedule may be developed when appropriate.

#### PART IV DEPRECIATION

Depreciation schedules should be established to reflect the depreciation of signs of similar type, size and physical condition. These schedules should include levels of depreciation reflecting the condition of the signs, their maintenance and other appropriate factors.

The age-life method of estimating depreciation may be used. The estimator should be aware of the typical economic life of the sign. Consideration should be given to past maintenance, quality of construction, type of materials, etc. A remaining economic life should be estimated and applied to each sign if the age-life method of estimating depreciation is used.

EXHIBIT NO. 20-13D1

In the appraisal process depreciation may also reflect functional, economic, legal and other matters, such as zoning, deed restrictions, visibility, compatibility with future use, and traffic conditions.

#### PART V GROSS RENT MULTIPLIER

A gross rent multiplier based on reliable and current sales of rented signs may be useful in valuing some signs. Sales of signs or groups of signs are preferred to sales of entire companies, but both types may be considered. The usual conditions of a fair market sale should be present, and all non sign values (items not normally considered in eminent domain) should be deducted from the sales prices. The signs should have similar expense and revenue producing characteristics. If sufficient sales become available and this technique proves feasible, multipliers may be prepared for consideration. Any proposed gross rent multipliers should be submitted to FHWA for approval prior to use.

#### PART VI SITE VALUATION

The valuation process outlined in paragraph 5 of this directive, would lend itself to the adoption of a formula permitting annual income to be multiplied by a present worth factor to determine the amount of payment to the site owner. Selection of the appropriate multiplier would depend upon the judgment of the appraiser or site valuator and reflect the following considerations:

The maximum duration of the income stream may not exceed the remaining economic life of the sign on the site.

Existing or proposed local ordinances.

Neighborhood quality and trends.

The effect of the existing sign(s) on the dominant use of the property.

Any potential change in use of the property.

Potential development of adjacent property which might block the view of existing sign(s).

Present and future traffic flow.

Existing zoning and potential rezoning.

Deed restrictions.

The effect of cancellation clauses and/or renewal options in the lease.

The ability of the tenant to pay.

In developing a payment schedule or formula, it should be recognized that the risk rate may increase on those sites having a relatively long remaining economic life. Sites producing substantial income and having long remaining economic lives should be valued using accepted appraisal procedure.

In applying developed schedule multiples to site income, the average rental for the preceding 2 years should be utilized.

#### PART VII LEASEHOLD VALUE

If it is established that economic site rent exceeds contract site rent, the bonus value may be computed in accordance with applicable State law and accepted appraisal technique. This amount may be added to the sign owner's compensation.

Related Sites:

Real Estate Services

FHWA - FAPG NS 23 CFR 750D, Non-Regulatory Supplement FEDERAL-AID POLICY GUIDE  
October 20, 1992, Transmittal 7

NS 23 CFR 750D

NON-REGULATORY SUPPLEMENT

OPI: HRW-12

OUTDOOR ADVERTISING - SIGN AND SITE ACQUISITIONS (23 CFR 750.302(a),  
750.303(e) AND 750.306(b)). States acquiring nonconforming signs should also  
extinguish (i.e., acquire) the sign site interest concurrently with the sign  
acquisition (see the attachment to this supplement).

DOCUMENTATION REQUIREMENTS - OUTDOOR ADVERTISING SIGN ACQUISITION (23 CFR  
750.302(a), 750.305(a)(1) AND 750.306(b)). In establishing the right for a  
site payment, there must be documentation of ownership or a compensatory  
interest in the land and compensable interest in the sign.

Related Sites:

Real Estate Services

[FHWA Home](#) | [Directives](#) | [23 CFR TOC](#) | [Feedback](#)

United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-13D2

FHWA - FAPG 23 CFR 750E, Signs Exempt From Removal in Defined Areas  
FEDERAL-AID  
POLICY GUIDE

December 9, 1991, Transmittal 1

23 CFR 750E

OPI: HRW-10

SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT

PART 750 - HIGHWAY BEAUTIFICATION

Subpart E - Signs Exempt From Removal in Defined Areas

Sec.

750.301 Purpose.

750.502 Applicability.

750.503 Exemptions.

Authority: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

Source: 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

Sec. 750.501 Purpose.

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).

Sec. 750.502 Applicability.

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.

Sec. 750.503 Exemptions.

(a) The Federal Highway Administration (FHWA) may approve a State's request to exempt certain nonconforming signs, displays, and devices (hereinafter called signs) within a defined area from being acquired under the provisions of 23 U.S.C. 131 upon a showing that removal would work a substantial economic hardship throughout that area. A defined area is an area with clearly established geographical boundaries defined by the State which the State can evaluate as an economic entity. Neither the States nor FHWA shall rely on individual claims of economic hardship. Exempted signs must:

(1) Have been lawfully erected prior to May 5, 1976, and must continue to be lawfully maintained.

(2) Continue to provide the directional information to goods and services offered at the same enterprise in the defined area in the interest of the traveling public that was provided on May 5, 1976. Repair and maintenance of these signs shall conform with the State's approved maintenance standards as required by Subpart G of this part.

(b) To obtain the exemption permitted by 23 U.S.C. 131(o), the State shall establish:

(1) Its requirements for the directional content of signs to qualify the signs as directional signs to goods and services in the defined area.

(2) A method of economic analysis clearly showing that the removal of signs would work a substantial economic hardship throughout the defined area.

(c) In support of its request for exemption, the State shall submit to the FHWA:

(1) Its requirements and method (see Sec. 750.503(b)).

(2) The limits of the defined area(s) requested for exemption, a listing of signs to be exempted, their location, and the name of the enterprise advertised on May 5, 1976.

(3) The application of the requirements and method to the defined areas, demonstrating that the signs provide directional information to goods and services of interest to the traveling public in the defined area, and that removal would work a substantial economic hardship in the defined area(s).

EXHIBIT NO. 20-13E

- (4) A statement that signs in the defined area(s) not meeting the exemption requirements will be removed in accordance with State law.
  - (5) A statement that the defined area will be reviewed and evaluated at least every three (3) years to determine if an exemption is still warranted.
- (d) The FHWA, upon receipt of a State's request for exemption, shall prior to approval:
- (1) Review the State's requirements and methods for compliance with the provisions of 23 U.S.C. 131 and this subpart.
  - (2) Review the State's request and the proposed exempted area for compliance with State requirements and methods.
  - (e) Nothing herein shall prohibit the State from acquiring signs in the defined area at the request of the sign owner.
  - (f) Nothing herein shall prohibit the State from imposing or maintaining stricter requirements.

Related Sites:

Real Estate Services

[FHWA Home](#) | [Directives](#) | [23 CFR TOC](#) | [Feedback](#)

United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-13E

FHWA - FAPG 23 CFR 750G, Non-Regulatory Supplement FEDERAL-AID POLICY GUIDE

October 20, 1992, Transmittal 7

23 CFR 750G

NON-REGULATORY SUPPLEMENT

OPI: HRW-12

OUTDOOR ADVERTISING CONTROL ON INDIAN LANDS (23 CFR 750.704 AND 750.705).

Title 23 U.S.C. 131(h) does not delegate to either FHWA or DOT the explicit authority to implement the Act on Indian Reservation Lands. In those limited instances where a State has indicated that it does have jurisdiction in such matters, FHWA expects the State to control outdoor advertising signs on Indian Lands. If a State does not have such jurisdiction, a legal opinion, preferably from the State Attorney General should be provided to FHWA. The matter of regulation and enforcement of the Act's provisions on Indian Lands in those States indicating they do not have such jurisdiction will be coordinated by the Washington office with the Bureau of Indian Affairs.

STATUS OF LANDMARK SIGNS (23 CFR 750.704(a)(6) AND 750.710(a)). Under the provisions of 23 CFR 750.710, any sign being considered for landmark status must have been lawfully in existence on October 22, 1965, and the message content must be the same as it was on that date.

MINERAL EXTRACTION, OUTDOOR ADVERTISING CONTROL (23 CFR 750.708(d)). The FHWA does not generally consider mineral extraction activities by themselves, without a visible business operation, as an activity which would qualify an area as an unzoned commercial or industrial (C/I) area because they are typically allowed in zones such as agricultural zones, which are not zoned for general C/I purposes. If such activities were considered to be industrial, they would be incident to the primary permitted uses and should not create an unzoned industrial area for purposes of permitting signs in areas not comprehensively zoned; or in an area zoned to permit mining, quarrying, excavation, etc. as a subsidiary use to other uses, such areas should not be recognized as being zoned commercial or industrial for purposes of permitting signs. The FHWA does not recognize C/I zones for outdoor advertising control purposes which allow only limited C/I activities.

OUTDOOR ADVERTISING CONTROL BONUS PAYMENTS - 4R PROJECTS (23 CFR 750.713).

Bonus payments are to be made only for costs incurred by the use of Interstate construction funds as authorized under the provisions of section 108(b) of the Federal Highway Act of 1956, as amended. Costs incurred by the use of Interstate 3R or 4R funds, or any other categories of funds not authorized under this section, are not eligible for bonus payments. There is no minimum dollar amount for which a bonus payment may be claimed by a State.

Related Sites:

Real Estate Services

FHWA - FAPG 23 CFR 750G, Advisory Guidelines for Implementation of the Outdoor Advertising Control Program (Non-Regulatory Supplement, Attachment) FEDERAL-AID POLICY GUIDE

December 9, 1991, Transmittal 1

NS 23 CFR 750G

Attachment

NON-REGULATORY SUPPLEMENT

ATTACHMENT

OPI: HRW-10

ADVISORY GUIDELINES FOR IMPLEMENTATION OF THE OUTDOOR ADVERTISING CONTROL PROGRAM

Guidelines for Bonus States - Interstate System Only

Section 131(j) of Title 23 U.S.C. provides that any State which entered into a bonus agreement as of June 30, 1965, may remain eligible to receive bonus payments provided it maintains the control required under such agreement along the Interstate System. It further provides that bonus States are not exempt from controlling outdoor advertising signs as otherwise provided in Section 131.

Therefore, if a State elects to remain eligible for bonus payments and in compliance with Section 131, as amended, it must continue to carry out its bonus agreement along the Interstate System except where Section 131 requires more stringent controls on the system.

(1) Effect on Bonus Agreements. The effect of Section 131, as amended, on bonus agreement provisions is as follows:

(a) Cotton Areas - Bonus agreements exempted so-called "Cotton Areas." These are areas adjacent to an Interstate Highway where any part of the highway right-of-way was acquired prior to July 1, 1956. The 1965 Act is more stringent in that it has no such exemption. Control Required Signs in Cotton areas must be prohibited unless such areas are zoned or un-zoned commercial or industrial areas.

(b) Kerr Areas - Bonus agreements exempted the so-called "Kerr Areas." These are areas adjacent to an Interstate highway where it traverses commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or where it traverses other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial. The 1965 Act permits signs in such areas, but does not exempt signs from control. Control Required - The bonus agreement is controlling with regard to the number and size of commercial and industrial zones to be recognized, but signs in Kerr areas are subject to size, lighting, and spacing requirements of the 1965 Act, and

(c) the 1958 bonus agreement National Standards permitted four classes of signs in protected areas,

1 Class 1 - Directional and Official Signs. Control Required - Directional and official signs were subject to regulation, but were not, in fact, regulated under the 1958 National Standards. Signs of this category are subject to National Standards under the 1965 Act (Subpart B, Part 750, Chapter I, 23 CFR) and therefore these provisions are controlling,

2 Class 2 - On-Premise Signs. Control Required - On-Premise (on property) signs are exempt from control under the 1965 Beautification Act, but are subject to control under the 1958 bonus agreement National Standards. However, the 1958 National Standards exclude such signs from control if they are located in Cotton or Kerr areas,

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3 Class 3 - Signs Within 12 Miles of Advertised Activities. Control Required - Signs within 12 air-miles of the advertised activity are not permitted unless they are located in commercial or industrial areas or qualify as official or directional signs permitted under 23 U.S.C. 131(c) because the 1965 Act does not permit such a category, and

4 Class 4 - Signs in the Specific Interest of the Traveling Public. Control Required - Signs in the specific interest of the traveling public are not permitted unless they are located in commercial or industrial areas or qualify as official or directional signs permitted under 23 U.S.C. 131(c) because the 1965 Act does not permit such a category.

(2) On-Premise Sign Measurements in Bonus States. On-premise signs located more than 50 feet from the advertised activity are subject to control in bonus States in accordance with 23 CFR 750, Subpart A.

(a) When the advertised activity is a business, commercial, or industrial land use, the distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. It shall not be measured from driveways, fences, or similar facilities, and

(b) when the advertised activity is a noncommercial or non industrial land use such as a residence, farm, or orchard, the distance shall be measured from the major structures on the property.

(3) Bonus Payments. The provisions for making bonus claims are found in Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 7, Incentive Payments for Controlling Outdoor Advertising on the Interstate System. Guidelines Concerning Destruction of Trees and Violations of Access Control instances involving the destruction of trees and shrubs on the right-of-way in order to increase or enhance the visibility of an outdoor advertising sign and instances involving the erection and/or maintenance of signs adjacent to Inter state highways by access from the highway right-of-way are contrary to the provisions of 23 CFR 1.23 and State laws and regulations. The State highway department should take all legal and administrative action at its disposal to abate these practices, including action to recover damages to landscaping, sodding, fences, and other appurtenances to the highway. Additionally, it is recommended that the States consider the following administrative remedies:

- (1) revocation of permits for any signs so involved,
- (2) denial of permits for signs which can only be erected or maintained as a practical matter from the highway right-of-way or which could not be seen from the highway due to existing landscaping on the right-of-way,
- (3) certification on permits and/or licenses to the effect that the sign owner will not engage in these practices,
- (4) performance bonds in permit or licensing procedures to guarantee compliance, and
- (5) a specific prohibition in State outdoor advertising control regulations.

Regional and division offices should report to the Washington Office promptly all such instances which come to their attention together with action being taken by the State. Suggested Criteria for Determining Which Signs Have Been Erected With the Purpose of Their Message Being Read From the Main-Traveled Way Traffic counts, sign angle and size, message content, physical obstructions, and similar factors. Distance from the controlled highway in relation to the size of the sign.

Exposure time (for example, would signs permitting glance views of a few seconds on highways with speed limits of 55 miles per hour be deemed readable?).

The sales value of the sign attributable to advertising circulation on the controlled highway under the criteria of an independent circulation audit agency where such is available.

#### Measurements

Distance from the edge of the right-of-way should be measured horizontally along a line perpendicular to the centerline of the highway.

Centerline means (1) a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, (2) the centerline of the main-traveled way of a non divided highway, or (3) the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

The minimum distance between sign structures on the same side of the highway should be measured along the nearest edge of pavement between points directly opposite the closest points of the signs as applied to sign structures located on the same side of the highway. In those instances where the minimum distance between sign structures apply to signs facing the same direction of travel which may be on opposite sides of the highway, such minimum distances should be measured along the center line of the highway between points directly opposite the closest points of the signs.

The areas of a sign should be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire sign, exclusive of base, apron, and sup ports, but including border and trim, except where the base or apron has copy thereon in which case the base or apron should be included in the area.

#### Related Sites:

Real Estate Services

[FHWA Home](#) | [Directives](#) | [23 CFR TOC](#) | [Feedback](#)

United States Department of Transportation - Federal Highway Administration

EXHIBIT NO. 20-13G2

FHWA - FAPG 23 CFR 771, Environmental Impact and Related Procedures  
FEDERAL-AID  
POLICY GUIDE  
October 14, 1997, Transmittal 1823 CFR 771

OPI: HEP-31

SUBCHAPTER H - RIGHT-OF-WAY AND ENVIRONMENT

PART 771 - ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.

771.101 Purpose.

771.103 [Reserved]

771.105 Policy.

771.107 Definitions.

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Authority: 42 U.S.C. 4321 et seq.; 23 U.S.C. 109, 110 128, 138 and 315; 49 U.S.C. 303(c), 5301(e), 5323, and 5324; 40 CFR part 1500 et seq.; 49 CFR 1.48(b) and 1.51.

Source: 52 FR 32660, Aug. 28, 1987, unless otherwise noted.

Sec. 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and the regulation of the Council on Environmental Quality (CEQ), 40 CFR 1500-1508. This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and urban mass transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, and 49 U.S.C. 303, 1602(d), 1604(h), 1604(i), 1607a, 1607a-1 and 1610.

Sec. 771.103 [Reserved]

Sec. 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation. [] FHWA and UMTA have supplementary guidance on the format and content of NEPA documents for their programs. This includes a list of various environmental laws, regulations, and Executive Orders which may be applicable to projects. The FHWA Technical Advisory T6640.8A, October 30, 1987, and the UMTA supplementary guidance are available from the respective FHWA and UMTA headquarters and field offices as prescribed in 49 CFR Part 7, Appendices D and G.

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(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(d) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

[52 FR 32660, Aug. 28, 1987; 53 FR 11065, Apr. 5, 1988.]

#### Sec. 771.107 Definitions.

The definitions contained in the CEQ regulation and in Titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

(a) Environmental studies--The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

(b) Action--A highway or transit project proposed for FHWA or UMTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) Administration action--The approval by FHWA or UMTA of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(d) Administration--FHWA or UMTA, whichever is the designated lead agency for the proposed action.

(e) Section 4(f) -- Refers to 49 U.S.C. 303 and 23 U.S.C. 138. [] Section 4(f), which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified, without substantive change, as 49 U.S.C. 303. This regulation continues to refer to Section 4(f) because it would create needless confusion to do otherwise; the policies Section 4(f) engendered are widely referred to as "Section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

#### Sec. 771.109 Applicability and responsibilities.

(a) (1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit or project approval. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.

- (2) This regulation does not apply to, or alter approvals by the Administration made prior to the effective date of this regulation.
- (3) Environmental documents accepted or prepared by the Administration after the effective date of this regulation shall be developed in accordance with this regulation.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(c) The Administration, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administration in accordance with the CEQ regulation:

(1) Statewide agency. If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may prepare the environmental impact statement (EIS) and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(2) Joint lead agency. If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and The applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant shall initially develop substantive portions of the environmental document, although the Administration will be responsible for its scope and content.

(3) Cooperating Agency. Local public agencies with special expertise in the proposed action may be cooperating agencies in the preparation of an environmental document. An applicant for capital assistance under the Urban Mass Transportation Act of 1964, as amended (UMT Act), is presumed to be a cooperating agency if the conditions in paragraph (c) (1) or (2) of this section do not apply. During the environmental process, the Administration will determine the scope and content of the environmental document and will direct the applicant, acting as a cooperating agency, to develop information and prepare those portions of the document concerning which it has special expertise.

(4) Other. In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 110, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

Sec. 771.111 Early coordination, public involvement, and project development.

(a) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action. For UMTA, this is normally no later than the review of the transportation improvement program (TIP) and for FHWA, the approval of the 105 program (23 U.S.C. 105).

(c) When FHWA and UMTA are involved in the development of joint projects, or when FHWA or UMTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other agencies having special interest or expertise to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States, and Federal land management entities, that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorporation into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and area wide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

- (1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.
- (2) State public involvement/public hearing procedures must provide for:
  - (i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

- (A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,
- (B) The project's alternatives, and major design features,
- (C) The social, economic, environmental, and other impacts of the project,
- (D) The relocation assistance program and the right-of-way acquisition process.
- (E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(3) Based on the reevaluation of project environmental documents required by Sec. 771.129, the FHWA and the State highway agency will determine whether changes in the project or new information warrant additional public involvement.

(4) Approvals or acceptances of public involvement/public hearing procedures prior to the publication date of this regulation remain valid.

(i) Applicants for capital assistance in the UMTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, a public hearing will be held during the circulation period of the draft EIS. For all other projects, an opportunity for public hearings will be afforded with adequate prior notice pursuant to 49 U.S.C. 1602(d), 1604(i), 1607a(f) and 1607a-1(d), and such hearings will be held when anyone with a significant social, economic, or environmental interest in the matter requests it. Any hearing on the action must be coordinated with the NEPA process to the fullest extent possible.

(j) Information on the UMTA environmental process may be obtained from: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, DC 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, DC 20590.

Sec. 771.113 Timing of Administration activities.

(a) The Administration in cooperation with the applicant will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition (with the exception of hardship and protective buying, as defined in Sec. 771.117(d)), purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

- (1) (i) The action has been classified as a categorical exclusion (CE), or
- (ii) A FONSI has been approved, or
- (iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed;
- (2) For actions proposed for FHWA funding, the FHWA Division Administrator has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;
- (3) For activities proposed for FHWA funding, the programming requirements of 23 CFR par 450, Subpart B, and 23 CFR part 630, Subpart A, have been met.

(b) For FHWA, the completion of the requirements set forth in paragraphs (a)(1) and (a)(2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. However, such approval does not commit the Administration to approve any future grant request to fund the preferred alternative.

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Sec. 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

- (1) A new controlled access freeway.
- (2) A highway project of four or more lanes on a new location.
- (3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, auto-mated guideway transit).
- (4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) Class II (CEs). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in Sec. 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to Sec. 771.117(d).

(c) Class III (EAs). Actions in which the significance of the environmental impacts is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

Sec. 771.117 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Sec. 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

- (1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
- (2) Approval of utility installations along or across a transportation facility.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.
- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- (7) Landscaping.
- (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- (9) Emergency repairs under 23 U.S.C. 125.
- (10) Acquisition of scenic easements.
- (11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.
- (12) Improvements to existing rest areas and truck weigh stations.
- (13) Ridesharing activities.
- (14) Bus and rail car rehabilitation.

- (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
  - (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
  - (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
  - (18) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.
  - (19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
  - (20) Promulgation of rules, regulations, and directives.
- (d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:
- (1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
  - (2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
  - (3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
  - (4) Transportation corridor fringe parking facilities.
  - (5) Construction of new truck weigh stations or rest areas.
  - (6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
  - (7) Approvals for changes in access control.
  - (8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
  - (9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
  - (10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
  - (11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Sec. 771.119 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through an early coordination process (i.e., procedures under Sec. 771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The UMTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in Sec. 771.111.

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(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in Sec. 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

Sec. 771.121 Findings of no significant impact.

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to Sec. 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the other agency's FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

Sec. 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the Federal Register. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the Administration, in cooperation with the applicant, will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by Sec. 771.111. For UMTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) An applicant which is a "statewide agency" may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. Where the applicant is a "joint lead" or "cooperating" agency, the applicant may select a consultant, after coordination with the Administration to assure compliance with 40 CFR 1506.5(c). The Administration will select any such consultant for "other" applicants. (See Sec. 771.109(c) for definitions of these terms.)

(e) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to:

- (1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;
- (2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and
- (3) States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(h) The UMTA requires a public hearing during the circulation period of all draft EISs. FHWA public hearing requirements are as described in Sec. 771.111(h). Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The Federal Register public availability notice (40 CFR 1506.10) shall establish a period of not less than 45 days for the return of comments on the draft EIS. The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For UMTA funded major urban mass transportation investments, the applicant shall prepare a report identifying a locally preferred alternative at the conclusion of the Draft EIS circulation period. Approval may be given to begin preliminary engineering on the principal alternative(s) under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures.

These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

Sec. 771.125 Final environmental impact statements.

(a) (1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in Sec. 771.109(b). The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.

(2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(3) Major urban mass transportation investments as defined by UMTA's policy on major investments (49 FR 21284; May 18, 1984).

(d) The signature of the UMTA approving official on the cover sheet also indicates compliance with section 14 of the UMT Act and fulfillment of the grant application requirements of Sections 3(d)(1) and (2), 5(h), and 5(i) of the UMT Act.

(e) Approval of the final EIS is not an Administration Action (as defined in Sec. 771.107(c)) and does not commit the Administration to approve any future grant request to fund the preferred alternative.

(f) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When filed with EPA, the final EIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

Sec. 771.127 Record of decision.

(a) The Administration will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the final EIS notice in the Federal Register or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and document any required section 4(f) approval in accordance with Sec. 771.135(1). Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1.

(b) If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under Sec.

771.125(c). To the extent practicable the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to Sec. 771.125(g).

Sec. 771.129 Reevaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the

right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Sec. 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:

- (1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or
- (2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

- (1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or
- (2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with Sec. 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) A supplemental draft EIS may be necessary for UMTA major urban mass transportation investments if there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.

(f) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

- (i) Prevent the granting of new approvals;
- (ii) Require the withdrawal of previous approvals; or
- (iii) Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

Sec. 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

Sec. 771.133 Compliance with other requirements.

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128.

Sec. 771.135 Section 4(f) (49 U.S.C. 303).

(a) (1) The Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

- (i) There is no feasible and prudent alternative to the use of land from the property; and
- (ii) The action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire site is not significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant. The Administration will review the significance determination to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The Administration will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl sites.

(e) In determining the application of section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify all properties on or eligible for the National Register of Historic Places (National Register). The section 4(f) requirements apply only to sites on or eligible for the National Register unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(f) The Administration may determine that section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

- (1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
- (2) The SHPO and the Advisory Council on Historic Preservation (ACHP) have been consulted and have not objected to the Administration finding in paragraph (f)(1) of this section.

(g) (1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction except as set forth in paragraph (g)(2) of this section. Where section 4(f) applies to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) does not apply to archeological sites where the Administration, after consultation with the SHPO and the ACHP, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the Administration decides, with agreement of the SHPO and, where applicable, the ACHP not to recover the resource.

(h) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (g) of this section, the Administration may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(i) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be developed by the applicant in cooperation with the Administration. This information should be presented in the draft EIS, EA, or, for a project classified as a CE in a separate document. The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the Administration for receipt of comments. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

(j) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) property.

(k) The final Section 4(f) evaluation will be reviewed for legal sufficiency. (l) For actions processed with EISs, the Administration will make the section 4(f) approval either in its approval of the final EIS or in the ROD. Where the section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notified by the Administration of section 4(f) approval. For these actions, any required section 4(f) approval will be documented separately.

(m) Circulation of a separate Section 4(f) evaluation will be required when:

- (1) A proposed modification of the alignment or design would require the use of section 4(f) property after the CE, FONSI, draft EIS, or final EIS has been processed;
- (2) The Administration determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property;
- (3) A proposed modification of the alignment, design, or measures to minimize harm (after the original section 4(f) approval) would result in a substantial increase in the amount of section 4(f) land used, a substantial increase in the adverse impacts to section 4(f) land, or a substantial reduction in mitigation measures; or
- (4) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) evaluation.

(n) If the Administration determines under Sec. 771.135(m) or otherwise, that section 4(f) is applicable after the CE, FONSI, or final EIS has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental environmental document. Where a separately circulated section 4(f) evaluation is prepared, such evaluation does not necessarily:

- (i) Prevent the granting of new approvals;
- (ii) Require the withdrawal of previous approvals; or
- (iii) Require the suspension of project activities; for any activity not affected by the section 4(f) evaluation.

(o) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

(2) A section 4(f) approval made when additional design details are available will include a determination that:

- (i) The preliminary section 4(f) determination made pursuant to paragraph (o)(1) of this section is still valid; and
- (ii) The criteria of paragraph (a) of this section have been met.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

(p) Use. (1) Except as set forth in paragraphs (f), (g)(2), and (h) of this section, "use" (in paragraph (a)(1) of this section) occurs:

(i) When land is permanently incorporated into a transportation facility.

(ii) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in paragraph (p)(7) of this section; or

(iii) When there is a constructive use of land.

(2) Constructive use occurs when the transportation project does not incorporate land from a section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished.

(3) The Administration is not required to determine that there is no constructive use. However, such a determination could be made at the discretion of the Administration.

(4) The Administration has reviewed the following situations and determined that a constructive use occurs when:

(i) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(ii) The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of substantial impairment to visual or esthetic qualities would be location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting.

(iii) The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(iv) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(v) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

(5) The Administration has reviewed the following situations and determined that a constructive use does not occur when:

- (i) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in an agreement of "no effect" or "no adverse effect";
- (ii) The projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement criteria as contained in Table 1, 23 CFR part 772, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria in the UMTA guidelines;
- (iii) The projected traffic noise levels exceed the relevant threshold in paragraph (p)(5)(ii) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);
- (iv) There are proximity impacts to a section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;
- (v) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:
  - (A) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, or
  - (B) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;
- (vi) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);
- (vii) Proximity impacts will be mitigated to a condition equivalent to, or better than that which would occur under a no-build scenario;
- (viii) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or
- (ix) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

(6) When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

- (i) Identification of the current activities, features, or attributes of a resource qualified for protection under section 4(f) and which may be sensitive to proximity impacts;

- (ii) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project;
  - (iii) Consultation, on the above identification and analysis, with the federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.
- (7) A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of section 4(f) when the following conditions are satisfied:
- (i) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
  - (ii) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;
  - (iii) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
  - (iv) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and
  - (v) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 56 FR 13279, Apr. 1, 1991]

Sec. 771.137 International-actions.

(a) The requirements of this part apply to:

- (1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.
- (2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

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[Title 49, Volume 1, Parts 1 to 99]  
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TITLE 49--TRANSPORTATION

Subtitle A--Office of the Secretary of Transportation

PART 21--NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION--EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

- 21.1 Purpose.
- 21.3 Application of this part.
- 21.5 Discrimination prohibited.
- 21.7 Assurances required.
- 21.9 Compliance information.
- 21.11 Conduct of investigations.
- 21.13 Procedure for effecting compliance.
- 21.15 Hearings.
- 21.17 Decisions and notices.
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- 21.21 Effect on other regulations, forms, and instructions.
- 21.23 Definitions.

Appendix A to Part 21--Activities to Which This Part Applies

Appendix B to Part 21--Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is to Provide Employment

Appendix C to Part 21--Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation

Authority: Sec. 602, 42 U.S.C. 2000d-1.

Source: 35 FR 10080, June 18, 1970, unless otherwise noted.

Sec. 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

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Sec. 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally assisted programs and activities listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in Sec. 21.5(c).

The fact that a program or activity is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

Sec. 21.5 Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

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(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

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(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) Examples demonstrating the application of the provisions of this section to certain programs of the Department of Transportation are contained in appendix C of this part.

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

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(c) Employment practices:

(1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

Sec. 21.7 Assurances required.

(a) General. (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required

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of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

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In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) Continuing State programs. Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

Sec. 21.9 Compliance information.

(a) Cooperation and assistance. The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) Access to sources of information. Each recipient shall permit access by the Secretary during normal business

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hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

Sec. 21.11 Conduct of investigations.

(a) Periodic compliance reviews. The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) Investigations. The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in Sec. 21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

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Sec. 21.13 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking,

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and (2) any applicable proceeding under State or local law.

(b) Noncompliance with Sec. 21.7. If an applicant fails or refuses to furnish an assurance required under Sec. 21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to Sec. 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to Sec. 21.17(e); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

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- (1) The Secretary has determined that compliance cannot be secured by voluntary means;
- (2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and
- (3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

Sec. 21.15 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by Sec. 21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and Sec. 21.13(c) and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, D.C., at a

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time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with Sec. 21.17.

Sec. 21.17 Decisions and notices.

(a) Procedure on decisions by hearing examiner. If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) Decisions on record or review by the Secretary. Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or

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recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to Sec. 21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Secretary. Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) Post termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

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(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

Sec. 21.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

Sec. 21.21 Effect on other regulations, forms, and instructions.

(a) Effect on other regulations. All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to

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any applicant for a recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) Forms and instructions. The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) Supervision and coordination. The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in Sec. 21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

Sec. 21.23 Definitions.

Unless the context requires otherwise, as used in this part:

(a) Applicant means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and ``application'' means such an application, request, or plan.

(b) Facility includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) Federal financial assistance includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) Primary recipient means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) Program includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or

other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) Recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) Secretary means the Secretary of Transportation or, except in Sec. 21.17 (e), any person to whom he has delegated his authority in the matter concerned.

#### Appendix A to Part 21--Activities to which This Part Applies

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).
2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.).
3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).
4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).
5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).
6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).
7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).
8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).
9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).
10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).

11. Use of U.S. land acquired for public airports under:
  - a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and
  - b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).
12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).
13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).
14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).
15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).
16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).
17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).
18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642).

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Appendix B to Part 21--Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is to Provide Employment

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 et seq.).

Appendix C to Part 21--Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation

Nondiscrimination on Federally Assisted Projects

(a) Examples. The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

(1) Federal Aviation Administration. (i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

(2) Federal Highway Administration. (i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation,

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and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) Urban Mass Transportation Administration. (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

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(b) Obligations of the airport operator-- (1) Tenants, contractors, and concessionaires. Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) Notification of beneficiaries. The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) Reports. Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

EXHIBIT NO. 20-15

## SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

### PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Appendix A to Part 24 -

#### **Additional Information**

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc). [57 FR 33264, July 27, 1992]

| Source: 54 FR 8928, Mar. 2, 1989 and 64 FR 7127, Feb. 12, 1999, unless otherwise noted.

This appendix provides additional information to explain the intent of certain provisions of this part.

#### Subpart A - General

##### Section 24.2 Definitions

| Definition of comparable replacement dwelling. The requirement in Sec. 24.2 that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

| Paragraph (7) in the definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

#### **EXHIBIT NO. 20-16**

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under Sec. 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

| Persons not displaced. Paragraph (2)(iv) under this definition recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with Sec. 24.10.

| Initiation of negotiations. This section of the part: provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

### Section 24.3 No Duplication of Payments

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

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## Section 24.9 Recordkeeping and Reports

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

## **Subpart B - Real Property Acquisition**

### Section 24.101 Applicability of Acquisition Requirements

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

### Section 24.102 Basic Acquisition Policies

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

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Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency 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 Agency on short notice. Such rent may not exceed "the fair rental value \* \* \* to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

#### Section 24.103 Criteria for Appraisals

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, Sec. 24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is \$2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with Sec. 24.104. This includes appraisals of real property valued at \$2,500, or less.

#### Section 24.104 Review of appraisals

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property. Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

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### **Section 24.106 Expenses Incidental to Transfer of Title to the Agency**

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. 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 Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

### **Subpart C - General Relocation Requirements**

#### **Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement**

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Sec. 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. 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 Agency make fewer than three referrals.

#### **Section 24.205 Relocation Assistance Advisory Services**

Section 24.205(c)(2)(ii)(C) is intended to emphasize 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.

#### **Section 24.207 General Requirements-Claims for Relocation Payments**

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated 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 Sec. 24.303(c).

### **Subpart D - Payment for Moving and Related Expenses**

#### **Section 24.306 Fixed Payment for Moving Expenses-Nonresidential Moves**

Section 24.306(d) Nonprofit organizations. 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 fundraising 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.

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### Section 24.307 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner 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.

### **Subpart E - Replacement Housing Payments**

#### Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension 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 of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in Sec. 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in Sec. 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) 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 "buydown."

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 must be known 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.

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## SAMPLE COMPUTATION

### Old Mortgage:

Remaining Principal	
Balance.....	\$50,000
Monthly Payment	
(principal and interest)....	458.22
Interest rate (percent).....	7

### New Mortgage:

Interest rate (percent).....	10
Points.....	3
Term (years).....	15

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

\$50,000.00
<u>-42,010.18</u>

### Increased mortgage

interest costs.....	7,989.82
3 points on \$42,010.18.....	<u>1,260.31</u>

Total buydown 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 buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 by \$42,010.18 = .8331; \$9,250.13 X .83 = \$7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she 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 displacee is also to be advised of the interest rate and points used to calculate the payment.

### Section 24.402 Replacement Housing Payment for 90-Day Occupants

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The downpayment assistance provisions in Sec. 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 Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

### Section 24.403 Additional Rules Governing Replacement Housing Payments

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

### Section 24.404 Replacement Housing of Last Resort

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under Sec. 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" at Sec. 24.2. The Agency 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 Agency 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 Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. 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.

Section 24.404(c)(2) 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.

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One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional 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.

**Subpart F - Mobile Homes**

**Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants**

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under Sec. 24.401 and a replacement housing payment for a site computed under Sec. 24. 402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under Sec. 24.401 to assist in the purchase of a replacement site or, under Sec. 24.402, to assist in renting a replacement site.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

**EXHIBIT NO. 20-16**

FEDERAL-AID POLICY GUIDE  
December 9, 1991, Transmittal 1

49 CFR 24  
Appendix B

FEDERAL-AID POLICY GUIDE  
October 8, 1993, Transmittal 8

49 CFR 24  
Appendix B  
OPI: HRW-10

## **SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

### **PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

#### **Appendix B to Part 24 -**

#### **Statistical Report Form**

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc). [57 FR 33264, July 27, 1992]

Source: 54 FR 8928, Mar. 2, 1989, unless otherwise noted.

This appendix sets forth the statistical information collected from Agencies in accordance with Sec. 24.9(c).

#### General

1. Report coverage. This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. Report period. Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.

3. Where and when to submit report. Submit an original and two copies of this report to (Name and Address of Federal Agency) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. How to report relocation payments. The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. How to report dollar amounts. Round off all money entries in Parts B and C to the nearest dollar.

6. Statutory references. The references in Part B indicate the section of the Uniform Act that authorizes the cost.

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#### **EXHIBIT NO. 20-16**

Part A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation payments and expenses

Columns (A) and (B). Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).

Line 7A is a new line item for reporting the business reestablishment expense payment.

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12 A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of \$7,000 to rent a replacement dwelling, the sum of \$5,250 shall be included on Line 10, Column (B), and \$1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

**EXHIBIT NO. 20-16**

Part C. Real property acquisition  
subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

**EXHIBIT NO. 20-16**

OPI: HEPR

**SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

**PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**Subpart A - General**

Sec.

24.1 Purpose.

24.2 Definitions.

24.3 No duplication of payments.

24.4 Assurances, monitoring and corrective action.

24.5 Manner of notices.

24.6 Administration of jointly-funded projects.

24.7 Federal agency waiver of regulations.

24.8 Compliance with other laws and regulations.

24.9 Recordkeeping and reports.

24.10 Appeals.

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc).

[57 FR 33264, July 27, 1992]

| Source: 54 FR 8928, Mar. 2, 1989 and 64 FR 7127, Feb. 12, 1999, unless otherwise noted.

**Sec. 24.1 Purpose.**

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

**EXHIBIT NO. 20-16**

(c) To ensure that Agencies implement these regulations in a

manner that is efficient and cost effective.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

**Sec. 24.2 Definitions.**

Agency. The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) Acquiring agency. The term "acquiring agency" means a State agency, as defined in paragraph (a)(4) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of Sec. 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by Sec. 24.4(a)(1) or (2).

(2) Displacing agency. The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) Federal agency. The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) State agency. The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

Alien not lawfully present in the United States. The phrase "alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

(1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General, and

(2) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

Appraisal. The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information .

**EXHIBIT NO. 20-16**

Business. The term "business" means any lawful activity, except a farm operation, that is conducted:

- (1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or
- (2) Primarily for the sale of services to the public; or
- (3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- (4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

Citizen. The term "citizen," for purposes of this part, includes both citizens of the United States and noncitizen nationals.

Comparable replacement dwelling. The term "comparable replacement dwelling" means a dwelling which is:

- (1) Decent, safe and sanitary as described in paragraph (f) of this section;
- (2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);
- (3) Adequate in size to accommodate the occupants;
- (4) In an area not subject to unreasonable adverse environmental conditions;
- (5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- (6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also Sec. 24.403(a)(2).);

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- (7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in Sec. 24.401(c), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at Sec. 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under Sec. 24.404, Replacement housing of last resort.

| Contribute materially. 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 Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5000; or

(2) Had average annual net earnings of at least \$1000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

| Decent, safe, and sanitary dwelling. The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

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(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

Displaced person. (1) General. The term "displaced person" means, except as provided in paragraph (2) of this definition, any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at Secs. 24.401(a) and 24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under Sec. 24.205(c), and moving expenses under Secs. 24.301, 24.302 or 24.303.

(2) Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also Sec. 24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

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(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at Sec. 24.101(a) (1) and (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or (vii) A person who, after receiving a notice of relocation eligibility (described at Sec. 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at Sec. 24.101(a) (1) and (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303, except that such owner remains a displaced person for purposes of subpart D of this part; or  
[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in Sec. 24.206.

(xii) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Sec. 24.208.

Dwelling. The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

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Farm operation. 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.

| Federal financial assistance. The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

| Initiation of negotiations. Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

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

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

| Lead agency. The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

| Mortgage. The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

| Nonprofit organization. The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

| Notice of intent to acquire or notice of eligibility

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- for relocation assistance. Written notice furnished 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, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal

financial assistance.

| 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 paragraphs (p) (1) or (2) of this section, or

| (4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

| Person. The term "person" means any individual, family, partnership, corporation, or association.

| Program or project. The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

| Salvage value. 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 except on that basis.

| Small business. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of Sec. 24.304.

[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

| State. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

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| Tenant. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

Uneconomic remnant. The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

Uniform Act. The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91-646), and amendments thereto.

Unlawful occupancy. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

Utility costs. The term "utility costs" means expenses for heat, lights, water and sewer.

Utility facility. The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, 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.

Utility relocation. The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

### **Sec. 24.3 No duplication of payments.**

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, Sec. 24.3.)

### **Sec. 24.4 Assurances, monitoring and corrective action.**

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(a) Assurances--(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the

Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) Monitoring and corrective action. The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see Sec. 24.603, Subpart G.)

(c) Prevention of fraud, waste, and mismanagement. The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

#### **Sec. 24.5 Manner of notices.**

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at Sec. 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

#### **Sec. 24.6 Administration of jointly-funded projects.**

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the

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cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that

are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

**Sec. 24.7 Federal agency waiver of regulations.**

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

**Sec. 24.8 Compliance with other laws and regulations.**

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

- (a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
- (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.
- (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).
- (f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
- (g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).
- (h) Executive Order 11063--Equal Opportunity and Housing, as amended by Executive Order 12259.
- (i) Executive Order 11246--Equal Employment Opportunity.
- (j) Executive Order 11625-Minority Business Enterprise.
- (k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.
- (l) Executive Order 12250--Leadership and Coordination of Non-Discrimination Laws.  
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- (m) Executive Order 12259--Leadership and Coordination of Fair Housing in Federal Programs.
- (n) Executive Order 12630--Governmental Actions and Interference with Constitutionally

Protected Property Rights.

**Sec. 24.9 Recordkeeping and reports.**

(a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 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 under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) Confidentiality of records. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) Reports. The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

**Sec. 24.10 Appeals.**

(a) General. The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) Actions which may be appealed. Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under Sec. 24.106 or Sec. 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) Time limit for initiating appeal. The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) Right to representation. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) Review of files by person making appeal. The Agency shall permit a person to inspect and  
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copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) Scope of review of appeal. In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) Determination and notification after appeal. Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) Agency official to review appeal. The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

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## **SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

### **PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

#### **Subpart B - Real Property Acquisition**

Sec.

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc).

[57 FR 33264, July 27, 1992]

| Source: 54 FR 8928, Mar. 2, 1989 and 64 FR 7127, Feb. 12, 1999, unless otherwise noted.

#### **Sec. 24.101 Applicability of acquisition requirements**

(a) General. The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

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(iv) The Agency will inform the owner of what it believes to be the fair market value of the

property.

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project which is undertaken by, or receives Federal financial assistance from, the Tennessee Valley Authority or the Rural Electrification Administration.

(b) Less-than-full-fee interest in real property. In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, Sec. 24.101(b).)

(c) Federally-assisted projects. For projects receiving Federal financial assistance, the provisions of Secs. 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See Sec. 24.4(a).)

[54 FR 8928, Mar. 2, 1989; as amended at 54 FR 24712, June 9, 1989; 58 FR 26070, April 30, 1993 (effective date June 1, 1993)]

## **Sec. 24.102 Basic acquisition policies.**

(a) Expeditious acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) Notice to owner. As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also Sec. 24.203.)

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(c) Appraisal, waiver thereof, and invitation to owner. (1) Before the initiation of negotiations

the real property to be acquired shall be appraised, except as provided in Sec. 24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an 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 Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.

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

(e) Summary statement. 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.

(f) Basic negotiation procedures. The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with Sec. 24.106. 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 Agency shall consider the owner's presentation.

(g) 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

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property, the Agency 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 Agency shall

promptly reestablish just compensation and offer that amount to the owner in writing.

(h) Coercive action. The Agency 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.

(i) Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) Payment before taking possession. Before requiring the owner to surrender possession of the real property, the Agency 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 Agency'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 Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) Uneconomic remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See Sec. 24.2.)

(l) Inverse condemnation. If the Agency 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.

(m) Fair rental. If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

#### **Sec. 24.103 Criteria for appraisals.**

(a) Standards of appraisal. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, 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 his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

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(1) The purpose and/or the function of the appraisal, 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, an adequate description of the remaining 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.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. 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.

(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.

(b) Influence of the project on just compensation. 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.

(c) 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 (defined at Sec. 24.2) of the retained improvement.

(d) Qualifications of appraisers. (1) The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

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(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to Sec. 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*)

[57 FR 33264, July 27, 1992, as amended at 57 FR 53294, Nov. 9, 1992 (effective date December 31, 1992)]

(e) Conflict of interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

**Sec. 24.104 Review of appraisals.**

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of 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 appraisal documentation in accordance with Sec. 24.103 to support an approved or recommended value.

(c) 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 any remaining property shall also be identified in the statement.

**Sec. 24.105 Acquisition of tenant-owned improvements.**

(a) Acquisition of improvements. When acquiring any interest in real property, the Agency 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 requires 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.

(b) Improvements considered to be real property. 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 Subpart.

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(c) Appraisal and establishment of just compensation for tenant-owned improvements. Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at Sec. 24.2.)

(d) Special conditions. 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 Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) Alternative compensation. Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law. [54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

**Sec. 24.106 Expenses incidental to transfer of title to the Agency.**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(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 Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**Sec. 24.107 Certain litigation expenses.**

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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:

(a) The final judgment of the court is that the Agency cannot acquire the real property by

condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

**Sec. 24.108 Donations.**

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in Sec. 24.102(c)(2).

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## SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

### PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Subpart C - General Relocation Requirements

Sec.

24.201 Purpose.

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Authority: 42 U.S.C. 4601 et seq; 49 CFR 1.48(cc).

[57 FR 33264, July 27, 1992]

| Source: 54 FR 8928, Mar. 2, 1989 and 64 FR, Feb. 12, 1999, unless otherwise noted.

#### Sec. 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

#### Sec. 24.202 Applicability.

| These requirements apply to the relocation of any displaced person as defined at Sec. 24.2.

#### Sec. 24.203 Relocation notices.

(a) General information notice. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

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(1) Informs the person that he or she may be displaced for 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 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 person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), 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) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Sec. 24.2 for the occupied property.) When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) Ninety-day notice--(1) General. 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.

(2) Timing of notice. The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) Content of notice. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See Sec. 24.204(a).)

(4) Informs the 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 Sec. 24.208(i).

(5) Urgent need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency 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. A copy of the Agency's determination shall be included in the applicable case file.

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**Sec. 24.204 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 (defined at Sec. 24.2) has been made available to the person. 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; and

| (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.

(b) Circumstances permitting waiver. The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section 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 Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which 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 is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(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.)

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**Sec. 24.205 Relocation planning, advisory services, and coordination.**

(a) Relocation planning. During the early stages of development, Federal and Federal-aid

programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency 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.
- (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. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.
- (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) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) Loans for planning and preliminary expenses. In the event that an Agency 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 lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) Relocation assistance advisory services--(1) General. The Agency shall carry out 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 paragraph (c)(2) of this section. If the Agency 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.

(2) Services to be provided. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

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(i) Determine 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 person.

(ii) 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 Sec. 24.204(a).

(A) As soon as feasible, the Agency 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 Secs. 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.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See Sec. 24.2.) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) 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.

(iv) 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.

(v) 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.

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(vi) Any person who occupies property acquired by an Agency, 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 Agency.

(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 the duplication of functions is minimized. (Also see Sec. 24.6, Subpart A.)

#### **Sec. 24.206 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 in this part unless the Agency determines that:

- (a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- (b) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- (c) 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 in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

#### **Sec. 24.207 General requirements-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.

(b) Expeditious payments. The Agency 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 for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

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(c) Advance payments. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) Time for filing--(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) 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 Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Sec. 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) Notice of denial of claim. If the Agency 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.

#### **Sec. 24.208 Aliens not lawfully present in the United States.**

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) 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.

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(2) In the case of a family, that each family member 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 head of the household on behalf of other family members.

(3) 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.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section 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 this rule shall be within the discretion of the Federal funding agency and, within those parameters, that of the displacing agency.

(c) 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.

(d) The displacing agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the agency considers reliable and appropriate.

(e) Any review by the displacing agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing agency 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.

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(1) If the agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing agency shall obtain verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. A list of local INS offices was published in the Federal Register in November 17, 1997 at 62 FR 61350. Any request for INS verification shall include the alien's full name, date

of birth and alien number, and a copy of the alien's documentation. [If an agency is unable to contact the INS, it may contact the FHWA in Washington, DC at 202-366-2035 (Marshall Schy, Office of Real Estate Services) or 202-366-1371 (Reid Alsop, Office of Chief Counsel), for a referral to the INS.]

(2) If the agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) 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 displacing agency'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.

(h) For purposes of paragraph (g) 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 that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) 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

(3) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in Sec. 24.207 of this part.

#### **Sec. 24.209 Relocation payments not considered as income.**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

#### **EXHIBIT NO. 20-16**

## **SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

### **PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

#### **Subpart D - Payments for Moving and Related Expenses**

Sec.

- 24.301 Payment for actual reasonable moving and related expenses- residential moves.
- 24.302 Fixed payment for moving expenses-residential moves.
- 24.303 Payment for actual reasonable moving and related expenses- nonresidential moves.
- 24.304 Reestablishment expenses-nonresidential moves.
- 24.305 Ineligible moving and related expenses.
- 24.306 Fixed payment for moving expenses-nonresidential moves.
- 24.307 Discretionary utility relocation payments.

Authority: 42 U.S.C. 4601 et seq; 49 CFR 1.48(cc).

[57 FR 33264, July 27, 1992]

| Source: 54 FR 8928, Mar. 2, 1989 and 64 FR 7127, Feb. 12, 1999, unless otherwise noted.

#### **Sec. 24.301 Payment for actual reasonable moving and related expenses-residential moves.**

| Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at Sec. 24.2) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

- (a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (b) Packing, crating, unpacking, and uncrating of the personal property.
- (c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- (d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

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- (e) Insurance for the replacement value of the property in connection with the move and

necessary storage.

(f) 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.

(g) Other moving-related expenses that are not listed as ineligible under Sec. 24.305, as the Agency determines to be reasonable and necessary.

**Sec. 24.302 Fixed payment for moving expenses-residential moves.**

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under Sec. 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This 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 an agency at no cost to the person shall be limited to \$50.

**Sec. 24.303 Payment for actual reasonable moving and related expenses-nonresidential moves.**

(a) Eligible costs. Any business or farm operation which qualifies as a displaced person (defined at Sec. 24.2) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency 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 machinery, equipment, and other personal property, including substitute personal property described at Sec. 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property 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. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

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(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, 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, or certification.

(7) 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.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) 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:

(i) The 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 Agency 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 cost of the goods to the business, not the potential selling price.); or

(ii) 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.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) 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:

(i) 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

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(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency 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 site.

(14) Other moving-related expenses that are not listed as ineligible under Sec. 24.305, as the Agency determines to be reasonable and necessary.

(b) Notification and inspection. The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in Sec. 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) Self moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

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(d) Transfer of ownership. Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) Advertising signs. 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 Agency, less the proceeds from its sale; or
- (2) The estimated cost of moving the sign, but with no allowance for storage.

**Sec. 24.304 Reestablishment expenses-nonresidential moves.**

In addition to the payments available under Sec. 24.303 of this subpart, a small business, as defined in Sec. 24.2, farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. 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) Provision of utilities from right-of-way to improvements on the replacement site.
- (5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.
- (6) Licenses, fees and permits when not paid as part of moving expenses.
- (7) Feasibility surveys, soil testing and marketing studies.
- (8) Advertisement of replacement location.
- (9) Professional services in connection with the purchase or lease of a replacement site.

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(10) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

- (i) Lease or rental charges,

- (ii) Personal or real property taxes,
  - (iii) Insurance premiums, and
  - (iv) Utility charges, excluding impact fees.
- (11) Impact fees or one-time assessments for anticipated heavy utility usage.
- (12) Other items that the Agency considers essential to the reestablishment of the business.

[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

(b) Ineligible expenses. The following is a nonexclusive listing of reestablishment 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.
- (4) Payment to a part-time business in the home which does not contribute materially to the household income.

[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

**Sec. 24.305 Ineligible moving and related expenses.**

A displaced person is not entitled to payment for:

- (a) 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 Sec. 24.401(c)(4)(iii); or
- (b) Interest on a loan to cover moving expenses; or

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- (c) Loss of goodwill; or
- (d) Loss of profits; or
- (e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in Sec. 24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in Secs. 24.303(a)(3) and 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

**Sec. 24.306 Fixed payment for moving expenses-nonresidential 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 Secs. 24.303 and 24.304. 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 \$20,000. The displaced business is eligible for the payment if the Agency 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 Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

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(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.

(6) The business contributed materially to the income of the displaced person during the 2

| taxable years prior to displacement (see Sec. 24.2).

(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 at Sec. 24.2) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment 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 \$20,000. 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 Agency 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) Nonprofit organization. A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency 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 Agency 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. (See Appendix A of this part).

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(e) Average annual net earnings of a business or farm operation. 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 Agency 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 Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

**Sec. 24.307 Discretionary utility relocation payments.**

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see Sec. 24.2) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency 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 displacing agency; 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 displacing agency's program or project; and
- (5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency 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 displacing agency, 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.

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(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, less any increase in value of the new facility and salvage value of the old facility. The displacing agency 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. (See Appendix A, of this part, Sec. 24.307.)

## SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

### PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Subpart E - Replacement Housing Payments

Sec.

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
- 24.402 Replacement housing payment for 90-day occupants.
- 24.403 Additional rules governing replacement housing payments.
- 24.404 Replacement housing of last resort.

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc).

[57 FR 33264, July 27, 1992]

| Source: 54 FR 8928, Mar. 2, 1989 and 64 FR 7127, Feb. 12, 1999, unless otherwise noted.

#### Sec. 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) Eligibility. A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the 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

(ii) The date the displacing agency's obligation under Sec. 24.204 is met.

(b) Amount of payment. The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also Sec. 24.404.) The payment under this subpart 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:

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(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the

displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(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 paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) Price differential--(1) Basic computation. The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with Sec. 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) Mixed-use and multifamily 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 price differential.

(3) 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. (Also see Sec. 24.3.)

(4) 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:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at Sec. 24.2); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, Sec. 24.401(c) (4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

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(iv) 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 displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. 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 mortgage(s) on the displacement dwelling. In addition, payments 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 (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 person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) 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 points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) 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 such mortgage balance under this section.

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(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.

(e) Incidental expenses. The incidental expenses to be paid under paragraph (b)(3) of this section or Sec. 24.402(c)(1) 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) 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 Agency determines to be incidental to the purchase.

(f) Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with Sec. 24.402(b).

#### **Sec. 24.402 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 \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

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- (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 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) 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

(B) 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 \$5,250 for rental assistance. (See also Sec. 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(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 Agency. (For an owner- occupant, use the fair 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 person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. 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 receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

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(3) Manner of disbursement. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by Sec. 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) Downpayment assistance payment--(1) Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under Sec. 24.401(b) if he or she met the 180-day occupancy requirement. An Agency'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 180-day owner-occupant under Sec. 24.401(a) is not eligible for this payment. (See also Appendix A of this part, Sec. 24.402(c).)

(2) Application of payment. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

### **Sec. 24.403 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 (defined at Sec. 24.2).

(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. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Sec. 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(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 Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

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(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.

(b) Inspection of replacement dwelling. Before making a replacement housing payment or

releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at Sec. 24.2.

(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; or
- (3) Relocates a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (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.
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair 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 displacing agency; 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 Agency.

(e) Conversion of payment. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Sec. 24.402(b) is eligible to receive a payment under Sec. 24.401 or 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Sec. 24.401 or 24.402(c).

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(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) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(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.

**Sec. 24.404 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 Sec. 24.401 or Sec. 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. 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:

(i) The availability of comparable replacement housing in the program or project area; and

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) 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

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

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(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

(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 Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency 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.

(c) Methods of providing comparable replacement housing. Agencies shall have broad latitude in implementing this subpart, 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.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in Sec. 24.401 or Sec. 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) 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.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

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(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 (see Appendix A, of this part, Sec. 24.404), 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 Sec. 24.2.

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under Secs. 24.401 and 24.402 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, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

**EXHIBIT NO. 20-16**

**SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

**PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**Subpart F - Mobile Homes**

Sec.

24.501 Applicability.

24.502 Moving and related expenses-mobile homes.

24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

24.504 Replacement housing payment for 90-day mobile home occupants.

24.505 Additional rules governing relocation payments to mobile home occupants.

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc). [57 FR 33264, July 27, 1992]

Source: 54 FR 8928, Mar. 2, 1989, unless otherwise noted.

**Sec. 24.501 Applicability.**

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

**Sec. 24.502 Moving and related expenses-mobile homes.**

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with Sec. 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under Sec. 24.303. However, if the mobile home is not acquired, but the homeowner- occupant obtains a replacement housing payment under one of the circumstances described at Sec. 24.503(a)(3), the owner 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.

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(b) The following rules apply to payments for actual moving expenses under Sec. 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable 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 Agency determines that payment of the fee is necessary to effect relocation.

**Sec. 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.**

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under Sec. 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at Sec. 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(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.

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(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at Sec. 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

**Sec. 24.504 Replacement housing payment for 90-day mobile home occupants.**

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under Sec. 24.402 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 at Sec. 24.402(a); and
- (c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at Sec. 24.503(a)(3).

**Sec. 24.505 Additional rules governing relocation payments to mobile home occupants.**

(a) Replacement housing payment based on dwelling and site. Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also Sec. 24.403(b).)

(b) Cost of comparable replacement dwelling--(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under Sec. 24.401(c), the cost of a comparable replacement dwelling is the sum of:

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(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) Initiation of negotiations. If the mobile home is not actually acquired, but the occupant is considered displaced under this part, 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 under this part.

(d) Person moves mobile home. If the owner is reimbursed for the cost of moving the mobile home under this part, 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.

(e) 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 Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

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FEDERAL-AID POLICY GUIDE

October 8, 1993, Transmittal 8

49 CFR 24G

OPI: HRW-10

**SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

**PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**Subpart G - Certification**

Sec.

24.601 Purpose.

24.602 Certification application.

24.603 Monitoring and corrective action.

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc). [57 FR 33264, July 27, 1992]

Source: 54 FR 8928, Mar. 2, 1989, unless otherwise noted.

**Sec. 24.601 Purpose.**

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by Sec. 24.4 of this part.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

**Sec. 24.602 Certification application.**

An agency wishing to proceed on the basis of a certification may request an application for certification from the lead agency [Director, Office of Right-of-Way, HRW-1, Federal Highway Administration, 400 Seventh St. SW., Washington, DC 20590]. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding agency, in accordance with application procedures.

[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

**Sec. 24.603 Monitoring and corrective action.**

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(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) The lead agency may require periodic information or data from affected Federal or state agencies.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989; 58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

**EXHIBIT NO. 20-16**

Title VI, Civil Rights Act of 1964

Governmental Studies

Environmental Justice

Works in Progress

In Writing

Scholars

Areas of Expertise

Events

Title VI, Civil Rights Act of 1964

(go to the complete Civil Rights Act of 1964)

§2000d Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color or national origin No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President . Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or

(2)

by any means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and had determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

§2000d-2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 602, shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedures Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

§2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

§2000d-4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guarantee

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

§2000d-4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of

--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or  
(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;  
(2)(A) a college, university, or other post secondary institution, or a public system of higher education; or  
(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --

2701 if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship ; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

§2000d-5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et. Seq.], by the Act of September 20, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 236 et seq.], by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 631 et seq.], or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter:

Provided, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

§2000d-7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

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EXHIBIT NO. 20-17

Fair Housing Act as Amended (Title 8)FAIR HOUSING ACT

Sec. 800. [42 U.S.C. 3601 note] Short Title

This title may be cited as the "Fair Housing Act".

Sec. 801. [42 U.S.C. 3601] Declaration of Policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Sec. 802. [42 U.S.C. 3602] Definitions

As used in this subchapter--

- (a) "Secretary" means the Secretary of Housing and Urban Development.
  - (b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
  - (c) "Family" includes a single individual.
  - (d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 [of the United States Code], receivers, and fiduciaries.
  - (e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
  - (f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of this title.
  - (g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.
  - (h) "Handicap" means, with respect to a person--
    - (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
    - (2) a record of having such an impairment, or
    - (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).
  - (i) "Aggrieved person" includes any person who--
    - (1) claims to have been injured by a discriminatory housing practice; or
    - (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.
  - (j) "Complainant" means the person (including the Secretary) who files a complaint under section 810.
  - (k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--
    - (1) a parent or another person having legal custody of such individual or individuals; or
    - (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.
- The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.
- (l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means--

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).

(o) "Prevailing party" has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

[42 U.S.C. 3602 note] Neither the term "individual with handicaps" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

Sec. 803. [42 U.S.C. 3603] Effective dates of certain prohibitions

(a) Subject to the provisions of subsection (b) of this section and section 807 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 of this title shall apply:

(1) Upon enactment of this subchapter, to--

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: Provided, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

(b) Nothing in section 804 of this title (other than subsection (c)) shall apply to--

(1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided further, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such

broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if--

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Sec. 804. [42 U.S.C. 3604] Discrimination in sale or rental of housing and other prohibited practices

As made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)

(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--
- (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes--
- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that--
    - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
    - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - (iii) all premises within such dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
      - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5)
- (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.
  - (B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.
  - (C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).
  - (D) Nothing in this title shall be construed to require the Secretary to

review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 805. [42 U.S.C. 3605] Discrimination in Residential Real Estate-Related Transactions

(a) In General.--It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Definition.--As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance--

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal Exemption.--Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Sec. 806. [42 U.S.C. 3606] Discrimination in provision of brokerage services  
After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 807. [42 U.S.C. 3607] Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)

(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section "housing for older persons" means housing --

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older, and--

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall--

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of sections (2)(B) or (C); or

(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(5)

(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

- (B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that--
- (i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
  - (ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

Sec. 808. [42 U.S.C. 3608] Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties and power to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 [of the United States Code]. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall--

- (1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;
- (2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress--
  - (A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and
  - (B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which--

- (i) investigations are not completed as required by section 810(a)(1)(B);
  - (ii) determinations are not made within the time specified in section 810(g); and
  - (iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g);
- (3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;
- (4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;
- (5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter; and
- (6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).
- (f) The provisions of law and Executive orders to which subsection (e)(6) applies are--
- (1) title VI of the Civil Rights Act of 1964;
  - (2) title VIII of the Civil Rights Act of 1968;
  - (3) section 504 of the Rehabilitation Act of 1973;
  - (4) the Age Discrimination Act of 1975;
  - (5) the Equal Credit Opportunity Act;
  - (6) section 1978 of the Revised Statutes (42 U.S.C. 1982);
  - (7) section 8(a) of the Small Business Act;
  - (8) section 527 of the National Housing Act;
  - (9) section 109 of the Housing and Community Development Act of 1974;
  - (10) section 3 of the Housing and Urban Development Act of 1968;
  - (11) Executive Orders 11063, 11246, 11625, 12250, 12259, and 12432; and
  - (12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

Sec. 808a. [42 U.S.C. 3608a] Collection of certain data

(a) In general

To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88-352 [42 U.S.C.A. {2000d et seq.} and title VIII of Public Law 90-284 [42 U.S.C.A. {3601 et seq.}]), the Secretary of Housing and Urban Development and the Secretary of Agriculture shall each collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary involved determines such collection to be appropriate.

(b) Reports to Congress

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each include in the annual report of such Secretary to the

Congress a summary and evaluation of the data collected by such Secretary under subsection (a) of this section during the preceding year.

Sec. 809. [42 U.S.C. 3609] Education and conciliation; conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of Title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Sec. 810. [42 U.S.C. 3610] Administrative Enforcement; Preliminary Matters

(a) Complaints and Answers. --

(1)

(A)

(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint--

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this title;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this title, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)

(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative Report and Conciliation. --

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this title.

(5)

(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing--

- (i) the names and dates of contacts with witnesses;
- (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- (iii) a summary description of other pertinent records;
- (iv) a summary of witness statements; and
- (v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to Comply With Conciliation Agreement. -- Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814 for the enforcement of such agreement.

(d) Prohibitions and Requirements With Respect to Disclosure of Information.

--

(1) Nothing said or done in the course of conciliation under this title may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt Judicial Action. --

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 812 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under section 814(a) and 814(c) or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or Local Proceedings. --

(1) Whenever a complaint alleges a discriminatory housing practice--

(A) within the jurisdiction of a State or local public agency; and  
(B) as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless--

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;  
(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or  
(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)

(A) The Secretary may certify an agency under this subsection only if the Secretary determines that--

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;  
(ii) the procedures followed by such agency;  
(iii) the remedies available to such agency; and  
(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this title.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on the date of the enactment of the Fair Housing Amendments Act of 1988 and ends 40 months after such date, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this title on the day before such date shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on that date. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable Cause Determination and Effect. --

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)

(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 812.

(B) Such charge--

- (i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
- (ii) shall be based on the final investigative report; and
- (iii) need not be limited to the facts or grounds alleged in the complaint filed under section 810(a).

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 814, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of Copies of Charge. -- After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 812(a) and the effect of such an election, to be served--

- (1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and
- (2) on each aggrieved person on whose behalf the complaint was filed.

Sec. 811. [42 U.S.C. 3611] Subpoenas; Giving of Evidence

(a) In General. -- The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this title. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness Fees. -- Witnesses summoned by a subpoena under this title shall be entitled to same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal Penalties. --

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this title--

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

Sec. 812. [42 U.S.C. 3612] Enforcement by Secretary

(a) Election of Judicial Determination. -- When a charge is filed under section 810, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 810(h) or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative Law Judge Hearing in Absence of Election. -- If an election is not made under subsection (a) with respect to a charge filed under section 810, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 810. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5, United States Code. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of Parties. -- At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 811. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited Discovery and Hearing. --

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) Resolution of Charge. -- Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of Trial of Civil Action on Administrative Proceedings. -- An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, Findings and Conclusions, and Order. -- (

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent--

(A) in an amount not exceeding \$11,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice; (B) in an amount not exceeding \$27,500 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and (C) in an amount not exceeding \$55,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this title.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)--

- (A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and
- (B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; Service of Final Order. --

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g). Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial Review. --

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28, United States Code.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

- (j) Court Enforcement of Administrative Order Upon Petition by Secretary. --
- (1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.
- (2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.
- (k) Relief Which May Be Granted. --
- (1) Upon the filing of a petition under subsection (i) or (j), the court may--
- (A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;
- (B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and
- (C) enforce such order to the extent that such order is affirmed or modified.
- (2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.
- (3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.
- (l) Enforcement Decree in Absence of Petition for Review. -- If no petition for review is filed under subsection (i) before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement--
- (1) which is filed by the Secretary under subsection (j) after the end of such day; or
- (2) under subsection (m).
- (m) Court Enforcement of Administrative Order Upon Petition of Any Person Entitled to Relief. -- If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i), and the Secretary has not sought enforcement of the order under subsection (j), any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.
- (n) Entry of Decree. -- The clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.
- (o) Civil Action for Enforcement When Election Is Made for Such Civil Action.
- (1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28, United States Code.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 813. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 813 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's Fees. -- In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5, United States Code, or by section 2412 of title 28, United States Code.

Sec. 813. [42 U.S.C. 3613] Enforcement by Private Persons

(a) Civil Action. --

(1)

(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

(b) Appointment of Attorney by Court. -- Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may--

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief Which May Be Granted. --

(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on Certain Sales, Encumbrances, and Rentals. -- Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

(e) Intervention by Attorney General. -- Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(e) in a civil action to which such section applies.

Sec. 814. [42 U.S.C. 3614] Enforcement by the Attorney General

(a) Pattern or Practice Cases. -- Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On Referral of Discriminatory Housing Practice or Conciliation Agreement for Enforcement. --

(1)

(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 810(g).

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)

(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 810(c).

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 810(c).

(c) Enforcement of Subpoenas. -- The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this title, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief Which May Be Granted in Civil Actions Under Subsections (a) and

- (b). --
- (1) In a civil action under subsection (a) or (b), the court--
- (A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title;
- (B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and
- (C) may, to vindicate the public interest, assess a civil penalty against the respondent--
- (i) in an amount not exceeding \$55,000, for a first violation; and
- (ii) in an amount not exceeding \$110,000, for any subsequent violation.
- (2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28, United States Code.
- (e) Intervention in Civil Actions. -- Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 813.

Sec. 814a. Incentives for Self-Testing and Self-Correction

- (a) Privileged Information. --
- (1) Conditions For Privilege. -- A report or result of a self-test (as that term is defined by regulation of the Secretary) shall be considered to be privileged under paragraph (2) if any person-
- (A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a residential real estate related lending transaction of that person, or any part of that transaction, in order to determine the level or effectiveness of compliance with this title by that person; and
- (B) has identified any possible violation of this title by that person and has taken, or is taking, appropriate corrective action to address any such possible violation.
- (2) Privileged Self-Test. -- If a person meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test-
- (A) shall be privileged; and
- (B) may not be obtained or used by any applicant, department, or agency in any --
- (i) proceeding or civil action in which one or more violations of this title are alleged; or
- (ii) examination or investigation relating to compliance with this title.
- (b) Results of Self-Testing. --
- (1) In General. -- No provision of this section may be construed to prevent an aggrieved person, complainant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this title is alleged, or in any examination or investigation of compliance with this title if --
- (A) the person to whom the self-test relates or any person with lawful access to the report or the results --

- (i) voluntarily releases or discloses all, or any part of, the report or results to the aggrieved person, complainant, department, or agency, or to the general public; or
  - (ii) refers to or describes the report or results as a defense to charges of violations of this title against the person to whom the self-test relates; or
- (B) the report or results are sought in conjunction with an adjudication or admission of a violation of this title for the sole purpose of determining an appropriate penalty or remedy.
- (2) Disclosure for Determination of Penalty or Remedy. -- Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B) --
- (A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and
  - (B) may not be used in any other action or proceeding.
- (c) Adjudication. -- An aggrieved person, complainant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in --
- (1) a court of competent jurisdiction; or
  - (2) an administrative law proceeding with appropriate jurisdiction.
- (2) Regulations. --
- (A) In General. -- Not later than 6 months after the date of enactment of this Act, in consultation with the Board and after providing notice and an opportunity for public comment, the Secretary of Housing and Urban Development shall prescribe final regulations to implement section 814A of the Fair Housing Act, as added by this section.
  - (B) Self-Test. --
    - (i) Definition. -- The regulations prescribed by the Secretary under subparagraph (A) shall include a definition of the term "self-test" for purposes of section 814A of the Fair Housing Act, as added by this section.
    - (ii) Requirement for Self-Test. -- The regulations prescribed by the Secretary under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of the compliance by a person engaged in residential real estate related lending activities with the Fair Housing Act.
    - (iii) Substantial Similarity to Certain Equal Credit Opportunity Act Regulations. -- The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Board to carry out section 704A of the Equal Credit Opportunity Act, as added by this section.
- (C) Applicability. --
- (1) In General. -- Except as provided in paragraph (2), the privilege provided for in section 704a of the Equal Credit Opportunity Act or section 814a of the Fair Housing Act (as those sections are added by this section) shall apply to a self-test (as that term is defined pursuant to the regulations prescribed under subsection (a)(2) or (b)(2) of this section, as appropriate) conducted before, on, or after the effective date of the regulations prescribed under subsection (a)(2) or (b)(2), as appropriate.
  - (2) Exception. -- The privilege referred to in paragraph (1) does not apply to such a self-test conducted before the effective date of the regulations prescribed under subsection (a) or (b), as appropriate, if

- (A) before that effective date, a complaint against the creditor or person engaged in residential real estate related lending activities (as the case may be) was --
  - (i) formally filed in any court of competent jurisdiction; or
  - (ii) the subject of an ongoing administrative law proceeding;
- (B) in the case of section 704a of the Equal Credit Opportunity Act, the creditor has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section;
- (C) in the case of section 814a of the Fair Housing Act, the person engaged in residential real estate related lending activities has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section.

Sec. 815. [42 U.S.C. 3614a] Rules to Implement Title

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

Sec. 816. [42 U.S.C. 3615] Effect on State laws

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Sec. 817. [42 U.S.C. 3616] Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Sec. 818. [42 U.S.C. 3617] Interference, coercion, or intimidation; enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title.

Sec. 819. [42 U.S.C. 3618] Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

Sec. 820. [42 U.S.C. 3619] Separability of provisions

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Sec. 12 of 1988 Act). [42 U.S.C. 3601 note] Disclaimer of Preemptive Effect on Other Acts

Nothing in the Fair Housing Act as amended by this Act limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.

(Sec. 13 of 1988 Act). [42 U.S.C. 3601 note] Effective Date and Initial Rulemaking

(a) Effective Date. -- This Act and the amendments made by this Act shall take effect on the 180th day beginning after the date of the enactment of this Act.

(b) Initial Rulemaking. -- In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act, issue rules to implement title VIII as amended by this Act. The Secretary shall give public notice and opportunity for comment with respect to such rules.

(Sec. 14 of 1988 Act). [42 U.S.C. 3601 note] Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Section 901. (Title IX As Amended) [42 U.S.C. 3631] Violations; bodily injury; death; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin and because he is or has been selling, purchasing, renting, financing occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from--

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin, in any of the activities, services, organizations or facilities described in subsection(a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--

shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

TITLE 28, UNITED STATES CODE, AS AMENDED

Section 2341. Definitions

As used in this chapter --

- (1) "clerk" means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;
- (2) "petitioner" means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and
- (3) "agency" means --
  - (A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, the Interstate Commerce Commission, or the Atomic Energy Commission, as the case may be;
  - (B) the Secretary, when the order was entered by the Secretary of Agriculture;
  - (C) the Administration, when the order was entered by the Maritime Administration; and
  - (D) the Secretary, when the order is under section 812 of the Fair Housing Act.

Section 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of-

- (1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;
- (2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under section 210(e), 217a, and 499g(a) of title 7;
- (3) all rules, regulations, or final orders of--
  - (A) the Secretary of Transportation issued pursuant to section 2, 9, 37, 41, or 43 of the Shipping Act, 1916 (46 U.S.C.App. 802, 803, 808, 835, 839, and 841(a); and
  - (B) the Federal Maritime Commission issued pursuant to--
    - (i) section 23, 25, or 43 of the Shipping Act, 1916 (46 U.S.C.App. 822, 824, or 841a);
    - (ii) section 19 of the Merchant Marine Act, 1920 (46 U.S.C.App. 876);
    - (iii) section 2, 3, 4, or 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C.App. 844, 845, 845a, or 845b);
    - (iv) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C.App. 1713 or 1716); or
    - (v) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C.App. 817d(d) or 817e(d));
- (4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;
- (5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of Title 49, United States Code; and
- (6) all final orders under section 812 of the Fair Housing Act.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

**EXHIBIT NO. 20-18**