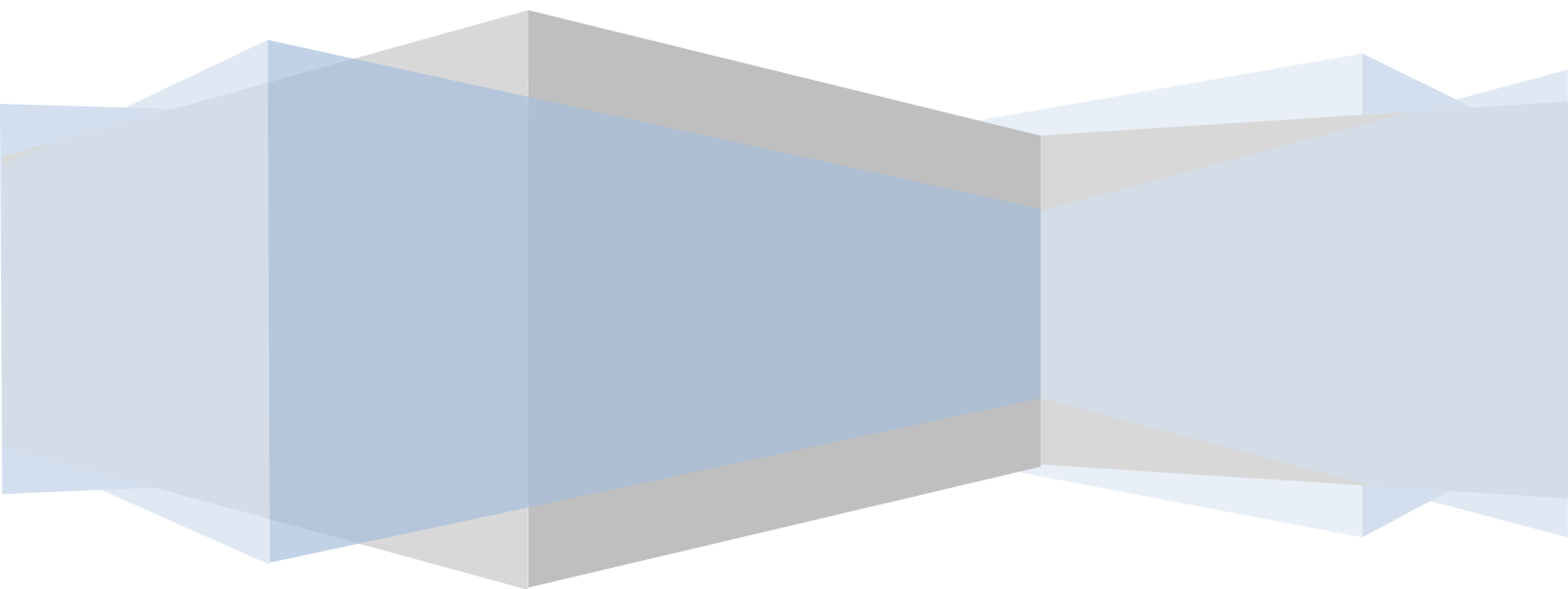




DEPARTMENT OF TRANSPORTATION



# RIGHT-OF-WAY MANUAL 2016



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### NEVADA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MANUAL

## FOREWORD

This Right-of-Way Manual has been compiled to provide guidance to the officers and various employees of the Nevada Department of Transportation and specifically the employees of the Right-of-Way Division. It is the purpose of this manual to provide uniformity in interpretation and administration of applicable State and Federal Laws, Departmental policies and the implementation of the Code of Federal Regulations as they apply to Right-of-Way acquisition.

This manual is designed to provide Right-of-Way personnel with a reference guide to the policies and procedures of the Right-of-Way Division. No policy and procedure manual can be expected to cover all of the potential eventualities that might be encountered by members of the Right-of-Way Division. The policies and procedures contained in this manual are considered general guidelines to be followed. If a situation should arise that is not specifically covered in this manual, members are encouraged to contact their immediate supervisor.

---

Director

## 1.000 ADMINISTRATION

### 1.100 INTRODUCTION AND AUTHORITY

- A. The policies, instructions and standard practices contained herein are presented as aids in the solution of common field and office operations and problems. This manual is not a textbook or a substitute for application of law, statute, regulation, knowledge, experience or rational and prudent judgment.
- B. The Nevada Department of Transportation is formed under the authority of the Nevada Revised Statutes and is administered by a seven-member Board of Directors consisting of the Governor, the Lieutenant Governor, the Attorney General and the State Controller, who serve ex-officio, and three members who are appointed by the Governor. The appointed members of the Board shall serve terms of 4 years.
- C. In accordance with [NRS 408.160](#), the Board shall select a person to be the Director of the Department who is responsible to the Board and serves at the pleasure of the Board. The Director shall have and exercise such powers as delegated to the position of Director, in accordance with section [408 of the Nevada Revised Statutes](#), including but not limited to:
  - 1. Closing and construction of highways; removal of encroachments
  - 2. Designation of highway as scenic route; adoption of regulations
  - 3. Purchase, rental of, and contracts for equipment, supplies, and services
- D. The authority and requirements for carrying out the numerous obligations of the Right-of-Way Division are delegated to the Chief Right-of-Way Agent by the Director of Transportation and are further based in the [Nevada Revised Statutes](#) (NRS), [United States Code](#) (USC), the [Code of Federal Regulations](#) (CFR), [Federal Register](#), [Public Utility Commission](#) (PUC) Rulings, [Nevada Administrative Code](#) (NAC), [State Administrative Manual](#) (SAM) and [Transportation Policies](#) (TP) issued by the Director.
- E. The Uniform Relocation Assistance and Real Property Acquisition Policies Act ([Uniform Act](#)) is a major component of the [United States Code](#) by which the Right-of-Way Division is governed. This legislation may be found at [42 USC Chapter 61, Subchapter I, Section 4601](#).
- F. Reference material useful for Agents in the performance of these duties may be found in the various authoritative volumes applicable to the specific functions including but not limited to:



## ADMINISTRATION

1. Uniform Standards of Professional Appraisal Practice ([USPAP](#))
2. Uniform Appraisal Standards for Federal Land Acquisitions ([UASFLA](#))
3. [FHWA Program Development Guide](#)
4. [NDOT Project Management Guidelines](#)
5. [NDOT Local Public Agency manual](#)

### 1.150 PURPOSE

The purpose of this manual is to implement 23 Code of Federal Regulations (CFR) [710.201 \(c\)](#) which in part requires each state Department to which receives funding from the Highway Trust Fund to maintain a manual describing its right-of-way organization, policies, and procedures. The CFR further requires all public land acquisition organizations, private consultants, and local governments under the Department's oversight on Federal-aid projects to comply with State and Federal laws, regulations, and the Department's policies and procedures. To comply with this requirement, this manual provides information and guidance to officers and employees of the Nevada Department of Transportation (Department) and those who fall under the Department's oversight due to their use of federal funds on transportation projects within the state. Although it desires to ensure compliance with all Federal and State laws and regulations pertaining to the acquisition of Right-of-Way, it is not intended to be, nor does it establish, a legal standard for those following these guidelines and procedures.

### 1.200 MANUAL ORGANIZATION

- A. The Manual is organized in sections along the flow of work through the Right-of-Way Division. Due to conversion from prior manuals, some discrepancy exists in that the Appraisal Review and Engineering sections are reversed in work flow order. The various manual sections include:
  - 1.000 Administration
  - 2.000 Right-of-Way Control
  - 3.000 Right-of-Way Engineering
  - 4.000 Appraisal
  - 4.500 Appraisal Review
  - 5.000 Negotiations
  - 6.000 Relocation
  - 6.600 Legal
  - 7.000 Utilities

## ADMINISTRATION

7.400 Railroad Agreements

7.500 Right-of-Way Occupancy Permits

7.600 Outdoor Advertising Control

7.700 Policy on Accommodation and Installation of Utilities

8.000 Property Management

- B. References to [United States Code](#) (USC), [Code of Federal Regulations](#) (CFR), [Nevada Revised Statutes](#) (NRS), [Nevada Administrative Code](#) (NAC), [State Administrative Manual](#) (SAM) are provided when the referenced code provides additional insight or clarification into processes or procedures.
- C. Forms applicable to each function are listed at the back of each section and provided in the separate Forms section of the manual. The forms are standardized and have been approved by the Legal Division and accepted by [Federal Highway Administration \(FHWA\)](#) for our use. Any deviation from standard language used on approved forms requires approval of the Legal Division (Deputy Attorney General – DAG) utilizing the Draft Review Process.

### 1.250 STATUTORY COMPLIANCE

- A. All Right-of-Way functions shall be conducted in such a manner as to assure that all persons shall have full access to the Department's programs, services, and information, without regard to race, color, sex, nation origin, age, religion, handicap or income status.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ([Uniform Act](#)), is embodied in the Code of Federal Regulations and is the basis for Right-of-Way activities.  
  
[NRS 342.105](#) requires, "Any department, agency, instrumentality or political subdivision of this State, or any other public or private entity, which is subject to the provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, [42 USC, Chapter 61, Subsections I-III, Sections 4601-4655](#), and the regulations adopted pursuant thereto, and which undertakes any project that results in the acquisition of real property or in a person being displaced from his home, business or farm, shall provide relocation assistance and make relocation payments to each displaced person and perform such other acts and follow such procedures and practices as are necessary to comply with those federal requirements".
- C. Presidential Executive Order 12898 requires the Department to consider Environmental Justice issues on its projects affecting minority and low-income populations.

## ADMINISTRATION

- D. Presidential Executive Order 13166 improves access to services for persons with limited English proficiency (LEP). This order states in part, “each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency”.

### 1.300 THE DEPARTMENT OF TRANSPORTATION ORGANIZATION

#### 1.301 Establishment of the Department of Transportation

The Nevada Department of Transportation of the State of Nevada was created in 1979 by State Statutes, known as Highways and Roads Law, Nevada Revised Statutes. Prior to this legislation the Department was known as the Highway Department, which was established in 1917.

The Nevada Department of Transportation maintains its Headquarters and Northern District office in Carson City, Nevada.

#### 1.302 Department of Transportation Board of Directors

“The Department of Transportation is administered by a Board of Directors consisting of the governor, the lieutenant governor, the attorney general and the state controller, who serve ex-officio, and three members who are appointed by the governor. If one of the four constitutional offices is vacant, the secretary of state shall serve ex-officio on the board until the vacancy is filled.”

“The governor normally serves as chairman of the board. A vice-chairman is elected annually from the remaining members to serve as chairman in the governor’s absence.”

#### 1.303 Director – Department of Transportation

[NRS 342](#) established the Director of Transportation has the authority to make any policies necessary to comply with the federal statutes.

The Board selects a Director to be head of the Department of Transportation.

#### 1.304 Deputy Director – Department of Transportation

The Director appoints a Deputy Director, who, in the absence, inability, or failure of the Director to be able to perform his/her duties has full authority to perform any of the required duties of the Director.

#### 1.305 Assistant Directors

In addition to the Director and the Deputy Director there are four Assistant Directors. The Right-of-Way Division falls under the responsibility of the Assistant Director of Engineering.

## ADMINISTRATION

### 1.306 Chief Right-of-Way Agent

By delegation of authority from the Assistant Director – Engineering, the Chief Right-of-Way Agent is charged with the administration and operation of the Right-of-Way Division.

The Chief Right-of-Way Agent maintains overall responsibility for all Right-of-Way policies and procedures for all functions.

### 1.307 Departmental Districts

The Department has divided the State into 3 geographic districts as outlined on the map found in the exhibits of this [Section at 1.650](#). Districts 2 and 3 make up the Northern Right-of-Way District, while District 1 makes up the Southern Right-of-Way District.

## 1.350 THE RIGHT-OF-WAY ORGANIZATION

The Right-of-Way Division is divided into two districts and headquarters, the Southern District is located in Las Vegas, and the Northern District is located in Carson City.

### 1.351 Right-of-Way Headquarters

Headquarters Right-of-Way functions include the Chief Right-of-Way Agent, Deputy Chief Right-of-Way Agent, the Condemnation Coordinator, Right-of-Way Engineering, Right-of-Way Control, Appraisal Review, four Staff Specialists, and Administrative Services.

The Chief Right-of-Way Agent and staff, at Headquarters in Carson City, establish project assignments, priorities, policy and procedures relative to the Right-of-Way Program within the Right-of-Way Districts.

All Appraisal and Appraisal Reviews statewide are performed by the Appraisal review section which reports directly to the Deputy Chief Right-of-Way Agent.

### 1.352 Right-of-Way Districts

Each District is comprised of an Assistant Chief Right-of-Way Agent, a Supervisory Right-of-Way Agent for Utilities, and a Supervisory Right-of-Way Agent for Negotiations, and administrative staff.

In addition, each Right-of-Way District has a utility inspection responsibility, which includes: performing required field inspections of such work underway for cost documentation, traffic safety and compliance with construction quality and location purposes, and performing permit and field surveillance, under the direction of the District Engineer, related to outdoor advertising control.

- A. The Assistant Chief Right-of-Way Agents report directly to the Deputy Chief Right-of-Way Agent.

## ADMINISTRATION

- B. Northern Right-of-Way District (Departmental Districts 2 & 3)  
Provides negotiations, relocation and property management services for the northern operational area, which includes Departmental Districts 2 & 3.
- C. Southern Right-of-Way District (Departmental District 1)  
Provides negotiation, relocation, utility adjustment and property management within its area of responsibility.
- D. Utility Inspectors (Departmental Districts 1, 2 & 3)  
Provides utility adjustments and railroad inspection; assists in obtaining new utility services, manhole and valve cover counts, assists in reviewing revocable occupancy permits, utility occupancy permit inspection; Outdoor Advertising control and inspection, and assists the District Engineer.

### 1.400 RIGHT-OF-WAY FUNCTIONS

#### 1.401 Right-of-Way Control

Under the supervision of the Deputy Chief Right-of-Way Agent, Right-of-Way Control prepares, monitors, and maintains the Right-of-Way Division's annual budget; gathers and compiles project cost estimates; programs funding for various Right-of-Way acquisition projects; monitoring of all Right-of-Way and Utility payments and processing of revenue receipts; preparation and maintenance of various Right-of-Way Control Ledgers; reviews and audits various reports for accuracy; and prepares and transmits various bills to other entities for their participation in project expenditures.

#### 1.402 Right-of-Way Engineering

Right-of-Way Engineering is divided into seven squads of engineering technicians, which are supervised by Right-of-Way Engineering Supervisors that report to the Right-of-Way Engineering Manager. The function of Right-of-Way Engineering is to prepare mapping for land acquisition and disposal, leases, licenses and for litigation; conducts land title searches and related research; calculates land boundaries, land areas for acquisition of permanent and temporary easements, and the Public Land Survey System; write legal descriptions of land; certify material sites for NDOT construction projects; prepares applications for well permits and water rights from the State Engineer; retains, maintains, and is a public information office for all NDOT past and present land interests; and performs Right-of-Way verifications on every project as well as conduct contract reviews.

## ADMINISTRATION

### 1.403 Appraisal Review

Under the management of the Chief Appraiser, the Appraisal Review section prepares and/or examines all completed appraisal reports, and conducts on site investigations to determine completeness, validity, accuracy and correctness of material for approval of the reports; or establishes the Reviewer's estimate of just compensation. The review section is also available for appraisal assignments.

### 1.404 Negotiations

Under the supervision of a Supervisory Right-of-Way Agent the Negotiations section conducts all acquisition activities necessary to acquire property rights to construct and maintain the transportation system, and initiates and follows the condemnation process when negotiations have reached an impasse. The Supervisory Right-of-Way Agent for the Negotiations section also oversees preparation of Waiver Valuation and appraisal reports performed by Right-of-Way Agents under their control, as well as negotiation, relocation, and property management within their area of responsibility.

### 1.405 Utilities

Under the supervision of a Supervisory Right-of-Way Agent the Utilities section is responsible for the reimbursement, accommodation of encroachments within highway right-of-way, and highway beautification under the State Highway Beautification Act. The Section has operational responsibility for the negotiation of utility and railroad adjustments to clear highway construction projects, and has statewide program responsibility for outdoor advertising control and junkyard beautification. The Section coordinates the processing of right-of-way occupancy permits reviewed by the NDOT Headquarters Encroachment Committee.

### 1.406 Administrative Services

Under the direction of the Deputy Chief Right-of-Way Agent, the Administrative Staff is responsible for administrative support and word processing services, maintenance and security of personnel records, routine correspondence files and records, records retention, maintenance of office supplies and forms, reception and phone duties, and tracking of surplus property.

### 1.407 Condemnation

- A. The Supervisory Right-of-Way Agent/Condemnation Coordinator provides necessary liaison between the Right-of-Way Division and the Legal Division when negotiations break down and condemnation proceedings must be filed.
- B. The Supervisory Right-of-Way Agent, while within the Right-of-Way Division, reports directly to the Chief Counsel.

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### 1.408 Relocations

Under the supervision of the Supervisory Right-of-Way Agent for Negotiations, the relocation function provides full implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act ([Uniform Act](#)) in the relocation, advisory assistance, and reimbursement of displaced persons and businesses.

### 1.409 Property Management

Under the supervision of the Supervisory Right-of-Way Agent for Negotiations, the property management function manages all Department owned properties held for future transportation projects and administers leases of Department held land.

### 1.410 Staff Specialists

Under the direction of the Chief and/or Deputy Chief Right-of-Way Agent, the Staff Specialists provide quality control, quality assurance, and guidance and oversight to the Division, Right-of-Way staff, and local public agencies for issues pertaining to or affecting their assigned disciplines.

## 1.450 RESPONSIBILITIES

### 1.451 Chief Right-of-Way Agent

By delegation of authority from the Assistant Director of Engineering, the Chief Right-of-Way Agent is charged with the administration and operation of the Right-of-Way Division.

The Chief Right-of-Way Agent maintains overall responsibility for all Right-of-Way policies and procedures for all functions.

The Chief retains ultimate authority for:

- A. Deciding whether an acquisition is referred for condemnation action
- B. Permitting acquisitions to be taken subject to restrictions
- C. Recommending approval of Administrative Settlements
- D. Authority to Set Just Compensation
- E. Personnel Actions
- F. Transportation Board actions

## ADMINISTRATION

### 1.452 Deputy Chief Right-of-Way Agent

The Chief Right-of-Way Agent selects a Deputy Chief Right-of-Way Agent who has full authority to perform any of the required duties of the Chief Right-of-Way Agent in their absence.

Under the supervision and direction of the Chief Right-of-Way Agent, the Deputy Chief Right-of-Way Agent supervises and directs the Assistant Chief Right-of-Way Agents. The Deputy Chief Right-of-Way Agent, in addition to the above, coordinates and directs the activities of the following sections of the Right-of-Way Division:

- A. Right-of-Way Engineering
- B. Administrative Staff Section
- C. Right-of-Way Control Section
- D. Condemnation Coordinator and Staff
- E. Appraisal Review Section

The Deputy Chief Right-of-Way Agent has specific authority for:

- A. Approval for use of Notice of Intent to Acquire
- B. Authorizing Waiver Valuations
- C. Setting Just Compensation

### 1.453 Assistant Chief Right-of-Way Agent

In the absence of the Chief and Deputy Chief Right-of-Way Agents, the Assistant Chief Right-of-Way Agent assumes the duties of the Chief and Deputy Chief Right-of-Way Agent for their area of responsibility.

The Assistant Chief has specific responsibility for:

- A. Setting Just Compensation for acquisition within their area of responsibility
- B. Project certification

#### *Assistant Chief Right-of-Way Agent – Acquisition & Relocation*

By delegation of authority from the Deputy Chief Right-of-Way Agent, the Assistant Chief Right-of-Way Agent – North coordinates and directs the activities of the following northern sections of the Right-of-Way Division:

- A. Right-of-Way Negotiations Section



## ADMINISTRATION

### *Assistant Chief Right-of-Way Agent – Utilities*

By delegation of authority from the Deputy Chief Right-of-Way Agent, the Assistant Chief Right-of-Way Agent – South coordinates and directs the activities of the following sections of the Right-of-Way Division:

- A. Right-of-Way Utilities Section
- B. Supervision of Administrative Services for the Southern Right-of-Way District

### **1.454 Right-of-Way Section Supervisors**

Operational responsibility for each Right-of-Way Section and Right-of-Way District lies with the following Supervisor of the Sections or Districts:

- A. Engineering Section – Manager, Right-of-Way Engineering
  - 1. Supervisors – Right-of-Way Engineering
- B. Appraisal Review Section – Chief Appraiser
- C. Northern Right-of-Way District – Assistant Chief Right-of-Way Agent – North
  - 1. Supervisory Right-of-Way Agent – Negotiations
  - 2. Supervisory Right-of-Way Agent – Utilities
- D. Southern Right-of-Way District – Assistant Chief Right-of-Way Agent – South
  - 1. Supervisory Right-of-Way Agent - Negotiations
  - 2. Supervisory Right-of-Way Agent – Utilities
  - 3. Administrative Services section
- E. Administrative Services Section – Deputy Chief Right-of-Way Agent
- F. Condemnation Coordinator – Deputy Chief Right-of-Way Agent
- G. Right-of-Way Control Section – Deputy Chief Right-of-Way Agent
- H. Administrative Service Section – Deputy Chief Right-of-Way Agent

## ADMINISTRATION

### 1.455 Staff Specialist

There are four Staff Specialists. Three Staff Specialists are part of headquarters staff and report directly to the Deputy Chief Right-of-Way Agent. They are responsible for quality control, quality assurance, guidance and oversight to the Division, Right-of-Way staff, and local public agencies for issues pertaining to or affecting their assigned disciplines. The disciplines covered by these three Staff Specialists are Appraisal, Negotiations, Utilities, Relocations and Property Management. The fourth Staff Specialist reports to the Condemnation Coordinator.

Specific duties of the Staff Specialists include:

- A. Responsible for the research, evaluation, recommendation and implementation of policy and procedure in the area of utilities, appraisal, negotiation, relocation and property management on a statewide basis.
- B. Responsible for administrative coordination of the periodic Right-of-Way manual changes.
- C. Responsible for review and approval of all acquisition, utility, relocation and property management expenditures.
- D. Keeps a file of legal opinions. This file is maintained by the Administrative Assistant III.
- E. Responsible for review and closing of Right-of-Way negotiated acquisitions, acquisitions by administrative or legal settlement, or by condemnation.
- F. Responsible for obtaining Right-of-Way project authorization from the Federal Highway Administration.
- G. Responsible for processing the certification of Right-of-Way project completion to the Federal Highway Administration and/or senior Department management.
- H. Monitors all Right-of-Way Division contracts for compliance with State and Federal rules and regulations.
- I. Responsible for the review and approval of the complex multi-use leases and licenses.
- J. Responsible for the review and approval of airspace leases.
- K. Responsible for the submission of the Right-of-Way District's quarterly inspection report relative to multi-use and airspace leases to the Federal Highway Administration.
- L. Responsible for special reports, training, appraisals and appraisal reviews as scheduling and projects dictate.
- M. Research, interpret, and apply Federal and State laws.

## ADMINISTRATION

- N. Liaison between Departmental divisions and other federal, state, and local public agencies relative to project development, program management, appraisals, negotiations, relocation assistance, property management, condemnation, utilities, railroad, junkyard regulation, outdoor advertising, encroachment permits and telecommunications in highway right-of-way.
- O. Consult with Right-of-Way District Supervisors on special problems of negotiations, appraisal, relocations, property management, condemnation, utilities, railroad, junkyard regulation, outdoor advertising, encroachment permits and telecommunications.
- P. Prepare required reports for the Department and FHWA on utilities, railroad, junkyard regulation, outdoor advertising, encroachment permits and telecommunications.
- Q. Coordinate programs with other government agencies.
- R. Coordinate with the Staff Specialists for Appraisal and Property Management and Appraisal and Negotiations to continue functions of either position during the absence or vacancy of either position.
- S. Assist management with special studies and other related assignments pertinent to the division.
- T. Responsible for the review of Service Agreements.
- U. Serves on the Surplus Property Committee.
- V. Coordinates and prepares packages for the Transportation Board.
- W. Prepares annual report to FHWA for relocation cost.
- X. Reviews Department agreements with outside agencies and makes recommendation to management to ensure contract language and terms comply with State and Federal rules and regulations affecting their areas of responsibilities.
- Y. Serves as Liaison between the Right-of-Way and Legal division for matters affecting their assigned disciplines.
- Z. Service as Legislative Coordinator for the Right-of-Way Division.
- AA. Participates in the annual "Active Directory" review called by Information Services to review storage and access issues.
- BB. Service as the Civil Rights Coordinator.

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### 1.456 Management Analyst I

- A. Responsible for the supervision of Right-of-Way Control Section.
- B. Responsible for the control and processing of all payable, receivable, non-monetary, and cooperative agreements.
- C. Responsible for the administration or right-of-way agreement files and liaison with Administrative Services Division.
- D. Assist in the coordinating, drafting and monitoring the Right-of-Way Division's annual budget and work programs, including periodic revision thereto.
- E. Responsible for a continuous review of all Right-of-Way documents covering expenditures and revenue to ensure that coding and calculations are correct.
- F. Responsible for the preparation of the paperwork necessary for the deposit of money with the Court, as requested by the Legal Division, in condemnation actions, maintaining proper ledgers and serving as liaison with Legal in these matters.
- G. Responsible for the review of all requests for payments and billings prior to their processing.
- H. Responsible for reviewing and verifying all line items reflected on various electronic reports generated by other divisions.
- I. Responsible for a review of the various monthly budget reports.
- J. Responsible for the preparation and maintenance of ledgers reflecting accounting and reference information.
- K. Responsible for the preparation and maintenance of a monthly lands acquired report.
- L. Responsible for the preparation of programming documents on all Right-of-Way projects and Federal authorization requests.
- M. Responsible for the receipt and transmittal of all Right-of-Way original source documents to Central Records for permanent storage.
- N. Serves as the Right-of-Way Coordinator for accounting matters and serves as liaison with the Accounting Division, Central Records, Internal Audit, Programs and Financial Management Division and Safety Engineering.
- O. Responsible for the preparation and updating of the Right-of-Way Control section work procedural manual. Refer to this manual for specific procedures relating to the operation of the control section.

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- P. Responsible for coordinating approved training and conference or seminars for the Right-of-Way Division.
- Q. Responsible for Division payroll processing, including accurate staff time charges to projects.
- R. Responsible for closure of expired and completed division agreements.
- S. Responsible for the Right-of-Way Final Voucher Process.
- T. Responsible for submitting required documents to Internal Audit and reviewing audit reports for concurrence with findings.

### 1.457 Administrative Assistant III (AIII)

The Administrative Assistant III (AIII) (Supervising Secretary) is responsible for supervision of the administrative staff for the Right-of-Way Division. Supervision includes balancing the workload and establishing work priorities for the administrative staff.

The AIII is responsible for setting standards for the administrative staff to follow so as to maintain uniformity within the division when performing the routine daily work activities. The standards are written and are to be included in the individual Administrative Assistant's Desk Procedures Manuals.

**Note:** Please refer to the individual Administrative Assistant's Desk Procedures Manual for specifics on the positions role and responsibilities within the Right-of-Way Division.

The duties for the AIII include, but are not limited to:

- A. Provides advisory assistance and technical direction to the administrative section of the Southern Right-of-Way District.
- B. Responsible for the safeguarding and maintenance of the employee's divisional personnel files which are stored in a locked cabinet for the Northern as well as the Southern employees.
- C. Maintains Right-of-Way Divisional forms and legal instruments updating forms as requested by the Staff Specialists to include formatting, electronically archiving outdated/old forms and uploading all current forms to the Right-of-Way SharePoint site.
- D. Responsible for updating and maintaining the Right-of-Way Division's SharePoint Site and permission thereto.
- E. Assist the 3 Staff Specialists with special projects/duties as requested.
- F. Participates in the annual "Active Directory" review called by Information Services to review storage and access issues.

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- G. Maintain the Right-of-Way Division's Organizational Chart.
- H. Set, coordinate and maintain the Right-of-Way Status Meeting schedule and due dates for Right-of-Way staff project worksheet updates.
- I. Coordinates and schedules various meetings for all levels of Right-of-Way personnel.
- J. Produces various reports on an as-needed basis from the Project Scheduling and Management System (PSAMS).
- K. Creates forms used by division personnel using Microsoft Visio and Adobe Acrobat Professional.
- L. Create PowerPoint presentations as requested.
- M. Initiates and tracks Customer Service Survey on Projects. Collects information and provides results to the Chief Right-of-Way Agent for their review and action, if necessary.
- N. Actively train Right-of-Way divisional staff on SharePoint.
- O. Provides Administrative support to the Surplus Property Committee and maintains tracking log of Surplus Items.
- P. Acts as back-up to the Right-of-Way Control Section on the following duties:
  - 1. Timesheets
  - 2. Payment Vouchers
  - 3. Training Coordinator
  - 4. Travel Coordinator
- Q. Reviews and time/date stamps incoming mail before distributing to appropriate staff.
- R. Maintains the official files of legal opinions related to the Right-of-Way Division held by the Chief, Deputy Chief, and Staff Specialists.

### 1.458 Administrative Staff (AAI and AAI)

The Administrative staff provides the following services to the Right-of-Way Division:

- A. Office receptionist
- B. Conference and meeting arrangements
- C. Maintain office supplies

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- D. Provide typing services
- E. Answer telephones and take messages
- F. Provide word processing and technical support to the Right-of-Way Division.
- G. Each Administrative Assistant is responsible for maintain and updating their own Desk Procedures Manual as duties, policies or procedures change and must include the most current written standards produced by the AAIII.
- H. Assist staff in creating files.
- I. Filing timesheets, timecards and tickler documents.
- J. Purging documents as needed and required by retention schedules and when requested.
- K. Key operator for 3<sup>rd</sup> Floor Copier.
- L. Opens, time/date stamps, and circulates mail.
- M. Runs errands as needed.
- N. TP Manuals – places updates into manual holder's copies, along with updating the index to the manual.
- O. Places meeting dates/times on SharePoint calendar as requested by the AAIII.
- P. Maintains and updates Letter/Memo Logs.
- Q. Provides duplication services.
- R. Maintains electronic Archives of legal documents produced by the Right-of-Way Division, along with electronic logs.
- S. Schedule Conference Rooms A and B for the Roop Street Annex Building as requested using Microsoft Outlook.
- T. Maintains and updates Right-of-Way Project Worksheets as needed for Right-of-Way Division and Department Status Meetings.

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### 1.500 DEFINITIONS

#### **Acquisition Cost Estimate:**

An estimate of value made by the Right-of-Way Division for budget and planning purposes.

#### **Airspace:**

Airspace is the real property rights above or below State highways that can be used for other purposes subject to any reservations, restrictions, and conditions necessary to ensure protection to the safety and adequacy of highway facilities and conforming to abutting or adjacent land uses.

#### **Certification:**

Certification, insofar as the Acquisition Branch is concerned, means that any and all interests in the property adverse to State's use have either been cleared or the documents or legal process which will legally authorize entry by the Department have been secured.

#### **Code of Federal Regulations:**

The publication of federal regulation explaining the requirements of federal law found in the United States Code (USC).

#### **Condominium:**

A separate interest in air space in a residential, industrial, or commercial building, and may include a separate interest in other portions of such real property.

#### **Contributory Value:**

Contributory value" is defined as the dollar amount that a building, structure, or other improvement adds to the market value of the real property.

#### **Dedication:**

Dedication is the setting aside of property for public use in exchange for the granting of, for example, a building permit or zoning change variance for land use or to satisfy mitigation requirements resulting from an environmental review. Dedications are usually required through exercise of police power and without compensation.

#### **Donation:**

Donation is the voluntary transfer of a land title to the State at no cost or for less than full fair market value. Donations can be made with or without the need for an appraisal.

#### **Donor:**

The meaning of Donor includes any person or non-governmental entity that makes a donation of right-of-way for State transportation purposes.

#### **Easement:**

An interest in real property that conveys use, but not ownership of a portion of a property (see AIREA dictionary). An Easement is the right to perform a specific action on a particular land



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parcel, or portion of a parcel of land, without owning the underlying fee. A continuous easement across multiple tracts of land is often referred to as a right-of-way.

### **Federal Register:**

The official publication where all new federal regulations and policies are published upon implementation.

### **Just Compensation:**

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken; should put the owner in as good a position pecuniary as he or she would be if the property had not been taken; generally held to be market value, but courts have refused to rule that it is always equivalent to market value.

### **Mobile Homes:**

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

### **Public Agencies:**

Public agencies are those agencies and political subdivisions of federal, state, county and city governments.

### **Right-Of-Way:**

Real estate required for State transportation purposes ([NRS 408.080](#)).

### **Shall:**

Shall means that an action is mandatory and must be performed. No alternative action is to be considered in its place.

### **Should:**

Should explain how a regulatory provision is to be implemented under most circumstances. Unusual circumstances may warrant different action after, careful consideration and discussion with all parties affected.

### **Tenant-Owned Improvement:**

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. 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. Just compensation for tenant-owned improvements is the amount, which the improvement contributes to the fair market value of the whole property (Contributory Value), or its salvage value, whichever is greater.

### **Uneconomic Remnant:**

The term "Uneconomic Remnant" means a parcel of property remaining after an acquisition which has little or no value or utility to the present owner.

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### Waiver Valuation:

Waiver Valuations is a process to determine value administratively for non-complex properties with a value less than \$20,000. This is the valuation process and the product produced when the agency determines an appraisal is not required.

**Note:** Due to the amendment to the Nevada Constitution, if condemnation is necessary, then an appraisal of the property will be required.

### 1.550 POLICY

Right-of-Way Administration ensures that right-of-way activities required for transportation projects by the State of Nevada are conducted in compliance with all Transportation Policies and Procedures, and all Local, State, and Federal Laws. Right-of-Way Administration assures that all services and benefits to be derived from any right-of-way activity will be administrated as required in Title VI and related statutes.

#### 1.551 Compliance with Statute, Policy and Procedure

##### *The Nevada Revised Statutes (NRS)*

The Nevada Revised Statutes are the compilation of all laws of the State of Nevada and covers all aspects of business law, government, revenue, public safety, civil, criminal and consumer protection. Discrepancies between the various applicable policies shall always be resolved in favor of statutes. Interpretation of statutes may be sought from the Legal Division through the appropriate Staff Specialist.

Discrepancies between various statutes are the venue of Right-of-Way Management and may require a legal opinion to resolve. In such cases, the issues shall be brought to the attention of the appropriate Staff Specialist to coordinate with the Chief Right-of-Way Agent and the Legal Division and to record the legal advice received within the official file of legal opinions.

##### *The Nevada Department of Transportation (NDOT) policies and procedures*

The Department issues Transportation Policies (TP) to cover administrative and operational aspect of business conducted by the Department. These policies are approved by the Director of transportation and are the expression of the Department's position on how to comply with various state and federal statutes and regulation applicable to the Department's operations.

##### *Applicable Federal Statutes and Code of Federal Regulations*

The Code of Federal Regulations is the expression of rules published in the Federal Register by the Executive departments and agencies of the federal government. The published rules stem from legislative acts made a part of the United States Code (USC), which is the official compilation of federal law.

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### *The Nevada Administrative Code (NAC)*

The Administrative Code is a compilation and codification of the administrative regulations of the Executive Branch of Nevada State government.

### *The State Administrative Manual (SAM)*

The State Administrative Manual (SAM) is a compilation of policy statements concerning the internal operations of State Government. Policies are based on statutes or other approved regulations.

The SAM covers state operations of interest to the Right-of-Way Division including:

- A. Travel
- B. Cooperative Agreements and Contracts
- C. Records
- D. Administrative Procedures
- E. Open Meeting Law
- F. Purchasing
- G. Attorney General
- H. Internal Audits
- I. Budgeting

### *The NDOT Right-of-Way Manual*

The NDOT Right-of-Way Manual is a compilation of policy and procedures approved by FHWA covering the operations of the Right-of-Way Division and includes chapters for:

- A. 1.000 Administration
- B. 2.000 Right-of-Way Control
- C. 3.000 Right-of-Way Engineering
- D. 4.000 Appraisal
- E. 4.500 Appraisal Review
- F. 5.000 Negotiations
- G. 6.000 Relocation

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- H. 6.600 Legal
- I. 7.000 Utilities
- J. 7.400 Railroad Agreements
- K. 7.500 Right-of-Way Occupancy Permits
- L. 7.600 Outdoor Advertising Control
- M. 7.700 Policy on Accommodation and Installation of Utilities
- N. 8.000 Property Management

### *The Local Public Agency (LPA) Manual*

The Nevada Division of the [Federal Highway Administration \(FHWA\)](#) is charged with the stewardship of the Federal Highway Program for the state of Nevada. The Nevada Department of Transportation (NDOT) and FHWA entered into a new Stewardship Agreement in May 2015, allowing NDOT to assume the responsibilities of the FHWA under [Title 23 of the United States Code](#).

The Local Public Agency (LPA) Program as established under the Stewardship Agreement allows for the delegation of project review, oversight, and administration for any project involving federal funds that is not located on the National Highway System (NHS). Examples of projects that can be completed under the LPA Program include bicycle facilities, landscaping, lighting, sidewalks, and capacity projects. In addition to traditional transportation projects, other transportation projects involving programs, equipment, or services may be completed under the LPA Program if federally funded.

To be eligible for the LPA Program, two basic conditions need to occur:

- A. The project must be partially funded with Federal-Aid funds.
- B. The local public agency must be responsible for the design of the plans, advertising, awarding, and administering the construction of the project.

### *NDOT Project Management Guidelines*

The Project Management Guidelines provide Department staff with general instructions on their roles in managing, developing, and delivering projects. It is intended to assist them as they perform their duties in advancing projects through the Department's project management process.

Discrepancies between the various applicable policies shall always be resolved in favor of statutes. Informal interpretation of statutes may be sought from the Legal Division through the appropriate Staff Specialist.

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Discrepancies between various statutes are the venue of Right-of-Way Management and may require a legal opinion to resolve. In such cases, the issues shall be brought to the attention of the appropriate Staff Specialist to coordinate with Management and the Legal division and to record the legal advice received within their file of legal opinions. If a formal legal opinion is desired, a memo from the Chief Right-of-Way Agent to the Deputy Attorney General is prepared by the appropriate Staff Specialist and approved by the Chief Right-of-Way Agent.

### 1.552 Department Policy

The Nevada State Transportation Board establishes all Departmental policy under the provisions of the Nevada Revised Statutes.

### 1.553 Right-of-Way Policy and Procedure Approval

All right-of-way policy and procedures shall be reviewed annually by the applicable Staff Specialist to ensure compliance with Federal and State regulations. All right-of-way policy and procedures shall be reviewed and approved by the Chief Right-of-Way Agent prior to distribution to the field.

Upon receipt of approved policy and procedural changes, the Assistant Chief Right-of-Way Agent will ensure that Supervisory Right-of-Way Agents hold a meeting with their staff within two weeks of the receipt of the changes made and ensure that their personnel understand and have inserted the changes to their manuals.

### 1.554 Cooperation with Other Government Agencies

Right-of-Way Administration cooperates with all State, Federal and local government officials and agencies to effectively provide for a safe, efficient highway system compatible with the needs of the community.

Right-of-Way participates in developing and planning projects with local governmental agencies as a member of the project planning team. Additional information on Right-of-Way's role in that process may be found in:

- A. The Department's Stewardship Agreement with FHWA, and
- B. The Department's Project Management Guidelines, and
- C. The Local Public Agency (LPA) Manual, and
- D. [Section 5.389](#) of the Right-of-Way Manual.

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### 1.555 Federal Funds Reimbursement

Right-of-Way participates in the project development process as a member of the project development team. The process starts with the initiation of feasibility studies, community interaction, environmental studies, initial Right-of-Way cost estimates, development of alternatives, selection of an alternative, placing the project in the State Transportation Improvement Plan (STIP), public hearings, environmental clearance and approval of plans, specifications and estimates. Once the project has been accepted, approved and programmed right-of-way acquisition activities (appraisal, acquisition, utility relocation) may commence. Acquisition activity commenced prior to project approval and programming may be ineligible for federal reimbursement.

As a condition of Federal-aid, the State Transportation Department (STD) shall obtain [Federal Highway Administration \(FHWA\)](#) authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see [23 CFR 710.503](#)). ([23 CFR 710.307](#))

Acquisition includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements and condemnation. ([23 CFR 710.309](#))

In some cases FHWA may allow reimbursement on advance acquisition if the [Uniform Act](#) has been followed.

Right-of-Way Administration shall make every effort to qualify all right-of-way costs as appropriate for Federal reimbursement in accordance with State and Federal law. Supervisory Right-of-Way Agents will review the Engineering Authorizations prior to commencing work on any project to ensure federal approval has been received and funds have been programmed before beginning Right-of-Way acquisition. Programmed right-of-way incidentals allow preliminary activities to begin.

If funding has not been programmed for Right-of-Way activities the Supervisory Right-of-Way Agent shall coordinate with Right-of-Way Control to determine the cause and resolution.

### 1.556 Design-Build Projects

In the case of a Design-Build project, right-of-way must be acquired, cleared and certified in accordance with the [Uniform Act](#) and established right-of-way procedures prior to the start of physical construction on individual properties.

Certification will be submitted in accordance with the provisions of [23 CFR 635.309\(p\)](#).

The advance of a right-of-way segment to construction shall not impair the safety or in any way be coercive with respect to unacquired properties on the same or an adjacent segment of the project.

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If Right-of-Way activities are included in the Design-build contract, the provisions of [23 CFR 710.313 \(d\)](#) must be adhered to.

### 1.557 Acquisition of Parcels Containing Hazardous Waste

Early identification of potential hazardous waste sites is essential. Every effort should be made to avoid the necessity to acquire a parcel containing hazardous waste.

### 1.558 Risk Taking

Risk taking is defined as a legal and planned deviation in business practice or policy consistent with delegated authority and fiduciary responsibility that results in time or monetary savings for the Department.

Right-of-Way is constantly challenged with new laws, regulations, policies and the application of the laws and policies to real-life situations. Right-of-Way often times faces situations that require judgment decisions when specific guidance is not available from law, regulations, policy or procedures.

Prior to making any decision deviating from policy or normal business practice, the following factors should be considered:

- A. Is it legal?
- B. Is it consistent with Departmental policy?
- C. Does it protect State asset and interests?
- D. Is it consistent with delegated authority?
- E. Does it consider the rights of all involved?

### 1.559 Equal Opportunity Employment Policy

The Nevada Department of Transportation is an equal opportunity employer. As such the Right-of-Way Division shall provide all training, supervision, advancement, and employment opportunity in accordance with this policy as set forth in its Affirmative Action Plan.

### 1.560 Outside Employment and Conflict of Interest

The Right-of-Way Administration does not prohibit personnel of the Division from outside employment. However, caution is advised to avoid any possible perception of a conflict of interest with employment in the Right-of-Way Division. Such conflicts might arise in the following circumstances:

- A. A financial interest in a business that does work for the Department, or the

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- B. Employment as a real estate broker.
- C. Employment as a private appraiser doing work potentially related to right-of-way acquisitions.
- D. Employment doing private engineering work potentially related to right-of-way acquisition.

Employees must comply with Transportation Policy 1-6-10 if they engage in employment outside the Division and/or Department of Transportation.

It is against Department and Division policy for employees of the Right-of-Way Division to work on outside employment activities during regular working hours.

Employees shall not engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with their duties as employees, or with the duties, functions or responsibilities of their appointing authorities or agencies by which they are employed. (NAC 284.738, [NRS 284.065](#), [284.155](#))

No employee may seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity that would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties. (NAC 284.746, [NRS 284.065](#), [284.155](#))

No employee may use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity with which he or a member of his household is associated, or any other person. (NAC 284.750, [NRS 284.065](#), [284.155](#))

### **1.561 Waste, Fraud, and Abuse (Required per 23 CFR 710.201)**

- A. It is hereby declared to be the public policy of this state that a state officer or employee and a local governmental officer or employee are encouraged to disclose, to the extent not expressly prohibited by law, improper governmental action, and it is the intent of the Legislature to protect the rights of a state officer or employee and a local governmental officer or employee who makes such a disclosure. ([NRS 281.621](#))
- B. No employee may seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity that would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties. ([NAC 284.746](#))
- C. No employee may use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of



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his household, any business entity with which he or a member of his household is associated, or any other person. ([NAC 284.750](#))

- D. If an employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he may not use the information to further the economic interests of himself or any other person or business entity. ([NAC 284.758](#))
- E. No employee may suppress any governmental report or other document because it might affect unfavorably of his private financial interest. ([NAC 284.762](#))

### 1.562 Right-of-Way Personnel Training

Right-of-Way Management encourages its employees to take advantage of every training opportunity. Supervisors are responsible for determining the training needs of their employees and developing a training plan. These needs are then transferred to the Division's annual budget for planning purposes. Right-of-Way then coordinates these training needs with the Training Section of the Department.

Employees are ultimately responsible for their own personal and professional development. This includes assuming personal and financial responsibilities for developing skills and abilities. The employee is responsible for identifying training, needs to be included in the personal training plans, for participating in assigned training, and for seeking opportunities to improve job performance and self development by serving as instructors, project coordinators, lead persons or serving on panels.

Achievement of professional designations from associations such as the International Right-of-Way Association, Appraisal Institute, or any other sponsored professional organization is beneficial to the Division and the Department. Employees are encouraged to seek professional designations and the Division will support their endeavors to the degree possible.

### 1.563 Annual Work Performance Review

At least annually, in accordance with Nevada Personnel regulations, the Chief Right-of-Way Agent shall prepare a performance evaluation for the Deputy Chief Right-of-Way Agent. The Deputy Chief Right-of-Way Agent shall prepare performance evaluations for the Assistant Chief Right-of-Way Agents, the Right-of-Way Engineering Manager, Staff Specialists, Management Analyst I and Administrative Assistant III. The Assistant Chief Right-of-Way Agents shall prepare, at least annually, the performance evaluation for those personnel under their supervision.

### 1.564 Contact with Legal Division

Agents are not to contact attorneys in the Legal Division without first discussing the particular problem with their Supervisor *and* Staff Specialist.

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When an (Agent) employee of the division believes legal advice or an opinion is necessary, the appropriate Supervisory Right-of-Way Agent should be advised of the situation. If the Supervisor agrees, contact will be made with the appropriate Staff Specialist as to the appropriate procedure to be followed. The Staff Specialists maintain a file of Legal decisions and opinions and should always be the first point of contact to prevent duplications of effort.

The Administrative Assistant III maintains the official binder for all legal opinions. Copies of the official binder are provided to the Staff Specialists and Deputy Chief Right-of-Way Agent by the Administrative Assistant III.

### 1.565 Payment of Contracting Fee Appraisers

The Chief Review Appraiser shall be responsible for the payment of contracting fee appraisers. Fifty percent of the contracted fee shall be paid after notification by the Chief Review Appraiser that the appraisal meets the Department's minimum appraisal standards, including all required copies of the report and supporting data. The remaining 50% shall be paid once the review process has been successfully completed and the appraisal product has been turned over to the District Supervisory Right-of-Way Agent or Contracting Authority.

### 1.566 Contracting with outside firms

The Right-of-Way Division works with and follows the policies and procedures of the Agreement Services Division for most outside services. The references provided here are intended to complement the understanding of the purpose and need for those procedures by Right-of-Way Management.

Staff Specialists serve as the liaison with Agreement Services for their respective disciplines.

- A. Direct purchases, when authorized, shall be subject to competitive considerations. ([SAM 1546.0](#))
- B. Particular attention should be given to proposals and bids. Except as provided in subsection (3), an agency shall, whenever possible, solicit and review at least three bids or proposals for each contract. ([SAM 0338.0](#))
- C. When using any procurement process other than an exemption under [NAC 333.150](#), an evaluation committee is required to review and select the winning bid if criteria other than low bid are used to select the winning bidder. ([NRS 625.530](#))
- D. Contractors, as defined by [NRS 624](#), must be licensed before they can submit a bid or proposal on any minor remodeling, repair and maintenance work, pursuant to [NRS 624.700](#) unless specifically exempt under [NRS 624.031](#). ([SAM 0330.0](#))
- E. Contracts are required for all minor remodeling, repair and maintenance work and must be submitted to and approved by the Board of Examiners unless

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exempted in [SAM 0326.0](#). ([SAM 0330.0](#))

- F. Because the State Purchasing Act, [NRS 333](#) is applicable to all procurements within the scope of [NRS 284.173](#), a published Request for Proposal (RFP) (or authorized alternative publication) shall be the required form of agency-direct solicitation for contracts of \$25,000 per fiscal year or more primarily for services.

This process is applicable to solicitations of service or service with goods whose estimated contract value is \$25,000 per fiscal year or more. Agencies must use the approved RFP template, which may be obtained at the State Purchasing Division's website at <http://purchasing.state.nv.us>. Prior to an RFP being released, the evaluation criteria must be determined and listed in the RFP document in order of importance; weight factors for the evaluation criteria must be established and maintained confidential until a contract has been awarded; and the evaluation committee should be identified and appointed by the agency head. Additionally, it is at this time that agencies should have the draft RFP reviewed by their Deputy Attorney General for approval of the document as to form and content and seek minimum insurance limit requirements from Risk Management.

- G. An agency using the RFP process must request a query of the Purchasing Division's database when developing a mailing list for the solicitation.
- H. If NDOT is hiring a consultant or firm that employs a former/current state employee and is performing services for NDOT, IFC approval is required if:
1. Less than 1 year out from the end of state employment (this applies to Temporary Employment Agencies also, and temp consultants must be competitively bid)
  2. Contract is for more than 2 years or amended to extend beyond a total of 2 years (State funded)
  3. Contract is for more than 4 years or amended to extend beyond a total of 4 years (Federal funded)
- I. NDOT may hire a current state employee or former state employee less than 1 year out from end of state employment without IFC approval if:
- The term of the employment is for less than 4 months and the NDOT Director determines that an emergency exists which necessitates the employment.
- Note:** The employment and a description of the emergency must be included in the report to the IFC of the hire.
- J. Whenever NDOT employs a former state employee to provide consultant

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services it must report that employment to the IFC – with the exception of employment of professional engineers on federally funded transportation project exempted above and to which AB 463 does not apply.

- K. If NDOT seeks IFC approval of a hire, it will be NDOT's burden to establish to the IFC:
1. That the person to be hired provides services:
    - a. Not provided by any other NDOT employee; or
    - b. For which a critical labor shortage exists; or
  2. The following exists for NDOT to employ the person as a consultant:
    - a. A short-term need; or
    - b. An unusual economic circumstance.
- L. 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](#). ([23 CFR 710.201 \(g\)](#))

**Note:** Consultants must provide to NDOT a list of former/current state employees that will be utilized on a contract with that person's retirement date or the time that has elapsed since retirement. (AB 463)

### 1.567 Project Management and Delivery

The Chief Right-of-Way Agent has overall responsibility for delivering the right-of-way needed for all transportation projects. The Chief meets this responsibility through the delegation of specific responsibilities to members of the management team as indicated herein.

The Deputy Chief Right-of-Way Agent has responsibility for maintaining a system of tracking the progress of all projects for which Right-of-Way has an obligation to deliver real property interests or provide for the relocation of utilities affected by the project.

The Assistant Chief Right-of-Way Agent coordinates Right-of-Way Project Activities and schedules for their assigned districts in order to accomplish Department goals and objectives. Right-of-Way Project Activities include acquisition/negotiations, property management, relocation assistance, engineering, administrative services and utility/railroad/PUC actions.

In the design of a project, Right-of-Way may be asked to participate in review of design alternatives, draft environmental documents, draft agreements, or to participate on a project team in value or risk analysis. In order to understand the role and responsibilities of the various Right-of-Way functions and how a project team member will be expected to interact with the design team and Right-of-Way Management, the following policy has been established:

Right-of-Way Engineering Manager, Staff Specialists and Supervisory Right-of-Way Agents

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shall participate in the various stages of project delivery including but not limited to review of preliminary design, verification of right-of-way, identification of utilities, relocation surveys, attending Preliminary Design Field Study (PDFS), right-of-way assessment meetings and Right-of-Way Setting meetings.

Once a project is identified, a Project Team is formed by the Project Manager who includes representatives from Right-of-Way, including the Deputy Chief, Assistant Chief, Right-of-Way Engineering Manager, Supervisory Right-of-Way Agents, and Staff Specialists. Right-of-Way will be invited to attend project kick-off meetings and the Project Team shall attend these meetings whenever possible. The initial project meetings will indicate the level of support required from Right-of-Way. Due to different project types and complexities, project management techniques and responsibilities should be tailored to the specific risks and opportunities of each project.

Project development and management are guided by the Department's Project Design Development Manual and the Project Management Guidelines. Within the Project Management Guidelines, responsibilities are assigned to Technical Managers (Supervisory Right-of-Way Agents) and Functional Managers (Assistant Chiefs). As defined in coordinating of work to ensure the Divisions tasks are completed while Functional Managers are District Engineers, Division Heads and section heads within the Department. Although Technical Managers work closely with Project Managers, their direct supervision comes from their Functional Manager (Assistant Chief Right-of-Way Agent).

Initial Right-of-Way cost estimates and schedules are broadly defined in the very initial stages of project development. By the time Right-of-Way is invited to a kick-off meeting for the project, the initial cost estimate may have been prepared. More frequently, the Right-of-Way Division may be requested to provide the cost estimate. This responsibility is delegated to the Negotiation Supervisor who follows the policy and procedures outlined in the Negotiation section of the manual.

Technical managers are expected to report the status of their work on a regular basis to the Assistant Chief (Functional Manager) and Project Manager and their function Manager. The information reported should reflect work accomplishments, work in progress, work plans for the next period, current issues, any help needed, work acceleration opportunities, and any work delivery challenges.

### **“The Technical Manager (Supervisory Right-of-Way Agent) Produces:**

- Plans for technical tasks within project cost, scope, schedule, quality, and resource needs.
- Complete technical tasks as identified in the project management plan.
- Technical tasks status reports.
- Information and assistance to the project manager for scoping projects.

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### **The Technical Manager Is Accountable For:**

- Cost, scope, schedule, and quality associated with the technical tasks.
- Professional/technical quality of work consistent with applicable policies, procedures, and standards.
- Adequate and timely notice to functional and project managers of any necessary changes to project cost, scope, schedule, and quality.
- Coordinating with the project team.
- Acquiring, managing, and coordinating consultant activities within their area of responsibility.
- Serving as an active member of the project team.

### **The Technical Manager Has Authority for:**

- Negotiating and developing cost, scope, and schedule for projects.
- Technical and administrative decisions to accomplish technical tasks as identified in the project management plan.
- Providing input into evaluation of the project manager's performance.
- Assigning technical staff to the project team."

### **1.568 Intra-divisional Liaison**

In an effort to ensure coordination between the various sections within the Right-of-Way Division, the Deputy Chief Right-of-Way Agent shall conduct a monthly staff meeting on the 3<sup>rd</sup> Wednesday of the Month at approximately 8:30 a.m. The purpose of this meeting is to discuss and coordinate the various projects and discuss concerns of the Division. Present at this meeting shall be the Chief Right-of-Way Agent, the Deputy Chief Right-of-Way Agent and the Assistant Chief Right-of-Way Agents, The Chief Review Appraiser, the Northern Nevada Supervisory Right-of-Way Agent, the Manager for Right-of-Way Engineering, the Condemnation Coordinator, the Right-of-Way Management Analyst, the Administrative Assistant III, the Supervisory Right-of-Way Agent in charge of Utility Relocations, the Staff Specialists for Appraisal, Property Management, Negotiations, Relocation and Utilities. As appropriate the Supervisory Right-of-Way Agents in the Southern Right-of-Way District shall be included by telephone. Also present, as may be appropriate, will be those Agents or clerical personnel for special projects or skills.

For the purpose of project status tracking and planning within the Right-of-Way Division itself, a Right-of-Way Project Status Reporting system has been created. This reporting process takes place in two phases. Initially, when a project has been authorized each Supervisory Right-of-Way Agent provides an estimate of when their individual portion of the project will be

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completed. These estimates are updated and provided to Right-of-Way Management prior to the monthly Departmental Project Status Meeting.

### **1.569 Administrative Liaison**

Management of the Division is accomplished through communications from the Chief Right-of-Way Agent or the Deputy Chief Right-of-Way Agent to the Assistant Chief and various section supervisors. The primary means by which divisional policy and procedure are communicated shall be by the Right-of-Way policy and procedures manual. This manual shall be reviewed and updated annually, as necessary. Periodic changes shall be made to the on-line manual and staff notified as appropriate. Other means of communication shall be that of written instructional memorandums, regularly scheduled Divisional staff meetings, personal contact and the regular performance standards reporting process.

### **1.570 Annual Budgetary Preparation**

Annually, each section supervisor, in conjunction with the Deputy Chief Right-of-Way Agent and the Right-of-Way Management Analyst, shall prepare the section's budget for the upcoming fiscal year. At this time the Deputy Chief Right-of-Way Agent and Management Analyst should carefully review the section's training and travel needs both in-state and out-of-state, needed items of a general expense category, materials and supplies, needed items of rental equipment and items of an operational nature. Also at this time each section supervisor is given an opportunity to review upcoming items of capital outlay. The Chief Right-of-Way Agent reviews and approves for submission to the Budget Section of the Financial Management Division after prepared.

As mentioned above, this budget is prepared for the upcoming fiscal year commencing in July. A mid-year budgetary review is conducted in December and submitted to the Right-of-Way Control Section. This review, in turn, is submitted to the Budget Division in January.

### **1.571 Right-of-Way Policy and Procedure Manual Annual Review and Change Procedure**

For coordination purposes, the Staff Specialists are responsible for manual format, collection, and submission of all changes to the manual to the Federal Highway Administration for approval.

The Right-of-Way Manual is reviewed on an ongoing basis but no less than every five (5) years and readied for submission, review and approval by the Federal Highway Administration. Each section supervisor is responsible to see to it that required or desired changes to the manual are submitted to the Staff Specialists for their area of expertise.

Changes made to the manual at times other than the 5 year review will go through the same review procedures indicated below but may be exempt from formal FHWA approval if the revisions do not alter or change current policy. Such changes shall be provided to FHWA for a courtesy review and concurrence and shall only be released after FHWA concurrence is received.

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Once all changes, corrections, additions, and deletions have been received and reviewed by the Staff Specialist they shall be reviewed by at least one other Staff Specialist and the Administrative Assistant for content and form. The changes are then typed onto the manual electronically and submitted to the Chief Right-of-Way Agent and the Deputy Chief Right-of-Way Agent for their review and approval. Following approval by the Chief Right-of-Way Agent, the changes are reviewed by the Legal Division and the Director's Office prior to being submitted to the local office of the [Federal Highway Administration \(FHWA\)](#) for their review and approval. Upon completion of this review, required changes are made, FHWA approval received, and the changes are placed into the manual electronically for final printing and distribution.

### 1.572 Forms Management

- A. The Staff Specialists keep the Division in compliance with applicable laws and regulations to include the following responsibilities:
  - 1. Review forms for compliance with the Information Practices Act.
  - 2. Enforce provisions of the Information Practices Act to assure confidentiality of all personal information gathered.
  - 3. Review and make all changes to redesign and revise forms.
  - 4. Take advantage of opportunities for use of new technologies.
- B. District Right-of-Way personnel shall submit any issues on functionality or use of individual forms to the Right-of-Way Staff Specialist responsible for the related function.

### 1.573 Records Retention

- A. 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 [23 CFR 710.201\(f\)](#) and [49 CFR Part 24](#). These records shall be retained at least 3 years from either:
  - 1. 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
  - 2. The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.
- B. 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 Department.



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### 1.574 Annual Federal Report

“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” [Ref. [49 CFR 24.9\(c\)](#)]

The federal report provides statistical information pertaining to those activities subject to provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 ([Uniform Act](#)), as amended, where federal funds are involved in any phase of a project. This includes projects under the Combined Road Plan, State/Local Cooperative Agreements, and where there is sales tax initiative funding.

Each Region/District prepares two Federal Statistical Report Forms for the 12-month period ending June 30 of each State fiscal year. One form is completed for state-funded and/or state/federal-funded relocation and real property acquisitions. The other form is completed for local-funded and/or local/federal-funded relocation and real property acquisitions. The reports are submitted to Headquarters P&M no later than October 1. Refer to Exhibit 2-EX-6 for copies of the forms and the Federal instructions for their completion.

### 1.575 Employment – Other Firms or Individuals

- A. In accordance with Right-of-Way Division policy and procedure, or in times of peak workloads or in complex cases, the Right-of-Way Division contracts for services of qualified individuals, firms, or agencies in such operational areas as:
  - 1. Engineering – Title Companies/on call agreements for engineering services
  - 2. Appraisal – Fee Appraisers and Contractors for estimating building costs or other specialty reports
  - 3. Appraisal Review
  - 4. Negotiations
  - 5. Property Management – Demolition Contractors, property management, and security services, etc.
  - 6. Relocation – Commercial Movers, Relocation services
  - 7. Utilities – Subsurface Utility Engineering (SUE)
  - 8. Acquisition – Acquisition services
- B. Contracts are awarded at the District or Section Supervisor’s recommendation of need, and are approved by the Chief Right-of-Way Agent or Deputy, Department of Transportation Administrators, and the Legal Division (as to legality and form).

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- C. All of the contracts listed above, and their associated advertising, contain the Civil Rights compliance assurances.

### 1.600 PROCEDURES

#### 1.601 Project Management and Delivery

Pre-construction engineering is a complex, multidisciplinary, resource-intensive process that involves many participants both within and outside the Department. The process begins with the assignment of the project to a project coordinator and concludes with the date of advertising for construction bids. It includes the identification of project need and scope, programming, initial engineering, value engineering, environmental impact study, right-of-way and utilities work, final design and preparation of plans, specifications and estimates.

A project becomes part of the transportation program as a result of a deficiency or inadequacy that must be corrected. Generally, these deficiencies are prioritized to assure that available funds are expended on the most urgent needs. A project may also become part of the program because of external influence or as a result of a new area of emphasis or transportation system requirement.

The planning process includes defining the general characteristics of the project and establishing a cost estimate for the work. The applicable design standards, a schedule, and the necessary resources are normally identified at this phase. The success of the ensuing project development process and the ability to control the scope, schedule, and cost depend on the accuracy and effort put forth during this time period to develop the base information. Information from various functional units such as design, traffic, construction, geotechnical, maintenance, environmental, right-of-way, and any involved external entities can greatly assist in developing the project scope. Project cost estimates should be developed and the project should be programmed to adequately address the deficiencies identified.

#### 1.602 Programming

The development of the annual work program is the next phase of the process. Individual projects are identified and established in the programming document from specific information developed during the planning process. The program, once adopted and funded, becomes the commitment to deliver the various projects in accordance with the time, funding, and personnel controls. The programming document becomes a strategic tool in the management process. It contains the necessary information for systematic engineering management. Changes to essential information regarding the individual project elements must be made to the programming document as consistently and expeditiously as possible to ensure accurate and current information is available. See [Sections 2.267](#) and [2.269](#) for more explanation.

#### 1.603 Preliminary Design

Engineering studies are conducted of the general project area for all new alignments to identify significant factors to be considered in bringing the project to fruition. Alternative analysis is

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conducted to establish potential corridors or alternative designs of features that may have significant impact on the environment. It includes such aspects as location, profile grade, major drainages features, geotechnical, right-of-way needs, major utilities, structures and traffic.

During this phase of a project, the Right-of-Way staff will become involved in preparing various estimates and other studies, including compiling special information for the environmental impact assessment, required for all projects. Right-of-Way staff will be asked to inspect various alignments, and make note of special problems or unusual circumstances that are not revealed by aerial photography. Right-of-Way is expected to deliver accurate cost estimates of the property value on the various alignments. Estimates shall be based on current property values, be as accurate as possible, based on the information available at the time and be prepared following the procedures outlined in the Negotiation section of the manual.

Right-of-Way staff may be expected to assist with identifying and providing cost impacts covering the following:

- A. Noise abatement - This may involve a cost analysis of appropriate mitigation measures (i.e., sound walls, berms, cuts, and fill) to achieve noise reduction on adjacent property.
- B. Property access - Most state laws require that reasonable access be maintained. If reasonable access is not maintained, then appropriate damages may be considered as part of the cost estimate.
- C. Neighborhood boundaries.
- D. School districts.
- E. Fire and police protection.
- F. Recreational facilities.
- G. Wetlands and/or floodplain impacts.
- H. Land use impacts - Participation in the descriptions of current development trends and researching state/local plans with regard to land use and growth in the project area may be assigned to Right-of-Way.
- I. Sites required for disposal or borrow areas. Acquisition costs are often necessary requirements of the preliminary engineering phases of a project.
- J. Historic properties.
- K. Legal Costs – This may involve early involvement from the legal division to identify areas of concern that may initiate inverse condemnation actions, legal counsel relocation negotiations, cost for outside counsel, legal settlements, court awards and costs, and costs incidental to the condemnation process.

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For some projects the use of “value analysis” will pay dividends in improved design, reduced cost, or both. Generally, very complex designs, unique structures, difficult traffic control, high cost right-of-way, or questionable design (to name a few), are good project candidates for value engineering. Using a value engineering team and study approach to analyze project alternatives leads to the selection of the “preferred” alternative.

All viable design alternatives are advanced equally as needed until the NEPA process is completed and then the selected alternative is fully advanced to the preliminary design level of development. This level is focused primarily on the fundamental project features, such as the geometrics, to ensure they are in conformance with applicable criteria and to affirm that the project is otherwise acceptable for advancement to a higher level of design.

### 1.604 Intermediate Design

After the final project scope is established by the PDFS, sufficient direction is available to update the requirements for final design, right-of-way, utilities, environmental mitigations, funding, schedule for completion, and human resource demand. Such elements as roadside design, traffic operations, structural requirements, drainage, erosion control, aesthetics, earthwork, pavement, traffic control and safety are balanced to provide a cost-effective solution to the engineering problem.

Many of these elements are developed in separate functional units of the Department and therefore must be systematically coordinated and scheduled to ensure overall project integrity. The design and engineering are advanced sufficiently to accommodate the review and approval of the overall design in preparation of making final arrangements, setting right-of-way requirements, finished detailing of the design features and preparing a comprehensive estimate.

### 1.605 Value Analysis, Scheduling, Risk Assessment

Value Analysis (VA) establishes a program to improve project quality, reduce project costs, foster innovation, eliminate unnecessary and costly design elements, and ensure efficient investments by requiring the application of VA to all federal-aid highway projects on the NHS with an estimated cost of \$25 million or more. In accordance with the federal-state relationship established under the federal-aid highway program, NDOT is responsible for conducting a VA on all applicable projects and ensuring that all resulting approved recommendations are incorporated into the plans, specifications, and estimate.

VA is based on the concepts of value engineering which is the systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the project reliably, and at the lowest life cycle cost, without sacrificing the safety, necessary quality, and environmental attributes of the project.

Value analysis can occur anytime during the design process and multiple studies are sometimes conducted on a project. An early VA can be used to help determine and develop alternatives for

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an EA or EIS and a second, during the final design phase to fine-tune the project. The outcome of value analysis is often cost reduction, but the primary focus is value improvement.

It is NDOT's policy to:

- Conduct value analysis on any project on the National Highway System that has an estimated construction cost of \$25 million or greater, and
- Consider applying value analysis in all functional areas of projects having an estimated construction cost greater than \$10 million.

For more information on Value Analysis see the [NDOT Road Design Guide](#), Policy and Procedures Section 4.19-Value Analysis.

The Performance Analysis Division (formerly known as Operations Analysis Division) Staff coordinates and conducts the value analysis studies, maintains an on-call list of certified value specialists with the Administrative Services Division, and manages value analysis consultant agreements. The candidate projects should be selected after the Transportation Board's approval of the Statewide Transportation Projects Workbook (STPW), but not later than January 1 of each year.

Ideally, two studies should be performed on each qualifying project. The first analysis should be done early in the development phase to help minimize project impacts, develop an EIS or ROD, decide the best type of facility to build, and pinpoint its location. The second study should be performed during the intermediate design phase to address design issues (geometrics, drainage, construction staging, traffic control, signalization, roadbed design, structure details, etc.) and fine-tune the project before setting final right-of-way.

The following project characteristics may indicate a need for Value Analysis:

- Safety concerns
- Controversial project
- Anticipation of difficult construction
- Difficult or complex traffic control scenarios
- Complex or costly environmental issues
- Expensive or high-impact right-of-way
- Utility relocation impacts
- Major structures required
- Scheduling problems

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Value Analysis should be considered if it could provide any of the following benefits:

- Improve project quality
- Build consensus with transportation partners
- Develop solutions to difficult transportation issues
- Reduce project development time
- Reduce initial cost of projects
- Reduce life-cycle cost of projects
- Improve traffic flow during construction

### 1.606 Right-of-Way Needs Assessment Meeting

The purpose of the needs assessment meeting is to collectively discuss the proposed acquisitions with all appropriate divisions and sections to ensure that right-of-way needs, necessary to accommodate the project, are addressed on the drawings and that the design team concurs with the limits and area shown. The Right-of-Way engineering manager should be present at this meeting to ensure that the drawings provide the information needed by them to prepare the parcel maps. The Supervisory Right-of-Way Agent, Negotiations or Staff Specialist, Negotiations should be present to ensure that the proposed takings are being adequately described in order for them to acquire the appropriate rights.

The attendees collectively develop explanations for the need of each proposed taking. The explanations must clearly define exactly what the taking will be used for including any physical alterations or occupancy requirements. This helps the Right-of-Way Agent determine the appropriate type of taking to acquire for each situation. While the type of takings will actually be determined at the right-of-way setting, the discussion of this important aspect during the needs assessment meeting assures that the drawings and needs descriptions for each taking will be sufficient to conduct the right-of-way setting efficiently.

It is important to develop consensus among the divisions at the needs assessment meeting to support the proposed takings. The right-of-way division needs to have viable and sufficient reasoning for the takings when entering into negotiations with the property owners. It should be kept in mind that each taking may ultimately end up requiring the Department to exercise its powers of eminent domain and accordingly the need for the taking must be substantiated.

Any related issues requiring further action must be identified and assigned to appropriate staff in order to prepare for the right-of-way setting meeting.

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### 1.607 Obtain Title Information

Title information showing the vested owners and all interests in the property must be secured to ensure that title and all interest in the property is acquired as needed for the project. This is generally performed by the Right-of-Way Engineering Section.

### 1.608 Right-of-Way Verification

For every project, a Right-of-Way Verification must be requested from the Right-of-Way Engineering section. Right-of-Way Engineering will provide the design team with mapping depicting the current right-of-way holdings. Some projects will involve roadways owned by local public agencies. The PM or Designer will request the local public agency provide satisfactory proof that they possess adequate ownership rights on which to construct the roadway.

### 1.609 Utility Coordination

Where a project affects utility structures, such as boxes, manholes, valves, power poles, etc. the utility will need to be identified and contracted to coordinate any relocations required for the project.

### 1.610 Relocation Survey

The early stage of project development is the best time to identify and estimate the impact of the project on potential displaced persons, businesses and farms. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ([Uniform Act](#)) Section 205(a) requires that programs or projects be planned so that the problems associated with displacements are identified at an early stage and resolution of those anticipated problems is provided. For relocation, the objective is an orderly and humane relocation of persons displaced by a project without creating adverse impacts or costly delays to the project. Relocation studies should be initiated during early project development, be continued through the environmental analysis, and culminate in a relocation study appropriate for the particular project. The factual information should indicate if orderly relocation can be achieved. If problems are revealed early in the planning process, various solutions may be considered. Solutions could include extension of lead time, alignment and plan changes prior to construction, or undertaking clearly defined mitigation measures.

### 1.611 Develop Right-of-Way Plans and Final Right-of-Way Estimates

Right-of-Way plans containing essential data needed in connection with appraisal and negotiation activities should show the property lines, topography, Right-of-Way lines, dimensions from the centerline alignment to the right-of-way, centerline stationing and offset information for all right-of-way breaks. Also, any additional easement areas, either temporary or permanent, that is required for the project.

For each parcel to be acquired, the plans should show:

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- A. The E.A. Number;
- B. The project number;
- C. A parcel identification number;
- D. Property owner names; and
- E. The area in square feet or acres, and the remainder area for each partial acquisition.

It shall be the responsibility of the Supervisory Right-of-Way Agent (Technical Manager) assigned to the Project Team to use the guidelines provided within the Right-of-Way Manual to refine and provide the final Right-of-Way cost estimates. The final cost estimates shall follow the procedures outlined in the Negotiations section of the manual.

### 1.612 Final Design

The final design is accomplished based on the preliminary engineering, the type of facility, applicable criteria and the users to be served. It is important that the plans be consistent with public and agency commitments and expectations. The design process includes review and input from construction, maintenance and traffic divisions to help establish the project as constructible and that construction traffic control is planned to minimize inconvenience to the users. Specifications that augment and reconcile the design are prepared in cooperation with the design team and other project contributors. A comprehensive quality assurance review provides the final measure of consistency and oversight to the process.

Based on the preliminary engineering and design, the necessary final right-of-way is determined. If right-of-way is required, a map is prepared showing the exact areas or rights to be acquired. During Final Design, the design of the selected alternative identified during the environmental studies phase is finalized. In this phase the project scope is finalized, detailed project schedule and cost estimates are developed. The right-of-way requirements are determined and appraisal may be initiated. Additionally, utility relocations are initiated toward the end of this phase. The Right-of-Way is certified and authorization to Proceed is received during the end of this phase. Such activities as title search, appraisal, negotiation, acquisition, relocation assistance, easements, air space rights, and property management are included in the right-of-way phase.

### 1.613 Environmental Certification

The Chief Environmental Services Engineer is responsible for certifying that the project is in compliance with applicable environmental criteria.

Federal-aid and state funded projects, not including local public agency projects, will be processed as follows:



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Upon receipt of the processing memo, the environmental services division will certify that the environmental requirements for the project have been met. The certification will be in the form of a memo to the Administrative Services Division, with paper copies to the Project Manager and the Financial Management Division that shall include:

- Project information and identification,
- NEPA process approval and date (federal projects), and
- Environmental clearances obtained (federal and state projects).

### 1.614 Agreements

A critical document in the reimbursement process is the project agreement, which creates a contractual obligation and allows the FHWA to reimburse eligible project costs. Without the project agreement, the state DOT cannot request Federal reimbursement of expended funds. The requirements for a project agreement are set forth in [23 CFR 630](#). A project agreement is usually entered into at the same time or shortly after the project authorization is issued.

### 1.615 Right-of-Way Setting

Once the right-of-way needs have been adequately assessed and documented the design team may now formally request the right-of-way to be acquired. This is done at a meeting where the proposed right-of-way takings are presented to the Chief Right-of-Way Agent, management and, on federal actions, the FHWA. The formal right-of-way proposal in the form of the drawings prepared by the design squad, are discussed at the meeting prior to turning them over to the Chief Right-of-Way Agent. The reason for these discussions is to ensure that the Right-of-Way Agents understand the purpose and duration of each proposed taking and to determine the type of taking to be pursued.

Areas of consideration during the Right-of-Way Setting include:

#### A. Benefit/Cost Analysis

The need to acquire rights-of-way must be economically justified among the various design options. A common such economic analysis is that of comparing the cost of right-of-way with standard slopes designs against the cost of right-of-way using steeper slopes or retaining walls. This economic analysis should include the impact on safety created by traffic barriers and other features that are normally required of steeper roadsides.

#### B. NEPA (Environmental Approval)

The NEPA process of selecting a design alternative is predicated on the principle of a fair and practical approach with regard to the local community and surrounding area. The Chief Environmental Engineer is responsible for certifying that the project is in compliance with applicable environmental criteria.

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### C. PDFS Report

The PDFS report is the primary scoping document for a project and the design features affecting right-of-way must be incorporated into the scope as established by the PDFS report. The inclusion of improvements approved on the PDFS report is a means to justifying certain right-of-way takings and, in contrast, the PDFS report may preclude the taking of right-of-way as a condition of approval for other improvements.

### D. Intermediate Design Documents

The intermediate design memo and summary report are other scoping documents that may affect the right-of-way. They should be evaluated for any additional requirements. The design should be completely up to date in accordance with any decisions and applicable criteria to ensure that the ensuing process of establishing right-of-way needs is based on the final design configurations.

### E. Right-of-Way needs

The Right-of-Way needs must accommodate the proposed improvements and any associated activities, both temporary and permanent. This not only includes work associated directly with the transportation infrastructure but could also include maintenance of certain environmental mitigations or other related features. The relocation of other facilities, such as those owned by utility companies, must also be considered when determining the right-of-way needs. It is wise to involve anyone that could possibly have a right-of-way requirement related to the project at this time. The senior designer should ascertain the general right-of-way needs for any infrastructure, construction, maintenance, and environmental purposes.

### F. Right-of-Way Plans

The designer provides scaled drawings of the project improvements and the proposed right-of-way takings. The drawing must clearly indicate the current NDOT right-of-way where applicable. Other known ownerships, such as county and city street rights-of-ways, should also be clearly marked.

### G. Why Each Area is Needed

Each area that is under consideration must be correlated among the various requests to identify overlaps and determine sensible resolutions. For example, if maintenance requires an access road along the base of a slope and hydraulics requires ditch easement along the same slope the two should be combined into one taking that accommodates both needs if possible. The area would then be identified as a maintenance and drainage easement.

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### H. How Long Each Area is Needed

Another important aspect is to determine the duration for which the taking is needed. Takings should first be identified as either permanent or temporary. Then the temporary takings must be assigned a reasonable duration such as two years may be needed for a construction easement to accommodate the contractor's staging operations and/or seasonal construction schedules. The two years would need to begin at the notice to proceed date given to the contractor which could be several months away.

#### 1.616 Produce Right-of-Way Setting Memo

The principal designer produces the Right-of-Way setting memo in cooperation with the design team. One of the primary reasons for the Right-of-Way setting memo is to document the nature of the takings and the associated justifications for acquiring them and to provide the Notice to Proceed.

#### 1.617 Authorization to Proceed

Project authorization obligates the FHWA to reimburse the state for allowable project costs and requires that Federal funds be available for that reimbursement. No Federal-aid participation in a project is allowed until formal project authorization is given by the FHWA. Project authorization can only occur after the state's programming request has been approved by FHWA.

However, acquisition of right-of-way may only commence **after** the necessary environmental decisions have been completed.

In order to receive authorization to proceed, the environmental documents required by the NEPA process, any Interchange Modification Report (IMR) or Interchange Justification report (IJR) must be completed and accepted by FHWA. The project must also be included in the State Transportation Improvement Plan (STIP) and in urban areas, the Transportation Improvement Plan (TIP) must also be updated and approved.

No right-of-way acquisitions may proceed on a federally-funded project until all steps have been completed and accepted by FHWA, the authorization to proceed has been issued and the funds programmed.

Preliminary appraisal work can commence prior to this time, but it must be recognized that a risk is present that due to the lack of final design plans any appraisal may need to be revised if design changes any aspect of the right-of-way requirements for the appraised properties. This could result in additional costs being ineligible for federal funding as FHWA only authorizes the appraisal work to be performed one time.

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### 1.618 Appraisal

- A. The Department desires to utilize procedures that provide the flexibility to deliver projects timely while providing for just compensation to all property owners.
- B. The Department determines fair market values for the various parcels based on a myriad of factors that depend on the nature and location of the parcels. During this time the designer may need to assist the appraiser through discussions on the purpose and intent of particular design features.
- C. Due to the requirement in Nevada State Law that property owners be provided a copy of the appraisal before the State occupying a property acquired through eminent domain, it is important to have appraisals performed for all acquisitions that may proceed to condemnation.
- D. Waiver Valuations or Restricted Use Appraisal shall not be used in any situation that may require an appraisal due to:
  - 1. Possibility of parcel condemned or
  - 2. Legal situations that may require an appraisal or
- E. The potential for litigation and the desire to preclude preparation of additional reports affecting project schedules determines whether an appraisal is performed by a Right-of-Way Agent or a licensed appraiser. This is not a licensing issue as state law specifically permits a Right-of-Way Agent to prepare an appraisal in the performance of their duties.
- F. Appraisals may be performed by a Right-of-Way Agent without co-signing by a licensed appraiser.
- G. Appraisals performed on parcels that may proceed to condemnation may be performed by a Right-of-Way Agent if a licensed appraiser co-signs the appraisal report, after reviewing and complying with all State and Federal appraisal requirements.

### 1.619 Appraisal Control

The Chief Review Appraiser maintains project control that indicates the status and/or progress of appraisal assignments.

As specified earlier, the Staff Specialist for Appraisals and Negotiation prepares updates and maintains these policies and procedures and provides such other direction to maintain uniformity of procedure in the preparation of appraisal reports.

All original source documents pertaining to appraisals are delivered, maintained and safeguarded in the Department's Central Records Section in Carson City where they are

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available for inspection by the Federal Highway Administration, the public and the Department's Internal Audit Division.

Appraisals are performed by either staff or approved contract appraisers. For more explanation of this process see the [Appraisal section](#) of the Right-of-Way Manual.

### 1.620 Appraisal Review

Appraisals are reviewed by either staff or approved contract appraisers. For more explanation of this process see the [Appraisal Review section](#) of the Right-of-Way manual.

### 1.621 Establishment of Just Compensation

The State reserves the right and authority to set Just Compensation on all projects. This is never delegated, as mandated by [49 CFR 24.102 \(d\)](#).

### 1.622 Acquisition

- A. The Right-of-Way Agent enters into negotiations with the property owners to settlement negotiated agreement. During this phase the Department may alter the design and make other concessions to achieve this goal. This usually requires the designer to determine what can reasonably be done to alter the design and to make any resulting changes. Ultimately the department may need to exercise its power of eminent domain to acquire the needed rights-of-way.
- B. Right-of-Way Administration ensures the acquisition of property required by the State of Nevada is conducted in compliance with the provisions of:
  - 1. The Nevada Revised Statutes.
  - 2. The Nevada Department of Transportation policies and procedures.
  - 3. Applicable Federal Statutes and Code of Federal Regulations.

### 1.623 Notices to Owner

- A. The following is a list of the required notices to be made to the property owner or tenant:
  - 1. Notice to Owner (Form 520)
    - a. As soon as feasible after the Right-of-Way Setting, the Nevada Department of Transportation shall notify those property owners whose property have been identified as being affected by the proposed project that their property will be acquired by the Department in the near future. This notice, Notice to Owner (Form 520) and Waiver of Appraisal (Form 520B), if applicable, shall

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briefly identify the property to be acquired and discuss the basic legal protections provided the owner.

- b. Waiver of Appraisal (Form 520B) shall be sent out with the Notice to Owner (Form 520) when:
  - i. It has been determined that a parcel may be acquired using the Waiver Valuation process described in [Section 5.433](#) of this Manual and
  - ii. The value of the parcel is estimated to be greater than \$10,000 but less than \$20,000.

**Note:** Insert verification of programming approval prior to sending the following notices:

- A. General Information Notice (Form 631); Relocation Assistance, [Section 6.256](#);
- B. Appraiser Introductory Letter (Form 431); Appraisal, [Section 4.204](#);
- C. Valuation Letter, Letter Presenting Written Offer (Form 517), or Notice of Intent to Acquire (Form 636), Negotiations, [Section 5.355](#);
- D. 90-Day Notice to Vacate (Form 617); Relocation, [Section 6.258](#).

### 1.624 Acquisition of Parcels Containing Hazardous Waste

- A. A material is hazardous if it possesses a threat to human health or the environment. A hazardous material has one or more of the following general characteristics:
  1. Flammable
  2. Corrosive
  3. Toxic
  4. Reactive (Subject to Spontaneous Combustion)
- B. If at all possible the Department should avoid acquiring or entering into the title chain of any properties that have a history of containing hazardous waste. Early identification of potential hazardous waste sites is essential. Right-of-Way Staff must be aware of this potential problem and help identify such properties.
- C. Accordingly Right-of-Way will:
  1. Review the EIS and other information provided by the Environmental Division or coordinate with the Environmental Division to ascertain whether properties of this nature have been found within the scope of the project.
  2. Coordinate with the Environmental Division and Federal Highway Administration when a potential hazardous waste site is discovered.

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3. Obtain any required Right of Entry Permits for hazardous waste investigation and cleanup from owners and operators including securing court order through the Legal Division.
  4. Provide normal right-of-way clearance activities to include cleanup of minor hazardous waste situations which can be handled as part of the clearance contracts (Service Agreement).
- D. Early identification can be facilitated by simple observation, examination of the chain of title, discussions with authorities of the various planning departments, and interviews with the property owner or occupant of the property.
- E. Any property known or suspected to be contaminated with hazardous waste will not be acquired until:
1. The suspected site has been sufficiently investigated to the point of providing a reasonable assurance that no significant hazardous waste problem exists; or
  2. The confirmed hazardous waste on the site has been cleaned up by the responsible party prior to possession by the Department; or
  3. A determination has been made that the hazardous waste will cause no impediment to the construction of the proposed project or to the anticipated subsequent use by the Department and the public; or
  4. The estimated cost of the hazardous waste cleanup has been reflected in the acquisition offer in those cases where the Department will do the cleanup work.
- F. Once hazardous waste contamination is known the owner's shall be advised of their responsibility under the law to cleanup all identified hazardous waste. The preferred procedure is to not acquire property in its contaminated state and all efforts possible should be extended to obtain cleanup prior to acquisition.
- G. As a normal rule, hazardous waste problems must be dealt with at the earliest stage of the project as possible. If hazardous waste is discovered during the acquisition process:
1. The Right-of-Way District Supervisor is to immediately advise the Chief Right-of-Way Agent.
  2. The Chief Right-of-Way Agent shall advise the Chief of Environmental Services by memorandum with a courtesy copy to the Federal Highway Administration.
  3. The Chief of Environmental Services is responsible for further investigation to determine if hazardous waste contamination exists

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and, if so, the nature and dimension of the waste and, determine the costs of potential cleanup.

4. As a result of these investigations Environmental Services shall advise Right-of-Way to proceed accordingly.
5. If further investigation is necessary, the Right-of-Way Division will continue contact with the owner(s)/operator(s) to advise of process being pursued and to obtain necessary permits to enter. When testing is complete and cleanup costs are known, this information should be supplied to the appraiser so that it can be reflected in the estimated market value.
6. Offers are generally to be based on cleanup prior to acquisition, i.e., as if the acquisition has been cleaned, inspected and certified to be clean, however, where cleanup occurs after acquisition the following is required:
  - a. Offers made prior to cleanup must reflect the cost of cleanup of the hazardous waste material. If actual cleanup costs exceed the amount deducted from the appraised value of the property the owner/operator will be required to reimburse the Department for the additional costs and, if cleanup costs are less than the deducted amounts, the excess withheld will be refunded to the grantor.
  - b. Where settlement cannot be reached and the owner will not or cannot cleanup the property it may be necessary to file a condemnation suit and obtain an order of occupancy. The appraisal in this situation must reflect the effect of the hazardous waste on the market value. Any outstanding offers must be withdrawn.
  - c. Through the appraisal process the effect of the contamination on the market value is the goal. This effect may or may not be relative to the cleanup cost especially for an improved property which will be demolished.

### 1.625 Administrative Settlement

Either upon recommendation from a District Supervisor, or as a result of the Condemnation Review Board's investigation and recommendation, an administrative settlement may be approved by the Chief Right-of-Way Agent and the Assistant Director of Engineering. Administrative Settlement requests are fully documented by the Negotiating Right-of-Way Agent as to the background and basis of the request. The narrative is to be a factual analysis of the acquisition problem prepared by the Negotiating Right-of-Way Agent and shall include all known



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facts, variables and concerns related to the acquisition. The Right-of-Way Agent shall submit analysis to the Supervisory Right-of-Way Agent who will make a justified recommendation to the Assistant Chief Right-of-Way Agent. The Assistant Chief Right-of-Way Agent shall concur and or provide additional justification prior to forwarding the request to the Chief Right-of-Way Agent via the Deputy Chief Right-of-Way Agent. Upon receipt of a justified and signed recommendation of Administrative Settlement, the Chief Right-of-Way Agent shall confer with the Assistant Director to approve the request.

Acquisition is performed by staff or approved negotiators. For more explanation of this process see the [Negotiations section](#) of the Right-of-Way Manual.

### 1.626 Condemnation Review Process

- A. Condemnation is commenced on parcels that have not been successfully acquired through negotiations.
- B. When negotiations have reached an impasse and it is necessary to obtain legal occupancy to maintain the project schedule, the Chief Right-of-Way Agent will call a meeting of the Condemnation Review Board. The purpose of this board is to review acquisitions for compliance with regulatory and legal requirements, recommend corrective actions and if found necessary, to request the Department's Legal Division to prepare a resolution seeking authority from the Transportation Board of Directors to acquire the acquisitions through eminent domain.

The Chief Right-of-Way Agent requests the Staff Specialist for Negotiations to coordinate a date, time and location for this meeting with the Review Board members. Depending on the number of projects and parcels being considered for condemnation it may be necessary to hold more than one meeting. Prior to notifying the Review Board members, the Staff Specialist for Negotiations will request one original and two copies of the Right-of-Way Agent's condemnation packages for each negotiation being referred from the appropriate Supervisory Right-of-Way Agent. The Staff Specialist for Negotiations will retain the original copy of the condemnation package and forward two copies of the same to the Condemnation Coordinator or Staff Specialist for Condemnation.

- C. Each condemnation package is simultaneously reviewed by the Staff Specialist for Negotiations, the Condemnation Coordinator and the Staff Specialist for Condemnation. The time allotted for this review should be 10 working days prior to the scheduled meeting. Five days prior to the Review Board meeting the Condemnation Coordinator will, under the approval of the Chief Counsel or their appointee, forward a list of concerns and issues to the Staff Specialist for Negotiations who will compile the data for an agenda to be distributed to Review Board members only no later than three (3) days prior to the scheduled Review Board meeting.

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- D. The Review Board is composed of, but not limited to:
1. The following voting members:
    - a. Deputy Chief Right-of-Way Agent, who chairs the meeting in the absence of the Chief;
    - b. Assistant Chief Right-of-Way Agent;
    - c. Supervisory Right-of-Way Agent, Negotiations;
    - d. Supervisory Right-of-Way Agent, Appraisals
    - e. Staff Specialist for Acquisitions;
  2. The following non-voting members:
    - a. Chief Right-of-Way Agent – Chairman (Alternate – Deputy Chief Right-of-Way Agent); and,
    - b. Chief Deputy Attorney General or appointee,
    - c. Condemnation Coordinator or appointee
    - d. Negotiating Right-of-Way Agent

The Review Board will not be convened without the attendance of Legal Counsel and Condemnation Coordinator or their appointees in the quorum;

3. The following attendees may be invited, as non-voting members, upon request:
    - a. Supervisory Right-of-Way Agent, Utilities or appointee;
    - b. Staff Specialists;
    - c. NDOT Project Manager; and,
    - d. Federal Highway Administration, Right-of-Way Program Manager
- E. The negotiating Right-of-Way Agent presents a synopsis of the issues related to the negotiations. Following a general discussion among the meeting attendees a vote may be proposed by one of the voting members to recommend the Chief Right-of-Way Agent refer the acquisition for condemnation or the recommendation may be tabled for further action by the Right-of-Way Division.
- F. Upon verbal passing of a formal proposal for condemnation, the Review Board verbally recommends to the Chief Right-of-Way Agent whether the parcel should be considered for condemnation action. The Chief Right-of-Way Agent may refer the parcel to the Office of the Attorney General for condemnation or refer it back

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to Negotiations for further action. A memo prepared by the Staff Specialist for Negotiations and signed by the Chief Right-of-Way Agent will refer the specific properties to the Legal Division for commencement of condemnation.

- G. All recommendations will include whether or not negotiations are to be continued or terminated by the Right-of-Way Division. If negotiations are to be continued, the negotiating Right-of-Way Agent will continuously provide the Staff Specialist for Negotiations with one original and two copies of all the updated documentation subsequently produced or received. The Staff Specialist for Negotiations will forward two copies of the same to the Condemnation Coordinator or Staff Specialist for Condemnation so that all condemnation packages remain current. Negotiations will cease once the case has been filed with the district court. (See Negotiations, [Section 5.422](#), G.)
- H. The Legal Division provides the assigned Condemnation Resolution number(s) to the Staff Specialist, Relocations/Property Management for inclusion in the Transportation Board Agenda memo. The Staff Specialist for Negotiations provides the list of the parcels included in each condemnation resolution to Right-of-Way Engineering so they can prepare one colored set of Right-of-Way Plans and a Location Sketch for each condemnation resolution. The Condemnation Coordinator will prepare the resolutions and resolution memo.
- I. The Staff Specialist for Negotiations prepares packages for the Transportation Board consisting of and distributed as follows:
  - 1. One copy of the memo, set of maps and condemnation resolution for each parcel/project are sent to the Deputy Director of the Department for review and approval. Prior to sending the Right-of-Way Condemnation Packets to the Deputy Director for approval, the Staff Specialist and Chief Deputy Attorney General will review the packets and initial and sign the BOARD MEMO CHECKLIST, and deliver to the Deputy Director. Upon approval and corrections, if necessary for each resolution the Staff Specialist will scan the final resolution and distribute electronically to the Directors Office, Chief Right-of-Way Agent, Deputy Chief Right-of-Way Agent, Engineering Manager, Assistance Chief Right-of-Way Agent, Condemnation Coordinator, and the appropriate District Engineer's.
  - 2. 1 copy is retained by the Staff Specialist for Negotiations.

### 1.627 Certification

The Assistant Chief Right-of-Way Agent is responsible for certifying that the project is in compliance with applicable Right-of-Way and utility criteria.

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Per [23 CFR 635.309](#), “Prior to authorization to advertise bids for physical construction, **the acquiring agency shall prepare a certification statement, such that:**

- A. All right-of-way is clear, or if not, appropriate notification has been included in bid proposals of any work concurrent with highway construction;
- B. All people relocated to DS&S, and one of the following applies:
  - 1. All needed right-of-way acquired, all occupants have moved; **or**
  - 2. Not all needed right-of-way acquired, but right of entry obtained on all parcels, and all occupants have moved; **or**
  - 3. Acquisition of right-of-way **not** complete, and occupants still on the project (**rare exceptions only, and only if in the public interest**) – requires full explanation, notices in bid proposals, and special assurances about occupant protection.
- C. Advises that right-of-way acquired in accord with the FHWA directives, **and**
- D. Advises that relocation assistance and payments rules followed, if required.”

Federal-aid projects, including full oversight projects but not including local public agency projects, will be processed as follows: once a final processing memo is received by the Right-of-Way Division, with a copy to the Staff Specialist, Relocation/Property Management, a certification letter to the [Federal Highway Administration \(FHWA\)](#) will be prepared for the Assistant Chief Right-of-Way Agent’s signature. An electronic copy will be forwarded via e-mail to FHWA, Division Administrator to the attention of the Right-of-Way Program Manager. Paper copies will be provided to the Project Manager, Administrative Services Division and the Financial Management Division. Additional copies will be distributed as specified on the processing memo.

Federal-Aid local public agency projects will be processed as follows: Once a processing memo is received by the Right-of-Way Division, with a copy to the Staff Specialist, Relocation/Property Management a certification letter will be sent to the principal intergovernmental programs engineer in the road design division. A paper copy will be sent to the financial management division and a digital copy will be emailed to the FHWA Division Administrator to the attention of the right-of-way program manager.

State funded projects, not including local public agency projects, will be processed as follows: once a processing memo is received by the Right-of-Way division, a certification memo will be sent to the administrative services division. Paper copies will be sent to the project manager and the Financial Management Division.

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State funded local public agency projects will be processed as follows: once a processing memo is received by the Right-of-Way Division, a certification memo will be sent to the principal Intergovernmental Programs Engineer in the road design division. A paper copy will be sent to the Financial Management Division.

### *Right-of-Way Project Certification Process*

- A. On a routine basis, the Right-of-Way Division is required to “certify” completion of the various right-of-way acquisition projects. The purpose of this certification is to assure Departmental and Federal management that the right-of-way required for a particular project has been acquired or that the Department has the legal right to commence construction of the public project.
- B. The certification process is initiated by the receipt of a memorandum from the Assistant Director (Engineering) notifying the Right-of-Way Division of the date at which the Division is expected to certify completion of the Right-of-Way project. This memo is received by the Staff Specialist who in turn notifies the responsible section heads of this impending requirement. The section heads are required to review the status of their portion of the subject project and report that status back to the Staff Specialist. This report is required to be made in writing.
- C. All State financed projects require a memo from the Chief Right-of-Way Agent to the Chief Administrative Officer certifying completion of the acquisition project or the project’s status.
- D. The certification process for Federally-financed projects is governed by Public Law 91-646 and [23 CFR 635.309](#). There are two slightly different requirements for Federal Interstate projects; one in which the Right-of-Way Division responds by letter directly to the Director of the Federal Highway Administration the other is when a PS&E package is being prepared by the Administrative Officer. In the latter case the Chief Right-of-Way Agent responds by letter to the Director of the Federal Highway Administration through the Administrative Officer. In each case the Chief Right-of-Way Agent must clearly attest to the status of the right-of-way acquisition project as specified by Public Law 91-646 and [23 CFR 635.309](#).
- E. If the Right-of-Way Division is notified that a construction change order is necessary and additional right-of-way acquisitions or utility adjustments must be accomplished, the Chief Right-of-Way Agent shall issue an amended certification as soon as the newly identified right-of-way acquisitions or utility conflicts have been resolved.
- F. If any project costs are incurred as the result of unresolved utility conflicts or other right-of-way conflicts, such costs shall not be paid with federal funds.
- G. The certification memo is submitted to the Administrative Services Officer through DocuSign.

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### 1.628 Relocation

Relocations are conducted in accordance with federal statutes. For more explanation of this process see the [Relocation section](#) of the Right-of-Way manual.

### 1.629 Property Management

For more explanation of this process see the [Property Management section](#) of this Right-of-Way manual.

### 1.630 Disposal

For more explanation of this process see the [Property Management section](#) of this Right-of-Way manual.

### 1.631 Payment Procedure for Contracting Fee Appraisers

- A. The Chief Review Appraiser is responsible for monitoring all appraisal report contract compliance. Upon completion of the appraisal report assignment the appraisal report shall be delivered to the Chief Review Appraiser in the proper number as prescribed in the Appraisal contract. This includes all supporting data. The Chief Reviewer shall determine if the appraisal report meets the Department's minimum appraisal report requirements. Upon this determination the Chief Review Appraiser is authorized to pay, according to the appraisal contract agreement, 50% of the agreed upon fee.
- B. Upon completion of the review process, the approved appraisal report and review is delivered to the Administrative Assistant for date/time stamp and then forwarded to the Deputy Chief Right-of-Way Agent. The Deputy Chief forwards the reports to the appropriate Supervisory Right-of-Way Agent. Upon approval of the appraisal the Chief Review Appraiser is authorized to pay the second installment of the agreed upon fee according to the appraisal contract agreement.
- C. Upon approval of the final invoice, the Chief Review Appraiser will complete the Appraiser Review Checklist (Form 433) and forward to the Staff Specialist for Appraisals with a copy of the invoice. These documents are for inclusion in the appraiser evaluation file maintained by the Staff Specialist for Appraisal.

### 1.632 Right-of-Way Project Approvals

- A. For most right-of-way acquisition projects the acquisition of right-of-way needed is normally preceded by a series of public hearings and published notices.

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- B. In those cases in which no public notice or hearing process is followed, it is the responsibility of the District Supervisory Right-of-Way Agent to ensure that the affected property owner or owners are notified of the impending acquisition.
- C. Upon completion of right-of-way plans, the Right-of-Way Engineering Section requests environmental clearance by memorandum from the Department's Environmental Services Division. Once the project or parcel(s) have been cleared by the Environmental Services Division a memorandum to that affect is sent to the Chief right-of-Way Agent with a copy to the Staff Specialist for Negotiation, in turn, shall ensure that a copy of the environmental clearance memo is received by Right-of-Way engineering and the appropriate Supervisory Right-of-Way Agent.

### 1.633 Regular Project Approvals

- A. The Supervisory Right-of-Way Agent responsible for either the acquisition and/or utility relocation on a project is charged with initiation and monitoring the authorization process. Initiation of the process consists of notifying the Staff Specialist by memo on the authorization to be requested.
- B. Plan Approvals, Appraisal through Clearance and Utility Relocation
  - 1. Authorization including Plan Approval, Appraisal, Acquisition, Relocation, Clearance and Utility Relocation begin with the completion of Right-of-Way Plans, three sets of which are submitted by Right-of-Way Engineering to the Staff Specialist. A current Right-of-Way cost estimate, including Utility Relocation if applicable, must be completed by the District Supervisor and supplied to the Management Analyst in the Right-of-Way Control Section.
- C. Appraisal Authorization Only

Appraisal authorization may be granted prior to the approval of Right-of-Way Plans and acquisition programming, under incidental Right-of-Way expense. The available plan information together with the request is submitted directly to the FHWA from the Staff Specialist, copies of the letter are provided to Programs and Budget Division and the Management Analyst.
- D. Utility Relocation/Adjustment Authorization Only

On projects that include utility adjustment or relocation and do not involve other Right-of-Way functions, the Management Analyst will prepare and send a separate utility authorization letter and program an amount based on a utility relocation cost estimate. The responsibility for the cost estimate and authorization rests with the Supervisory Right-of-Way Agent, who must monitor the authorization to make sure it is granted prior to any utility adjustment.

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### E. State-Funded Right-of-Way Projects

While authorizations are not required with State Funding it is important that appropriate amounts are programmed or budgeted for the project as soon as the required function is known and its cost may be estimated. The Supervisory Right-of-Way Agent is responsible for supplying the cost estimates to the Management Analyst who will submit the cumulative estimate to the Programs and Budget Division for programming.

### F. A review of the environmental clearance memoranda for the specific project is conducted and/or the Environmental Services is contacted to ensure that the land to be acquired has been reviewed for the possible existence of hazardous waste materials and to ensure that all provisions of the Farm Lands Protection Policy Act have been met.

## 1.634 Project Control Procedures

### A. Division Project Files will be established within the Right-of-Way Control Section. Information and correspondence contained in each project file will include the current spreadsheet reports for acquisition and utilities, memos, and letters related to authorizations and programming, cost estimates, processing memo, certification and other significant correspondence affecting the entire project excluding consultant contracts. The Control Section will be responsible for the maintenance of the files and the specific contents.

1. The District Supervisory Right-of-Way Agent is responsible for providing the initial status spreadsheet immediately after the Right-of-Way is set or before any authorization is requested and is responsible for monthly updates, which will include the current status of authorizations in a separate column.
2. Project Status Spreadsheets for both acquisition and utilities/railroads must be provided by the District to the Staff Specialist nine days prior to the date the project is to be certified. Added comments which may be required to fully describe the situation must be provided in memo form. After certification, the spreadsheet must be updated by the Supervisory Right-of-Way Agent until conditions within the certification are achieved.
3. After the project is certified and conditions or exceptions within certification have been met, the Control Section will be responsible for updating the spreadsheet as cases are settled or tried.

## 1.635 Right-of-Way File Closure Procedures

### A. The Staff Specialist in their appropriate disciplines, are responsible for ensuring that all right-of-way parcel files are complete, that all activities have been



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performed in conformance with pertinent Federal laws and regulations and that all documents and support data have been obtained.

- B. The Staff Specialist for Negotiations receives a closing package from the negotiating Right-of-Way Agent, or from the Legal Division upon their completion of a negotiation, settlement or condemnation action.
- C. The Staff Specialist for Negotiations tallies all items shown on the Parcel Closing Checklist (Form 560) to ensure that the documentation is complete and all requirements have been fulfilled.
- D. The Staff Specialist for Negotiations stops the file processing if they discover faulty or missing documentation and holds it in abeyance until the necessary correction has been obtained.
- E. In addition to file completeness, the Staff Specialist for Negotiations checks for the possibility of land-locked remainders, the access control requirements, verifies escrow closings and delivers the recorded Deed to the Management Analyst for inclusion in the Lands Acquired Report and the completed package to Central Files for filing.
- F. The Staff Specialist for Negotiations makes the necessary entries onto the R/W Project Certification Checklist (Form 534). When the Right-of-Way Project Certification Checklist has been completed for the project, the Staff Specialists will forward the completed checklist to Central Records.

### 1.636 Draft Review Process

- A. The Draft Review Process is the process whereby designated forms or agreements are required to be reviewed by the Staff Specialist and the Legal Division prior to being released to persons outside the Department.
- B. The forms required to go through this review process are listed on the Right-of-Way SharePoint site under Shared Documents/Forms requiring pre-review.
- C. In addition to the forms that must go through this review, any Public Highway Agreement that uses non-standard language must go through this review process.
- D. Forms, agreements or documents submitted through the Draft Review Process shall be as complete in content, grammar and format as possible to limit the attention the submittal receives for ancillary issues.
- E. If the standard wording has been adapted for a specific situation a brief explanation of why the change is being requested shall be provided on the cover sheet submitted. A copy of the cover sheet is provided as the Draft Agreement

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Coversheet (Form 918).

### 1.637 Document Preparation

All documents initiated by the Right-of-Way Division staff must follow the document preparation process. Document preparation is completed by the Administrative Assistant (AA) staff. It includes formatting, grammar, spelling, logging of documents, copy and distribution and mailing. Each AA is provided a list of the staff employees assigned to them. A written policy and procedure is on file and is updated by the Supervising Administrative Assistant as needed. All staff in the Northern Right-of-Way Office is provided a copy of this policy and procedure to keep all aware of what is required for document preparation and who their assigned AA is.

### 1.638 Archival of Documents

Any legal-type documents must be “Archived” by the assigned AA. A distinct number for each document is assigned to record what the document content was prior to obtaining any signatures. Archived documents consist of but are not limited to Public Highway Agreements, Deeds, Resolutions of Relinquishments, Consent to Resolutions, Leases, Licenses, a variety of other named Agreements, and Contracts.

### 1.639 Tickler File

All letters and memos produced by the Right-of-Way Division are logged on an excel spreadsheet entitled “Tickler Log”. All logs are electronic but the hard “Tickler” copy is retained by the Administrative Assistant II, filed by document signatory. Logs are archived electronically and on an annual basis the hard “Tickler” copies are transferred into binders and labeled and/or tabbed according to each year.

### 1.640 FORMS

100	Survey Form
100A	Customer Service Survey
102	Bill Draft Request from Executive Agency

#### **Administrative Services Agreements:**

1. Service Agreement
2. Cooperative Agreement
3. Developer Agreement
4. Amendment (Service, Cooperative and Developer Agreements)

Go to: <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>

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### **Request for Proposal (RFP)**

<http://shptsrv1/070/agree/RFP%20Documents/Forms/AllItems.aspx>

### **Request for Approach (RFA)**

<http://shptsrv1/070/agree/RFA%20documents/Forms/AllItems.aspx>

## **1.650 EXHIBITS**

Included are the organizational charts for the Department of Transportation and the Right-of-Way Division which show their organization and operational authority.

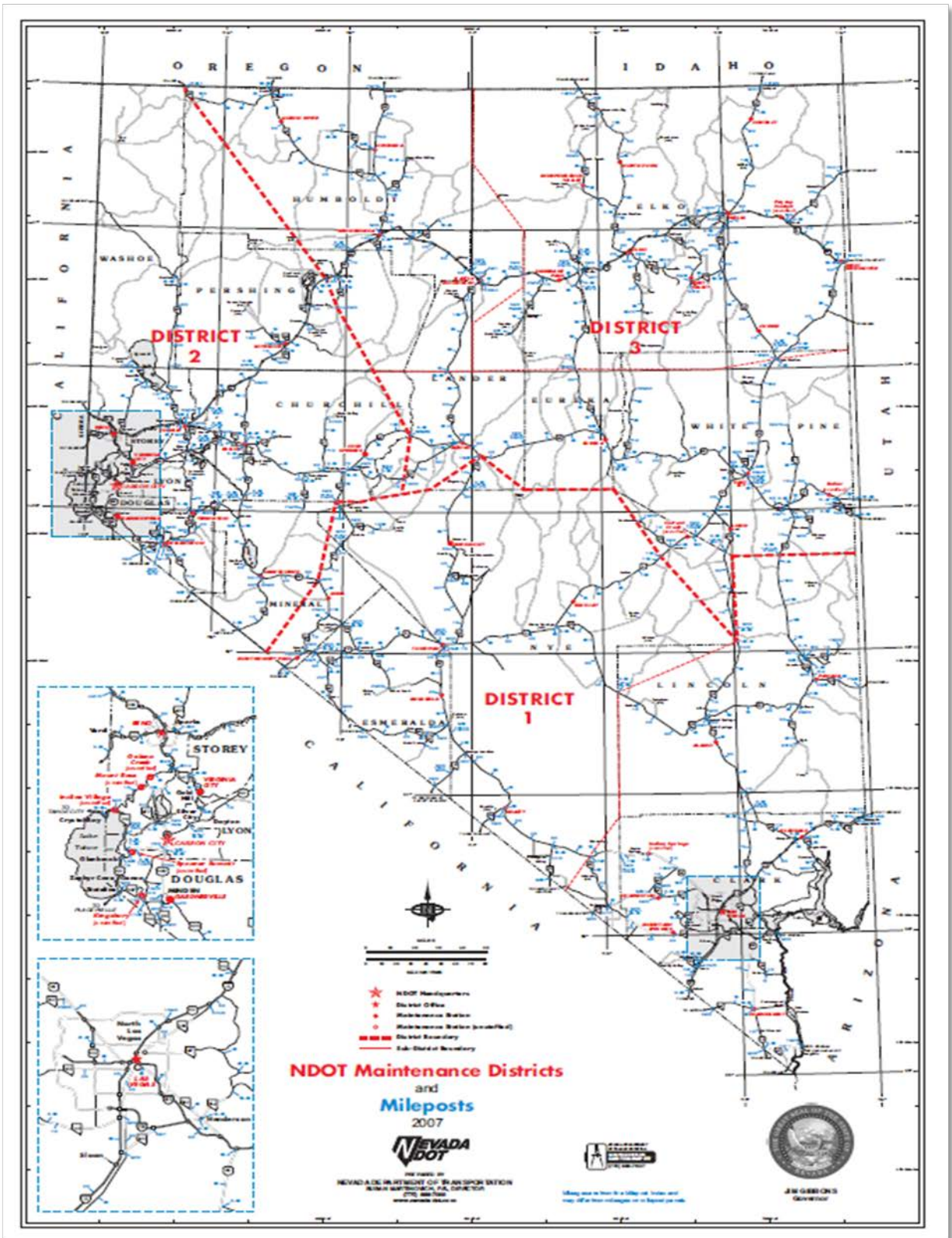






# ADMINISTRATION

## Departmental District Map



## **2.000 RIGHT-OF-WAY CONTROL**

### **2.100 INTRODUCTION AND PURPOSE**

The purpose of this Section of the Right-of-Way Manual is to outline the responsibilities, policies and procedures relative to the operation of the Right-of-Way Division's Right-of-Way Control Section.

This Section is responsible for and provides the Right-of-Way Division with agreement processing, audit services; secretarial and clerical services; internal controls; budget and work programs; forms control; project control; file and agreement closures and Right-of-Way (Final Voucher Process).

### **2.150 RESPONSIBILITIES**

#### **2.151 Chief Right-of-Way Agent**

The Chief Right-of-Way Agent maintains responsibility for the overall policy and procedures of the Right-of-Way Control Section.

#### **2.152 Deputy Chief Right-of-Way Agent**

Under the direction and supervision of the Chief Right-of-Way Agent the Deputy Chief Right-of-Way Agent is responsible for the establishment of the policies and procedures for the Right-of-Way Control Section.

#### **2.153 Administrative Assistant III (Supervising Secretary)**

By delegation of authority from the Deputy Chief Right-of-Way Agent the Administrative Assistant III directs and supervises the daily operation of the secretarial staff.

#### **2.154 Management Analyst I**

By delegation of authority from the Deputy Chief Right-of-Way Agent, the Management Analyst I directs and supervises the daily operation of the Right-of-Way Control Section.

The Right-of-Way Control Section is a subsection of the Right-of-Way Division.

## 2.200 POLICY

### 2.201 Requests for Legal Opinions

To avoid duplication of effort and confusion within the Right-of-Way Division, all requests for legal opinions shall be routed through the office of the Chief Right-of-Way Agent.

### 2.251 Knowledge and Interpretation of the NDOT Accounting Coding Manual

- A. The Nevada Department of Transportation has developed a coding manual for the purpose of identifying and accounting for the various operations of the Department.
- B. All expenditure and revenue documents utilized in the acquisition function, the rental and the disposition of property contains an expense allocation section. To complete this section, reference should be made to the Accounting Coding Manual to obtain the proper numeric codes. Therefore, it is imperative that all personnel assigned to the Right-of-Way Control Section have a thorough knowledge of the coding manual.
- C. In conjunction with a thorough knowledge of the Department's coding manual, it is necessary that the user have a thorough knowledge of which expenditures qualify for federal participation and which do not qualify.
- D. In general, the costs that qualify for participation are any costs on a Federally participating project, that are related to providing right-of-way and clearing right-of-way to make ready for construction. These costs include land acquisition, the relocation of families and businesses, the relocation of public utility facilities and the salaries and travel expenses of the Nevada Department of Transportation employees who are assigned to work on those projects.
- E. Those costs that do not qualify for federal participation are administrative and overhead expenses of Right-of-Way headquarters and field offices. Federal funds will not participate in the costs of real property that is not incorporated into the final highway right-of-way nor any of the property management costs related to that excess property. In a condemnation proceeding, federal participation is not permitted in the cost of property owner's attorney fees, appraiser fees or expert witness fees except (a) where the final judgment is that the property cannot be acquired by condemnation, or (b) the proceeding is abandoned by the acquiring agency, or (c) an inverse condemnation is successfully maintained. Also, federal participation is denied for any activity related to the maintenance of the State's roads and highways.



### **2.252 Travel Claim Audit**

Travel claims are submitted periodically by Right-of-Way Division personnel to the Right-of-Way Control Section. It is the responsibility of the Right-of-Way Control Section to review these claims to ensure proper completion and coding documentation.

### **2.253 Time Sheet Audit**

Personnel assigned to the Right-of-Way Division are required to submit their timesheets bi-weekly to the Right-of-Way Control Section. It is the responsibility of the Right-of-Way Control Section to review the submitted timesheets to ensure proper completion and correct cost coding distribution.

### **2.254 Purchase Order/Voucher Payable Audit**

The Right-of-Way Control Section shall be required to audit all Purchase Order/Voucher Payable documents which originate by the Right-of-Way Division statewide as a result of the acquisition function. These Purchase Order/Voucher Payable documents include, but are not limited to payment for:

- A. Land acquisition costs
- B. Appraisal costs
- C. Relocation costs
- D. Property Management costs
- E. Utility adjustment costs
- F. Incidental (Right-of-Way Acquisition) costs
- G. Administrative costs

### **2.255 Agreement Logs, Process, Payments and Ledgers**

On a daily basis, the Right-of-Way Control Section tracks all draft and/or final Right-of-Way Agreements for proper and complete execution. Upon agreement execution, copies are distributed accordingly and an agreement file and ledger are created.

On a daily basis, the Right-of-Way Control Section shall be required to maintain a variety of Agreement Ledgers. The purpose of these Ledgers is to maintain a running account of expenditures made on each individual Agreement and to ensure payments do not over-run the estimated costs of that agreement.

### **2.256 Rental Revenue Receipts Processing**

The time gap between the acquisition of a parcel and the construction date of the project often allows the Department to rent the newly acquired parcel to the former owner or some other person or company during this interim period. For this purpose, rental agreements are entered into between the Department and the Renter. These agreements and subsequent rental receipts require the establishment of a Recurring Receivable (RERE) form. It is the responsibility of the Right-of-Way Control Section to provide the Accounting Division with all the data necessary to establish and maintain these rental accounts.

### **2.257 Airspace, Multi-Use Commercial Lease and License Document Procedure**

It is the responsibility of the Right-of-Way Control Section to establish and maintain records and forward documentation to the Accounting Division on revenue received for the rental of airspace, Multi-Use commercial leases, and licensed properties.

### **2.258 Audit of Monthly Project Transaction Report**

At the end of each month, the Accounting Division closes out the monthly transactions on each project. The various transaction reports are available through the accounting system for review.

It is the Right-of-Way Control Section's function to reconcile this information and issue corrections to the reports as necessary in the form of adjustment memoranda, Decentralized Journal Vouchers (DJV's).

### **2.259 Right-of-Way Control Section's Procedure for Condemnation Actions**

In the event of a condemnation action, the Legal Division requests by memo that the Right-of-Way Control Section prepare a Payment Voucher and obtain a check in the amount of the approved appraisal to be deposited by the Legal Division with the court. If during the condemnation process, an appraisal update is required resulting in an additional deposit or interest payment upon completion of the condemnation action, Legal Division will again, by memo, request the necessary Payment Voucher and checks through the Right-of-Way Control Section. The Right-of-Way Control Section is required to calculate all interest payments when applicable. The Right-of-Way Control Section is also required to keep a Ledger to track the money on deposit with the courts, interest payment and the final awards paid. Additionally, retaining certain legal documents in the parcel files and entering the Final Order of Condemnation on the Lands Acquired Report.

### **2.260 Training Course Preparation and Processing**

The field of right-of-way acquisition requires a program of on-going education. Therefore, on a periodic basis, personnel within the right-of-way organization are required to attend professional educational courses. It is the responsibility of the Right-of-Way Control Section to accumulate

and submit the Department's Training Section all of the necessary documentation and applications for this required training.

### **2.261 Edit Corrections of Source Documents**

Periodically, a report is prepared by Data Processing for the Accounting Division called an Edit Listing. This report consists of a list of the source documents that have been submitted for processing through the system, but have been edited out due to coding errors. Since time is of the essence, Accounting Division personnel attempt to correct the coding on the documents and resubmit them for processing. It is the responsibility of the Right-of-Way Control Section to research the edited Right-of-Way documents to verify the revised coding that has been entered by Accounting Division personnel or to prepare adjustment memos for final correction.

### **2.262 Document Processing as a Result of Excess Real Property or Improvements**

Following the auction or sale of excess real property or improvements from property acquired for right-of-way purposes, it is the responsibility of the Right-of-Way Control Section to verify all document coding.

Revenue generated on open projects is credited to the State Highway Fund as received with coding reflected on the RERE.

When a project is closed, expenses incurred in preparing surplus property for sale and in conducting the sale of such property will be charged to a work order number, assigned specifically to each closed project, as needed. Revenue collected from the sale of surplus property is also accounted for by the work order number. The work order number is assigned by the Management Analyst I.

Expenses and revenue will be accumulated monthly, or quarterly depending on the generated revenue, at the time of sale.

### **2.263 Final Certification of Right-of-Way Costs**

The Final Right-of-Way project costs are prepared by the Project Accounting Section at the close of each state and federally sponsored project. The Right-of-Way Control Section shall ensure that ineligible funds are not used to cover any Right-of-Way project expense that is reported to Project Accounting. This is accomplished through monthly reconciliation of Payment Voucher Requests, verification of bi-weekly payroll project coding, and an audit of project related agreements prior to closure. The Right-of-Way Control Section shall ensure Federal funds are not used to cover any increase in project costs brought about by unresolved utility conflicts or other Right-of-Way conflicts associated with construction change orders. The Right-of-Way certificate becomes part of a Final Voucher package which is submitted to the Federal Highway Administration.

## **2.264 Calculation of Damages When Excess Property is Acquired**

There are basically two methods of calculating damages to a parcel when excess property is acquired. Historically, the Nevada Department of Transportation has used both of these methods depending on the particular time at which the project was authorized. It is the responsibility of Right-of-Way Control to determine at what point the particular acquisition program took place and therefore which method of calculating damages is appropriate.

## **2.265 Uneconomic Remnant Acquisition and Disposal Document Processing**

An uneconomic remnant is a part of a parcel of land which the owner is left with an interest after the partial acquisition of the owner's property. The uneconomic remnant may or may not have improvements on it, which lies outside of the right-of-way limits, which is of such irregular shape or size that it will be of little or no utility or value to the property owner. The Department shall offer to acquire the uneconomic remnant along with the portion of the property needed for project purposes. The uneconomic remnant is NOT acquired for Right-of-Way purposes. It is the responsibility of the Reviewing Appraiser to make the uneconomic remnant determination. The Reviewer is also responsible for making a value determination of the uneconomic remnant. Federal funds are utilized in the acquisition cost of uneconomic remnants whether or not the remnant is incorporated in the highway right-of-way. It is the Department's policy to account for the costs of uneconomic remnants. Specific codes for these acquisitions must be utilized. It is the responsibility of the Right-of-Way Control Section to provide this record keeping and ensure that proper coding is used.

Following the completion of the project, if the uneconomic remnant is not incorporated into the right-of-way limits, the remnant is considered for disposal by the Surplus Property Committee. Should the Committee decide to dispose of the remnant, it is the responsibility of the Right-of-Way Control Section to supply historical information needed to determine the amount paid for that portion of the remnant that will be offered for sale.

## **2.266 Billing for County Participation in Acquisition & Utility Company Relocation Costs**

On some projects, the specific county government may agree to participate in the Right-of-Way acquisition costs or in the case of a public utility, the Utility may choose to allow the Department to perform the needed relocation utilizing its contractor. Currently, if the Utility has us do the work, the Right-of-Way Control Section prepares and routes the agreement for execution, but the Project Accounting Section does the billing. It is the Right-of-Way Control Section's responsibility to prepare billing statements to the county or public utility as the project progresses. These statements are prepared on an irregular, as-needed basis as that portion of the project is completed.

## **2.267 Programming of Right-of-Way Costs**

Right-of-Way programming consists of estimating the costs of new projects, updating or revising the project costs of older projects and supplying this information to the Department's Project

Manager. The Project Manager or the Right-of-Way Division requests Federal participation, Program Approval and authorization to incur Right-of-Way costs on the project.

It is the responsibility of the Right-of-Way Control Section to supply the Project Manager with the anticipated project Right-of-Way costs.

#### **2.268 Lands Acquired and Dispositions Report**

Monthly, a report is issued by the Right-of-Way Control Section detailing all lands which have been acquired and disposed by the Right-of-Way Division through its acquisition function. This report provides the following information:

- A. The acquisition portion of the report is a synopsis of all recorded deeds and final order of condemnations that vest title to the State of Nevada, Department of Transportation.
- B. The Disposal portion of the report lists the State's property that has been disposed of during the month.
- C. This report is processed by the Right-of-Way Engineering Section in order to maintain an accounting of acquisitions and dispositions.

#### **2.269 Prepare, Monitor & Review of R/W Division's Annual Work Program & Revenue Estimates**

It is the Right-of-Way Control Section's responsibility to assist Right-of-Way Management in the preparation of the annual work program and to research and provide information for any revisions of the annual work program which may be requested by Department Management.

On a daily basis, Right-of-Way Control Section has access to reports giving the fiscal year-to-date expenditures by the Right-of-Way Division. This report also contains a statement of established budgetary target figures by line item.

It is the function of the Right-of-Way Control Section to review this report to ensure accuracy in addition to insuring that the Division remains within the budgetary limits of each line item.

From time-to-time, the Financial Management Division will request an estimate of revenue that will be generated by the Right-of-Way Division. This revenue generation includes such items as right-of-way costs on Federally-Aided projects, sale of excess property, and rents received from property management. It is the function of the Right-of-Way Division Control Section to prepare such estimates from the records of this section.

#### **2.270 Right-of-Way Control Procedures**

In addition to those policies set forth in this portion of the right-of-way manual, Right-of-Way Control procedures will be contained in a separate manual distributed separately.

## 2.300 FORMS

200F Incidental Expenses (Federal)

200S Incidental Expenses (State)

201F Final Certification Right-of-Way Costs (Federal)

201S Final Certification Right-of-Way Costs (State)

202 Tabulation of Right-of-Way Costs

202lgl Tabulation of Right-of-Way Costs (including Surplus)

## 3.000 RIGHT-OF-WAY ENGINEERING

### 3.100 INTRODUCTION AND PURPOSE

Right-of-Way Engineering is a service section, within the Right-of-Way Division of the Department of Transportation. This section provides the engineering and land title information required in the transfer of lands for State and Federal-aid highways of the State of Nevada. The work done in this office is basically the office portion of what a land surveyor would be responsible for.

From the inception of a new highway project until after its use by the public, the Right-of-Way Engineering Section is involved. Functions of the Section include providing Right-of-Way Plans, title to land to be acquired, and legal descriptions to effect the transfer of land. Additionally, the Section provides the necessary engineering data to administer property management, i.e., abandonments, relinquishments, leases, licenses, surplus disposal, etc.

Right-of-Way Engineering participates in the Department's On-Call program for hiring consultants to accomplish engineering when existing staff cannot perform work on a timely basis or when work requires specialized skills not available within the section. Right-of-Way Engineering utilizes and adheres to the Department's Consultant Agreement Procedures Manual.

The Department enters partnerships with private developers and other Local Public Agencies (LPA) throughout the State. These partnerships often necessitate Right-of-Way Engineering work with and thoroughly review the engineering products of private industry engineering firms and other government agencies. Due to the LPA's lack of familiarity with State and Federal standards, policies and procedures these partnerships are laborious and time consuming. All products produced by others go through the same review and checking process as those accomplished in-house.

It is the responsibility of Right-of-Way Engineering to produce and maintain the mapping and documentation to show all right-of-way under the jurisdiction of the Department. Right-of-way may be held in various forms such as by prescriptive right, permanent easement, temporary easement, license, lease, agreement, deed, fee, Federal Grant and/or Special Use Permit from other agencies.

#### 3.101 Authority

Right-of-Way Engineering was established as a Section of the Right-of-Way Division. It receives part of its authority to operate from the Head of that Division. Certain delegated authorities are received directly from the Department Director; namely, those pertaining to the Department's transactions with the [Bureau of Land Management](#) (BLM) and the [U.S. Forest Service](#) (USFS).

### 3.102 Location

The Right-of-Way Engineering Section is one of four sections of the Right-of-Way Division of the Department of Transportation and is located in the Headquarters Building, in Carson City. It is a one-unit entity serving the entire State.

### 3.103 Staff

The Right-of-Way Engineering Section staff consists of a Manager, two Supervisors, and usually 28 Technicians of various grades, all in a one office complex, in the Headquarters Building.

### 3.104 Supervision

The Right-of-Way Engineering Staff is headed by the Manager, Right-of-Way Engineering, who reports to the Deputy Chief of the Right-of-Way Division.

Assisting the Manager are two Supervisors, Right-of-Way Engineering and seven Engineering Technician V squad leaders.

All are in the classified service of the State of Nevada.

### 3.105 Technicians

The supporting staff of the Supervisors and Tech V's normally consists of twenty-one Technicians. Those Technicians range from Technician I's through Technician III's and there are seven (7) Technician IV's and are all in the classified service.

### 3.106 Right-of-Way Engineering

- A. Right-of-Way Engineering provides all of the engineering information required for preparation of the following items:
  - 1. Maps, ownerships and parcels for court hearings.
  - 2. Maps, legal descriptions and ownerships for appraisal.
  - 3. Maps, title searches and legal descriptions for negotiations.
  - 4. Maps, title searches, legal descriptions and visual displays for condemnation.
  - 5. Maps and records for the public.
  - 6. Maps and legal descriptions for disposals.
  - 7. Maps, resolutions, legal descriptions and exhibits for the Transportation Board of Directors.



### 3.107 Records

Since all the records of the Department are public records and must be made available to the public upon request, complete and detailed copies are maintained in Right-of-Way Engineering for all right-of-way information, such as maps and land acquisition documents.

The maintenance, use and protection of these records consume a large part of the floor and server space of Right-of-Way Engineering, as well as a substantial part of the time of the personnel. There are also off-site storage facilities.

### 3.108 Reproduction

Since most requests of the public for right-of-way information entail copies of maps or other information, duplicating becomes an important ingredient in furnishing such information. The office is now able to provide electronic copies of most of the documents via the internet.

Copy machines and computers are used freely and most information may be furnished without cost to the public. However, the larger maps require the use of special equipment and charges for such prints are made. Large orders may need to be charged for labor.

### 3.109 Continuing Education

Right-of-Way Engineering encompasses Land Surveying and Real Estate principles and law, as well as math skills, writing abilities, and CADD capabilities. Experience in Right-of-Way Engineering enhances an individual's career ladder within the Department. Coupled with experience is continuing education. For the Section, this takes the forms of in-house training, Department- or State-offered courses, college classes, webinars, workshops, conferences, and etcetera.

- A. In-house training is a series of Right-of-Way Engineering Technician modules. These modules are designed to increase a technician's working knowledge by stages as the individual advances from a Tech I to a Tech V.
- B. Department- or State-offered courses come in a wide range of offerings, from the interpersonal to the technical.
- C. The Department will support an employee who wishes to take job-related college classes. There is also a preferred degree program in place which provides for employees to pursue degrees that are not directly related to their current positions.
- D. Participation in webinars, workshops, conferences, etcetera, is encouraged when these deal with procedures or techniques useful to the Section.

### **3.150 RESPONSIBILITIES**

The Right-of-Way Engineering Section is a service section to the other Sections of the Right-of-Way Division, other Divisions of the Department, other Agencies of the State and Federal Governments and the public at large. This service consists of furnishing the engineering and land ownership details of the Department's right-of-way holdings throughout the State.

#### **3.151 Acquisition**

Right-of-Way Engineering is charged with the gathering of all information available from the public record, together with survey information furnished by the Department's Location Engineer. This material is then developed into specific information for use in the acquisition of real estate for the Department's needs.

#### **3.152 Research (Preliminary Title)**

In the preliminary stages of a capacity project, Right-of-Way Engineering is tasked with researching the number of private parcels to be affected by the corridor alignment or alignments. Often County Assessor land ownership names and addresses are forwarded to the Hearings Officer for use in coordinating Public Hearings. This information can be found in Nevada by a check in the appropriate County Assessor's Office. The Assessor maps reflect all of the Assessor's parcels, for tax purposes. By utilization of the Assessor's data the Right-of-Way Engineering Section accounts for the number of properties affected by a particular proposed alignment.

#### **3.153 Title Reports**

After the right-of-way is set, Right-of-Way Engineering is responsible for providing a title report on each and every acquisition parcel. A title report shows the complete title holder, the condition of title, all liens, easements, leases, etc. Court action involving the parcel and all other recorded information that may affect the value of the parcel are researched and documented.

Title reports or "chain of title", as it may be called, usually are provided by private Title Companies and reviewed internally, noting any discrepancies so they may be cleared. On occasion, chain of title is accomplished by Right-of-Way Engineering personnel.

#### **3.154 Right-of-Way Plans**

When the Right-of-Way Setting memorandum is received from the approving authority for Engineering, Right-of-Way Engineering initiates action to prepare Right-of-Way Plans for use by the entire Right-of-Way Division.

Right-of-Way Plans are computer generated utilizing CADD programs, with completed maps measuring 11" x 17". These plans show all land rights to be acquired and include permanent and temporary easements.

### **3.155 Legal Descriptions (Acquisition)**

Right-of-Way Engineering has the responsibility to furnish the precise legal descriptions and areas of parcels to be inserted into the legal documents for the acquisition of such parcels.

If condemnation proceedings are initiated, legal descriptions may need alteration as requested by the attorneys.

Accurate descriptions and ties to known monuments are required to completely identify and locate all parcels to be acquired.

### **3.156 Private Lands**

Right-of-Way Engineering maintains parcel maps that go back as far as 1917, which were used in the original acquisition of private land and the calculations to support it.

### **3.157 Federal Lands**

The Manager of Right-of-Way Engineering is charged with the responsibility to negotiate with the BLM, and therefore submits the applications for the Federal Land Transfers of right-of-way and material sources.

Acquisition of all right-of-way and material sources is processed through the Federal Highway Administration, with engineering data furnished by Right-of-Way Engineering.

The BLM applications require the submission of the Right-of-Way Plans that are developed by Right-of-Way Engineering, which has the responsibility of maintaining the original reproducible.

All the federal land acquisitions are maintained through mapping and a database.

### **3.158 Forest Lands**

Right-of-Way through National Forest Lands has historically been detained by "Special Use Permits" with the Forest Service. The mapping of such right-of-way is maintained by Right-of-Way Engineering, together with the supporting calculations and documentation. Present procedures require that the transfer of National Forest Lands be accomplished by Easement Deed processed through the FHWA.

### **3.159 Indian Lands**

Special mapping and acquisition procedures of the Bureau of Indian Affairs (BIA) are followed by Right-of-Way Engineering. The transfer of lands held by the BIA is dependent on how the land is held and the particular tribe from whom the acquisition is to be acquired from. See Negotiations section of this manual for additional information.

### 3.160 State Lands

Small portions of right-of-way statewide are held on State select lands and over navigable rivers. Right-of-Way Engineering maintains the mapping and calculations to demonstrate this control.

The land interest acquired by the Department may be fee simple absolute under authority of the Nevada Revised Statutes, Chapter 408. Those lands not covered by the aforementioned law are negotiated with the State Land Office and may be granted as an easement or fee estate.

### 3.161 Disposal

Right-of-Way Engineering has the responsibility of preparing sketch maps, legal descriptions and detailed calculations needed to abandon, relinquish or sell parcels of surplus land or superseded portions of rights-of-way.

If any surplus parcel is determined to be a stand-alone parcel and can be disposed of by auction, Right-of-Way Engineering prepares the sketch maps and legal descriptions needed by Property Management for the advertising and auction.

Proper notation on existing maps and permanent records of those portions of right-of-way which have been disposed of is a prime function of the section and handled through the Lands Acquired & Disposition Report.

### 3.162 Certification

Because of its exclusive relationship with the BLM and USFS, Right-of-Way Engineering has the responsibility to certify, through Right-of-Way Management, to other Divisions within the Department the rights-of-way which fall upon public lands.

Applications for federal land transfers are a matter of quasi-public record with the BLM and USFS. Before the certification is done, a Letter of Consent is issued and the right-of-way easement deeds are signed and then recorded in the appropriate County Recorder's Office.

All material sites made available to Department contractors must be certified by Right-of-Way Engineering. A Memorandum and a Sketch Map describing in detail where material is available, as well as any applicable special conditions, is forwarded to the NDOT Specifications Engineer.

### 3.163 Private Parcels

Right-of-Way Engineering is not responsible for the certification of right-of-way acquired from private owners, or other agencies, other than the BLM and USFS.

When borrow material is purchased from private owners, Right-of-Way Engineering does certify to Specifications that such agreements are complete. There is no land transfer in this instance, only the right to excavate road building materials.

Copies of private owner agreements and materials options are kept in the Right-of-Way Engineering “Material Site Files”.

### **3.164 Disclosure**

Being a service section, Right-of-Way Engineering has as one of its prime functions, the retrieval and supplying of information requested pertaining to the right-of-way holdings of the Department.

To make the disclosure of such information convenient and prompt, all files are maintained in the office complex and are readily available to both NDOT personnel and the inquiring public.

### **3.165 Departmental**

Right-of-Way Engineering has the responsibility of keeping other Divisions and Districts within the Department informed of changes with the right-of-way.

When Right-of-Way is abandoned, relinquished or sold, notations are made on the applicable maps, other records are brought up to date, and notifications are issued to the various sections within the Department such as Roadway Systems and maintenance.

All land rights held on Federal lands that are material sites are maintained in a GIS database and all highway right-of-way is maintained in a separate database.

### **3.166 Public**

Right-of-Way Engineering routinely provides private surveyors and property owner’s information on the location of NDOT-controlled right-of-way and ties to section corners and other monuments.

Copies of maps and documents are furnished upon request; however, large orders may have charges assessed, depending on the number of prints and the labor expended.

## **3.200 POLICY**

Right-of-Way Engineering has adopted the policies generally accepted by other respected engineering agencies in the area as to ethics, standards, cooperation and legality and is proud of the quality of its work and its service to the public and the Department.

### **3.201 Origin**

Except for periods of extreme workload, Right-of-Way Engineering does all of its own office work, from the first Assessor’s Check for ownership, to the preparation of the final sketch maps for surplus property. The section has no field crew. Its field survey requirements are met by the Location Division.

Technicians are routinely assigned duties in the various county offices, checking Assessor's records, searching recorded documents and court records, or gathering public information for right-of-way purposes.

A contract will be entered into with a title company to provide preliminary title reports or abstracts of title to define ownerships on each project.

### 3.202 Quality

It is the policy of Right-of-Way Engineering to follow the standards and practices of land surveying as generally accepted by the Professional Land Surveying profession, Nevada State law.

The BLM has published a manual setting forth the property methods and procedures for establishment of the Federal Public Land Survey System. Said methods are followed closely.

### 3.203 Accuracy

It is the policy of Right-of-Way Engineering to provide the Right-of-Way Plans, legal descriptions and Title Searches to Staff members in other Sections within the Right-of-Way Division. The plans reveal parcel data, ownership and areas.

To reduce errors or omissions, the use of checklists and cross-checking are utilized.

### 3.204 Legality

Since the Department is a subdivision of State Government and shares with the U.S. Government in the funding and construction of Federal-aid Highways of Nevada, it is required to follow the regulations set forth in the [Nevada Revised Statutes](#) (NRS), [United States Code](#) (USC) and the [Code of Federal Regulations](#) (CFR).

Right-of-Way Engineering strives for accuracy, visual clarity and sound engineering practices while producing the mapping, legal description, calculations and title searches in order for them to be accepted in any court as professional work, if the situation arises.

Because the State has the power of Eminent Domain, the Department's work does appear in court and quality must always be paramount.

### 3.205 Availability

It is the policy of Right-of-Way Engineering to furnish the public, during regular office hours, complete and accurate information regarding the Department's right-of-way holdings. Prompt and courteous service is a requirement.

### 3.206 Contractual Work

When title work is to be contracted out, it is the policy of the section to provide interested title companies the opportunity to submit bids for proposed contracts. Contracts are awarded to the company whose cost and work product is judged to be satisfactory and within acceptable time limitations. On occasion, severe time constraints do not allow for submission of bids and reputable companies receive contracts to meet the immediate need.

### 3.250 PROCEDURE FOR PROJECTS

- A. The acquisition, disposal and property management of a highway right-of-way is a sequential procedure. Right-of-Way Engineering arranges its work according to:
1. Initial Research – Research is accomplished to provide a base for engineering work and for public hearings, which includes pulling ownership information and performing a right-of-way verification.
  2. Preliminary Right-of-Way Setting Meetings – A meeting to allow all involved disciplines within the Department an opportunity to voice related concerns prior to the final setting of right-of-way limits by the Design Division.
  3. Right-of-Way Setting Meeting – A meeting is arranged by the Design Division to set final right-of-way limits on a project.
  4. Request for Field Surveys – A detailed request for field survey work is prepared and forwarded to the Location Engineer. Precise field survey data is necessary to establish accurate land boundaries.
  5. Land Title Searches – Preliminary land title reports are contracted from reputable title companies to ensure proper identification of legal owners and all valid liens and encumbrances pertinent to the land.
  6. Field Data Reduction – All field survey data is thoroughly analyzed for use in establishing land boundaries as well as the lines of the Public Land Survey System.
  7. Calculations – All land ownerships from whom new right-of-way is needed are calculated and each acquisition parcel is precisely determined.
  8. Right-of-Way Mapping – Computer drafted Right-of-Way Plans are accomplished that pictorially depict all pertinent facts related to Department land ownership such as: location, size, legal description, type of legal right and from whom it is to be acquired from.

9. Legal Descriptions – A legal description of the property right to be acquired is written for insertion into a legal document.
10. Condemnation – As requested, special exhibits, mapping, title and legal descriptions are provided to our Condemnation Coordinator.
11. Lands Acquired Report – After recordation of documents, all acquired land rights are verified against the Right-of-Way Plans and recording data is added to the property schedule.
12. Final Voucher – All projects are officially closed through the Final Voucher process which accounts for all property acquisitions and final right-of-way limits.
13. Multiple Use of Right-of-Way – Excess right-of-way may be leased, licensed or disposed of.

### 3.251 Hearings

New highway alignments require a series of public hearings, which Right-of-Way Engineering is expected to provide information for, such as the number of parcels the right-of-way is expected to impact, along with the legal owners' name and mailing address.

A Bureau of Land Management Check is made online and Master Title (M.T.) plats are procured. "Assessor's Checks" are also done online or requested by phone.

### 3.252 Bureau of Land Management Check

A "Bureau of Land Management Check" can be done entirely online. The Engineering Technician pulls up the Master Title (MT) plats, which indicate all actions by the BLM for natural resource lands, which includes patented lands.

The "Serial Pages" contain the name and address of each applicant and is maintained by the BLM. Oil and Gas Lease (O.G.) plats are also available, if mineral rights are needed.

### 3.253 Assessor's Check

Early in the planning stage of a new highway alignment, the number of private parcels of land to be crossed by the Right-of-Way Corridor becomes important.

A Right-of-Way Engineering Technician accesses through the internet or is dispatched to the respective County Office, to perform an "Assessor's Check". The Right-of-Way Engineering Technician secures a set of maps from the Assessor's Office for the general area of the corridor. The names and addresses of the assessed owners are secured from the tax rolls.



### 3.254 Preliminary Right-of-Way Setting

When the Design Division feels right-of-way needs are known, a preliminary right-of-way setting takes place. All Department disciplines that have interest in the project should have a representative present. A thorough review and discussion of all issues related to right-of-way takes place. If possible, adjustments in the right-of-way should be made to avoid minor acquisitions of land from otherwise untouched parcels. Control of access is a critical and costly issue that should be closely evaluated.

### 3.255 Right-of-Way Setting

After necessary changes are made as a result of the preliminary right-of-way setting, the official right-of-way setting meeting is arranged by the Design Division. All new land rights to be acquired are identified as to location and type of right to be acquired. All new acquisition limits are directly related to the highway centerline by station and offset. A Right-of-Way Setting Memo is written by Design after this meeting. It is then approved by the Assistant Director of Engineering, the Chief Right-of-Way Agent and the Chief of the Environmental Division. This is the Right-of-Way Divisions authorization to proceed.

### 3.256 Sliver Takings

- A. It is the responsibility of Right-of-Way Engineering to closely review the design submittal of right-of-way requirements to determine the following:
  - 1. The access restrictions as submitted conform to established policy.
  - 2. Whether or not any sliver takings can be eliminated to avoid unnecessary acquisition.
  - 3. Occasionally, it is desirable to include slivers of superseded highway within the new right-of-way requirements, thereby eliminating the need for future abandonment investigation and proceedings.

### 3.257 Control of Access

When controlled access highways are being considered, the right-of-way setting can be greatly influenced by the effect access control can have on parcels or remainders outside of the right-of-way. Frontage roads, ramps, interchanges and many other highway related features need be considered.

The purchase of access rights is expensive and must be handled prudently.

### 3.258 Ownerships

After the right-of-way is set, the preliminary ownership of those parcels to be acquired within the established right-of-way limits are verified from current Assessor's Plats. A vesting document for each ownership impacted by the project is then obtained from the County Recorder's Office.

The legal description within the vesting ownership document is critical at this stage for preparing field survey requests to the Location Engineer and for preliminary engineering work.

### **3.259 Title Searches**

Title searches are necessary to obtain an ownership chain, encumbrance data and legal descriptions of the subject property and valid easements. If accomplished by in-house staff, the search is conducted at the County Assessor's, Recorder's, Clerk's and Treasurer's offices. The Technician obtains the record of the current owner's deed, then the previous owners deeds establishing a title chain back a period of at least two owners or five years. The Technician checks for easements, trust deeds, reconveyances, assignments, liens, rights-of-way, suits, divorces and any other documents that may affect title; compiling this on a form provided for this purpose.

### **3.260 Addresses**

After the title chain is established and all encumbrances and variations between deeds and reservations are properly noted, the County Treasurer is contacted and the tax roll address of the owner is obtained. Additionally, all fictitious names and corporations are checked with the County Clerk and corporations are further checked with the Office of the Secretary of State for current status and list of officers. Foreign corporations must be authorized to do business in the State of Nevada and their current standing must be checked, noting the Resident Agent.

### **3.261 Title Companies**

Under normal circumstances, a Supervisor will solicit time and cost estimates from several licensed title companies doing business in the project area. Based on the estimates received and on previous performance history (if any) a letter of authorization to proceed, approved by the Chief Right-of-Way Agent, will be forwarded to the chosen company for preparation of preliminary title reports. Rates for the services rendered are negotiated from bids and are based on the location and complexity of the titled lands.

### **3.262 Title Update**

Title searches must occasionally be updated for such reasons as changes in ownership, lapse of time between original search and appraisal process or negotiations, or when condemnation action is pending. All updated information is noted on the original title search and all original items are rechecked. If the updating is for use in a Court case, at least two copies of each pertinent document are obtained. If a title report requires an update the request should be initialed through R/W Engineering.

### **3.263 Calculations**

- A. After right-of-way limits are set, field survey work is received and ownership deeds and other documents are available, the property boundaries of impacted

owners are established and the dimensions of the parcels required for right-of-way acquisition are determined by Right-of-Way Engineering.

- B. Precise calculations are made for:
1. All acquisitions of property right, including permanent and temporary easements. Most calculations will form the basis of metes and bounds parcel descriptions, with a maximum error of closure of .02'.
  2. Areas of the acquisition parcels and remainders.
  3. Ties to public land section corners or other established monuments of record.
  4. Highway centerline traverses.
  5. Details of access control, if applicable.
  6. Details of lease and license areas.
  7. Establishment of those lines that make up the Public Land Survey System.
  8. Correlation of records of survey, record parcel maps, subdivision maps, deeds, etc.

### 3.264 Parcels

- A. It is the responsibility of Right-of-Way Engineering to correlate ownership boundaries with new right-of-way requirements and to calculate right-of-way requirements, previously acquired right-of-way and remainders as a basis for all right-of-way maps and descriptions.
- B. The calculations done by Right-of-Way Engineering must be based on the same datum survey control Design is using.
- C. On total takes located entirely within the highway right-of-way, it is still necessary to mathematically correlate the ownership boundaries. On occasion the use of record dimensions and record area may be utilized to expedite acquisition.
- D. On partial take parcels, boundaries are to be based on the new right-of-way requirements established in the right-of-way setting. Ownership boundaries shall be located from field survey data and record information in accordance with established survey practices and legal principles.

### 3.265 Calculations

- A. Calculations of land boundaries, acquisition parcel areas and other engineering data necessary for the acquisition of property for highway and related purposes

are performed by Technicians using base information which includes, but is not limited to:

1. Surveys performed for the U.S. Government.
  2. State and private surveys.
  3. Existing Department data.
  4. Vesting documents and other documents affecting title.
  5. Field surveys of monuments, property corners, etc., existing on the ground.
- B. The basis, theory, application and accuracy of all calculations are checked by a Technician other than the originating Technician.

### 3.266 Legal Descriptions (Types)

Property to be acquired for right-of-way purposes may be described by various types of descriptions such as “metes and bounds”, strips defined by centerline, naming of the lot and block of legal subdivisions or portions thereof, strip parcels off the larger portion; aliquot part and various other methods.

When preparation of legal descriptions has been completed, they are checked for format, application and accuracy by a Technician other than the one who prepared the original description.

### 3.267 Legal Descriptions (Acquisition)

- A. The Engineering Section prepares all land descriptions used in the preparation of legal documents for such purposes as appraisal, acquisition or condemnation of property, leasing, licensing, sale, relinquishment or abandonment of property held by the Department in the name of the State.
1. The land description shall be written so that property may be located on the ground by any competent surveyor and withstand a test in a court of law.
  2. A description of land shall have a base of location either by reference to, lines of the Public Land Survey System, recorded subdivision, adjoining lands of record, physical monuments or any point or line which can be identified with relation to other records.

### 3.268 Field Ties

- A. It is the Right-of-Way Engineering Sections' responsibility to initiate requests for additional property ties when required to establish the location of property boundaries.
- B. Right-of-Way Engineering closely coordinates its request for field survey with the Location Engineer to accomplish the following:
  - 1. Allow the Location Section sufficient time to properly schedule work.
  - 2. Make certain that requested surveys clearly identify the information needed for boundary determination. The Engineering Technician includes any maps, plats, descriptions or other information necessary to clearly identify such requirements.
  - 3. That field notes supplied by Location contain all information requested by Right-of-Way Engineering or that the information has been searched for and does not exist in the field.

### 3.269 Checking

All calculations, mapping and descriptions are checked by a journeyman level technician other than the originator. The checking Technician is provided with one set of prints which are checked for sound surveying methods, format accuracy, and application and conformance to office policy and procedure. Any unresolved differences are reported to the Engineering Technician V. All descriptions and maps are reviewed by the Engineering Technician V.

### 3.270 Mapping

- A. When all parcels to be acquired are calculated, and checked, mapping can begin as follows:
  - 1. Right-of-Way Plan maps to show right-of-way and parcel detail.
  - 2. Cover or Location map to show project location.
  - 3. Maps to meet those standards established by the pertinent public agencies: Bureau of Indian Affairs, USFS, etc.
- B. These maps provide the basis for all appraisals, negotiations, condemnations, etc., and become the permanent land record of all Department land rights.

### 3.271 Format

- A. Right-of-Way Plans shall indicate the following:

1. Right-of-Way lines, access control lines, dimensions, centerline alignment and stationing with appropriate ties to intersecting property lines and changes in right-of-way widths.
2. Lines and areas of any additional easement areas, either temporary or permanent that are required to accommodate intersecting roads or streets, access and temporary roads, drainage areas, material storage areas, utilities, railroads and any other special feature appropriate to the project.
3. Right-of-Way monumentation (station and offset from centerline alignment) at all right-of-way breaks and at beginning and end of acquisition.
4. Parcel lines are to be in bolder than right-of-way lines.
5. For each parcel to be acquired the plans shall show a minimum of the following:
  - a. Property ownership lines.
  - b. Names of property owners.
  - c. Area in square feet and acres of the portion acquired and of each remainder of a partial acquisition and parcel identification number. (Parcel identification numbers are milepost numbers)
  - d. Sufficient engineering data to depict the legal description contained in the acquisition conveyance document.

### 3.272 Details

- A. Right-of-Way Plans are of a suitable scale, computer drafted and sized to print on 11" x 17" paper.
- B. They should show the following:
  1. Highway centerline alignment(s) with stationing.
  2. New right-of-way lines with bearings and distances.
  3. Previously acquired right-of-way lines.
  4. Proposed access restrictions and access openings.
  5. Existing access restrictions.
  6. Proposed frontage roads and other collateral facilities.

7. Intersecting roads or streets and their names.
8. Subdivision names and lots and blocks thereof.
9. Section lines, section corners and mining claim lines, if located.
10. Property lines intersecting the right-of-way.
11. Property owners' names from whom we are acquiring.
12. Areas of all acquisition parcels.
13. Area of all remainders, where applicable.
14. Parcels numbers.
15. Topography to include the following:
  - a. All building improvements within the right-of-way.
  - b. Building improvements on remainders, unless such improvements are so remotely located that they will not be either physically or economically affected by State's acquisition requirements.

### 3.273 Approval

Approval of the right-of-way plans is by the Manager, Right-of-Way Engineering. Any plan revisions after the initial approval must also be approved and authorized by the Manager, Right-of-Way Engineering. The only exceptions to this approval process will be for control access on Interstate projects, where FHWA approval is necessary.

### 3.274 Coloring

Areas to be acquired shall be outlined on the Right-of-Way Plans by a solid colored line. Each separate interest to be acquired from an ownership is to be outlined separately in the same solid color. The areas outlined by the solid colored lines shall include excess land outside of the highway requirements when it has been determined that such excess land is to be acquired. Where possible, coloring shall be accomplished on CADD.

Remainders of ownership are outlined in the same color as the areas to be acquired, but with a less bold line.

### 3.275 Federal Lands

Application to the BLM or the USFS regarding right-of-way for highways and material sites is coordinated through the Federal Highway Administration. The mapping that will be prepared to support such an application will be to the right-of-way plan standards. BLM and USFS right-of-way transfers are easement interests for highway purposes.

Material sources are retained for long term use. That long term use includes as future construction and maintenance of existing highways. The Federal Highway Administration makes the request for a land transfer to the BLM and USFS. Data submitted by the Federal Highway Administration is prepared by the Right-of-Way Engineering Section. The resultant land interest transferred to the Department is an easement deed.

### **3.276 Indian Lands**

Each application shall be in conformance with applicable regulations and as directed by the appropriate Agency. The width of the right-of-way shall be clearly shown on the maps. Basic information is the same as required by the Right-of-Way Plans.

The maps shall show the allotment number of each tract of allotted land, where applicable, and shall clearly designate each tract or tribal land affected. The sections, townships and ranges in which the lands crossed for the right-of-way must be shown.

### **3.277 State Lands**

Maps are required for the reservation of rights-of-way or material sites when State selected lands are involved. Those are prepared in the same manner as regular Right-of-Way Plans.

### **3.278 Water Applications**

The Right-of-Way Engineering Section prepares all applications for water rights required by the Department, for such purposes as wells at rest areas and maintenance sites. The applications are prepared on a reproducible in accordance with the State Engineer's regulations and governing State statutes. The Department of Transportation's permanent reproducible is retained in the Right-of-Way Engineering Office.

### **3.279 Court Displays**

The Department is often involved in Court action by the exercise of Eminent Domain and being subject to tort suits by the public.

When called upon to assist the Legal Division, Right-of-Way prepares the graphic displays to be used as visual aids in the Courtroom and furnishes the basis of engineering information needed to support them.

### **3.280 Condemnation**

When preparing graphic displays for the Legal Division of the Department, Right-of-Way Engineering uses many methods, many of which are computer generated, showing property lines, acquisition parcels, remainders, etc. Many visual aids may be required, such as before and after condition of a property, sales map for appraisers graphs, charts, etc.

The engineering facts and figures may be requested to support the exhibits and are provided in special formats at the request of the attorneys.



### 3.281 Personal Injury

The public use of the thousands of miles of State highway involves the Department in personal injury and property damage suits. This requires the maintenance of a staff of attorneys and investigators. This staff may request Right-of-Way Engineering provide engineering information and, on occasion, to assist in the preparation of visual aids as Court exhibits.

### 3.282 Disclosure

Right-of-Way Engineering is the office from which the public often requests information on the Department's right-of-way holdings.

### 3.283 Map Files

- A. Right-of-Way Engineering maintains map files as required by Department policy. They are as follows:
  - 1. Private parcel acquisition maps.
  - 2. Federal Land Application maps for roadway right-of-way.
  - 3. Right-of-Way Plans.
  - 4. Federal Land Application maps for material sources.
  - 5. Federal Land Application maps for radio sites, maintenance sites, and District Offices, etc.
  - 6. State Water Application maps – Wells, etc
  - 7. Right-of-Way maps on Indian Lands.
  - 8. Right-of-Way maps through Forest Service Lands.
  - 9. Right-of-Way maps across State Lands.
  - 10. Material Site maps for private lands.
  - 11. Maps for all leases, licenses and Surplus Property.

### 3.284 Source Files

- A. Right-of-Way Engineering has accumulated basic engineering and source information, as follows:
  - 1. Title Search Files of all recent projects that have not been Final Vouchered.
  - 2. Books of old City Subdivisions – Statewide.

3. A Book of Acquisition Deeds prior to 1955.
4. All original calculations.
5. Miscellaneous subdivision, sewer, water and street maps, of various towns and cities.
6. A database of all material sources.

### 3.285 Originals

Right-of-Way Engineering or Central Records maintains all official and/or original documents that are created within Right-of-Way and need to be safeguarded. This includes traverse sheets, calculation sheets, original tracings and transparencies, approved Federal land maps, approved Indian land maps, signed State selected land maps and prints of Federal Lands Applications.

Copies of title searches or report, and all correspondence are safeguarded and maintained in parcel and project files.

County maps showing the locations of all material sources and other applications on Federal land are kept up to date.

### 3.286 Dispositions

- A. The Right-of-Way Engineering Section provides all property descriptions and maps necessary for the disposal of lands which the “Surplus Property Committee” has recommended for action to the Transportation Board of Directors. These may include, but are not limited to:
  1. Lands returned to original owner or holder of reversionary right.
  2. Disposal as agreed upon by municipal or county governments and the Department.
  3. Transfer or relinquishment to other State Departments or governmental agencies.
  4. Sale at public auction or by sealed bid.
  5. Negotiated sale or trade.

### 3.287 Vacation of Abandonment

The Department may abandon a highway right-of-way that was held by easement interest and has been superseded by relocation ([NRS 408.523](#)).

Right-of-Way Engineering provides the detailed calculations and maps required to process the abandonment by the Transportation Board of Directors.

### 3.288 Relinquishments

The Transportation Board of Directors may relinquish to a city or county any highway right-of-way, which has been superseded by relocation or been deleted from the State system by legislative enactment ([NRS 408.527](#)).

The transfer is effected by a Resolution of Relinquishment and requires calculating the location, description of the parcel and complete mapping for exhibit and recording purposes.

### 3.289 Auctions

When surplus parcels of land are to be advertised for public auction, Right-of-Way Engineering provides sales maps and legal descriptions of the parcels for insertion in sales brochures.

### 3.290 Miscellaneous

Material sites, maintenance sites, radio sites and various other types of applications on Federal lands are subject to relinquishment for non-use.

These all require that Right-of-Way Engineering prepare partial or total descriptions, maps and other supporting engineering information to properly identify the relinquishments.

### 3.291 Recordation

To perfect the release of the Department's land interest and liability to its lands requires the transferring instrument be recorded in the Recorder's Office of the respective county.

### 3.292 Multiple Use

Right-of-Way Engineering provides descriptions and maps, as requested, for various parcels that may be leased or licensed within the right-of-way under the multiple use concept.

### 3.293 Airspace Leases

- A. Airspace Lease Maps shall be 8.5" x 11" unless conditions require larger.
- B. Airspace maps are used for inventory purposes, appraisal and negotiations.
- C. The map shall show the parcel location and its relationship to the State highway, nearest city streets, county roads or other easily identifiable locations.
- D. The map specifications are as follows:
  1. A perimeter border of 1 inch from outside edge with a title block in the lower right corner.
  2. Information to be shown:

- a. Outline perimeter of subject lease area metes and bounds, when possible.
  - b. Right-of-Way lines.
  - c. Centerline alignment of highway with stationing.
  - d. Graphically depict outside edge of viaduct structure.
  - e. Ramps, abutments, retaining walls, etc.
  - f. Top of slope – if any.
  - g. Size and location of bridge supports.
  - h. Horizontal area subject lease.
  - i. Area covered by structure.
  - j. Area of supports.
  - k. Height limitation(s).
  - l. Area outside the right-of-way lines (excess).
  - m. Fences, and size and location of gates.
  - n. Parcel identification number.
  - o. County, route and milepost.
  - p. Approximate location, width and purpose of all easements, including joint use agreements.
  - q. Distance from existing grade to underside of bridge structure to the nearest foot (minimum number to identify vertical clearance).
  - r. Typical viaduct section.
3. Calculate the following areas:
    - a. Gross lease area.
    - b. Area of supports.
    - c. Net lease area (gross minus support area).
    - d. Area covered by viaduct.
    - e. Area outside right-of-way lines (excess).

### 3.300 FORMS

Additional forms and technical information used by the Right-of-Way Engineering Section may be found in the Right-of-Way Engineering Policy and Procedure Binder.

The following forms are available only to the Engineering staff on the Engineering SharePoint site:

300	Resolution of Abandonment of a Portion of State Highway R/W
301	Resolution of Relinquishment of a Portion of State Highway R/W
301SL	Resolution of Relinquishment of a Portion of State Highway R/W or Land (State Lands)
302CC	Resolution Consenting to Relinquishment and Land Transfer Agreement (CC/RTC)
302City	Resolution Consenting to Relinquishment and Land Transfer Agreement (City Council / Board of Supervisors)
302County	Resolution Consenting to Relinquishment and Land Transfer Agreement (Board of County Commissioners)
302SL	Resolution Consenting to Relinquishment and Land Transfer Agreement (State

#### **Administrative Services Agreements:**

1. Service Agreement
2. Amendment

Go to: <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>

## 4.000 APPRAISAL

### 4.100 INTRODUCTION AND PURPOSE

The Fifth Amendment of the Constitution of the United States provides that “no person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation...” Likewise, Article 1, Section 8 of the Nevada Constitution provides that property shall not be taken without just compensation. Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ([Uniform Act](#)) (P.L. 91-646) expands on the Fifth Amendment and applies to all Federal or Federally funded real property acquisitions such as Federal-aid highways. Title III of this law further requires that real property being acquired for public purposes shall be appraised prior to negotiations.

There are a number of excellent textbooks and classes that concern themselves with every facet of the appraisal field; therefore, this portion of the Right-of-Way Manual does not attempt to cover material more adequately covered by other sources. The Nevada Department of Transportation’s Right-of-Way Division adheres to the appraisal standards found in the Uniform Standards of Professional Appraisal Practice, [49 CFR 24.103](#), and to the extent that it is not in conflict with Nevada Law, the Uniform Appraisal Standards for Federal Land Acquisitions ([UASFLA](#)).

PISTOL (People’s Initiative to Stop Taking of Our Land): This initiative was introduced and approved by voters of Nevada and has amended the [State Constitution adding Article I, Section 22](#). NDOT Appraisal Policy recognizes the Nevada Constitution’s impact on eminent domain practices and every effort has been made to recognize PISTOL in conjunction with [49 CFR 24](#).

### 4.150 RESPONSIBILITIES

#### 4.151 Chief Right-of-Way Agent

The Chief Right-of-Way Agent maintains overall responsibility for all appraisal policies and procedures.

#### 4.152 Deputy Chief Right-of-Way Agent

Under the supervision and direction of the Chief Right-of-Way Agent, the Deputy Chief Right-of-Way Agent supervises and directs the Assistant Chief Right-of-Way Agents and the Appraisal Review Section.

#### 4.153 Assistant Chief Right-of-Way Agent – North

- A. By delegation of authority from the Chief Right-of-Way Agent, the Assistant Chief Right-of-Way Agent – North, coordinates and directs the activities of the following sections of the Right-of-Way Division:
  - 1. Northern Right-of-Way District
  - 2. Northern Right-of-Way Utilities Section
- B. In the absence of the Chief and Deputy Chief Right-of-Way Agents, the Assistant Chief Right-of-Way Agent – North assumes the duties of the Chief Right-of-Way Agent.

#### 4.154 Supervisory Right-of-Way Agent - Negotiations

By delegation of authority from the appropriate (North or South) Assistant Chief Right-of-Way Agent, each Supervisory Right-of-Way Agent shall supervise the activities of Right-of-Way Agents who perform appraisals within their jurisdictional area. The Supervisory Right-of-Way Agent shall contact the Chief Appraiser to contract with outside fee appraisers. In all cases, the Supervisory Right-of-Way Agent and/or the Chief Appraiser shall ensure that the appraisals comply with the State Constitution (PISTOL), case law, the Nevada Revised Statutes, [49 CFR 24.103](#), the Uniform Standards of Professional Appraisal Practice ([USPAP](#)), and to the extent that it is not in conflict with Nevada Law, the Uniform Appraisal Standards for Federal Land Acquisitions ([UASFLA](#)).

The Supervisory Right-of-Way Agent shall ensure that a substantial number of Right-of-Way Agents are qualified to perform appraisal assignments as required.

#### 4.155 Chief Appraiser (Right-of-Way Supervisor)

- A. By delegation of authority from the Deputy Chief Right-of-Way Agent, the Chief Appraiser is given the authority and responsibility for the supervision of review appraisers and approval of appraisals and special valuation reports submitted to the Department. Furthermore, it is the responsibility of the Chief Appraiser and Review Appraisers to establish the amount believed to be just compensation for all acquisitions performed by staff.
- B. By delegation of authority from the Deputy Chief Right-of-Way Agent, the Chief Appraiser with the assistance from the Staff Specialist for Appraisal is responsible for the research, evaluation, recommendation and implementation of policy and procedure in the area of appraisal statewide.
- C. It is the Chief Appraiser's responsibility, with the cooperation and assistance of the Supervisory Right-of-Way Agent and Staff Specialist to evaluate the professional competence of the various fee appraisers that contract with the

Department of Transportation. The Agency shall review the experience, education, training, and other qualifications of appraisers annually, including review appraisers, and utilize only those determined to be qualified.

- D. The Chief Appraiser with the assistance of the Staff Specialist is responsible for the establishment of new and revised methods of operations as may be necessitated by Federal and State laws and regulations; will inform the Chief Appraiser of all new and revised methods of operations that have resulted due to changes in State and Federal laws and regulations; and is responsible to ensure all policies, regulations and procedures are in compliance with State and Federal laws and regulations as they apply to appraisal.
- E. The Chief Appraiser shall be responsible for contracting with outside fee appraisers as necessary to ensure the accomplishment of appraisal requirements.
- F. The Chief Appraiser with the assistance of the Staff maintains the list of approved appraisers.

#### 4.156 Staff Specialist

The Staff Specialist with the assistance of the Chief Appraiser is responsible for making periodic review of this manual to ensure that it properly reflects current Federal Highway Administration policy and Nevada Department of Transportation procedures. Changes of major importance need to be circulated throughout the Administration section of the Right-of-Way Division for comment prior to finalization and inclusion in this manual.

The Staff Specialist shall be the control point for reviewing all appraisal and specialty contracts. The Districts shall submit all appraisal contracts through the Staff Specialist, who shall review all contracts to ensure that they comply with all Federal regulations, Nevada Statutes, and this manual. Right-of-Way Control maintains records of these contracts and the fees charged.

#### 4.157 Definitions

Please see Administration, [Section 1.500](#) of this manual

##### **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.

Source: [49 CFR 24.2\(a\)\(3\)](#)

##### **Shall:**

“Shall” means that an action is mandatory and must be performed. No alternative action is to be considered in its place.



### Should:

“Should” explains how a regulatory provision is to be implemented under most circumstances. Unusual circumstances may warrant different action after, careful consideration and discussion with all parties affected.

### Value:

The definition of value per Nevada’s Constitution is: “In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.”

For further consideration, [NRS 37.009\(6\)](#) provides the following: “Value” means the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property.

## 4.200 APPRAISAL POLICY

### 4.201 Exception from Established Appraisal Policy

The Nevada Department of Transportation’s Right-of-Way Division adheres to the appraisal standards as provided by State Law, the Uniform Standards of Professional Appraisal Practice (USPAP), [49 CFR 24.103](#), and to the extent that it is not in conflict with Nevada Law, the Uniform Appraisal Standards for Federal Land Acquisitions ([UASFLA](#)) and as required in Title VI and related statutes.

Exceptions from these standards are achieved only by using the “Scope of Work Rule”, the Appraisal Conditions, and the “Jurisdictional Exception Rule” of [USPAP](#). Any exception must be approved by the Chief Appraiser.

Internal changes to, or exceptions from approved appraisal policy and procedures may be made as case law, appraisal standards, internal needs, State Law, or Federal Law changes. Any changes to this policy will occur only after concurrence of the Chief Appraiser, Chief Deputy Attorney General, Chief Right-of-Way Agent and [Federal Highway Administration \(FHWA\)](#).

### 4.202 Right-of-way Cost Estimates

Right-of-way cost estimates of the projected right-of-way acquisition costs are periodically required for budgetary and planning purposes. Right-of-Way cost estimates are to be

completed in an abbreviated format in conformance with [USPAP](#) Standard Rules 1 and 2. Right-of-Way Agents preparing cost estimates should use the procedures outlined in the [Negotiations section](#) of this manual.

#### 4.203 Appraisal Prior to Negotiations

Unless the appraisal has been waived, in writing Waiver of Appraisal (Form 520B), all real property needed for a Department of Transportation project must be valued using either the appraisal or the Waiver Valuation process.

#### 4.204 Owner's Right to Accompany Appraiser

The owner or the owner's designated representative shall be mailed a written invitation to accompany the appraiser on the appraiser's inspection of the property. This right also applies to all lessees who own an identifiable interest in any structure, building or improvement deemed to be a part of the real property to be acquired.

#### 4.205 Types of Acquisition

- A. The Nevada Department of Transportation usually acquires title to a parcel in "fee". However, the Department may occasionally, acquire a "less than fee" title. The appraiser must be prepared to estimate value for "fee" as well as for "less than fee".
  1. Total Acquisition

A total acquisition is the acquisition, in fee, of an entire property.
  2. Partial Acquisitions (in fee)
    - a. An acquisition of this nature may result in damages, or in some cases, benefits to the remainder parcel.
    - b. Damages result when, for a number of reasons, the value of the remainder after the acquisition is less than the value of the remainder before the acquisition. Conversely, special benefits result when the value of the remainder after the acquisition is greater than the value of the remainder before the acquisition.
  3. Valuation of Access Rights

The valuation of access rights is measured by the loss or increase in value, if any, of the remaining parcel measured on a before and after basis. Control of access may be appraised in a similar fashion subject to NDOT policy.
  4. Valuation of Temporary Easements

A temporary easement is defined as an area outside the right-of-way limits required to allow the construction of a highway feature. The loss to the property owner as a result of the temporary easement will vary according to the length of time the easement is needed, the use to which the temporary easement is to be placed, and the type and character of property being valued. A method of measuring the compensation is the present value of land rental and any temporary damages to the remaining real estate for the duration of the easement.

5. Valuation of Permanent Easements

A permanent easement is defined as an area outside the right-of-way limits required to construct a highway related feature that is permanent in nature and requires ongoing maintenance. This type of easement requires the purchase of a less than fee interest in the land. Typically, a use or utility factor is estimated based upon remaining utility to ownership.

#### 4.206 Before and After – Partial Acquisitions

The appraiser shall estimate the value of the whole (larger parcel) before the take, the value of the part taken as part of the whole and the value of the remainder as part of the whole. Next, the appraiser shall estimate the value of the remainder after the take. Damages, if any, are calculated as the difference between the value of the remainder as part of the whole and the value of the remainder after the take. Compensation is the sum of the value of the part taken and net damages.

#### 4.207 Damages

- A. Compensation for damages to remainder properties in an eminent domain proceeding is addressed in the Nevada Revised Statutes and in Nevada case law. In determining damages to the remainder(s) in a partial acquisition, [NRS 37.110](#) states that damages must be assessed...” which will accrue to the portion not sought to be condemned, both by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff” (NDOT). These damages can be generally placed in the categories of severance damages and what may be called proximity damages. However, in the reporting of damages to the remainder, these two categories should be combined into one sum.
1. Severance damages: The following occurrences are commonly considered as being among the potential causes of a diminution in value of the remainder.
    - a. Changes to a more irregular shape
    - b. Change in size to less than required for a use

- c. Changes to access
- d. Changes of the roadway/highway grade
- e. Impairment of visibility from the roadway/highway
- f. Impairment of view from the remainder parcel

Some of the above items are more applicable to specific types of uses, i.e., visibility from the highway issues generally relate to commercial properties and view impacts are generally related to residential properties.

- 2. Proximity damages: Damages caused by the construction of the improvement in the manner proposed, including, but not limited to, visual impacts of the improvements proposed to be constructed as part of the project, noise, dust and fumes.

It is imperative that the appraiser has a copy of the construction plans and fully understands all impacts to the remainder parcel caused by the construction of the project.

- B. Damages are to be addressed in all appraisals for partial acquisitions. If possible, the degree of damages should be proven by a paired-sale analysis of the market data. Damages should not be simply assumed and conversely, the lack of damages should not be assumed. If it is determined there are no damages to the remainder, the statement to that effect must be accompanied by an analysis that may, at times, approach the complexity of that used to ascertain damages.

#### 4.208 Non-Compensable Damages

Not all damages to a remainder property are compensable. Nevada Case Law, which normally defines non-compensable damages, is ever changing. It is imperative that eminent domain appraisers keep current with Nevada Supreme Court rulings on damages. Past rulings have found that remote and speculative damages are generally held to be non-compensable. Some damages that have been ruled non-compensable when they are not accompanied by an acquisition are considered compensable when there is a acquisition from the parcel. As appraisers for the Department are normally appraising parcels with acquisitions, most of these damages are compensable. Counsel must be consulted to determine the non-compensability of any questionable damage item, such as:

Acquisitions from properties where there are businesses, including outdoor advertising, that must be relocated, or, from a property that is in the process of being developed, or redeveloped, may involve claims of damages related to business losses, i.e., frustration of plan or loss of goodwill.

The *Uniform Relocation Assistance and Real Property Acquisition Policies Act* of 1970, as amended requires condemners to break out their offers of purchase between acquisition and damages.

#### 4.209 Benefits

A. Benefits are beneficial factors attributable to the proposed project. There are two types of benefits, general and special:

1. General Benefits

General benefits are defined as the benefits that accrue to the community at large, to the area adjacent to the improvement, or to other property similarly situated. General benefits may not be used to offset damages.

2. Special Benefits

Special benefits are those benefits that accrue directly and solely to the advantage of the property remaining after a partial acquisition. Special benefits may be used to offset damages.

#### 4.210 Appraisal Assignments

It is the responsibility of the Supervisory Right-of-Way Agent to make all appraisal assignments that are to be completed by Right-of-Way Agents. The Chief Appraiser is responsible for all fee appraisal assignments, Review Appraisal assignment and all other assignments involving the Appraisal Review Section.

If questions should arise as to the number of appraisal reports required or the appraisal format to be followed, the Supervisory Right-of-Way Agent shall contact the Chief Appraiser. All appraisal assignments to Fee Appraisers are to be in writing. Appraisal assignments to Agent/Appraisers and Review Appraisers may be verbal or written at the discretion of the Supervisory Right-of-Way Agent or the Chief Appraiser.

The contract to an individual fee appraiser constitutes the written assignment. Specific instructions to the fee appraiser shall be included in the contract.

An appraiser or an intern CANNOT have a direct or indirect interest in a property to be appraised or reviewed. This includes personal, family, business associate or any other relation that could be interpreted as leading to an introduction of bias into the process.

#### 4.211 Appraisal Report Requirements

All appraisals are to conform to the Nevada Department of Transportation Appraisal Report Requirements as described in Introduction and Purpose, [Section 4.100](#) of this manual.

#### 4.212 Specialty Reports

- A. A special report is a written estimate from a specialist in a particular field. The written report shall at a minimum comply with [USPAP](#), if prepared for personal property or business interests ([USPAP](#) Standards 7-8-9-10), other reports may generally follow these guidelines.
1. Statement of the purpose of the report.
  2. Definition of value(s) reported, i.e., market value, salvage value, retention value, etc.
  3. Identification of the property and its ownership.
  4. Statement of appropriate contingent and limiting conditions, if any.
  5. Identification of the value problem.
  6. The estimate of value(s).
  7. The data and analysis to explain substantiate and document the estimate of value(s).
  8. The dates(s) on which and/or as of which (retrospective) the estimate of value(s) is made.
  9. A certification, signature, and date of signature of the specialist.
  10. Other descriptive material (maps, charts, plans, photographs) as applicable.
  11. The project number and parcel identification.
- B. Additional contents of the specialty report is dependent on the complexity of the valuation problem and should explain, substantiate, and document the estimate of value contained therein.

#### 4.213 Sign Appraisals

- A. Off-premise signs advertise a business or product that is not available on the subject property. There are three elements to an off-premise advertising sign to consider in the appraisal process. Two elements, the sign site and the sign structure, are tangible real property. The third element is the intangible outdoor advertising business. It is imperative that the real estate appraiser understands these elements and the associated ownership interests and gathers all necessary lease information prior to their appraisal.
1. The appraiser shall appraise all real property improvements in the acquisition parcels, including any off-premise advertising, or billboard,

sign structures. This initial activity should not be confused with the valuation of any intangible business value as required under Nevada case law.

2. The value of any billboard site within the acquisition area and the billboard permit as they contribute to the value of the real property must be appraised.
  3. If the billboard structure is a tenant-owned improvement, as defined in [49 CFR 24.105](#), the sign structure will be appraised in conformance with Appraisal Section [4.259](#) of this manual.
  4. If the outdoor advertising business (possibly along with the salvaged sign structure) must be relocated to another site, the relocation of the business will be handled under the relocation assistance program. If a suitable site for relocation cannot be found within the “market area”, the lost business value, or goodwill, must be appraised by a business appraiser. This activity is outside of the scope of the original real estate appraisal made for negotiating purposes, and may be done as part of a court action if legal occupancy is necessary.
- B. On-premise signs are those used in conjunction with the property being appraised (e.g. a service station pricing sign, a tenant directory sign of a commercial building, directional signs, etc.). On-premise signs are considered a part of the real estate and must be included in the valuation. In the case of a partial acquisition the owner may retain the sign. In either case, estimates of the relocation cost and salvage value are required.

#### 4.214 Acceptable Report Formats

- A. One report format is acceptable for determination of just compensation. The Chief Appraiser and assigned appraisers must be in agreement prior to contract execution. For purposes of recommended just compensation the appraiser should follow the “Scoping” document as provided to the appraiser.
1. Narrative  

A restricted use report in conformance with for a “Restricted” report may be used for internal purposes other than estimated just compensation. See Chapter 37 of NRS Section 2.
- B. Acceptable appraisal formats for surplus property, waiver valuations, or other internal purposes (on a case by case basis), are as follows:
1. Appraisal Reports developed and reported in conformance with USPAP Standards 1 and 2 and the provided “Scoping” document.
    - Narrative format

2. Restricted Use Reports developed and reported in conformance with USPAP Standard Rule 1 and 2.
    - Narrative format
- C. The guidelines for selection of Appraisal formats are as follows:
1. Appraisal Report
    - a. Used by Contracting Fee Appraisers and Department Staff
    - b. May be used when Federal funds are involved
    - c. No dollar amount limitation
    - d. No restrictions as to damages or complications
    - e. Prepared in conformance with Section 4.100 referenced standards. and the “Scoping” document provided.
    - f. Used by Contracting Fee Appraisers and Department Staff
    - g. No dollar amount limitation
    - h. To be used as an option for internal reporting only.
    - i. Prepared in conformance with Section 4.100 referenced standards.

#### 4.215 Number of Appraisal Reports Required

- A. At least one appraisal for each ownership
- B. Generally, five copies of the appraisal report are required on all properties. The number of copies is at the discretion of the Supervisory Right-of-Way Agent or the Chief Appraiser. The copy distribution is:
  1. 1-Central Records
  2. 1-Reviewer
  3. 2-Deputy Chief
  4. 1-Property owner
- C. For Surplus Property - four copies of the appraisal are required.
- D. Assistant Chief Right-of-Way Agent and Right-of-Way Control both receive a copy of Appraisal Review-Estimate of Value (Form 437).



#### 4.216 Additional Appraisal Reports

In certain circumstances, additional appraisers above the requirements in the Appraisal, [Section 4.216](#) of this manual may be hired. In this case, the concerned Supervisory Right-of-Way Agent, or Chief Appraiser, with the concurrence of the Staff Specialist, and approval of the Chief Right-of-Way Agent or Assistant Chief Right-of-Way Agent may order the additional appraisals. This requirement may exist in the case of highly complex or controversial acquisitions.

#### 4.217 Project Influence (Scope of the Project Rule)

“Project” means a highway-related undertaking that is planned, designed, and intended to operate as a unit. When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners 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.

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

#### 4.218 Valuation and Acquisition of Personal Property

When personal property that is normally included in an open market transaction is included in the acquisition, the appraisal shall include an estimate of salvage, or retention, value. If questions arise as to what should or should not be included, refer to the Staff Specialist of Negotiations for resolution.

#### 4.219 Avoidance of Conflict of Interest

No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised that would in any way conflict with the preparation or review of the appraisal. No appraiser shall act as a negotiator for real property which that person has appraised.

#### 4.220 Larger Parcel Concept

- A. It is always necessary for the appraiser to determine which parcel constitutes the larger parcel to be valued. The traditional tests for the larger parcel are:
  - 1. Unity of Use
  - 2. Contiguity of the Property
  - 3. Unity of Ownership

- B. The courts have used these tests and as needed have applied the tests of zoning, physical division and in some cases, integrated use rather than physical contiguity. In any case, the appraiser must have an understanding of the concept of the larger parcel.

#### **4.221 Valuation of Leasehold – Leased Fee Interest**

In the valuation of an acquisition encumbered by leasehold, the Nevada Department of Transportation adheres to the undivided fee rule of valuation. The appraiser will value the parcel as if unencumbered (fee simple). The State is not bound by agreements to which it is not a party and is certainly not obligated as a matter of law to consider any covenant between property owners, which is not compensable under State law. Furthermore, contract rent will be considered only as it relates to market value. The distribution of this valuation and an award of a subsequent valuation to the lessee by the lessor is the responsibility of the lessee, lessor or the courts.

#### **4.222 Valuation of Tenant-Owned Buildings, Structures and Improvements**

Even though the Nevada Department of Transportation adheres to the undivided fee rule in valuing leased property, the tenant may have the right to compensation for tenant-owned buildings, structures, or other improvements. A tenant-owned improvement is a building, structure, fixture, or other real property improvement, placed by the tenant on the premises of another. Such improvement would be considered real property if it were owned by the owner of the real property on which it is located. Furthermore, such improvement would be considered real property regardless of the tenant's right or obligation to remove the improvement at the expiration of the lease term. This does not mean that the lease terms should not be considered in determining market rent or tenant improvement value. Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property (contributory value), or its salvage value, whichever is greater. (Salvage value is defined in [49 CFR 24.2\(a\)\(23\)](#)).

#### **4.223 Fee and Staff Appraiser Qualifications and Performance Reports**

The Chief Appraiser for Appraisal, with the assistance of the Supervisory Right-of-Way Agent and the Staff Specialist, shall periodically complete and maintain an evaluation of the qualification and performance of each of the contracting fee appraisers and District staff appraisers.

#### **4.224 Appraisal of Donated Right-of-Way**

A title report must be ordered for, and the Chief Right-of-Way Agent must approve, all donations. Unless the appraisal has been waived in writing Waiver of Appraisal (Form 520B), all real property needed for a Department of Transportation project must be valued using either the appraisal or the Waiver Valuation process.

## 4.250 APPRAISAL PROCEDURE

### 4.251 Waiver Valuation

The purpose of this procedure is to provide a tool to value acquisition parcels of limited value with a minimum expenditure of taxpayer dollars. A waiver valuation may not require a written invitation to accompany the appraiser on the appraiser's inspection of the property.

When it is apparent that the subject of an appraisal assignment may fall into this category, the Supervisory Right-of-Way Agent, Negotiations, shall be notified.

### 4.252 Appraisal Report Preparation

All appraisals prepared for the Nevada Department of Transportation (NDOT) are required to conform to State Law, the Uniform Standards of Professional Appraisal Practice ([USPAP](#)), [49 CFR 24.103](#), and, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions. Exceptions are achieved only by application of the "Jurisdictional Exception" Rule of [USPAP](#), Scope of Work Rule or Report Conditions. Nevada Department of Transportation Appraisal Report Requirements (Form 430) is to be followed unless superseded by written instructions.

In all cases, excepting for the use of a waiver valuation, a narrative appraisal is required in accordance with the 'Scoping' document provided. Partial acquisitions and complex property assignments are to be reported in a narrative format.

### 4.253 Economic Comparison of Land Service Facility

- A. Right-of-Way Agents and Review Appraisers may be assigned to provide cost evaluations of proposed land service facilities such as private roads, frontage roads, sidewalks and pedestrian separations and vehicular or stock passes. When required, they may also provide consultation and advisory services concerning property valuations; respond to technical questions and provide information as required.
- B. When such a study is requested, an economic comparison may be prepared to assist in the justification of the proposed facility. Justification consists of:
  1. The difference in the current market value of the property as determined through the use of before and after estimates of the value of the property both with and without the proposed facility.
  2. This difference would then be compared with the current estimated cost of the land service facility to economically justify its construction.

#### 4.254 Appraisal of non-highway right-of-way Properties

Appraisals of properties such as roadside rest areas, scenic easements, maintenance station sites, radio tower sites, road building material sites, sign sites and airspace rights are performed essentially in the same manner as for highway rights-of-way; however, fewer or additional elements may be required by the Supervisory Right-of-Way Agent's instructions.

#### 4.255 Surplus Property Valuations

When the Surplus Property Committee recommends disposal of property no longer required for highway purposes under circumstances which conform to the statutory requirements for direct sale to an abutting owner ([NRS 408.533.1\(C\)](#)), the chairman of the Surplus Property Committee shall request an appraisal from the Chief Appraiser. The appraiser assigned, after gathering and analyzing sufficient preliminary information, shall report his findings to the Chief Appraiser. Based on these findings, the Chief Appraiser will recommend, by memo to the Chairman of the Surplus Property Committee, either a direct sale or a sale by public auction. All surplus property valuations are to be completed by NDOT Right-of-Way Agents or Review Appraisers.

If the direct sale is the most economically favorable option, valuation will be based on the value of the land for its use to the abutting owner (similar to the Larger Parcel concept in a partial acquisition). In other words, the appraiser shall estimate the hypothetical value as if the subject property were a part of the adjoining ownership. Should an estimate of value for public auction be the more favorable option, the appraiser shall appraise the property as a separate parcel.

In either case, the appraisal shall be prepared in the appropriate appraisal report format in accordance with NRS 37.260.

#### 4.256 Legal Interpretation Procedure

Occasionally an appraisal assignment will arise in which a legal opinion or interpretation is needed. In these cases, the need for legal interpretation must be requested through the Staff Specialist for Appraisal. The correspondence requesting the legal assistance should carefully spell out the problem and the time frame in which the answer is needed. In cases of a minor nature, a phone call to the Staff Specialist may be used where time is a factor.

A file of legal decisions pertaining to appraisal shall be maintained at Headquarters by the Staff Specialist.

#### 4.257 Appraisal Contracting

- A. The Right-of-Way Division should attempt to do as many appraisals as possible with staff appraisers. However, the Division's workload is often heavy and staff appraisers may not be available. Also, the Division may be required to acquire a parcel which is outside the expertise of the available staff. In such cases, it is often necessary to contract with independent fee appraisers. Selection of a fee

appraiser should be from the list of approved appraisers. For an appraiser to be included on the list involves the following:

1. Submission of a Self-Contained appraisal report of a complex property involving the three approaches to value. To be included on the list of approved residential appraisers; submission of a URAR form report is acceptable.
  2. Submission of a resume which contains:
    - a. The applicant's educational accomplishments
    - b. Professional courses of study completed
    - c. Professional experience and/or a length of time in practice
    - d. A list of recent clients
  3. Evidence of licensure by the State of Nevada as a Certified General Appraiser, or in the case of residential appraisers, evidence of licensure as a Certified Residential Appraiser.
  4. Evidence of membership in professional appraisal organizations, if any.
- B. The Contracting Authority (Chief Appraiser) should assemble a bid package to reduce appraisal costs. This package should contain parcels having sufficiently similar characteristics to give the contracting fee appraiser an opportunity to reduce the amount of research necessary to complete the assignment and provide the most economical bid. The Contracting Authority shall choose at least three appraisers from the list of approved appraisers and request bids on the package as presented. Every effort should be made to ensure that the appraiser fully understands the assigned problem.
- C. Once the bid responses are received, the Chief Review Appraiser shall select the appraisers based on, but not limited to, the following criteria:
1. The difficulty of the assignment and the ability of the appraiser to adequately handle the appraisal problem.
  2. The appraiser's past history with the Department in completing the assignment in an acceptable and timely manner in accordance with Department requirements.
  3. The dollar amount of the fee bid in relationship to the appraisal problem and the other fees submitted.
- D. During the bidding and selection process an audit trail shall be maintained. Bid request letters, submitted bids, and memos to the file shall be placed in the file to document the Department's compliance with the competitive bidding process.

- E. Following selection of an appraiser’s written proposal, the Contracting Authority (Chief Appraiser) then enters into a formal contract with the fee appraiser using Contract for Appraisal Services (Form 438). This contract includes and defines the “Scope of Work” specific to the individual project and needs.
- F. This contract is circulated through the Staff Specialist for review and then returned to the Chief Appraiser for execution by the appraiser. Once the contract is executed by the contract appraiser it is again forwarded to the Staff Specialist who will circulate it internally for execution.
- G. The executed contract is distributed as follows:
  - 1. The original to Administrative Services and subsequently to Central Files
  - 2. Two copies to the Contracting Authority (Chief Appraiser): One copy is sent by the Contracting Authority to the Appraiser with the Notice to Proceed and the remaining copy is retained by the Contracting Authority.
  - 3. One copy to Right-of-Way Control
  - 4. One copy to the Staff Specialist for Appraisal
  - 5. One copy to the Supervisory Right-of-Way Agent
- H. The Staff Specialist is responsible for monitoring the contract and ensuring that the State’s requirements have been properly followed.

#### **4.258 Fee Appraisal Liaison and Project Pre-Appraisal Planning Meeting**

Appraisal assignment misunderstandings can be greatly reduced with meetings between the appraisers, review appraisers and District personnel prior to the initiation of appraisals on a specific project. In cases involving complex appraisal problems or unique situations it is recommended that a meeting be held with legal counsel to discuss the appraisal issues involved and the Department’s appraisal requirements.

#### **4.259 Valuation of Tenant-Owned Improvements**

- A. Prior to requesting permission to appraise and acquire tenant-owned improvements, the Supervisory Right-of-Way Agent is required to identify those acquisitions that are tenant-occupied.
- B. Once permission to appraise and acquire has been received, the Supervisory Right-of-Way Agent shall assign an Agent to inform both the property owner and tenant or tenants of the State’s policy on tenant-owned improvements including outdoor advertising signs. At this time the owner and tenant shall be given a real property inventory form, Inventory of Improvements (Form 522), for their use in

listing real property improvements owned by the tenant. This form will have an attached disclaimer of interest in the items listed for the owner to sign (Form 543) in addition to a certification of ownership for the tenant to sign, Lessee's Certification of Ownership Tenant-Owned Improvements, (Form 545). The owner and tenant will be informed that this inventory of tenant-owned improvements must be returned to the Department within 30 working days from the day they received it (or the date of the letter in cases where personal contact cannot be made). It should also be explained to the tenant at this time that if agreement and release of interest cannot be obtained then the Department has no alternative but to proceed with the appraisal and negotiations working solely with the property owner.

- C. Once an agreed upon inventory has been received, it is reviewed by the Agent, the Supervisory Right-of-Way Agent and the assigned Reviewer to determine items that are personalty and items that are to be considered realty. At this time if questions arise as to the status of a particular item, assistance is to be sought from the Staff Specialist for Appraisal and Property Management. Once the list of tenant-owned improvements has been finalized, it shall be given to the Contracting Authority for inclusion in the request for proposals. The completed appraisal report must contain a Certificate of Appraiser (See Appraisal Report Requirements, Form 430) reflecting the value of tenant-owned improvements, that the appraiser inspected the subject property and that the owner of the tenant-owned improvements was given the opportunity to accompany the appraiser on his/her inspection of the property. This Certificate can be separate or it can be contained within the Certificate required for the real property.
  - 1. Where the improvements are unique or substantial, a cost estimator shall be obtained. If machinery and/or equipment or any other specialty items require valuation, a specialist shall be obtained. The results of this estimate shall be incorporated in the building cost estimate. The resulting final cost estimate will be reviewed and supplied to the appraisers for consideration in their reports.
- D. The Department, in these instances, must segregate the value of the inventoried improvements as to ownership. The negotiations process will require this information since a separate summary statement must be given to both the fee owner and the tenant when the offer is made.
- E. In dealing with tenant-owned improvements it is important to understand that the Department is not purchasing anything more than it has ever purchased. It is simply segregating the value to be paid into the separate interests of the fee owner and the tenant. The value of the tenant-owned improvements is determined by the value that the improvements contribute to the overall value of the property being acquired. Contributory value is therefore defined as the dollar

amount that a building, structure, or other improvement adds to the market value of the real estate being valued.

- F. Salvage value, as it pertains to tenant-owned improvements, is defined as the dollar amount that a building, structure or improvement would bring if sold on the open market with the stipulation that such items be removed from the property it occupies at the time of sale, taking into consideration the costs to dismantle and remove from the premises.
- G. Once the appraisal of the subject acquisition has been completed it will be turned over to Review Section in the normal manner. Review will make its estimate of just compensation, which will consist of the contributory value, or salvage value; whichever is greater, of tenant-owned improvements excluding any personalty items.

#### **4.300 FORMS**

- 430 Appraisal Report Requirements
- 431 Appraiser Introductory Letter
- 433 Appraiser Review Checklist
- 436 Staff Appraisal Assignment
- 437 Appraisal Review – Estimate of Value
- 438 Contract for Appraisal Services
- 438A Amendment to Contract for Appraisal Services
- 464A Appraiser Introductory Tenant-Owned Improvements Letter
- 464B Appraiser Introductory Fee Owner Tenant-Owned Improvements Letter



## 4.500 APPRAISAL REVIEW

### 4.550 INTRODUCTION AND PURPOSE

The purpose of appraisal review is delineated in [49 CFR 24.104](#), which states:

The Agency shall have an appraisal review process and, at a minimum:

- A. A qualified review appraiser (see [49 CFR 24.103\(d\)\(1\)](#) and appendix A, [49 CFR 24.104](#)) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in [49 CFR 24.2\(a\)\(3\)](#), appraisal requirements found in [49 CFR 24.103](#), Case Law, State Law, Uniform Standards of Professional Appraisal Practice ([USPAP](#)) and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions ([UASFLA](#)), and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the Agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A, [49 CFR 24.104\(a\)](#)).
- B. If the review appraiser is unable to recommend (or approve) and appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with [49 CFR 24.103](#) and Standard Rule 3 of [USPAP](#) to support a recommended (or approved) value. (See appendix A, [49 CFR 24.104\(b\)](#)).
- C. The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s) in compliance with Standard Rule 3 of [USPAP](#). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed hat includes the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A, [49 CFR 24.104\(c\)](#)).

The review appraiser plays an important role in the acquisition process and is charged with a great deal of valuation and administrative responsibility.

## **4.600 RESPONSIBILITIES**

### **4.601 Chief, Right-of-Way Agent**

The Chief Right-of-Way Agent maintains overall responsibility for all appraisal and appraisal review policies and procedures.

### **4.602 Deputy Chief, Right-of-Way Agent**

Under the supervision and direction of the Chief Right-of-Way Agent, the Deputy Chief Right-of-Way Agent supervises and directs the Review Appraisal Section.

### **4.603 Assistant Chief Right-of-Way Agent – North**

- A. By delegation of authority from the Chief Right-of-Way Agent, the Deputy Chief Right-of-Way Agent coordinates and directs the activities of the following sections of the Right-of-Way Division:
  - 1. Northern Right-of-Way District
  - 2. Northern Right-of-Way Utilities Section
  - 3. Appraisal Review Section
- B. In the absence of the Chief and Deputy Chief Right-of-Way Agents, the Assistant Chief Right-of-Way Agent – North assumes the duties of the Chief Right-of-Way Agent.

### **4.604 Right-of-Way Supervisor (Chief Appraiser)**

By delegation of authority from the Deputy Chief, Right-of-Way, the Chief Appraiser is given the authority and responsibility for supervision of the Appraisal Review Section and approval of appraisals and special valuation reports submitted to the Department.

The Staff Specialist assists the Chief Appraiser in making recommendations for changes in appraisal policy and procedure.

The Appraisal Review Section maintains a library of appraisal texts and articles pertinent to the appraisal of real estate.

### **4.605 Review Appraisers**

Review Appraisers, Interns and Trainees are directly responsible to the Chief Appraiser for all matters.

Review Appraisers are delegated the authority to establish the amount believed to be Just Compensation.

An appraiser or an intern CANNOT have a direct or indirect interest in a property to be appraised or reviewed. This includes personal, family, business associate or any other relation that could be interpreted as leading to an introduction of bias into the process.

## 4.650 POLICY

### 4.651 Review of all Appraisal Reports

The Department's Appraisal Review Section shall review all appraisal and specialty reports concerned with estimating the value of property to be acquired or sold by the Nevada Department of Transportation at the direction of the Deputy Chief Right-of-Way Agent.

All reviews shall be completed in compliance with Standard 3 of the Uniform Standards of Professional Appraisal Practice ([USPAP](#)). An exception to this policy is where just compensation is determined to be \$10,000, or less, as provided for in (the Appraisal section of this manual, Administrative Determination of Just Compensation) [Section 4.652](#), Determination of Just Compensation below.

### 4.652 Determination of Just Compensation

The Reviewer shall establish the amount believed to be just compensation. This figure may, or may not, coincide with the value reported in the appraisal submitted for review. The decision of the Review Appraiser must be well documented within his/her files and adequately explained in the review comments. Upon receipt of additional information prior to the close of negotiations or settlement, the Review Appraiser may adjust his/her estimate of just compensation.

A Reviewers determination of just compensation is not required under the following:

A. Requests from the Legal Division

When the appraisal report is received from the Legal Division and is being reviewed for condemnation purposes, the Review Appraiser shall provide a technical appraisal review in compliance with [USPAP](#) Standards Rule 3. The purpose of the review does not include the Review Appraiser developing his or her own opinion of value and form 437 shall not be used. To assist the Legal Division in pre-trial and/or trial preparation, the Review Appraiser may also provide an administrative review in the form of consulting services pertaining to the appraisal report be reviewed. This Consulting Service is provided under Attorney/Client Privilege and is not a technical review of the report.

B. Restricted Use Reports

Review of appraisals completed on the Restricted Use Report (Acquisition Cost Estimate) format shall be at the discretion of the Chief Appraiser or District Supervisor.

Chapter 37 of the Nevada Revised Statutes Section 2 amended as follows: “An appraiser shall not use a Restricted Use Appraisal Report which is prepared in accordance with the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of The Appraisal Foundation to determine, establish or assess the nature, value, quality or use of real property in a judicial proceeding for eminent domain brought pursuant to this chapter.

C. Reviews Completed by Contract Fee Appraisers

When a contract fee appraiser completes a review appraisal, the Assistant Chief, Right-of-Way shall establish just compensation.

**Note:** At times due to workload, outside certified, license appraisers are employed to complete appraisal reports for the Department. Proposal letters, including a project description and scope, are sent to appraisers on a pre-qualified list. Upon responses, a choice is made, and a Contract for Appraisal Services (Form 438) is prepared defining the “Scope of Work” related to the individual project and need.

#### 4.653 Tenant-Owned Improvements

When acquiring an interest in real property, the Nevada Department of Transportation must also acquire an equal interest in all buildings, structures and other improvements located upon the real property. Such buildings, structures and improvements are part of the real property to be acquired notwithstanding the right or obligation of a tenant to remove such at the expiration of the lease term. The value is the contributory value or salvage value whichever is greater. Contributory value is defined as the dollar amount that a building, structure, or other improvement contributes to the market value of the real estate.

Salvage value is defined as the dollar amount that a building, structure or improvement would bring if sold on the open market with the stipulation that such items be removed from the property it occupies at the time of sale, taking into consideration the costs to dismantle, move, reassemble, etc.

#### 4.654 Disregard of Project Influence

Any increase or decrease in the 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 by the Review Appraiser in establishing just compensation.

#### 4.655 Documentation of Review

All estimates of just compensation shall be documented and retained as a part of the parcel file.

#### 4.656 Uneconomic Remnant

Federal regulations [49 CFR 24.2\(a\)\(27\)](#) states “The term uneconomic remnant means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the Agency has determined has little or no value or utility to the owner.”

If a partial acquisition of a parcel of land leaves the remainder parcel in such irregular shape, uneconomical size, utility or condition as to be of little or no utility or value to the owner, the Nevada Department of Transportation shall offer to acquire the uneconomic remnant along with the partial acquisition.

It is the responsibility of the Review Appraiser to determine that a remainder is uneconomic to the owner. An uneconomic remnant may have value in the market but may have little or no utility or value to the owner. The test is whether the Review Appraiser determines that the remnant has little or no utility to the owner, not whether there is value in the marketplace. Once this determination has been made, the owner shall be given the option of accepting damages and retaining the uneconomic remnant or selling the parcel to the Department. The dollar amount of these alternatives shall be stated in the review.

#### 4.657 Relocation Assistance Benefits

Review Appraisers shall ensure that the Appraisers have not given consideration to nor included in their appraisals any allowance for relocation assistance benefits. The Review Appraiser must establish a fair market rental determination for acquired improved property. This fair market rental determination will be utilized by the relocation Agent to assist in calculating Replacement Housing Payments for 90-Day owners who elect to rent rather than purchase.

#### 4.658 Review of Specialty Reports

When a separate valuation of machinery, equipment or other specialty item is required, and when the Nevada Department of Transportation retains a specialist, the report shall be reviewed.

#### 4.659 Independent Valuation by Reviewers

If the Review Appraiser is unable to approve or recommend approval of an appraisal, and it is determined that it is not practical to obtain an additional appraisal, the Review Appraiser shall develop appraisal documentation to support a Reviewer’s estimate of market value and just compensation. The Reviewer’s estimate of market value must comply with [49 CFR § 24.103](#) and Standard 3 of the Uniform Standards of Professional Appraisal Practice ([USPAP](#)).

#### 4.660 Review of Cost Estimates

Cost estimate reports may be analyzed by the Reviewer at the discretion of the Deputy Chief Right-of-Way Agent. In the event of a complicated cost estimate, input or total review by the Department's Architectural Division or other qualified specialists should be solicited.

#### 4.661 Preliminary Project Review

Prior to commencing the appraisal process a preliminary project review should be conducted by the Appraisal Review staff.

The purpose of this review is to identify and document or track the following:

- A. Write a preliminary project appraisal scope.
- B. Complex issues that may require additional appraisals.
- C. Unique appraisal problems, which may result in the need for specialist reports, such as: cost estimates, engineering studies, etc.
- D. Identification of parcels eligible for appraisal waiver and an Administrative Determination of Just Compensation.
- E. Identification of parcels having hazardous materials or environmental contamination.
- F. The need for legal opinions.
- G. Personal property and items that will be acquired as fixtures.
- H. Modifications or revisions of right-of-way requirements or project design that may mitigate cost.
- I. Possible uneconomic remnants.

### 4.700 PROCEDURES

#### 4.701 Appraisal Review Process

All appraisal review assignments are to be completed in compliance with Standard 3 of the Uniform Standards of Professional Appraisal Practice ([USPAP](#)).

The Review Appraiser should field inspect the appraised property and the comparable sales included in the report. If a field inspection cannot be made, the Reviewer should document the file or the report with the reason(s). The Reviewer should examine the appraisal report to determine the following:

- A. That the report has been completed in accordance with NDOT Appraisal Report Requirements and the Contract for Appraisal Services (fee appraisers).
- B. That the report reflects nationally recognized appraisal standards and conforms to State law, [49 CFR 24.103](#), the [USPAP](#) and to the extent appropriate, the [UASFLA](#).
- C. That the report contains an identification, including ownership, of all buildings, structures, and other improvements on the land as well as the fixtures and/or personal property that were considered as part of the real property.
- D. That the report contains adequate analysis and documentation to support the estimate of market value for the acquisition, and in the case of a partial acquisition, an allocation of the estimate of market value for the real property and for damages to the remainder, if any.
- E. That the report includes consideration of compensable items, damages and benefits, if any, and does not include compensation for items that are non-compensable under Nevada law.

Prior to approving or recommending approval of an estimate of just compensation, the Review Appraiser should obtain from the appraiser any needed corrections or revisions to a deficient appraisal report. Any corrections and/or revisions should be documented in the file.

The Review Appraiser may make minor corrections, such as mathematical errors, and document such corrections; however, the Review Appraiser should not substitute his/her judgment for that of the appraiser. When the Reviewer finds analytical and/or factual deficiencies in the appraisal report, the Review Appraiser should ask the appraiser to consider making the required corrections. If the appraiser is unwilling to make the corrections, the Review Appraiser shall develop a Reviewer's estimate of market value. The Reviewer's estimate of market value must contain the same level of detail as the original appraisal report and must comply with State law, [49 CFR 24.103](#), Standard 3 of the Uniform Standards of Professional Appraisal Practice ([USPAP](#)) and to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions. Upon completion of the review, the Reviewer prepares an appraisal review report and Appraisal Review-Estimate of Value (Form 437). The appraisal review report, along with a copy of Appraisal Review – Estimate of Value, is returned to the Chief Appraiser.

Upon his/her concurrence the appraisal report with the completed appraisal review report and Appraisal Review-Estimate of Value (Form 437) is distributed as follows:

1. Two copies to the appropriate District Supervisor.
2. One copy is retained in the Review Appraiser's file.
3. One copy is retained in the review file until negotiations are complete or litigation is initiated.
4. One copy to Right-of-Way Control. (Form 437 only)
5. Two copies are provided to the Attorney General's Office if subject to Eminent Domain.

At any time prior to settlement, either by negotiations or condemnation, the Review Appraiser may modify the opinion of just compensation based upon receipt of new data, or other circumstances.

#### **4.702 Appraisal Function**

All requests for appraisals to be completed by the Review Section will be coordinated through the Chief Appraiser.

The procedures to be followed in completing appraisal assignments are established in the Appraisal portion of the Right-of-Way Manual.



## 5.000 NEGOTIATIONS

### 5.100 INTRODUCTION AND AUTHORITY

Rights-of-way and other real properties are obtained by the Right-of-Way Section under the provisions of the UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, as amended (Uniform Act). The Negotiations Section is responsible for the timely securing of those property rights necessary to the certification of a project.

The codification and explanation of the laws pertaining to the acquisition of real and personal property under the Uniform Act can be found in the [United States Code](#), [Nevada Revised Statutes](#) (NRS), [Code of Federal Regulations](#) (CFR), [Nevada Administrative Code](#) (NAC) and [the State Administrative Manual](#) (SAM).

### 5.150 PURPOSE

It is the policy of the Nevada Department of Transportation (Department) to make every reasonable effort to expeditiously acquire real property by negotiations and agreement with the property owner. It is the goal of this policy to avoid litigation and relieve congestion in the courts, to assure consistent treatment for the individual property owners in dealing with the Nevada Department of Transportation, and to promote general confidence in State government's land acquisition policies and practices.

The purpose of this manual is to provide the references and direction to allow for the expeditious acquisition of the real property needed for transportation projects while complying with all applicable State and Federal Statutes and regulations pertaining to real property acquired under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

### 5.200 ORGANIZATION

There are two Right-of-Way Districts. The Las Vegas office in the south is responsible for all acquisitions of real property in southern Nevada. The Carson City office is responsible for acquisitions of real property in northern Nevada.

Each District is managed by an Assistant Chief Right-of-Way Agent who reports directly to the Deputy Chief Right-of-Way Agent.

The Staff Specialist for Acquisitions works for headquarters and is responsible for interpreting and promulgating policy statewide for matters related to the acquisition of property.

## 5.250 RESPONSIBILITIES

### 5.251 Staff Specialist for Negotiations

By delegation of authority from the Deputy Chief Right-of-Way Agent, the Staff Specialist for Negotiations has statewide responsibility for the research, evaluation, recommendation and promulgation of policy and procedure in the area of negotiations.

Agents shall address all matters related to their specific activities to their immediate supervisor. In the absence of the immediate supervisor the Agent may approach the Staff Specialist for assistance with any matter pertaining to the process, procedures or policy.

### 5.252 Supervisory Right-of-Way Agent

By delegation of authority from the Assistant Chief Right-of-Way Agent, each Supervisory Right-of-Way Agent shall direct and supervise the activities of District Right-of-Way Agents who work as negotiators within their jurisdictional area. The Supervisory Right-of-Way Agent shall ensure that all policies and procedures specified in this manual are followed.

### 5.253 District Right-of-Way Agent

All District Right-of-Way Agents concerned with the negotiations process shall be members of the State Classified Service and under the direct supervision of the Supervisory Right-of-Way Agent. It shall be the responsibility of the individual Agents to familiarize themselves with, and adhere to, the current policies and procedures presented in this manual.

## 5.300 DEFINITIONS

See Administration, [Section 1.500](#) of this manual for more definitions.

### Shall:

“Shall” means that an action is mandatory and must be performed. No alternative action is to be considered in its place.

### Should:

“Should” explains how a regulatory provision is to be implemented under most circumstances. Unusual circumstances may warrant different action after, careful consideration and discussion with all parties affected.

## 5.350 POLICY

### 5.351 General Negotiations Policy

- A. The Right-of-Way Division shall make every effort to acquire property expeditiously by negotiation. All acquisition discussions shall be conducted to

accomplish the end result that the property owner receives just compensation, which is also just and fair to the public. Right-of-Way staff shall extend courtesy, consideration and patience, so as to foster feelings of confidence and respect by the property owner toward the Department of Transportation.

- B. In cases in which the valuation problem is non-complex, and the value of the proposed acquisition has an estimated value of \$20,000.00 or less, based on a review of available data, the Deputy Chief Right-of-Way Agent is authorized to waive the requirement for a full appraisal and make an Administrative Determination of Just Compensation.
- C. 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”. CFR 24.102. The Supervisory Right-of-Way Agent will send:
  - 1. Notice to Owner (Form 520, sent only to owners of impacted properties) and/or
  - 2. General Information Notice (Form 520-A).
- D. When the value is estimated to be greater than \$10,000 and less than \$20,000 the Owner must be given the opportunity to have an appraisal completed in lieu of the Waiver Valuation. The Waiver of Appraisal must be mailed along with the Notice to Owner immediately after the right-of-way setting. The Agent performing the valuation must ensure this mailing occurs and have receipt of the signed Waiver of Appraisal, prior to performing the valuation.
- E. Waiver Valuations are not appraisals and an appraisal review is not required.  
**Note:** Waiver valuations can only be used in a very limited role; only when a condemnation process will not be implemented.
- F. The Supervisory Right-of-Way Agent will send:
  - 1. Notice to Owner (Form 520) and, if applicable, Waiver of Appraisal Form 520B.
  - 2. Waiver of Appraisal (Form 520B) is to be sent to any owner of property estimated to be over \$10,000, but less than \$20,000 and for which a Waiver Valuation will be prepared. This Waiver is not required for parcels under \$10,000.

3. Form 520B shall be sent Certified Mail, Return Receipt Requested **and** regular U.S. First-Class Mail.
4. The assigned Agent shall follow up on owner's approval of the Waiver of Appraisal within ten (10) calendar days of delivery of the Waiver to the Owner. Waivers not received within twenty (20) calendar days shall be referred to the Supervisory Right-of-Way Agent for possible appraisal of the required property.

**Note:** FHWA allows the Waiver Valuation procedure for values up to \$25,000, but this has been limited by Department discretion to \$20,000.

### 5.352 Acquisition Policy

- A. The Department generally acquires fee title or other interest from owners by entering into a written agreement and executing a Grant, Bargain and Sale, Quitclaim or Easement Deed, as the case may be. The conveyance of the interest is recorded in the Office of the Recorder in the County in which the property is located. The various agreements used are signed by the property owner, reviewed and recommended by the Chief Right-of-Way Agent or Deputy Chief, approved for legality and form by the Legal Division, signed by the Director of the Department of Transportation or Deputy Director, witnessed by a Notary Public and recorded if necessary.
- B. Additionally, the State may acquire fee title or a lesser interest by the following:
  1. Donation
  2. Court Order, e.g., Final Order of Condemnation, Order of Occupancy
  3. Federal Land Transfer from lands owned by federal agencies.
  4. Conveyance from State Lands Division
  5. Special use permits or free use permits obtained from various public agencies
  6. Temporary permits or easements, usually to permit construction
  7. Right to Enter

### 5.353 Right-of-Way Agent Negotiators

Negotiation and right-of-way acquisition are normally the purview of Department Right-of-Way Agents, who are members of the State Classified Service. However, when circumstances warrant, with the prior approval of the Chief Right-of-Way Agent, consultants may be hired as service providers to perform these functions (refer to Consultant Agreement Procedures Manual, 1999 approved version).

A. Right-of-Way Project Coordinator

When a consultant is used, the Supervisory Right-of-Way Agent may assign an Agent as the Project Coordinator. The Project Coordinator will have the responsibility of overseeing the right-of-way project and work performed by the consultant. The Project Coordinator will attend project meetings, assist, advise and ensure that all applicable Departmental policies and procedures are followed. The Project Coordinator will verify that all the Right-of-Way has been acquired, with the Consultant, so a project can be certified (See Negotiations, [Section 5.435](#)).

B. An Agent assigned as part of a project development team shall act as a liaison between the project team and the Right-of-Way Division. The Agent shall:

1. Take comprehensive notes
2. Ask pertinent questions
3. Accept responsibility for task completion
4. Cooperate freely, and
5. Communicate with supervisors in a timely manner to facilitate decision making by Right-of-Way Management. In no case shall the Agent communicate or infer they possess authority for decision making. Nor shall the Agent assert any position undermining the official policies, procedures or directives of Right-of-Way Management.

**5.354 “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended” (Uniform Act)**

A. To the greatest extent practicable under State law, the Department shall be guided by the policies in Section 301 and the provisions of Section 302, 303 and 304 of Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act), and the regulations as found in [“49 CFR Part 24](#), and [23 CFR Part 710](#). Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Final Rule, January 4, 2005”, as amended. ([www.fhwa.dot.gov/realestate/lpaguide/ch1.htm](http://www.fhwa.dot.gov/realestate/lpaguide/ch1.htm))

**B. Title VI of the Civil Rights Act of 1964**

The Right-of-Way Division has the responsibility that all Right-of-Way functions and the results of those activities are executed in accordance with Title VI. Title VI of the Civil Rights Act of 1964 prohibits discrimination in Federal and Federally-assisted projects and programs based upon race, color, and national origin. Since 1964, additional Title VI-like statutes have prohibited discrimination based upon sex (Federal-aid Highway Act of 1973), age (The Age Discrimination Act of 1975), and disability (Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990). Taken together, FHWA has defined a Title

VI/Nondiscrimination Program to prohibit discrimination based upon race, color, national origin, sex, age, or disability. <http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm>.

Complaint procedures:

Refer Title VI complaints to the Civil Rights Officer and assist with the investigation of any complaints: All complaints received will be forwarded to the appropriate Supervisory Right-of-Way Agent Northern or Southern Districts. The Supervisor will forward any complaints to the Right-of-way Title VI Staff Specialist overseeing Title VI compliance. The Staff Specialist will catalog the complaint and forward to the Chief Right-of-Way Agent and then the Civil Rights Officer.

### 5.355 Initiation of Negotiations (ION) 49 CFR §24.2

The Initiation of Negotiations for parcels to be acquired shall be the date on which the Department's designated Agent makes the first contact with the property owner or the owner's designated representative where a written purchase offer is made. This contact should be made in person and documented along with all following contacts and communication. However, on an exception basis, approved by the Supervisory Right-of-Way Agent, the initial contact may be made Certified Mail or Registered U.S. First-Class Mail, Return Receipt Requested **and** regular U.S. First-Class Mail (See Negotiations, [Section 5.406](#)).

The Initiation of Negotiations starts the tolling of the 30 Calendar days required for the property owner's consideration of the written offer, provided that all items as indicated in "A." below are presented to the property owner at that time.

When the State issues a Notice of Intent to Acquire to Owner and a person moves after that date, but before the delivery of the written offer, the Initiation of Negotiations becomes the date of move.

When property is being acquired without threat of eminent domain and is also a voluntary transaction, the Initiation of Negotiations is the acceptance of offer.

- A. All initial purchase offers must include:
  1. Valuation Letter - Letter Presenting Written Offer (Form 517) or Letter Presenting Written Offer (Form 517A)
  2. Appraisal Summary Statement (Form 563) or Valuation Summary Statement (Form 518)
  3. Explanation of right-of-way needs and how it affects the parcel
  4. Right-of-Way Plans/Maps including owner's parcel to be acquired with legal description
  5. Acquisition brochure – "Nevada Highways and Your Property"

6. Name and phone number of the negotiating Agent (business card)
7. Public Highway Agreement and Deeds (After recording, the County Recorder is to send the deeds directly to NDOT Right-of-Way in Carson City)
8. Escrow Instructions (Form 526) or Manufactured Housing Escrow Instructions (Form 526A), when applicable

A follow-up contact must be made within a reasonable period of time from the initial contact and a minimum of once a month thereafter, unless directed otherwise.

9. Title VI Compliance Questionnaire (Form 929A or 929B) and NDOT's Division of Civil Rights Fact Sheet Brochure
- B. All Notices must be sent Certified Mail or Registered U.S. First-Class Mail, Return Receipt Requested **and** regular U.S. First-Class Mail.
  - C. Notice of Intent to Acquire (Form 636) is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Department intends to acquire the property. A Notice of Intent to Acquire establishes eligibility for relocation assistance prior to the Initiation of Negotiations and/or prior to the commitment of Federal financial assistance. The Deputy Chief Right-of-Way Agent has authority to approve use of this form on any project.
  - D. Unless otherwise authorized in writing by the property owner, all acquisition discussions shall be with the owner(s). If the property owner employs someone as a representative to conduct discussions, care must be exercised in establishing the extent of the authority of the owner's representative. Whether dealing with an attorney or other type representative, it is essential that clear ground rules are established since no two such acquisitions involving third parties are identical. The Negotiations Section may sometimes find it desirable or necessary to involve the Deputy Attorney General in communicating with the property owner's attorney.

### 5.356 Identification of Acquisition Documents

All documents pertaining to negotiations shall carry the project number, Engineering Authorization (E.A.) number, parcel number and all other identification numbers and names as appropriate.

## 5.357 Negotiation Contracts

### A. Nevada Resident Owners and Lessees

The Department's designated negotiator shall:

1. Make reasonable efforts to contact each Nevada resident property owner and within seven (7) days of the initial owner contact, the lessee or their designated representative in person.
2. Explain:
  - a. The acquisition thoroughly, with the use of exhibits, drawings and plans
  - b. What assistance is available
  - c. A complete description of the property to be acquired
  - d. The type of title that the State desires
  - e. Care should be taken to explain the individual's rights:
    - I. The right to occupy the premises for at least 90 days from the date written Notice to Vacate is given (See Negotiations, [Section 5.372](#)).
    - II. The right to receive full payment prior to vacating the property (See Negotiations, [Section 5.373](#)).
    - III. The right to retain the improvements (See Negotiations, [Section 5.375](#)).
    - IV. The steps available if the property owner rejects the State's offer (care should be exercised not to appear to threaten the owner with condemnation)
  - f. The Title VI Compliance Questionnaire and The Title VI Nondiscrimination complaint Procedures for Federally Assisted Programs or Activities and give the owners their agents, and lessees of property to be acquired a copy of the "NDOT Division of Civil Rights Fact Sheet" brochure.
3. Give owner and lessee, or their designated representative, a copy of the brochure "Nevada Highways and Your Property" with the Agent's business card attached (See Negotiations, [Section 5.364](#)).



4. Make a written offer in the amount of the approved estimate of Just Compensation for the property using the Valuation Letter-Letter Presenting Written Offer (Form 517) or Waiver of Appraisal (Form 520B). Present a summary of the basis for the amount established as just compensation for the real property to be acquired and for damages to the remaining real property, if any, using the Appraisal Summary Statement (Form 563) or Valuation Summary Statement (Form 518) and use appropriate clauses from the Appraisal Summary Statement Clauses (Form 501) and Appraisal Summary Statement Clause Guide (Form 502). Provide a copy of the Public Highway Agreement (PHA) and Deed to be signed to the Grantor.

B. Non-resident Property Owners and Lessees

Owners and lessees residing out of the State of Nevada may be contacted in person or by Certified Mail, Return Receipt Requested and regular U.S. First-Class Mail. Written contact shall contain, to the greatest extent practicable, the same information that would be presented in a personal contact, as delineated in Initiation of Negotiations, [Section 5.355](#), paragraph “A.”. A follow-up phone call should be made to explain the offer as detailed in Negotiation Contracts, paragraph “A.2.” above.

### 5.358 Acquisition of Subsurface Mineral Rights

Right-of-Way acquisitions normally exclude the acquisition of subsurface mineral rights unless such are necessary to support and protect the roadway or facility. Instances of limited vertical dimension occupancy are subject to approval by the Chief Right-of-Way Agent, the Deputy Director and by the Federal Highway Administration.

The owner of subsurface mineral rights to be acquired must be informed in writing of the right to just compensation.

If ownership in subsurface rights has been separated and we are acquiring those rights, that ownership interest must be acquired in accordance with the Uniform Act.

### 5.359 Separation of Functions

The negotiation function cannot be conducted by any person who made the Waiver Valuation, appraisal of the property or was the reviewing appraiser for the property, nor can the negotiator act as relocation Agent.

### 5.360 Civil Rights Brochure

The acquisition function shall be conducted in such a manner to assure that no person shall, on the basis of race, color, sex or national origin, age, religion, or handicap, be denied the benefits to which the person is entitled or be otherwise subjected to discrimination. At the Initiation of

Negotiations, owners of real property, their Agents, and lessees of property to be acquired shall be provided with a copy of “NDOT Division of Civil Rights Fact Sheet” brochure.

### **5.361 Acquisition Brochure**

At the Initiation of Negotiations, owners of real property, their Agents, and lessees of property to be acquired shall be provided with a copy of “Nevada Highways and Your Property”.

### **5.362 Expedient Completion of the Negotiations Process**

Following receipt of authorization to appraise and acquire and the subsequent determination of just compensation by the Appraisal Review section, the negotiation process should proceed as expeditiously as possible.

### **5.363 Coercion**

- A. In no event shall the Department, in order to compel an agreement on the price to be paid for a property:
  - 1. Advance the time of condemnation
  - 2. Defer negotiations
  - 3. Defer condemnation and the deposit of funds in court for the use of the owner
  - 4. Take any other action coercive in nature

### **5.364 Acquisition of Tenant-Occupied Properties**

Tenants receive a possessory interest in real and personal property leased from an owner. The rights of the tenant include the right to quiet enjoyment.

- A. When the Department needs to acquire property occupied by a tenant on either a long-term lease or month-to-month tenancy, at the earliest practicable moment, the Department shall notify both the property owner and the tenant that the Department wishes to acquire all interests in the real property through negotiated purchase. Unless otherwise specifically provided for, the Department will not acquire the property subject to existing leases. If there are tenant-owned improvements in place or the property is encumbered by a lease, the close of escrow will be conditioned upon execution of a Tenant Release of Partial Interest and Certification (Form 588) for a partial acquisition or Mutual Release and Certification (Form 589) for a total acquisition. The Lessor and Lessee will be required to complete an inventory identifying the tenant-owned improvements and release each other from any further liability relating to the ownership of improvements made by the tenant to the property, the tenant’s leasehold if any, rental payments and security deposits.

- B. When a tenant claims an interest in a building, structure, fixture or other improvements, (the tenant owns the improvements or a part of the improvements), the tenant must be personally and fully informed of his or her rights and entitlements.
- C. A tenant-owned improvement is a building, structure, fixture, or other real property improvement, placed by the tenant on the premises of another. Such improvement would be considered real property if it were owned by the owner of the real property on which it is located. Furthermore, such improvement would be considered real property regardless of the tenant's right or obligation to remove the improvement at the expiration of the lease term. A tenant who owns such real property improvements has the right to an appraisal of his or her property, to accompany the appraiser when the property is inspected, and to be made a separate offer in writing with a summary statement for such real property improvements only if:
1. The tenant, in consideration for the payment, assigns, transfers and releases to the Department all of the tenant's right, title and interest in the improvements; and
  2. The owner of the real property on which the improvements are located disclaims all interest in the improvements; and
  3. The payment does not result in the duplication of any compensation.
- D. The Department is not purchasing anything more than it has ever purchased. The property is appraised for fair market value. Just compensation is set that may or may not include damages. If a tenant has made some improvements to the real estate, the tenant may be entitled to compensation for those improvements. The overall value of the property does not change. The fair market value is simply allocated between the property owner and the tenant. The value of the tenant-owned improvements is the value that the improvements contribute to the overall value of the property being acquired or the salvage value of the improvements, whichever is greater. If the negotiations cannot be handled in this manner and the lessee and lessor cannot agree on the division of the payment, it will be necessary to condemn the property naming both as interested parties.
- E. "Contributory value" is defined as the dollar amount that a building, structure, or other improvement adds to the market value of the real property.
- F. "Salvage value" as it pertains to tenant-owned improvements, is defined as the dollar amount that a building, structure or improvement would bring if sold on the open market with the stipulation that such items be removed from the property it occupies at the time of sale, taking into consideration the costs to dismantle, move, reassemble, etc.

- G. If the contributory value of the Tenant-Owned Improvements (TOIs) is greater than their salvage value, the amount offered to the tenant will be the contributory value and the amount offered to the property owner (Lessor) will be the total fair market value of the property minus the contributory value of the TOIs.
- H. If the contributory value of the TOIs is less than their salvage value, the amount offered to the tenant will be the salvage value (the greater amount) and the amount offered to the property owner will be the total fair market value of the property minus the contributory value of the TOIs. It follows that if the contributory value of the TOIs is zero, the offer to the property owner (Lessor) will be the total fair market value of the property.

**Note for G. and H.:** please refer to the procedures in Negotiations of Tenant-Occupied Property and Acquisition of Tenant-Owned Improvements, [Section 5.407](#), paragraph “G”.

- I. If a tenant-occupied property becomes vacant after the Initiation of Negotiations, the Department may enter into an agreement with the property owner to rent the property while negotiations and/or settlement are underway. Such tenant occupied properties include, but are not limited to, single family residences, apartment units, mobile home park spaces, commercial buildings and billboard sites.

Rental payments will cease when the Department gains control over the property upon the close of escrow, or recording of the deed if no escrow is used, or legal right of entry.

### 5.365 Partial Acquisition of Leased Property

When acquiring a portion of a property, if the property is leased, a Tenant Release of Partial Interest and Certification (Form 588) is required. It is the owner’s responsibility to compensate the tenant for any loss, while the owner may request compensation for damages not included in the appraisal.

### 5.366 Duplication of Payment for Tenant-owned Improvements

No payment to a tenant shall be made unless the tenant, in consideration for such payment, assigns, transfers and releases to the Department all of the tenant’s right, title and interest in the improvements, and the payment does not result in any duplication of any compensation otherwise authorized by law. (See Negotiations of Tenant-Occupied Property and Acquisition of Tenant-Owned Improvements, [Section 5.407](#))

### 5.367 Unused Rent and Other Prepaid Deposits

In the acquisition of tenant occupied property, often the tenant will have paid rent at the beginning of the month in which the parcel is acquired. Additionally, the tenant or tenants may

have been required to place on deposit an amount to cover cleaning or damage of the unit. Upon acquisition of the property by the Department, the unused prepaid rent and any other deposit paid by the tenant should be returned to the tenant.

To ensure equitable distribution of these funds and to eliminate unnecessary complicated time-consuming accounting procedures, all tenant occupied acquisitions shall go through escrow. The negotiator should instruct the escrow officer to accept from the owner any unused rents or other fees and upon close of escrow disperse these funds to the tenant. Any additional escrow fees encountered should be added to the final escrow charge.

**Note:** In all cases where the tenant or owner will remain on the property, Right-of-Way Property Management Staff Specialist must be notified, via memo. They will execute a new rental agreement.

### 5.368 Incidental Expense Reimbursement

- A. As soon as practicable, the Department shall reimburse the owner, to the extent deemed fair and reasonable, expenses necessarily incurred for:
1. Recording fees, and similar expenses incidental to conveying the real property to the Department.
  2. Penalty costs for prepayment of any preexisting recorded mortgage entered into good faith encumbering such real property; and
  3. The pro rata portion of real property taxes paid which are allocated to a period subsequent to the date of vesting title in the Department and will be abated pursuant to [NRS 361.484](#). Permanent and Temporary Easements may be taken subject to property taxes when approved by the Supervisory Right-of-Way Agent.
  4. In the event that the property owner submits an incidental expense claim that is subsequently denied, the property owner shall have 60 days to file a written appeal to the appropriate Assistant Chief Right-of-Way Agent.

**Note:** When escrow is used these expenses are paid through escrow.

### 5.369 Uneconomic Remainder

Whenever a part of a parcel of real property, interests therein or improvements thereon are to be acquired and the remainder is left in such irregular shape, uneconomical size, utility or condition so as to be of little or no utility or value to the owner or give rise to claims of litigation concerning damages ([NRS 37.020](#)), the Department shall make an offer to acquire the whole parcel.

If the status of a remainder is not readily apparent through the appraisal process or has not been previously designated as uneconomic, per Uneconomic Remnant, [Section 4.656](#) of the

Appraisal Review Section of this manual, the Chief Right-of-Way Agent may declare a remnant uneconomic based upon an analysis of the facts supporting such findings.

When acquiring a partial acquisition which contains an uneconomic remainder, the Agent must first make an offer to acquire the “partial” acquisition, which is the property needed for highway purposes. The Agent must also inform the owner that he or she has the option of retaining the designated uneconomic remainder or having the Department acquire it.

Supervisor review of draft documents for the two separate offers is required before making the offer.

### 5.370 Revised Offers (Written offers)

**Note:** Revised Offers (Written offers) should be clearly labeled in the upper right hand corner as a “Revised Offer”.

- A. A “Revised Letter of Offer” and a “Revised Summary Statement” will be provided to an owner if the extent of the acquisition is revised or the approved estimate of just compensation is revised by a reviewing appraiser.

The Revised Offer shall include:

1. Revised Letter of Written Offer
2. Revised Appraisal Summary or Valuation Summary
3. Public Highway Agreement showing the new offer amount

The Revised Letter of Written Offer will be mailed along with the Revised Summary Statement as soon as the revised offer is known. The property owner shall be given reasonable time to consider the revised offer and to obtain professional advice or assistance, if so desired.

### 5.371 Time to Consider Offer

The property owner shall be given a reasonable period of time (at least 30 days) to consider the offer and obtain professional advice or assistance, if so desired.

### 5.372 Notice to Vacate

The Department adheres to the 90/30-day method for issuing notice to vacate; that is a 90-day notice is given on or after the initiation of negotiations for the parcel. A statement is included in the notice that the property owner or occupant will not be required to move from a dwelling, or move a business or farm before 90 days from the date of the notice. Furthermore, the property owner or occupant shall be given a subsequent 30-day written notice specifying the date by which the property must be vacated. The 30-day notice shall not be given until such time as the State has legal possession of the property. Of course, notices are not required if the occupant moves prior to the time such notices are due.

**Note:** A 90-day Notice – Initial Occupant Residential (Form 617) is provided to the owner or tenant at the time of presenting the Statement of Probable Entitlement - Replacement Housing Allowance (Form 610) by the Relocation Agent.

### 5.373 Surrender of Possession

No owner shall be required to surrender possession of real property before the Department pays the agreed purchase price or deposits with the court, for the benefit of the owner, an amount not less than the approved estimate of just compensation.

### 5.374 Agent/Negotiators as Commissioned Notaries

Right-of-Way Agents who are assigned to negotiation duties shall be legally appointed and commissioned as a notary public.

### 5.375 Retention of Improvements by Owner

The owner of improvements located on lands being acquired as right-of-way should be offered the option of retaining those improvements at a retention value determined by the Department, unless the Department considers it to be in the public interest to do otherwise.

### 5.376 Records of Negotiations - Diary

The negotiator shall maintain a timely, adequate, written record of negotiations for each parcel using the format in the Negotiator's Diary, (Form 529). (See Negotiation Diary, [Section 5.410](#))

### 5.377 Negotiator's Affidavit

Upon successful negotiation for a parcel, the negotiator shall sign the affidavit contained on the Parcel Closing Checklist (Form 560).

### 5.378 Minimum Allowable Payment

When the estimate of value for a property or property right to be acquired is less than \$1,000, a minimum offer of \$1,000 shall be made for each acquisition parcel to be acquired.

### 5.379 Dedication

Property dedicated under the States authority to use Police Powers to protect the general health and welfare of the public is not taken under threat of Eminent Domain.

Several U.S. Supreme Court cases that have determined that dedication of real property for highway purposes is constitutional when considered under the Police Powers of the State to regulate development for the general welfare and safety of the public provided no party bears a disproportionate burden. Dedication of land is not considered to be a taking and thus does not call for payment of just compensation or compliance with the Uniform Act. However, any dedication used to circumvent Federal requirements is unacceptable.”

### **5.380 Sign Acquisition Policy**

Signs can be divided into two categories, “off-premise” and “on-premise”, for appraisal and negotiation purposes. The classification of the sign will determine the manner in which it will be handled for right-of-way acquisition purposes.

#### *“Off-Premise” Signs*

Off-premise signs generally advertise a business or product not available on the property that is to be acquired. There are other instances where a sign may be considered “off-premise”. The definitions and information governing these classifications can be found in sections [410.210](#) and [410.220](#) of the Nevada Administrative Code. Off-premise advertising signs are considered personal property in the State of Nevada. They are removed from the right-of-way to be acquired under the relocation program, specifically. See Relocation, Moving Payments – Off-Premise Signs, under [Section 6.262](#)-Moving Payments.

#### *“On-Premise” Signs*

The standards that establish the classification of “on-premise” signs are contained in section 410.200 of the Nevada Administrative Code. On-premise signs are real property and an offer to purchase them must be made to the property owner. If the sign can be relocated on the remainder property, and the owner elects to do so, payment for relocation based on a “cost-to-cure” will be made to the owner. If the property owner should choose to have the Department purchase the sign, the property owner is entitled to re-purchase the sign from the Department at an established retention value (See On-premise Sign Retention Value Defined, [Section 5.381](#)).

### **5.381 On-Premise Sign Retention Value Defined**

Retention value is defined as the replacement cost of the sign new, less estimated depreciation, less the cost to relocate the sign as estimated by a cost-to-cure.

### **5.382 Access to the Appraisal Report by the Property Owner**

It is the policy of the Department that the property owner, or the owner’s authorized representative, shall receive a copy of the appraisal report that has been prepared for the purpose of negotiations. A copy of the appraisal and appraisal review will be provided to the Owner at the initiation of negotiations.

### **5.383 Use of an Escrow Service**

All acquisitions will be submitted through escrow, unless otherwise directed by the Supervisory Right-of-Way Agent. (Escrow Instructions (Form 526) or Manufactured Housing Escrow Instructions (Form 526A))



When the acquisition involves a large sum of money, or prolonged title clearance problems, the negotiator shall deposit the agreed upon purchase amount in an interest bearing escrow account in favor of the Department.

Generally, a title policy is required on all fee and permanent easement acquisitions with a value over \$2,500.00. Exceptions within the title report may be allowed at the discretion of the Assistant Chief Right-of-Way Agent.

#### 5.384 Document Completion

- A. When the text in a right-of-way agreement does not extend to the bottom of the page, the blank space shall be neatly lined out with reproducible black ink using a “Z” formation to indicate that nothing further may be added to the document in that space.
- B. Any and all handwritten entries on an agreement must be initialed by all parties to the agreement. No handwritten entries will be allowed on Deed forms.
- C. Forms are not to be altered without approval by the Staff Specialist, Negotiations/Acquisition.
- D. Original documents that have been partially executed shall not be altered without consent of all parties.
- E. When the PHA is to be signed by more than one Grantor that are geographically separated and time could be an issue, signing in Counterpart may be used. To sign in Counterpart, the following wording must be added as the last paragraph of the Mutuals:

*“This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.”*

#### 5.385 Date of Public Highway Agreement

The date of the Public Highway Agreement shall be the date the Director of the Department of Transportation, or their representative, signs the agreement and will be completed, by the Right-of-Way Mgmt. Analyst, in the Right-of-Way Control Section, upon return of the executed agreement.

#### 5.386 Deeds or Recordable Documents

- A. There are specific formatting requirements for documents that are recorded; except for court documents. ([NRS 247.110](#) & [247.305](#))
  - 1. 8 ½ x 11-inch paper size; 1-inch margins on the left, right and bottom of page; 3 inches by 3 inches at the upper right corner of first page and 1-inch top margin of each succeeding page.

2. Printed material on one side only.
3. Text printed in black ink and minimum of 11-point Arial font, no more than 9 lines of text per vertical inch.
4. Signatures are clear of any stamp or seals; except for stamps and signatures of licensed engineers and land surveyors.
5. The following information must be included in the upper left hand corner of the recorded document:
  - a. Assessor Parcel Number – APN
  - b. After Recording Return To: (Staff Specialist – Negotiations and address); the person's name and address who prepared the legal description (Chief Right-of-Way Agent Name)
  - c. NDOT's – Project, E.A. and Parcel Numbers

### 5.387 Property Taxes

The Department is responsible for paying the annual property taxes on property that it leases, loans or otherwise makes available for use by a natural person, association, partnership, corporation, or as a residence. During an acquisition, existing property tax assessments are processed through escrow. The collection of or prorated taxes will be done by the escrow officer and verified by the Right-of-Way Agent. (See Escrow Instructions (Form 526) or Manufactured Housing Escrow Instructions (Form 526A))

### 5.388 Project Certification

For a Project to be Certified, all acquisitions, relocations, demolitions/clearance and utility relocations/adjustments must be completed. The Supervisory Right-of-Way Agents will provide a written memo to the Assistant Chief Right-of-Way Agent stating the Right-of-Way is acquired, cleared and state any items that are to be completed (special items noted below) after the date of the memo.

Thirty (30) days prior to the advertising date, as set forth in the PSAMS Report, the Right-of-Way Supervisors will provide a memo to the designated Staff Specialist and copy the Assistant Chief Right-of-Way Agent, stating that their portion has been completed. The Staff Specialist verifies all project related information, the clearances and prepares the Right-of-Way Certification memo for the Northern or Southern Assistant Chief Right-of-Way Agent's signature approval and submits the memo to Administrative Services electronically through DocuSign.

#### A. Clearance Verification

1. Acquisition deeds and Public Highway or other Agreements must be signed and in escrow. If the acquisition is not going through escrow, the signed deeds and Agreement(s) must be fully executed by all parties.

2. Relocation of persons and personal property must be completed. Any exception requires written approval from the Chief Right-of-Way Agent.
3. Demolition work and Utility removal must be completed prior to certification, unless the work is to be done concurrent with the Project's construction or as part of the Project's Construction Contract. This includes shutting off, disconnecting and stubbing of utility lines, septic tank removal and other items. This must be identified 30 days prior to Certification and requires the approval by the Deputy Chief Right-of-Way Agent.

### 5.389 Project Oversight

- A. NDOT has an overall responsibility to FHWA for the acquisition of right-of-way on all federal transportation projects in the state. Any transportation project that uses federal funds or requires a federal action is considered a federal transportation project. Any project that impacts the interstate is considered a federal transportation project. All right-of-way needed for a federal transportation project must be acquired in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- B. NDOT must be able to certify that the right-of-way needed in order to construct the project is in legal and/or physical possession and all utility relocation and railroad work has been completed or arrangements have been made to coordinate the efforts with the construction of the project, before any federally funded construction project can be authorized by FHWA for advertisement.
- C. Prior to commencing any right-of-way activities, the following must be completed:
  1. LPA agreement has been executed, projects completed under the LPA Program require an agreement between NDOT and the local public agency before reimbursable work can begin. A Cooperative (Local Public Agency) Agreement defines the project scope, project responsibilities and requirements, the cost estimate, funding and payment obligations.
  2. NEPA is completed, and
  3. A Notice To Proceed (NTP) for right-of-way activities has been received from FHWA.
- D. For projects within or abutting NDOT right-of-way, the LPA Coordinator will request verification of NDOT's existing right-of-way limits from Right-of-Way Engineering and forwards that information to the local public agency. In addition, the LPA Coordinator will request copies of NDOT occupancy permits within the project area if the project is located within NDOT right-of-way. Copies of the permits will be forwarded to both the local public agency and the NDOT

Right-of-Way Division.

- E. Prior to the 60% review submittal, the local public agency must provide the NDOT LPA Coordinator with documentation on the local public agency's right-of-way limits on the project. The documentation of the existing right-of-way limits may consist of copies of deeds, plat maps dedication acceptance by the local public agency, record of survey showing acceptance by the local public agency or a town plat. Copies of assessor's maps are not acceptable.
- F. Not all projects can be constructed within the limits of the existing right-of-way owned by either the local public agency or NDOT. In those cases, right-of-way will need to be acquired to accommodate the project. In determining the right-of-way requirements for a project, [Americans with Disabilities Act](#) (ADA) guidelines must be considered. NDOT normally is responsible for acquiring any additional right-of-way. All costs associated with acquiring the right-of-way will be considered a project cost.
- G. Under certain circumstances, NDOT may delegate responsibility for completing portions or all of the work needed to acquire the right-of-way to a qualified local public agency. Qualification of a local public agency to perform right-of-way acquisition is provided on a project by project basis. Qualification will be determined by NDOT's Chief Right-of-Way Agent based on the specific requirements of the project, the local public agency's ability to perform the necessary right-of-way activities. In the event that the local public agency is qualified for a specific project, the local public agency shall work with and accept oversight from NDOT's right-of-way staff to ensure compliance with all federal and state laws.

In order for a local public agency to be considered qualified for right-of-way acquisition, the local public agency must submit the following information to NDOT:

1. A listing of positions performing the separate functions of appraisal, appraisal review, negotiations, relocation assistance and property management, in compliance with the Uniform Act.
2. An organizational chart indicating both positions and names of incumbent staff.
3. The qualifications and experience of each member of the right-of-way staff and/or consultant staff who will be performing right-of-way services, including the number of years of experiencing working with or utilizing the Uniform Act.
4. A statement detailing the local public agency's process for;
  - a. Approval of administrative and legal settlements

- b. Providing information to displaces regarding the relocation appeals process
    - c. Forwarding relocation assistance appeals to the Department
- 5. Identification of the agency official with direct responsibility for each function of appraisal, appraisal review, negotiations, relocation assistance and property management.
- 6. A detailed description of any right-of-way procedures proposed as alternatives to NDOT right-of-way procedures.
- 7. A detailed description of the right-of-way activities required for the project including:
  - a. A current set of right-of-way maps
  - b. The estimated number of parcels needed for the project, categorized by use, such as residential, commercial, industrial, etc.
  - c. The estimated type of right-of-way acquisition, such as fee acquisitions, permanent easements, temporary easements, etc.
  - d. A description of any known issues or complexities affecting the right-of-way acquisition.
  - e. A right-of-way cost estimate for the project. The cost estimate should include:
    - i. Staff costs
    - ii. Consultant Costs
    - iii. Relocation Assistance costs
    - iv. Acquisition cost per parcel, including cost-to-cure damages
    - v. Fees and costs for agency legal staff
    - vi. Utility relocation costs
- H. All right-of-way acquisitions, regardless of who acquires the right-of-way, shall be completed in accordance with the NDOT Right-of-Way Manual and the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended.
- I. An initial right-of-way setting meeting shall be held once the NEPA process has been completed and the local public agency has identified the right-of-way

needed for the project. This will normally occur at the sixty percent (60%) design phase.

- J. Once the right-of-way needs are set, the LPA Coordinator, with input from the local public agency, prepares a Right-of-Way Setting Memo. The memo must include:
  - 1. An exhibit that identifies and displays all of the areas and parcels to be acquired. The exhibit shows the limits and type of acquisitions and includes offsets to the project alignment at parcel breaks (Project alignments for NDOT highways must be approved by NDOT's Location Engineer). The county the project is located in.
  - 2. Define who will be the ultimate titleholder.
  - 3. Number and type of acquisition (See Section 6.3 of the Local Public Agency Manual for types)
  - 4. Alternatives that were explored including the justification for the acquisition versus the alternative
  - 5. Recommendation approval signature blocks for the following:
    - a. Chief Design Engineer
    - b. Chief Hydraulics Engineer
    - c. Chief Environmental Services Engineer
    - d. Chief Right-of-Way Agent
    - e. An approval block for the Assistant Director of Engineering
- K. Any changes from the information originally outlined in the Right-of-Way Setting Memo, such as the deletion of a parcel, requires an amended Right-of-Way Setting Memo.
- L. After the Right-of-Way Setting Memo is approved, the LPA Coordinator completes a Scope/Budget Change and Programming /STIP Revision Request. This document is used to request that funding be authorized for the right-of-way acquisition, relocation and utility relocations/adjustments. The request will be based on estimates provided by the local public agency and verified by the Right-of-Way Division.
- M. Once the funding authorization from FHWA has been received, the right-of-way phase of the project can begin. When the local public agency is delegated the authority to acquire right-of-way for the project, the LPA Coordinator will issue a Notice to Proceed with the right-of-way engineering, appraisal and appraisal

review. NDOT must establish the just compensation for the parcels before the local public agency can begin making offers to the property owners.

- N. If the local public agency acquires the right-of-way for a project, the local public agency shall follow the NDOT Right-of-Way Manual and the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. The Right-of-Way Manual has been approved by FHWA and will ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. The Local Public Agency (LPA) shall work closely with the LPA Coordinator and NDOT's Right-of-Way Division during the entire acquisition process, both to expedite acquisition and to assure that all federal and state requirements are met. The Right-of-Way Division shall review all products prepared by the local public agency for the project.

### 5.390 Early Acquisition

- A. The State may initiate acquisitions of real property at any time it has the legal authority to do so based on program considerations. This may include corridor protection, access management, or other reasons.
- B. Acquisition costs incurred prior to an approved project agreement with FHWA are not eligible for federal reimbursement but may be eligible for use as a credit towards the State's share of a federal project if certain conditions are met. ([23 CFR 710.501](#))
1. The property was lawfully obtained by the State;
  2. The property was not a public park, recreation lands, wildlife or waterfowl Refuge or historic sites as described in [23 USC 138](#);
  3. The property was acquired in accordance with the Uniform Act;
  4. The State complied with the requirements of [Title VI of the Civil Rights Act](#);
  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 construction the project;
    - ii. The consideration of alternatives; and
    - iii. The selection of the design or location; and
    - iv. The property will be incorporated into a Federal-Aid project.

- v. The original agreement covering the project was executed on or after June 9, 1998.
- C. 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 State Transportation Department (STD) to demonstrate that:
1. Prior to acquisition, the STD made the following certifications and determinations
    - a. The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;
    - b. The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this title;
  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. ([23 USC 108\(c\)\(2\)\(C\) and \(D\)](#))

### 5.391 Hardship and Protection

- A. Prior to obtaining final environmental approval of a project the Department may request reimbursement for advance acquisition of a particular parcel to prevent eminent development or to alleviate hardship to property owners on a preferred location, provided the following conditions are met:
1. The project is in the approved STIP
  2. Public involvement requirements have been met
  3. A determination of the provisions of [23 USC 138](#) (Park, Preservation and Historic Sites) has been completed
  4. Historic Preservation considerations have been met in accordance with [16 USC 470\(f\)](#).
- B. For Protective Buying the state must clearly show that development is imminent and that such development would limit future transportation choices. A significant increase in costs may be considered a justifying element.
- C. For Hardship the State must concur in a written request received from the property owner that:



1. Supports a hardship on the basis of health, safety, or financial reasons and
  2. Documents an inability to sell the property at fair market value within a time period typical for properties not affected by the project because of the impending project. ([23 CFR 710.503](#))
- D. 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.

### 5.392 State Lands

The Nevada Division of State Lands, a division of The Nevada Department of Conservation and Natural Resources, has responsibility for use of state lands in the best interest of all state residents.

Among other responsibilities, the Division of State Lands operates the State Land Office which serves as the "real estate" agency of the State for all agencies except the Legislature, the University system, and the Department of Transportation. The agency holds title to state lands and interests in land. The agency buys land needed by the state and sells excess land. The agency issues leases, easements, permits and other authorizations for the use of state land and administers all lands it holds which are not assigned for administration to another state agency.

The land office also keeps records of all lands that have ever been owned by the State, and provides land records information upon request

Upon statehood, Nevada received title to all sovereign lands which are submerged beneath navigable bodies of water. At the present time, the following bodies of water are considered to be navigable:

- Carson River
- Colorado River
- Lake Tahoe
- Truckee River
- Walker Lake
- Washoe Lake
- Virgin River

The State owns the beds and banks of these bodies of water, generally up to the ordinary and permanent high water mark. At Lake Tahoe, the State owns the bed of the lake to elevation 6223.0. The State's ownership does not generally extend to wetlands, tributaries, ditches or flood overflows. Any use or disturbance of these lands requires agency authorization.

When lands owned by the State and administered by the Division of State Lands is required for a transportation project the Department of transportation must make an application for an assignment of that land to the Department.

State Lands may issue a permit, license or other authorization for lawful use of state lands. State Lands typically will not convey title to such property nor accept a Permission to Construct

but will assign its use to the Department of Transportation. State Lands will require the Department to abide with the regulations and requirements of the State Lands Division for any conveyance of property interests to the Department of Transportation. ([NRS 322.170](#))

There will be no fee required for the assignment of any land or interest in lands administered by State Lands to the Department of Transportation. ([NRS 322.150](#))

### 5.393 Tribal Lands

Most Tribal Land is held in trust by the Federal Government under the Department of Interior, [Bureau of Indian Affairs](#) (BIA) and is regulated under [25 CFR Chapter I Part 169 - Rights-of-Way Over Indian Lands](#). Within the body of this reference are definitions for “Individually owned land”, “Tribe”, “Tribal land”, “Government owned land” and specific procedures regarding the “consent of landowners to grants of right-of-way”, “permission to survey”, “application for right-of-way”, “maps” and other details.

With rare exceptions, Tribal Land cannot be purchased in fee and cannot be condemned. In all interactions it is important to remember that as a State agency, the Department has no jurisdiction in these matters. It is therefore important that all communications show cultural respect and be done in the form of “requests”. The BIA approves transactions involving Indian lands and will determine if the land is held in “Trust or Fee”. Their procedures are subject to change and in some cases are lengthy and may require an Environmental Report whereas the Department’s project may not. Therefore, early involvement of the BIA is essential.

The BIA holds primary responsibility for the stewardship of Indian trust lands, specifically, the conservation and protection of the land.

The primary authority for granting right-of-way across Indian lands is the Act of February 5, 1948 (62 Stat. 17), [25 USC](#) 323-328. This Act authorizes the granting of right-of-way for all purposes over and across trust and restricted lands. If any other authorities are used to grant a right-of-way, the grant must reflect that specific authority, including statutes or tribal laws, constitutions or ordinances.

The BIA regulations at [25 CFR 169](#) are designed to give the Secretary or his/her representative, acting under delegated authority, adequate latitude to act in the best interests of the owners in a wide variety of circumstances, and situations which arise at the field level in connection with right-of-way matters.

[25 CFR 169.3\(a\)](#) allows that rights-of-way over and across any tribal land and permission to survey with respect to such lands, must have the prior written approval of the tribe.

[25 CFR 169.3\(b\)](#) except as provided in section (c), no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey issued with respect to such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

Pursuant to [25 CFR 169.3\(c\)](#) - Individual Consent Provisions, the Secretary can grant an easement or give permission to survey across individually-owned land with the consent of the individual Indian owners when:

- A. The individual owner of the land or of an interest therein is a minor or a person *non compos mentis*, and the Secretary finds that such a grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;
- B. The land is owned by more than one person, and the owners or owner of a majority of the interest therein consent to the grant;
- C. The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interest therein whose whereabouts are known, or a majority thereof, consents to the grant;
- D. The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof; or
- E. The owners of interest in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

Legal title to trust or restricted lands is held by the United States of America for the benefit of a tribe(s) or an individual Indian(s).

The Federal Government's fiduciary responsibility on behalf of the Indian landowners is to protect and conserve the resources on trust and restricted land, including the land itself. The Government must use sustainable yield principles and conservation management practices to regulate appropriate use and development of Indian trust lands. Other responsibilities include, but are not limited to, ensuring highest and best use of the resources whenever possible and protection against misuse of the property for illegal purposes. Grants of Easement for right-of-way assist in the protection of trust lands from inappropriate development and unregulated use.

Most rights-of-way are granted with owner consent, by the Secretary, pursuant to the Act of February 5, 1948, ([25 USC Chapter 8 §§ 323-328](#)). The Secretary may also approve owner-granted rights-of-way, pursuant to the Indian Land Consolidation Act (ILCA), (November 7, 2000, [25 USC Chapter 24 § 2218 Sec. 219](#)). The grant is issued as an easement. An easement for right-of-way creates an interest in the land, is for limited use or enjoyment, can be protected against third parties, and is not terminable at will by the Indian landowner.

In the preparation of a Grant of Easement for right-of-way, a thorough investigation of all aspects of the property, ownership, and potential conflicts with statutes, laws, and regulations is required. The long term best interest of the landowner(s), and the conservation and protection of the trust asset must also be considered. Investigative findings culminate in a written recommendation known as a Findings and Recommendation for Decision, or Report of

Investigation, that provides the necessary background required for the delegated authority to make an informed decision in approving or disapproving a Grant of Easement for right-of-way. The investigation and recommendation becomes part of the permanent record and may be used in the future to support the BIA's or tribe's decision to approve, disapprove, or withdraw the request.

The actual tenure or term of any right-of-way grant is discretionary within the maximum period stated in [25 CFR 169.18](#); however, in determining the tenure of a specific right-of-way, the consenting and granting parties should examine the effect and purpose served by the right-of-way and the consideration involved. Further, if an applicant has applied under a specific act and that act contains a maximum tenure less than the period specified under §169.18, the limitations of that specific act govern. No tenure shall exceed the statutory authority, nor exceed the regulations.

The appropriate state or local authority may apply to open public highways across tribal and individually owned lands. Refer to [25 CFR 169.26](#) for specific requirements.

#### 5.394 Federal Lands

- A. The Department of Agriculture, United States Forest Service (USFS), Bureau of Reclamation (BOR) and the Department of Interior's Bureau of Land Management (BLM) have the ability to transfer lands or interests directly to the State. On Federal-Aid projects the transfer of land is processed through the [Federal Highway Administration \(FHWA\)](#) in accordance with procedures outlined in the Engineering section of this manual. The Manager, Right-of-way Engineering has responsibility for this process.

#### 5.395 Acquisition File Closing

- A. The Staff Specialist for Negotiations has responsibility to ensure that all acquisitions are completed in accordance with State and Federal requirements, recording the acquisition in the Project Certification Checklist, coordinating all closing actions with the applicable Right-of-Way functions and closing the file to Central Files.
- B. Upon recording of the Deed transferring ownership of real property to the Department, the original recorded Deed is to be returned directly to the Staff Specialist for Negotiations.
- C. Upon receipt of the recorded Deed the Staff Specialist will
  - 1. Verify the Deed and
  - 2. Note the Recording information into the Acquisition Project Tracking Checklist and
  - 3. Provide a copy of the Deed to the acquiring Agent and

4. Forward the original Deed to Right-of-Way Control for inclusion in the Lands Acquired Report.
- D. Upon receipt of a copy of the recorded deed the acquiring Agent shall verify the Deed conforms to our copy. The Agent shall advise the Staff Specialist and Supervisory Right-of-Way Agent of any detected errors or omissions immediately.
- E. The Agent shall forward any supplemental diary entries or other information to be included in the parcel file to the Staff Specialist at this time.
- F. The file remains open with the Staff Specialist until all final documents are received pertaining to the transaction including but not limited to the final escrow billing, the Owner's Policy of Title and the Final Settlement Statement. Once all required actions are completed and the final documents are received the Staff Specialist will conduct a final review of the acquisition for compliance with all applicable State and Federal requirements.
- G. After ensuring that all actions are complete the Staff Specialist shall submit all originals including escrow documents to Central Files.

#### 5.396 Waiver Valuations

- A. This Waiver Valuation shall only be used for non-complex valuation issues where damages are not a factor.
- B. The Waiver Valuation shall be prepared by an Agent having sufficient understanding of the local real estate market to be qualified to prepare the Waiver Valuation.
- C. In no case will the determination be less than \$500.00 per parcel.
- D. The property owner shall be allowed the opportunity to accompany the Right-of-way Agent performing the valuation.
- E. Due to the misuse of the eminent domain process by some municipalities, taxpayers and legislators passed revisions to state laws and the State constitution in 2007. Under current law we are required to provide appraisals to all persons whom the State initiates condemnation proceedings against prior to taking possession of the property. Should any property valued using the Waiver Valuation process appear to be headed toward condemnation it is imperative an appraisal be ordered at the earliest opportunity.

## 5.400 NEGOTIATIONS PROCEDURES

### 5.401 Negotiations Assignment

- A. Following the appraisal review and receipt of written authorization to proceed with the negotiations for the parcel to be acquired, the Supervisory Right-of-Way Agent shall make the negotiations assignment. All negotiations assignments are to be made in writing and should contain the following:
  - 1. All pertinent identification numbers, such as the Project Number, E.A. and Parcel Number
  - 2. The date of the assignment
  - 3. The length of time in which the negotiations are expected to be completed
  - 4. A statement discussing the negotiations problem
- B. In most cases, when making an assignment to an highly experienced Negotiations Agent, detailed written instructions are not required. However, when the assigned acquisition is abnormally complex, or sensitive, or when an Agent below the journey level is assigned, specific, clear, written instructions may be required.
- C. Care should be exercised in making the negotiations assignment to ensure that a conflict of interest does not exist. The Agent assigned to negotiate for the acquisition shall not appraise or review the appraisal of the subject acquisition, nor calculate the replacement housing entitlement, if dealing with improved residential property. Agents shall not negotiate for any property in which they or their relatives, friends, business associates or others with whom they are closely associated have any personal or financial interest.
- D. Included with the written assignment are:
  - 1. Title report
  - 2. Legal description, Signed by Manager, Right-of-Way Engineering.
  - 3. The approved Appraisal, Appraisal Review and/or Just Compensation Memo – (Reviews that are not done by NDOT Staff Review Appraisers require a Memo establishing the “Just Compensation” from the Assistant Chief Right-of-Way Agent.)
  - 5. Copies of the right-of-way plans
  - 6. Recommendation for Escrow services

- E. The assigned negotiator shall check the central files for prior correspondence, notes on meetings, etc. as part of becoming thoroughly familiar with the acquisition. Other suggested sources of information may include the construction plans, the minutes of the public hearings, the environmental impact statement, the appraiser, and the design team. (The Right-of-Way Supervisor may have a copy of the public hearing comments and environmental documents.)

#### 5.402 Permanent Negotiations File Preparation

Upon receiving a written negotiation assignment, the Agent should review the data received and set up their working file under E.A. #, owner's name and parcel number. Each file is to include the following information:

- A. The Project Number, Engineering Authorization (E.A.) Number and, when federal funds are involved, the date the Federal Highway Administration authorized acquisition of the parcel.
- B. One copy of the approved appraisal report and the appraisal review and/or the Just Compensation Memo, including the Appraisal Review – Estimate of Value (Form 437). Within the report or the review will be a complete inventory of any real property improvements located within the right-of-way.
- C. At least one set of the right-of-way plans and, if possible, a set of the design plans should also be obtained. The plans obtained from Design need not become a part of the permanent file.
- D. A copy of the signed legal description and title report or title search from Right-of-Way Engineering. If the title report or title search is more than two months old an update shall be requested.
- E. When improvements are located within the acquisition they may be included in the Just Compensation Memo when applicable.
- F. Different situations may exist with each having a different approach to valuing improvements. For example:
  - 1. Tenant-owned Improvements (TOI) – Use Contributory Value, as required per [49 CFR 24.105\(c\)](#).
  - 2. Purchase in fee – value included in value of the whole, though damages may apply.
  - 3. Easement - pay the lesser of depreciated or replacement value of improvements.

The use of Contributory Value is required by the CFRs for TOI's.

If the area is being acquired in fee the owner would be entitled to the value of the property appraised as a total unit and not as separate parts, the Agent will see a separate value for land and improvements based on a subtraction of the land value from the total value, as required. In a partial acquisition damages may apply that allow for compensation for loss of water wells, drive approaches, etc.

In the case of an easement the real property is essentially being acquired for the specific purpose as described in the easement. The value of the easement is based on the value of the real property plus the depreciated value of any improvements being acquired.

Questions pertaining to values assigned to improvements shall be reviewed with the Review Appraiser prior to initiation of negotiations.

- G. The owner of improvements should be offered the option of retaining improvements. However, in instances where the acquisition precedes construction by a considerable length of time, the Right-of-Way Division may enter into a property management phase and rent the acquired improvements. In such cases, retention should only be initiated by the property owner's request to retain the improvements.
- H. If the owner requests the retention of any or all of the improvements, the negotiator will request approval by the Supervisory Right-of-Way Agent. When the owner requests the retention of any or all improvements, the Department shall determine the retention value. The Owner's retention of improvements is at the discretion of the Department and will be allowed when retention and removal has no adverse effects on the project.
- I. The brochure entitled "Nevada Highways and Your Property" must be given to the property owner with the initial offer. A copy of this brochure need not be placed in the permanent file, but must be noted in the Negotiations Diary.
- J. Pertinent information may be gathered from the Public Hearing transcript and the Environmental Impact Statement.
- K. Diary – The Agent is required to maintain a detailed diary. (See Negotiation Diary, [Section 5.410](#))

#### 5.403 Verification of Negotiations Data

- A. Much of the preparatory information that the negotiator obtains has been provided by other Right-of-Way staff, different divisions within the Department, or their contractors, and the Agent will usually find that it is correct. Care should be taken, however, to review and check information when possible. The primary



function of this review is to enable the Agent to become completely familiar with the acquisition and to weed out possible errors prior to contacting the property owner.

The Right-of-Way Field Review is the preliminary field review in which the negotiating Agents accompany the Supervisory Right-of-Way Agent on a field inspection of the project and the parcels to be acquired. This is designed to provide the Agent the opportunity to view the project, the assigned parcels and ask questions related to the project design and construction. This is an important part of the acquisition process as it enables the Agent to gain the understanding necessary to explain the effects of the project on the subject property, explore any design or legal issues that may arise and to negotiate the acquisition without unnecessarily involving others in the negotiation process.

1. Appraisal Data

The Agent must have knowledge of the appraisal process since they will be called on to explain the various factors considered in the estimate of value. Prior to the initial contact with the owner, the Agent shall review the appraisal in order to be thoroughly familiar with all elements of value and damages included in the offer. The Agent must also be able to explain the breakdown of the offer and the basis for each value. If necessary, the Agent shall discuss the report with the Review Appraiser. If any errors are found in the appraisal report, the Agent shall notify the Supervisory Right-of-Way Agent, who may request a meeting with the Reviewing Appraiser. It is critical to the success of the process that the owner receives an offer of just compensation. Therefore, any items missed by the appraiser, mistakes discovered by the Agent or any changes to the design are to be thoroughly reviewed by the Supervisory Right-of-Way Agent.

2. Engineering Data

- a. Engineering information, including the right-of-way plans and construction plans, should be completely understood by the Agent. It will be the Agent's responsibility to explain to the owner why the Department is acquiring the property, and what the construction will entail. In complex situations usually involving partial acquisitions, the Agent, with the Supervisory Right-of-Way Agent's approval, may ask the designer to be available to discuss the design plans with the Agent and supervisor to obtain any additional information to assist in explaining the design to the property owner.
- b. The legal description shall be compared to the right-of-way plans to ensure that the description matches the area depicted on the

plans. (See Preparation of Required Negotiation Documents, [Section 5.404](#), B.1.)

- c. Ensure that the described construction use in the documents matches that described in the “Remarks” section of the Property Schedule contained in the Right-of-Way plans. If there is a noticeable difference, this should be discussed first with the Supervisory Right-of-Way Agent and then Right-of-Way Engineering Manager, if necessary. Any confusion can be cleared up by reviewing the Right-of-Way Setting Memo.

### 3. Title Searches or Reports

The Agent is responsible for ensuring and verifying that the vesting and interest owned in the title search or report are correct. The best method to accomplish this is by reviewing the title report and title documents to ensure they are accurate and chain of title is complete. It also allows the Agent to understand who owns interests in the property, and upon meeting with the owner(s), making sure that the owner(s) also agrees with this information. If the search or report is older than **two months as of the date of assignment**, the Agent shall advise the Supervisory Right-of-Way Agent. The Supervisory Right-of-Way Agent, with concurrence of Right-of-Way Engineering will make a final determination of whether an updated report is required.

The Agent is responsible for determining if encumbrances in conflict with the project exist or if vesting is correct. Observed discrepancies must be brought to the attention of the Supervisory Right-of-Way Agent for reconciliation with Right-of-Way Engineering.

The Agent must also verify the vesting used on the PHA and Deeds matches with the vesting provided by Engineering on the legal description. If the vesting is in the name of a corporation or other fictitious name the Agent shall also verify the name matches with the Secretary of State records and status of the organization is current and not suspended or revoked. Vestings that do not match exactly require specific procedures to ensure clear title is obtained and may require assistance from the Staff Specialist and/or Legal in coordination with Engineering.

The Agent is also responsible for verifying that all encumbrances are identified and have been cleared. When escrow is involved, the Agent must work closely with escrow and title officers to provide them the required documents (Quitclaim Deeds, reconveyances, subordinations, etc.) to clear the liens and encumbrances. The best method to accomplish this is by reviewing the title report and title documents to ensure they are accurate and complete. The Agent may need to trace

locations of all easements, particularly permanent utility easements, on the Right-of-Way plan to determine the impact on these easements. The Agent may need to prepare and secure signatures on Quitclaim Deeds to clear encumbrances as necessary.

All exceptions to title that are to be taken subject to must be clearly identified and approval sought from the Chief or Deputy Chief Right-of-Way Agent through the Staff Specialist prior to commencement of negotiations. These exceptions may also require a change of language within the Deed so the Staff Specialist and Supervisory Right-of-Way Agent shall coordinate with Right-of-Way Engineering to obtain changes to the Deed.

B. Public Hearing Transcripts and Environmental Impact Statements

1. The Agent should review this material for the following reasons:

- a. The owner may have voiced concerns or complaints during the hearing which may be relevant to the negotiations.
- b. The owner, through the media or attendance, may be aware of items of concern which were discussed at the hearings.
- c. The Agent must have a general knowledge of how the project was formulated and the possible effects it may have on the community and neighborhood.
- d. Field Inspection

Prior to meeting with the owner, the Agent shall inspect the property to be acquired, the project area, the subject neighborhood and the comparable sales, and any other relevant data. Care should be taken not to disturb the owner since the Agent will not have all the information regarding the acquisition. If possible, however, the real property inventory in the appraisal report of improved property should be checked at this time.

**Note:** Please be respectful and care should be taken not to trespass on private property.

#### 5.404 Preparation of Required Negotiations Documents

A. After becoming familiar with the negotiation assignment, the Agent shall prepare the acquisition documents. The basic documents are:

- The Letter of Offer;

- The Appraisal Summary Statement (Form 563) or Valuation Summary Statement (Form 518);
  - The Public Highway Agreement;
  - The Deed;
  - Acquisition, Ownership and Occupancy Data form (Form 547); and,
  - Duplicate original Escrow Instructions (Form 526) or Manufactured Housing Escrow Instructions (Form 526A), if applicable.
1. The Letter Presenting Written Offer (Valuation Letter – Letter Presenting Written Offer (Form 517) Letter Presenting Written Offer (Form 517A))
    - a. The Agent shall prepare a written Letter of Offer, which must be based on the approved format, with added language as necessary.
    - b. The amount of the total offer is derived from the Appraisal Review - Estimate of Value (Form 437). This sheet will be attached to the approved appraisal, or may be attached to the Reviewer's determination of value in instances where the appraisal(s) could not be approved.
    - c. The Reviewer's Estimate of Value also separates the total value into land, improvements and damages in the case of partial acquisitions, or in the cases of total acquisitions, separates the total value into land and improvements.
    - d. The Reviewer shall indicate whether there is an uneconomic remainder involved and the amount that should be added to the total offer if the owner wishes the State to acquire the remainder. Prior to drafting the Letter of Offer, the Agent should discuss with the supervisor how to present the purchase offer for the uneconomic remainder. (See Uneconomic Remainders, [Section 5.369](#))
    - e. The rest of the Letter of Offer format is self-explanatory. Since the owner must be given the brochure entitled "Nevada Highways and Your Property", the brochure should be included as an enclosure, whether the letter is mailed or hand-delivered.
    - f. If the property is leased and the tenant owns improvements within the acquisition, a separate Letter of Offer and Summary Statement may be prepared for each party, provided the fee owner has:

- i. Disclaimed, in writing, any interest in the tenant's improvements; and
- ii. The tenant and owner have released their interest in the property

If the fee owner will not sign a disclaimer, the Agent should discuss the acquisition with the supervisor. (See Acquisition of Tenant-Occupied Properties, [Section 5.364](#) and Negotiations of Tenant-Occupied Property & Acquisition of Tenant-owned Improvements, [Section 5.407](#) for policies and procedures.)

- g. If the purchase offer is based on a Waiver Valuation, the Agent prepares a Letter of Offer using Form 517 instead of Form 517A.

2. Appraisal Summary Statement (Form 563) or Valuation Summary Statement (Form 518).

- a. A separate Appraisal Summary Statement or Valuation Summary Statement must be attached to the Letter of Offer.
- b. In the lower portion of the form, Description of Real Property to be Acquired, the Agent shall provide a general description of the type of property and/or property rights to be acquired. An identification is made of the building, structures, and other improvements that are included in the offer of just compensation. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g. tenant-owned improvements.
- c. Toward the bottom of the Appraisal Summary Statement or Valuation Summary Statement, following the description of the real property to be acquired, the Agent must insert a statement that generally covers the type of appraisal considerations that apply to the subject property. The statements can be found in the Appraisal Summary Statement Clauses (Form 501) and Appraisal Summary Statement Clause Guide (Form 502).

3. The Public Highway Agreement (Form 515) is prepared in duplicate (an original and one copy). Use the Draw Sheet (Form 516) to determine the specific forms to be used and Feasible Clauses for Legal Documents (Form 567), when applicable.

- a. The Public Highway Agreement is used to clearly delineate the agreement, obligations, and responsibilities of the contracting parties, i.e., the Nevada Department of Transportation for the State of Nevada, and the owner of the property to be acquired. All

negotiated terms shall be entered into this agreement and transferred to the Deed, when applicable. The Department has prepared and made available Public Highway Agreement forms. These forms have been screened and approved by the Department's Legal Counsel and cover a number of the more typical acquisition situations encountered by the Department's negotiating Agents. These are available on Right-of-Way SharePoint.

- b. The agreement pages were designed so that the pages with corresponding form numbers would follow in numerical order. However, form pages and clauses may be added or deleted as the acquisition situation dictates. Changes to standard paragraphs must be approved by the Staff Specialist through the Draft Review process. The individual pages and clauses are basically self-explanatory. The negotiator shall read and understand all of the clauses to ensure that they are appropriate for the acquisition situation.
- c. The agreement text should be moved up to fill each page as much as possible. The agreement shall be assembled in such a way that the last paragraph in the body of the agreement carries over to the signature page. All form numbers shall be deleted from the agreement pages during formatting if the context of the agreement has been changed. Form numbers shall remain on the first page only of the agreement if the agreement had no contextual changes made to the body that require the Legal Division's review.
- d. There are basically seven typical acquisition situations which define which Deed form to use. Draw Sheet (Form 516) will identify which Deed to use for each of these types of acquisitions.
  - i. Acquisition of bare land, total acquisition.
  - ii. Acquisition of bare land, partial acquisition
  - iii. Acquisition of improved property, partial acquisition
  - iv. Acquisition of improved property, total acquisition
  - v. Acquisition of bare land, partial acquisition, with access to the highway facility denied.
  - vi. Acquisition of improved property, partial acquisition, with access to the highway facility denied.
  - vii. Donation of Real Property

- e. The negotiator should attempt to categorize the assigned acquisition into one of the seven basic acquisition types listed above. Each of the above-described situations has an approved Public Highway Agreement form. They are listed on the Draw Sheet (Form 516) which may be used as a guide in preparing a highway agreement.
  - f. The negotiator is cautioned to fill in all the blanks on each page of the assembled agreement, so that important clauses are not left out. Additional standard clauses have been pre-approved by the Department's Legal Counsel. These clauses include, for example, the language regarding possible hazardous waste, fencing replacement provision, terms and conditions for retention of real property improvements, waiver clause when the property being acquired is a partial acquisition, etc. Agreements that vary from the standard forms shall be reviewed with the supervisor, the Staff Specialist and at the Supervisor's or Staff Specialist's discretion, by Legal Counsel through the Draft Review process.
  - g. In some instances, it may be necessary to replace existing fencing in connection with the construction of the highway facility if the agreement with the owner so specifies. In such instances the State's offer will include a value for fencing equivalent to the cost required to maintain (cure) the owner's existing enclosure with similar type fencing. An alternate offer, whereby the State's contractor will replace said fencing, will also be made to the owner. The signed agreement will specify which option the owner chooses in this regard. In providing this fencing, the Department of Transportation does not relieve the owner of his/her responsibility regarding livestock or in regards to the maintenance of said fencing. The signed agreement shall specify that the maintenance of the fence after construction is the responsibility of the owner.
  - h. The negotiator should also be familiar with the amount of compensation due the owner in the event he/she does not want the State to replace fencing.
4. The Deed (Forms 511, 512, 513 – General)
- a. The Department has standard, pre-printed forms for the Grant, Bargain, and Sale Deed, used to obtain fee title; the Quitclaim Deed either to clear a possible interest or obtain less than fee title; and the Easement Deed to obtain only the right to use certain property for specific highway purposes.

- b. The Annual List of Officers filed with the Secretary of State will provide names of persons that may be authorized to represent corporations, partnerships, LLCs and LLPs for the property interest being acquired. The Agent must verify, by receipt of the appropriate authoritative document, that the person contacted has the authority to represent the organization. Negotiations shall not occur with unauthorized persons.
- c. Representation can take many forms so the Right-of-Way Agent must verify that the representative has been delegated the authority to represent the business entity or individual property owner for the particular type of action (i.e. negotiation, receipt of legal notices, sign documents to sell or dispose of assets).
- d. The Agent must also obtain the appropriate documents to show who has authority to sign legal documents for the transfer of real property interests. (See [Section 5.404](#), B.8.)
- e. If a corporate resolution, release of interest, or other document is needed, the Agent may consult with the supervisor or Staff Specialist for assistance in preparing these forms.
- f. All Public Highway Agreements are to be prepared with one original and one copy. The copy is provided to the Grantor as their file copy to be superseded by a conformed copy of the executed document.
- g. The signature page for a deed differs from the signature page for a Public Highway Agreement in that the former contains only signature line(s) for the grantor, while the latter contains signature lines for at least two (2) parties to the contract.

B. Additional Information on Agreements and Deeds

1. Legal Descriptions

The Agent is responsible for the accuracy of the legal descriptions contained in the deeds and agreements. Once the description is verified, the Agent will initial and date the back of all document pages on which the legal description is written.

Agreements – Agent initials back of all pages with legal descriptions

Deeds – Agent initials front page next to Right-of-Way Engineering Managers' name

2. Omissions



All issues agreed to during negotiations must be included within the agreement. An omission of any item can result in lengthy civil actions which are costly for both parties.

3. Public Improvement Assessments

- a. When sewer, water, lighting, paving, sidewalk assessments, etc., are in effect at the time of negotiation for a land parcel, these constitute valid liens and encumbrances on the property and as such, must be cleared. The Public Highway Agreement should address such matters.
- b. It is desirable that the existence of such liens be determined during the title search process. Liens may be satisfied from the proceeds of the sale or otherwise. In any case, the Department is to receive the property free and clear of all encumbrances at the close of escrow.

4. \*\*Non-Standard Clauses

The Agent is encouraged to develop documents, which are tailored to the situation, and if a non-standard clause is to be used, the document shall be reviewed for legality and form by the Supervisory Right-of-Way Agent, Staff Specialist and Legal Counsel, prior to the document being presented to the property owner for signature.

5. Community Property

No deed of conveyance of any real property which is held as community property is valid unless both the husband and wife execute and acknowledge the same, except that either, by written Power of Attorney, may give the other the complete power to sell, convey or encumber any real property held as community property.

6. Property held as the Sole and Separate Property of a person within a community property state should be cleared by the non-owner spouse with a Quitclaim Deed relinquishing any interest in the property. This would also be applicable to property encumbered by a Homestead Declaration.

7. Property Inventories

- a. If the area to be acquired is improved, the Public Highway Agreement is not complete unless it includes, as an attachment, a complete inventory of the real property included in the acquisition.
- b. The original list of improvements gathered from the approved appraisal or the appraisal review, and checked by the Agent

during the initial field inspection of the property, is the source of data. The Inventory of Improvements (Form 522) should be used as the attachment, and should be sufficiently detailed to allow ready identification of all items to be relocated. If an inventory is difficult to describe because of magnitude or complexity, consideration should be given to describing by gross weight, volume, or other reasonable measures, including photographs and videos where appropriate.

- c. The list of improvements should also be checked against the information supplied by the Supervisory Right-of-Way Agent setting retention values. Retention values are set by an Agent and concurred with by the supervisor.

#### 8. Parties, Signatures and Documents to Verify Signature Authority

- a. The signature blocks on all documents must contain the following:

- i. The entity on whose behalf the person is signing;
- ii. The signer's name typed underneath his or her signature;
- iii. The signer's title or capacity typed next to his or her name.

- b. Specific legal documents create each type of legal entity and specify the person(s) who have the authority to convey real property. The entity may also require a Resolution or written approval by a Board or other persons. These entities are governed by the Nevada Revised Statutes. The following are the types of entities and legal document that will identify who has signature authority:

- i. General Partnerships – Created by a Partnership Agreement; the Partnership may or may not be registered with the Secretary of State. Signature authority is found in the Partnership Agreement, a Statement of Partnership Authority (On file with Secretary of State) or a Resolution signed by the partners. General Partnerships require signature of all partners unless specifically excepted in the Partnership Agreement provided by the partnership. ([NRS 87.090](#))

Partnerships not registered with the Secretary of State must provide one of the following:

- a) Partnerships doing business under a fictitious name must provide a copy of the current Fictitious

Business Name Statement on file in the county in which business is conducted, or

- b) A Statement of Partnership will be required to identify the partners. This form is provided by the escrow company handling the transaction and serves only to identify and certify the names of all partners.

- ii. Corporations – Created by Articles of Incorporation; signature authority may sometimes be found in the Articles of Incorporation, but is usually shown in the By-Laws or a Corporate Resolution.

Unless it is winding up, all corporations are required to be currently registered with the Secretary of State in order to conduct business or sell and dispose of assets. Before a corporation may wind up its affairs it must first file a Certificate of Resolution with the Secretary of State. ([NRS 78.580](#))

It is very important when dealing with a corporation that you are aware of its current status. The corporate status may be verified on the Secretary of State's website.

Because the Articles of Incorporation may limit the ability of a Corporation's Board of Directors to sell or dispose of assets, a corporation in good standing with the Secretary of State will need to provide:

- a) The Articles of Incorporation and
- b) The By-laws or a certified copy of a Corporate Resolution showing the name and title of the person authorized to act for the corporation to sell corporate assets.

Dealing with a revoked corporation will require special actions be followed in making the Initial Offer, negotiating the acquisition, and noticing for condemnation to ensure the Uniform Act has been followed.

The initial Offer to a Revoked Corporation shall be made to all listed Directors of the corporation or the court appointed Trustee or in the case of an

insolvent corporation it shall be made to the court appointed Receiver of trustee.

For legal noticing of a revoked corporation see subsection "6" below.

- (1) Corporations are required to keep a copy of the Articles of Incorporation and By-Laws available in their registered office. ([NRS 78.105](#))
- (2) Unless otherwise provided in the articles of incorporation, every corporation may, by action taken at any meeting of its Board of Directors, sell, lease or exchange all of its property and assets. ([NRS 78.565](#))
- (3) If the charter of a corporation is revoked and the right to transact business is forfeited as provided in [NRS 78.175 \(2\)](#), all the property and assets of the defaulting domestic corporation must be held in trust by the directors of the corporation as for insolvent corporations, and the same proceedings may be had with respect thereto as are applicable to insolvent corporations.
- (4) The Secretary of State shall compile a complete list containing the names of all corporations whose right to transact business has been forfeited. ([NRS 78.175](#))
- (5) If a corporate charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated. ([NRS 78.180 \(4\)](#))
- (6) Service of process on a corporation whose charter has been revoked or which has been continued as a body corporate pursuant to [NRS 78.585](#) may be made by mailing copies of the process and any associated records by Certified Mail, with Return Receipt Requested, to:

- (a) The registered Agent of the Corporation, if there is one; and
  - (b) Each officer and director of the corporation as named in the list last filed with the Secretary of State before the dissolution or expiration of the corporation or the forfeiture of its charter. ([NRS 78.750](#))
- iii. Limited Liability Corporations (LLCs) – Created by the Articles of Organization; signature authority is shown in either the Articles of Organization or Operating Agreement or a certified copy of a resolution that ratifies the manager's signature authority. ([NRS 86.301](#), [86.161](#) and [86.291](#)) The entity must provide a copy of the Articles of Organization and the Operating Agreement (if one exists). An Operating Agreement is not required by statute.
- iv. Trust - Created by the Trust Agreement. Signature authority is given to a Trustee within the Trust Agreement. ([NRS 163.023](#)) All trusts, this includes Living Trusts (Inter vivos Trusts), Business Trusts, and Real Estate Investment Trusts (REIT) must be signed by authorized Trustees. The Trust must provide either a certified and notarized copy of the Trust document or a Certification of Trust that complies with the requirements of [NRS 164.420](#) to show signatory authority and limitations. Such a certification must be in the form of an affidavit signed and acknowledged by all of the currently acting trustees of the trust. ([NRS 164.400\(2\)](#)) The Certification of Trust may confirm the following information:
  - a) The existence of the trust and date of execution of any trust instrument;
  - b) The identity of the settler and each currently acting trustee;
  - c) The powers of the trustee and any restrictions imposed upon him in dealing with assets of the trust;
  - d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;

- e) If there is more than one trustee, whether all of the currently acting trustees must, or less than all may, act to exercise identified powers of the trustee;
  - f) The identifying number of the trust and whether it is a social security number or an employer identification number; and,
  - g) The form in which title to assets of the trust is to be taken.
  - h) The certification must contain a statement that the trust has not been revoked or amended to make any representations contained in the certification incorrect, and that the signatures are those of all the currently acting trustees. ([NRS 164.410](#))
- v. Limited Partnerships – Created by a Partnership Agreement and registered with the Secretary of State. All documents must generally be signed by General Partners. A Limited Partner may not sign. The General Partner can be identified by the Secretary of State annual filings. If there are more than one General Partner all must sign. The Partnership Agreement may delegate this authority to a single General Partner. ([NRS 87A.200](#), [NRS 87A.235](#), [NRS 87A.375](#), [NRS 88.455](#), and [NRS 87.090](#))
- vi. Estate – Court document appointing an Executor or Court appointed Administrator.
- If a party is an unnatural person that name must be listed first beneath the signature line and is followed with “By” for the signature of the authorized party, including their title, such as “authorized Agent, owner, president”, etc.
- vii. Fictitious Names (Partnerships & Sole Proprietorships): both signatory and party must be identified, i.e., non-corporations must be identified as: “Carson Battery Sales, a sole proprietorship”, or “John Q. Smith, d/b/a Carson Battery Sales”. The authority of the owner of the Fictitious Business Name can be verified by obtaining a copy of the Fictitious Business Name statement or by proof of publication. The signature may be handled in several ways:
- a) In general,

- 1) All signatures must be notarized.
- 2) All business entities, except General Partnerships (General Partnerships are not required to file with the Secretary of State), must be in current status with the Secretary of State and have filed a current list of officers, members or partners.
- 3) People are referred to as “his, her and their”. Unnatural persons are referred to as “itself, it’s and neuter”. People have heirs, executors, administrators and successors and assigns. Unnatural persons have personal representatives, officers, successors and assigns.
- 4) Powers of Attorney authorizing an Agent to act on owner’s behalf must be signed and notarized by the actual owner (Trust, Corporation, LLC, etc.). If the owner is a corporation, partnership, limited partnership, trust or limited liability corporation, they must follow the general rules indicated above for business entities and unnatural persons. If a Power of Attorney is given by one party to another that power cannot be assigned to a third party without express written permission by the first party.
- 5) All signature lines must follow accepted convention and show the name of the owner, name of the signer, title of the signer and be supported by documents showing authority to sign as indicated above. Examples of signature lines are provided below.
- 6) All documents must match corresponding legal vesting or named lessees within the applicable lease.
- 7) If an unnatural person is the Agent for another unnatural person then each must satisfy signature authorizations and protocol for each respective entity.

**For example:**

Carson Battery Sales  
By John Q. Smith, sole owner  
John Q. Smith, Sole owner

**EXAMPLES OF SIGNATURE FORMATS:**

EXAMPLE 1:

Individual

\_\_\_\_\_  
John Jones, Owner, Proprietor, etc.

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EXAMPLE 2:

Partnership

ABC, a general (or limited) partnership

By: \_\_\_\_\_  
John Jones, General Partner

In some instances, the signature of one general partner will be adequate; in others it will not be adequate. This depends upon numerous provisions of Chapters [87](#) and [88](#) of the Nevada Revised Statutes, provisions in the Partnership Agreement and upon the facts surrounding each transaction.

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EXAMPLE 3:

Corporation

ABC Company, Inc.

By: \_\_\_\_\_  
John Jones, President

Not everyone has authority to sign for a corporation. Such authority is specified in the By-Laws of each corporation. Generally, high officers such as the Chairman of the Board, President or Vice-President have such authority. This authority must be verified by receiving and reviewing the corporation's By-Laws or a certified copy of an approved Corporate Resolution.

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EXAMPLE 4:

Trust

Doe Family Trust

dated \_\_\_\_\_ (if part of vesting)

By: \_\_\_\_\_

Mary Jones, Trustee

Information only: A trustee, also known as a fiduciary, has the authority to sign contracts and legal documents for the trust. Authority will be defined within the Trust document. Obtaining a copy of the Trust document and reviewing the Title page, authorizations, limitations and notarized signature page will verify the authority. If the trustee is a bank or trust institution, then it is the signature of a trust officer acting as the trustee that is required.

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EXAMPLE 5:

Estate

Estate of Jane Doe

By: \_\_\_\_\_

John Doe, Administrator or Executor

If property is held by an estate, then either an executor, as named in the will or, if there was no will, the administrator appointed by the court has the authority to sign legal documents.

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EXAMPLE 6:

Limited Liability Company

ABC, LLC

By: \_\_\_\_\_

WE BE Managers, Inc., Manager  
Jack Brown, President

Organizations with other fictitious persons signing as partners, managers or officers must also follow conventions for their type of organization as well as the owner's organization.

- b) When the PHA is to be signed by more than one Grantor that are geographically separated and time

could be an issue, signing in Counterpart may be used.

To sign in Counterpart, the following wording must be added as the last paragraph of the Mutuals:

*“This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.”*

## 5.405 Owner Contact

### A. Initiating the First Contact

1. Following the Agent’s review of the pertinent data and preparation of the necessary documents, the Agent shall make arrangements for the first meeting with the property owner. A telephone call setting a date for the initial meeting is the quickest and most successful method of contact; however, in some instances, a registered or certified letter may be needed to initiate contact with the owner. The first face-to-face contact with the owner should be scheduled in cooperation with the relocation Agent and at the convenience of the property owner or the owner’s designated Agent. To avoid problems and confusion, as little information relative to the offer as possible should be given over the telephone.
2. During the phone conversation, the Agent must ask the owner questions which will facilitate the completion of the Acquisition, Ownership and Occupancy Data (Form 547). The date and time of the first meeting must also be listed on this form. Copies of the completed form are transmitted to the assigned relocation Agent and the Supervisory Right-of-Way Agent.
3. If the owner or tenant are a non-person as defined in [Section 5.404](#), B.8. or is represented by a person or party other than their self, the Agent must obtain written authorization to negotiate with the representative in the form of a Power of Attorney, Corporate Resolution, Trust Agreement authority, court authority, Fictitious Business Name Statement, Partnership Statement or other satisfactory evidence.
4. When a parcel to be acquired is encumbered by a lease, the negotiator must address the degree of interest held by each party and discuss the acquisition procedure to be followed with the Supervisory Right-of-Way Agent. While it is true that the property is valued using the undivided fee concept, in some cases the lessee may hold more of the rights to the property than the Lessor. Refer to Acquisition of Tenant-Occupied

Properties, [Section 5.364](#) and Negotiations of Tenant-Occupied Property & Acquisition of Tenant-Owned Improvements, [Section 5.407](#), for policy and procedures concerning the acquisition of tenant-occupied property.

#### 5.406 The First Contact

##### A. Owners and Authorized Representatives

Unless otherwise authorized by the property owner(s), all acquisition negotiations shall include all ownership interests. If the property owner employs someone as a representative to conduct discussions, the extent of the authority must be in writing from the property owner. A properly executed and notarized Power of Attorney is required for a representative to sign any Deed.

##### B. Out-of-State Owners

Out-of-state owners may either be contacted personally, or by Certified Mail or Registered U.S. First-Class Mail, Return Receipt Requested. The Supervisory Right-of-Way Agent will decide which method to use. Usually, owners who reside in neighboring states, and within a day's driving distance, are contacted personally. In every case, where a personal meeting is not possible, the correspondence should, as much as possible, embody the same information, which would be discussed during the personal contacts.

##### C. Local Owners

1. The first face-to-face contact with the property owner is a most important meeting. There are a number of things that must be accomplished during the initial meeting, the most important of which is cultivating an attitude of confidence. It is important to realize that the Agent is not selling a product; rather, the Agent is presenting the owner with an offer to purchase property, which is fair to both the State and the property owner. Success is measured by the Agent's ability to explain the acquisition process and resolve problems equitably.
2. During the first contact, the Agent should ask the property owner questions about the property, such as the date of purchase, reason for purchase, area, special features, and any changes in title. If applicable, request a copy of the Corporate By-Laws, LLC By-Laws, Articles of Organization, Partnership Agreement or By-Laws, Trust document or Certification of Trust to show the person you are negotiating with has the authority to transfer title to real property. Powers of Attorney must be notarized.
3. Following re-verification of this information, an inspection of the property to be acquired should be conducted. During the inspection, the Agent should present and interpret the right-of-way plans and explain the project

in general, including the tentative construction schedule and more specifically, how the project affects the property. During the inspection, the Agent should check the improvements within the acquisition area against the inventory in the agreement.

4. During the first personal contact, the letter of offer may be presented to the owner along with the Appraisal Summary Statement (Form 563) and the brochure entitled, "Nevada Highways and Your Property". This letter must indicate that this information was hand-delivered, by whom and the date.
5. The negotiator must re-verify the occupancy data. The information on the Acquisition, Ownership and Occupancy Data (Form 547) must be accurate with respect to those occupying the property at the initiation of negotiations, since their occupancy establishes owner and/or tenant eligibility for relocation benefits.
6. The negotiator should explain to the owner the appraisal process, the definition of market value, the approaches to value which have been used, and in the case of a partial acquisition, explain the before and after appraisal process, damages and special benefits.
7. The property owner will be provided a copy of the appraisal, which should be returned, as per Access to the Appraisal Report by the Property Owner, [Section 5.382](#) of this manual.
8. If the market data approach was used, the Agent may inform the owner of the sales which were used and how they compare to the subject. The cost approach, if applicable, may be explained by discussing the sales used and the cost new as it relates to the present value. Regarding the income approach, the Agent may explain economic rent, contract rent and the present worth of future benefits as they may generally apply.
9. If the owner is to be given the option of retaining the improvements, the retention value and the conditions for removal of the improvements must be completely explained.
10. After the Agent has explained the acquisition, reviewed the deed and agreement thoroughly, and answered all of the owner's questions, the Agent should ask for the property owner's signature on the documents.
11. If the owner does not wish to sign at this time, the Agent will make another appointment. During the period between meetings, the negotiator should try to answer all questions to the owner's satisfaction and attempt to resolve any problems which have arisen. These problems should be discussed with the Supervisory Right-of-Way Agent and other

appropriate staff within the Department who may be able to aid in the resolution.

12. Throughout the acquisition process, the Agent must keep a diary of the negotiations on the Negotiator's Diary (Form 529). The Diary must be in a permanent form and include the date and time of each contact, location, persons present, items discussed and reactions, the amount of the offer or offers and any counter-offers made. The Agent should update the Diary after each contact, initial and date each entry, and sign the Diary after the final entry. The Diary should not include the Agent's opinions about the owner.
13. The Diary must clearly describe the action taken with regard to retention of the owner's improvements. If the owner is not afforded an opportunity to retain the improvements, the Diary must include an explanation as to why this was not done.

D. Uneconomic Remainder

1. If it has been determined by the Appraisal Review Section that damages are so severe that an uneconomic remainder exists, the owner must be given the option of accepting the established value for the part acquired plus damages, or requiring that the Department purchase the parcel in total.
2. The acquisition procedure continues as above, except that the owner's option of selling the uneconomic remainder must be included in the letter of offer, explained by the Agent, and noted in the Diary.

#### 5.407 Negotiations of Tenant-Occupied Property & Acquisition of TOI's

- A. Prior to requesting permission to appraise and acquire, the Supervisory Right-of-Way Agent is required to identify those acquisitions that are tenant occupied. This identification process places the Supervisory Right-of-Way Agent on notice that tenant-owned improvements and compensation claims for leaseholds may be involved.
- B. Once permission to appraise and acquire has been received, the Supervisory Right-of-Way Agent shall assign an Agent to inform both the property owner and the tenant(s) of the State's policy regarding the appraisal and acquisition of the property owner's interest and tenant-owned improvements. This contact is made in person and is followed with a letter of explanation, Follow-up Letter – Tenant-Owned Improvements (Form 542), including a Mutual Release and Certification (Form 589) or Tenant Release of Partial Interest and Certification (Form 540). The Agent should explain the concept of undivided fee and the definitions of contributory value and salvage value. The Agent must emphasize that a tenant's

claim for compensation for a leasehold interest, if any, must be satisfied by the owner, either through escrow from the owner's proceeds or otherwise.

- C. The Agent shall give the owner and tenant a real property inventory form for their use in listing real property improvements owned by the tenant, Inventory of Improvements (Form 522). Attached to the inventory will be a disclaimer of interest in the items listed for the owner to sign Lessor's Release of Interest in Tenant-Owned Improvements (Form 543) and a certification of ownership statement for the tenant to sign Lessee's Certification of Ownership Statement - Tenant-Owned Improvements (Form 545). The Agent may assist the owner and tenant in developing the list of tenant-owned improvements, so as to eliminate items which do not qualify as tenant-owned realty (e.g., maintenance expenses, the paint on the walls, movable personalty). It will be the responsibility of the appraiser to determine which items contribute value and which do not. Items of personalty will be relocated by the Department rather than acquired.
- D. The owner and tenant must agree on the improvements owned by the tenant. The property owner must agree that the contributory value of the tenant-owned improvements will be deducted from the total amount of compensation for the property before the State makes its offer to the Lessor. Absent such an agreement, condemnation of all interests may be necessary.
- E. The Agent shall advise the owner and tenant that the agreed upon inventory must be returned to the Department within a prescribed period of time, usually 30 days, and if agreement on and release of these interests cannot be obtained, the Department will have no alternative but to proceed with the appraisal assignment as though all interests were owned by the same person.

It is the Department's intent to obtain the agreed upon inventory before the appraiser begins the assignment; however, this does not always occur. Therefore, if the property owner and tenant produce the inventory, owner's release and tenant's certification prior to the completion of the appraisal report, the Supervisory Right-of-Way Agent may amend the appraisal assignment or contract so that the contributory value and salvage value of the tenant-owned improvements are obtained.

- F. The Department is not obligated to acquire all items listed on the initial inventory as real estate. Once the agreed upon inventory is received, it is reviewed by the Agent, Supervisory Right-of-Way Agent, and the assigned Reviewing Appraiser to determine which items, if any, are personalty and which items are realty. If questions should arise as to the status of particular items, assistance may be sought from the Staff Specialist for Negotiations. Only those items, which qualify as realty, are allowed to remain on the inventory list (Those items considered personalty are handled through the relocation program and must be inventoried at the time of the move). Once the list of tenant-owned improvements is

finalized, and the changes are approved by the owner and tenant, the list is given to the appraiser for inclusion in the appraisal report.

- G. When the appraisal has been completed and reviewed, it is turned over to the Supervisory Right-of-Way Agent for negotiations. The assigned acquisition Agent will proceed through the basic negotiation steps as delineated in Sections [5.401](#) through [5.418](#), keeping in mind that the tenant has the same rights as the property owner (See [Section 5.407](#) N. if the owner and tenant have not provided the inventory of tenant-owned improvements, the tenant’s certification of ownership, and the property owner’s disclaimer).

The following three examples show how separate offers to the property owner and tenant are calculated:

**EXAMPLE 1:**  
**CONTRIBUTORY VALUE OF TOIs IS GREATER THAN THEIR SALVAGE VALUE**

Total property value =	\$150,000.00	
Owner’s land =	\$100,000.00	
Owner’s Improvements =	\$ 49,400.00	
Tenant’s Improvements =	\$ 600.00 (salvage value = \$100.00)	
 Offer to Owner =	 \$150,000.00	
	- \$ 600.00 (contributory value to TOIs)	
	\$149,400.00 (land + improvements)	
 Offer to tenant =	 \$ 600.00	
Total of Offers	\$150,000.00	



**EXAMPLE 2:**  
**SALVAGE VALUE OF TOIs IS GREATER THAN THEIR CONTRIBUTORY VALUE**

Total property value =	\$150,000.00	
Owner’s land =	\$100,000.00	
Owner’s Improvements =	\$ 49,400.00	
Tenant’s Improvements =	\$ 600.00 (salvage value = \$2,000.00)	
 Offer to Owner =	 \$150,000.00	
	- \$ 600.00 (contributory value to TOIs)	
	\$149,400.00 (land + improvements)	
 Offer to tenant =	 \$ 2,000.00	
Total of Offers	\$151,400.00	

**EXAMPLE 3:**

**SALVAGE VALUE OF TOIs IS GREATER THAN THEIR CONTRIBUTORY VALUE**

**CONTRIBUTORY VALUE OF TOIs = ZERO**

Total property value =	\$150,000.00
Owner's land =	\$100,000.00
Owner's Improvements =	\$ 50,000.00
Tenant's Improvements =	\$ 0.00 (salvage value = \$2,000.00)

Offer to Owner =	\$150,000.00
-	\$ 0.00
	<hr/>
	\$150,000.00 (land + improvements)

Offer to tenant =	\$ 2,000.00
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Total of Offers	<u>\$152,000.00</u>
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Regarding Examples 2 and 3 above, the Department may sell the tenant-owned improvements at a later time and recover their salvage value. The net expenditure will be no more than the approved, appraised value of the total property.

- H. A separate letter of offer to purchase tenant-owned improvements must be prepared for each tenant. The Appraisal Summary Statement (Form 563) shall include all tenant-owned improvements listed on the inventory, even those improvements which have no contributory value. Public Highway Agreement – Tenant-Owned Improvements (Form 544) is specifically for negotiations with the tenant for the acquisition of tenant-owned improvements. The transfer of title of tenant-owned improvements will be by Deed (G.B.S. – Tenant-Owned Improvements) (Form 512B) with an attached inventory, and the purchase will be handled through escrow. Recordation of the Deed at the local county recorder's office will be required.
- I. Generally, once an item has been determined to be a tenant-owned improvement, it will remain in that category. However, if during negotiations with the tenant, an item listed as a tenant-owned improvement is needed by the tenant and can be removed without substantial harm to the property, the acquisition Agent, with concurrence of the Supervisory Right-of-Way Agent, can delete the item from the list of claimed tenant-owned improvements. A memo from the Supervisory Right-of-Way Agent to the Chief Right-of-Way Agent expressing this need shall be submitted for record purposes and approval. In the case of the need to add an item, the same procedure applies. However, arbitrarily adding or subtracting items is to be discouraged. Strict adherence to the Department's definition of tenant-owned improvements will be observed.
- J. Tenant-owned improvements are real estate and as such, like other improvements, can be retained. If the tenant should choose to retain any or all of



the tenant-owned improvements, the amount offered for the improvements to be acquired will be the difference between the amount determined as just compensation for the entire interest in the tenant-owned improvements and the salvage value of the retained improvements.

The Agent should prepare and calculate the offer as follows:

EXAMPLE 1:  
 CONTRIBUTORY VALUE OF TOIs IS GREATER THAN THE SALVAGE VALUE

Contributory Value =	\$3,000.00	
Salvage Value =	\$ 200.00	
Total amount of just compensation for		
Tenant-owned improvements		\$3,000.00
Estimated salvage value of		
tenant-owned improvements	-	\$ 200.00
Amount to be paid to the tenant if		<u>\$2,800.00</u>
improvements are retained		

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EXAMPLE 2:  
 SALVAGE VALUE OF TOIs IS GREATER THAN THE CONTRIBUTORY VALUE

Contributory Value =	\$ 100.00	
Salvage Value =	\$4,000.00	
Total amount of just compensation for		
Tenant-owned improvements		\$4,000.00
Estimated salvage value of		
tenant-owned improvements	-	\$4,000.00
Amount to be paid to the tenant if		<u>\$ 0.00</u>
improvements are retained		

K. If the tenant insists on receiving compensation for a leasehold interest, the Agent should make it clear that this issue is between the tenant and the property owner.

The property owner and tenant must execute a Mutual Release and Certification (Form 589) or deposit in escrow. The Public Highway Agreement (Form 515) shall include a clause to that effect. The Escrow Instructions (Form 526) or Manufactured Housing Escrow Instructions (Form 526A) shall include a clause instructing the escrow officer to record the mutual release form(s) at the close of escrow.

L. The Department cannot conclude negotiations and open an escrow without a signed Mutual Release and Certification (Form 589), which releases the Department from any liability for compensation for a tenant's leasehold interest. If the mutual release form is not signed by both parties, condemnation proceedings must be filed in which a decision is made by the court on the

amount of compensation due, followed by a separate hearing to determine the value of other claims.

M. If negotiations are successful, the closing package, with the request for payment shall be submitted to Right-of-Way Headquarters in accordance with [Section 5.419](#) of this manual.

N. If the owner and tenant are unable to provide the Agent with an agreed upon inventory of tenant-owned improvements, the owner's release, and the tenant's certification, the Agent must present the total offer to the property owner. Even without an initial agreement on the inventory of improvements, the property owner and tenant may be able to settle their issues independently so that all interests can be cleared in escrow.

If, however, the property owner accepts the total amount of the offer but refuses to settle issues with the tenant(s), the offer is considered to have been rejected, and condemnation proceedings may be necessary. In every case, whether or not the parties have agreed on, and the tenant is willing to accept the offer for, the tenant-owned improvements, the Department will require that the Mutual Release and Certification (Form 589) be signed by both parties. If not, the Department may begin eminent domain proceedings by applying to the Transportation Board of Directors for a condemnation resolution.

O. If a tenant-occupied property becomes vacant after the initiation of negotiations with the property owner it is usually advantageous for the Department to enter into a protective rent agreement to rent the property to hold vacant during negotiations. The acquisition Agent must consider and document whether or not:

1. Comparable vacant rental property in the area is scarce.
2. There is a good probability that the property would be re-rented prior to the Department gaining control of the parcel.
3. The cost of relocation benefits to any subsequent occupant would likely exceed the cost of renting the property to hold it vacant.
4. Reoccupation of the parcel might delay Right-of-Way's delivery of the property for construction.

P. If the Supervisory Right-of-Way Agent issues written approval to proceed with renting to hold vacant, the acquisition Agent will contact the property owner and offer to rent the property in accordance with the following procedures:

1. As soon as the property owner gives the Department notice of a vacancy, the acquisition Agent shall develop a protective rent agreement (Form 519PR) or commercial lease, Lease – State as Lessee (Form 519),

naming the Department as lessee and process through the appropriate Staff Specialist.

2. The amount of the protective rent paid by the Department will be the same amount as the contract rent from the last tenant during the last month of occupancy unless utilities or other items were included in that amount. This amount should be confirmed by obtaining a copy of the rental contract.
3. The acquisition Agent will notify the Right-of-Way Management Analyst, via memo, to issue monthly payments to the property owner while negotiations are in progress. The Agent will be responsible for notifying Right-of-Way Control of the date the rental payments are no longer necessary. If the Legal Division is involved in the settlement process, the Condemnation Coordinator will be responsible for these arrangements and notices.
4. Once the Department has entered into a protective rent agreement, negotiations with the property owner must be concluded with all deliberate speed.
5. Rental payments will cease when the Department gains control of the property (upon close of escrow, recording of the deed when no escrow is used, legal right of entry granted by the court, etc.).

**Note:** This information should be shared with the Right-of-Way Management Analyst for the appropriate termination of the protective rent agreement and termination of monthly rents.

#### 5.408 Revised Offers

- A. If the extent of the acquisition is changed and/or the amount of compensation is adjusted by an updated appraisal and/or re-determination by Appraisal Review, a revised offer and Appraisal Summary Statement must be provided to the owner. The Agent must compose an original letter to explain the circumstances that prompted the revised purchase offer.
- B. During negotiations conditions and circumstances may be revealed that were not known at the time the appraisal was prepared. These new conditions shall be immediately communicated to the Supervisory Right-of-Way Agent for consideration of impact on appraised values.
- C. Should a property owner reject the value arrived at in the appraisal the Agent shall advise the owner that the appraised value will be reconsidered if the owner can provide previously undisclosed market data or conditions related to the property.

- D. When a settlement offer is proposed by management, the Agent shall hand draft a letter of offer and customize the verbiage to fit the circumstances of the settlement proposal.

#### 5.409 Negotiations Period

- A. When the Agent receives a negotiation assignment, it will include the number of days the Agent has to complete the assignment. It is the Agent's responsibility to make every effort to confine the process to this period while allowing the owner a reasonable period of time to consider the offer and obtain professional advice or assistance.
- B. If, for any reason, the period given is inadequate, the Agent should immediately bring the problem to the attention of the Supervisory Right-of-Way Agent for reconsideration.
- C. In no instance should an owner be given less than 30 calendar days from receipt of the initial offer to consider the acquisition. During this period, the Agent must make every effort to meet with the owner at least twice.
- D. In every case, the Agent shall make every reasonable effort to expeditiously acquire the real property. In no event shall the Agent either advance or defer negotiations, or take any action coercive in nature, in order to compel an agreement on the price to be paid for the property.

#### 5.410 Negotiation Diary

- A. Immediately after each contact with the owner, the Agent should enter the pertinent facts relating to the acquisition in the Negotiator's Diary (Form 529). This diary format should be used because it covers the basic requirements for maintaining adequate records.
- B. The diary may be written in longhand or digitally. The pages must be numbered. Separate entries for each contact are initialed and dated. The following items must be included in the diary:
  - 1. Date, time and place of each contact.
  - 2. Persons contacted or present at the meeting.
  - 3. The amount of the offer and the basis for the amount.
  - 4. A list of the documents presented and explained to Owner.
  - 5. When the acquisition brochure, the Title VI Compliance form and Brochure, and Appraisal Summary Statement were delivered to the Owner.

6. Other offers and counter-offers, including the basis for these amounts, such as an approved re-appraisal or an administrative settlement.
  7. Problems encountered, what efforts were made to resolve them and what effect they have on the negotiations.
  8. If the negotiations are unsuccessful, the Agent should include an analysis of the problem and recommendations for future action.
  9. Upon completion of the negotiations, the diary must be signed and dated after the last entry.
- C. The Agent's analysis of the problem is required. However, it should be clearly separate from the facts.
- D. The Negotiator's Diary should not cover any portion of the relocation process other than to explain the presence of the relocation Agent.
- E. The diary is an official chronology of the steps and actions taken to acquire the property. It documents the Agent's diligence in performing their duties, our compliance with requirements of the [Uniform Act](#), our compliance with our own policies and procedure and provides explanation of divergent positions preventing a negotiated acquisition. The items listed here are the minimum requirement and may be expanded upon, when appropriate. This is not the location to air the Agent's frustrations with the Owner, their representative, our process or any other matter.
- F. In some instances, the diary may be entered as evidence in court actions and the Agent may be called to testify. If the diary entries state the owner's concerns, pertinent facts and are cogent and terse, the Agent will be able to defend his or her actions.

#### **5.411 Negotiation and Relocation Coordination and Cooperation**

- A. The acquisition process is a team effort by the negotiations Agent and the relocation Agent. Cooperation and teamwork will increase the likelihood of a positive outcome.
- B. The approved offer and the replacement housing allowance may be given at the same meeting; however, care must be exercised by both Agents to ensure that the two amounts are not considered as one or in any manner lumped together.
- C. If is preferred to have both Agents in attendance at the same meeting, the negotiation Agent should present the acquisition first, followed by the relocation Agent. Specific questions should be answered by the respective Agent and the discussions should be handled separately.

- D. It is the responsibility of the negotiations Agent to complete the Acquisition, Ownership, and Occupancy Data form (Form 547) prior to the first owner contact and ensure that the assigned relocation Agent gets a copy immediately. The occupancy data is to again be verified by the negotiator at the initiation of negotiations to document the occupancy of owners and/or tenants. At the signing of the Public Highway Agreement for the property, the negotiator must fill out a new Form 547 verifying with the former owner the original occupancy data or documenting the existence of subsequent occupants for relocation assistance eligibility. The new Acquisition, Ownership and Occupancy Data form is then transmitted to both the relocation Agent and the property management Agent with the acquisition date noted. In the acquisition of unimproved property, the updated form need only be sent to property management.
- E. When a settlement cannot be reached with the owner and the acquisition is turned over to Legal, the relocation Agent and Condemnation Coordinator assume the responsibility of maintaining the Acquisition, Ownership and Occupancy Data form.

#### 5.412 Appraisal Data

- A. Generally, until the property is acquired, the appraisal reports and reviews are considered confidential; however, the property owner or the owner's authorized representative is authorized to have access to the approved appraisal report and review. The acquisition Agent shall provide a copy of the report to the owner upon receiving the request and shall advise the owner that it should be returned to the Department in thirty (30) days.
- B. If the owner disagrees with the State's offer and presents data, which supports a higher opinion of value, the Agent should bring the information to the attention of the Supervisory Right-of-Way Agent. At that time, a decision will be made as to the next course of action.

#### 5.413 Clearing Title

Unless otherwise directed by the Supervisory Right-of-Way Agent acquisitions will be submitted through escrow if the value is greater than \$2,500, have complex title issues, Deeds of Trust to be cleared, reconveyances to record, releases of acceleration clauses or Tenant interests. At the close of escrow on a fee acquisition, there should be no monetary exceptions in the title policy.

Acquisitions of less than Fee interest may be taken subject to some title exceptions upon recommendation of the Staff Specialist and approval of the Chief or Deputy Chief Right-of-Way Agent.

It is generally the responsibility of the Owner to clear title because the State subscribes to the Undivided Fee Rule; however, we do what we can to facilitate the execution of documents to

clear title. If for some reason you believe we will not be able to clear title, we may have to file a condemnation action to do so even if we settle on the monetary amount with the property owner.

Form 526 or 526A, the Division's Escrow Instructions, shall be used to instruct the title company regarding the disbursement of funds and other services. The original Escrow Instructions with the Owners and Supervisory Right-of-Way Agent's signatures shall be included in the acquisition closing package.

#### 5.414 Property Taxes

- A. Property taxes are cleared and/or prorated in escrow for fee acquisitions. When purchasing a permanent easement interest, title may be taken "subject to" current taxes.
- B. Taxes levied on real property acquired for right-of-way purposes, by purchase and deed or by condemnation proceedings, will be abated for the portion of the fiscal year in which the real property is owned by the State. Ownership commences with the date the deed is recorded or, in the case of condemnation, with the date of judgment or occupancy of the property, whichever comes first.
- C. [NRS 361A.090](#) allows the State to preserve, conserve and otherwise perpetuate adequate agricultural and open-space lands to assure continued public health, use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the State and its citizens. Consequently, agricultural lands may be taxed at a rate lower than other properties.
- D. When one or more of the following events have occurred, this property may be reassessed and the deferred taxes become due and payable:
  - 1. A physical alteration of the surface of the property enabling it to be used for a higher use;
  - 2. The recording of a final map or parcel map which creates one or more parcels not intended for golf course use; or
  - 3. A change in zoning to a higher use made at the request of the owner.

For example, if a farmer or a rancher has some acreage that has an actual value of \$1,000 per acre because it could be subdivided into housing lots, but he is assessed instead at a use value of \$100 per acre, he pays the tax on the lower value. Ten years from now, if he converts or subdivides it, then he is required to pay the deferred tax, the tax that he didn't pay during those years.

#### 5.415 Negotiated Right of Entry with Compensation

- A. When immediate entry is necessary and negotiations for the acquisition have not been completed, it may be advisable to secure a negotiated right of entry with compensation.
- B. The decision to pursue a negotiated right of entry is the responsibility of management. This option is rarely used. The Agent must document the file to explain the reasoning behind the decision to proceed in this manner. Often this is used in emergency situations only.
- C. The Right of Entry Agreement (Form 524) must be prepared with the assistance of the Supervisory Right-of-Way Agent and Legal Counsel.

#### 5.416 Legal Complications

- A. In each of the following situations, the Agent should immediately confer with the Supervisory Right-of-Way Agent:
  - 1. Estates in Probate; persons under 18 years of age, with or without legal guardians; incompetents, whether or not legally adjudged so; bankruptcies, etc.
  - 2. Properties of disenfranchised, lapsed or extinct corporations for which no trustee can be found.
  - 3. Leases, recorded or unrecorded, regardless of whether they contain an eminent domain or condemnation clause.
  - 4. Title complications.

#### 5.417 Negotiating an Agreement

- A. The Agent's fundamental job is to buy property and/or property rights at fair market value. To be successful, the negotiator must be perceived as an honest, knowledgeable and effective Agent of the Department. The Agent may regard an acquisition assignment as a problem solving task. Utilizing a variety of approaches, including the funnel technique to problem solving, the Agent should identify the areas of agreement and disagreement with the property owner, endeavor to resolve the disputes and achieve an outcome that is fair to the property owner and fair to the public. The Agent's success will be influenced by a thorough understanding of the project, confidence in the approved offer of just compensation, effective communication and listening skills, and credibility with one's own supervisor and others in the Department.



- B. A common source of contention with owners of improved properties is the inventory of improvements. When it is apparent that something has been overlooked, omitted, or improperly described, this should be reported to the Supervisory Right-of-Way Agent for corrective action.
- C. Of a more difficult nature is the money impasse when an owner has repeatedly refused the State's offer. The negotiator should try to determine upon what basis the owner has formed a differing opinion of value and how strongly he or she believes in it. If the property owner knows of additional or more recent comparable sales, this information should be verified and reported to the Supervisory Right-of-Way Agent.
- D. If the Agent and supervisor determine that a negotiated settlement is possible, the matter should be discussed with the Assistant Chief Right-of-Way Agent. Right-of-Way Administration will decide whether to attempt a settlement or call for a Condemnation Review Board to resolve the acquisition.
- E. Land exchanges, pursuant to [NRS Chapter 408](#), provided another means of settling right-of-way negotiations.
  - 1. The parcels of land to be exchanged must be reasonably equal in appraised values. Exchanges that involve surplus property will require approval of the Transportation Board of Directors. (See Surplus Property Disposal, [Section 8.312](#) in the Property Management Section of the Manual for disposal policy and procedures)
  - 2. Most land exchanges are made within project limits. If an exchange is requested between two different projects, documentation recommending the exchange must be submitted to the Chief Right-of-Way Agent. Final approval for the land trade must be obtained from the Federal Highway Administration.
- F. When all issues in the negotiations have been resolved, the Agent should request the property owner's signature on the agreement, deed(s) and other documents that are necessary to complete the negotiation. If handwritten changes are made to the agreement, each entry must be initialed by all parties to the agreement.

#### 5.418 Administrative Settlement

- A. When it is evident that the owner does not agree with the approved offer of just compensation and requires additional consideration, whether monetary or otherwise, the Agent should attempt to obtain a written counter-offer. If the owner's counter-offer has merit and it appears that a negotiated settlement is feasible, the Agent may consider submitting a proposal for administrative settlement. The administrative settlement process should be maintained

separate from the appraisal review function. An administrative settlement is simply that, a settlement made for administrative reasons considered to be reasonable, prudent, in the public interest and properly documented. The Agent must ensure that all settlement discussions are thoroughly documented for the permanent record. All parcels with just compensation established at \$350,000 or greater and any parcels which have administrative settlements increasing the approved offer of Just Compensation by over 50% will be provided to the Federal Highway Administration for review and approval.

- B. After the Agent has obtained the proper documentation, the Recommendation for Administrative Settlement (Form 546) is completed. The proposal must be typewritten. A narrative justification Memo (form 546B) for the settlement with supportive factual data must be attached to the form and signed by the Agent and Supervisory Right-of-Way Agent.

The narrative should include the following information:

1. All appraisals, including the owner's appraisal or valuation information to include comparable sales, listings or cost information.
  2. Recent court awards, case law and new legislation.
  3. Range of possible testimony
  4. Trial cost
  5. Opinion of legal counsel when appropriate
  6. When the request is for additional services, such as an approach or piping, etc., the cost of providing the items should be included.
  7. Contractor bids, financial analysis or other supportive data
- Effect of possible delays to project if negotiations fail.

**Note:** Agents and Supervisors are to coordinate all contact with the legal division through the appropriate Staff Specialist, prior to the contact.

- C. The administrative settlement narrative should include all information that the negotiator is aware of, pro or con. The Agent's analysis and opinions will be considered. However, the final recommendation for settlement will be upper management's purview and all facts must be provided to support sound decision making.
- D. The payment clause of the Public Highway Agreement must be modified to include a breakout of the amount paid for the Administrative Settlement separate from the amount of Just Compensation. The suggested wording is found on the Feasible Clauses for Legal Documents (Form 567).

## 5.419 Closing Negotiated Acquisitions

- A. When the owner has executed the Public Highway Agreement, the Agent will follow these procedures:
1. Prepare the Memo to the Staff Specialist (Form 500) for document submittal, with a brief summary of any changes that occurred after the appraisal or to the Right-of-Way Plans.
  2. Prepare the Request for Payment.
  3. Close the Negotiator's Diary.
  4. Complete the Parcel Closing Checklist (Form 560).
  5. Prepare the Acquisition, Ownership and Occupancy Data form (Form 547) to certify any or no change in occupancy at the close of negotiations and transmit a copy to Property Management by using the Property Management Notice B (Form 635), in the case of vacant land or to Property Management and Relocation in the case of improved properties.
  6. Meet with the supervisor and provide, for his or her review, the permanent parcel file, which shall include:
    - a. Parcel Closing Checklist (Form 560)
    - b. Copy of Project Approval & Engineering Authorization
    - c. Request for Payment and Vendor Registration Form with proper taxpayer ID number for the entity or person receiving payment as identified in paragraph A of the Public Highway Agreement.
    - d. Public Highway Agreement
    - e. Copy of Deed(s). Originals are sent to escrow and returned directly to NDOT to ATTN: Staff Specialist of Negotiations after recording at close of escrow.
    - f. Right-of-Way Engineering's Legal Description
    - g. Notice to Owner (Form 520)
    - h. General Information (Notice Form 631)
    - i. Negotiator's Diary (Form 529)
    - j. Copy of Appraiser's Invitation Letter
    - k. Copy of Acquisition Assignment Memo or E-mail

- l. Title VI Compliance Questionnaire (Forms 928, 928A or 928B)
  - m. Appraisal Summary Statement (Form 563)
  - n. Appraisal Review/Value Determination
  - o. Copy of Letter of Offer
  - p. Acquisition, Ownership and Occupancy Data Forms (from each certification date) (Form 547)
  - q. Copies of Misc. Correspondence
  - r. Inventory of Improvements (Form 522)
  - s. Tenant Release of Partial Interest and Certification (Form 588) or Mutual Release and Certification (Form 589) (for properties with leases)
  - t. Signed Administrative Settlement & Justification Memo
  - u. Property Management Notice B (Form 635)
  - v. Copy of 90-day Notice
  - w. R/W Insurance Addition (Property Mgmt.) Memo (Form 506)
  - x. Escrow Instructions (Form 526) or Manufactured Housing Escrow Instructions (Form 526A) with original signatures of Owners and Supervisory Right-of-Way Agent, when applicable.
  - y. Title Report
  - z. Copy of: Written Authority to represent (Trust document, Corporate Resolution, Partnership Statement, Power of Attorney, Court Appointment, etc.)
  - aa. Set of Right-of-Way maps
  - bb. Any other pertinent documents as applicable
- B. After review and approval by the supervisor, the package must be promptly turned over to the Staff Specialist for Negotiations for processing.
- C. Deeds are not recorded until payment has been issued to the owner. When the recorded deed is returned, the Agent is to receive a copy for confirmation against the file copy.
- D. Payments to owner, beneficiaries, etc., which are to be accomplished by hand-delivery, are not to be made by the negotiator.

- E. The Agent should make every effort to make this process move as soon as possible to ensure the property owner is paid promptly.

#### 5.420 Payment Procedure – Escrow Fees

To process payment of escrow fees, the payment package shall contain the following:

- A. Memo to Staff Specialist for document submittal (Form 500)
- B. Request for Payment
- C. Escrow invoice (original plus 2 copies) with the E.A. and parcel number written in the upper right hand corner. The Agent initials the invoice after reviewing and approving the charges.
- D. Original recorded deed(s), if available. If conformed copies are submitted, the original deed(s) must be delivered to the Staff Specialist as soon as possible.
- E. Reconveyance and release documents necessary to unencumber the property, if available at the close of escrow. If the reconveyance is not available at closing, it must be submitted to the Staff Specialist as soon as possible thereafter.
- F. Title policy with E.A. and parcel number written on policy cover. The Agent initials the policy after checking the vesting and legal description.
- G. Copy of the escrow closing statement acknowledged by grantor.
- H. Relevant correspondence, if any.
- I. Should there be issues with the escrow company, the Supervisory Right-of-Way Agent should be made aware as soon as possible. Escrow should close within 6 weeks.

#### 5.421 Physical Possession

- A. When the acquisition consists of vacant land, the Agent in charge of property management will accomplish the physical possession upon receipt of the completed Acquisition, Ownership and Occupancy form from the negotiator.
- B. Physical possession of owner-occupied property is normally accomplished by joint action between the owner and the Agents for negotiation, relocation, and property management, on the date set forth in the agreement. The negotiator should promptly report any delays in accomplishing this task to the Supervisory Right-of-Way Agent.
- C. Upon recording of the deed transferring title to the Department of Transportation, the negotiator will send a memorandum, R/W Insurance Addition (Form 506) to the Staff Specialist for Property Management, with copies to Agents of Property

Management and Relocation, stating that the transfer of title has taken place and, if necessary, fire insurance should be placed on the improvements located on the newly acquired parcel. The following forms should be included with this memorandum: Acquisition, Ownership and Occupancy Data (Form 547), an inventory of improvements acquired, Inventory of Improvements (Form 522), a plot plan and floor plan of the improvements, the indicated value and the square footage of the improvements.

- D. When working through an escrow company the Agent should maintain close contact with the escrow officer to ensure that the Agent is notified immediately upon the recording of the deed transferring title to the Department. In some cases the escrow officer may wait to notify the Department and a lapse of time may occur before the Department realizes title has passed. In other cases the escrow may languish for lack of a required document. It is imperative that all escrows close timely.
- E. In the case of tenant occupied property, physical possession may be accomplished in various ways. Generally, it is more easily accomplished by an in-person, joint meeting between the three Agents and the tenants. The relocation Agent is included because this Agent should be familiar with the tenants.
- F. Due to winter climate, care should be taken to ensure that gas and power is switched over to the state immediately upon ownership transfer.

#### 5.422 Condemnation

- A. When negotiation for a property reaches an impasse or project schedules demand, the only recourse left the Agent is to submit the acquisition to the Supervisory Right-of-Way Agent for possible condemnation action. If the supervisor decides that condemnation is the preferred course of action remaining, the Agent shall begin preparing for a Condemnation Review Board by completing the Negotiator's Report to the Legal Division (Form 561) and checking the file and diary to make sure everything is in order (Refer to Form 561, Item 16).
- B. The negotiator should make every effort to acquire from the owner a formal rejection of the offer in writing and a counter-offer. Exception to this policy must be approved by the Chief Right-of-Way Agent. Regardless of the success of attaining such a letter, the Agent's diary must reflect all of the problems with the negotiation.
- C. When the Agent has completed gathering the necessary information, three separate condemnation referral packages (one original and two copies) are to be submitted to the supervisor. Each package must consist of the agents complete acquisition file and a copy of the Negotiator's Report to Legal followed by the

applicable items 1. through 15., as listed in Item 16 of the report (Form 561) and the Synopsis of Negotiator's Report to the Legal Division. The Agent must furnish the original plus one copy of the entire title package and two copies of every appraisal report.

- D. After the three packages are reviewed by the supervisor, they are submitted to the Staff Specialist for Negotiations, who ensures that the packages are complete and schedules the Condemnation Review Board meeting. In most cases, the Legal Division will be given at least one week to consider the problem prior to the review board meeting.
- E. If the parcel referred for condemnation is an improved property, the negotiator will send a memorandum R/W Insurance Addition (Form 506) to the Staff Specialist for Property Management, requesting that the property be included on the insurance inventory as soon as the State obtains possession. The following forms should be included with this memorandum: Acquisition, Ownership and Occupancy Data (Form 547), an Inventory of Improvements acquired (Form 522), a plot plan and floor plan of the improvements, the indicated value and the square footage of the improvements.
- F. When the Condemnation Review Board meeting is held, appointed members of the Right-of-Way Division and the Deputy Attorney General will review the acquisition, and based on the situation, may or may not recommend condemnation.
- G. If the review board recommends condemnation and determines negotiations between the Agent and property owner should not continue, the Agent shall inform the owner, the resident agent if applicable, and the owner's delegated authorized representative in writing, Condemnation Referral Letter Rescinding Offer (Form 586) that the acquisition has been referred for condemnation action and all previous offers are revoked. If the review board recommends condemnation and determines that negotiations should continue for a specific period of time, the Agent shall promptly notify the owner, the resident agent if applicable, and the owner's delegated authorized representative in writing, Condemnation Referral Letter w/continued Negotiations (Form 587) that the State intends to pursue a condemnation action, but negotiations may continue until further notice. If no agreement is reached during the extended period of negotiations, upon receipt of the Notice of Lis Pendens from the Legal Division, the Agent shall notify the owner in writing that negotiations are terminated and all offers are revoked (Letter of Rescission, Form 586B). At this point, the Supervisory Right-of-Way Agent shall submit the supplemental diary and correspondence to the Staff Specialist for Negotiations. Management will then be responsible for monitoring the acquisition of the property.

- H. Prior to the Transportation Board of Directors' taking action on the condemnation issue, the acquisition Agent must give written notice, required per [NRS 241.034](#), to the property owner, Notice of Public Meeting – Transportation Board of Directors (Form 503) of the time and place of the Transportation Board meeting at which the board will consider whether to acquire the subject property by the power of eminent domain. The written notice, issued on behalf of the Board of Directors, must be either,
1. Delivered personally to the property owner AT LEAST 5 WORKING DAYS before the meeting, or
  2. Sent by Certified Mail, Return Receipt Requested to the last known address of the property owner AT LEAST 21 WORKING DAYS before the meeting.
    - a. Notice(s) shall be served, at a minimum, to the property owner of record, as shown on the tax roll of the appropriate county assessor the resident agent if applicable, and the owner's delegated authorized representative
    - b. Proof of service of the written notice must be received before the Transportation Board can consider the condemnation issue.
      - i. If written notice of the meeting is delivered in person, the proof of service shall be in the form of a Certificate of Service by Personal Delivery (Form 505) signed by the Agent who personally served the notice.
      - ii. If written notice of the meeting is sent by Certified Mail, proof of service shall be in the form of a Certificate of Mailing (Form 504) signed by the Agent who prepared and sent the letter.
    - c. The Agent's proof of service must be forwarded to the Staff Specialist for Negotiations as soon as possible prior to the date of the Transportation Board of Directors meeting. Without proof of service, the board cannot take action on the condemnation resolution.

Once the Transportation Board approves the parcel for condemnation the Legal Division will prepare the filing for condemnation and the Order of Occupancy, if applicable. The Legal Division will notify the Supervisory Right-of-Way Agent and the Staff Specialist for Negotiations of the filing. Once this notice is received the Supervisory Right-of-Way Agent will direct the negotiating Agent to notify the property owner that the offer has been rescinded and that negotiations with the Agent are terminated using the standard form.

When received, the Order of Occupancy will be forwarded to the Staff Specialist for Negotiations who will finalize and close the Acquisition file using the original information supplied to them at the beginning of the Condemnation process.



### 5.423 Donations of Right-of-Way

- A. A property owner whose real property is to be acquired for highway purposes may make a gift or donation of the property, or any part of it, to the Department. Prior to accepting a donation, ownership of the property should be verified and adequate title assured and assurance secured that the property is not subject to hazardous waste contamination and/or cleanup liability that may exceed the value of the property. A donation is accepted in the following manner:
1. The property owner is informed in writing of his or her right to receive just compensation. Additionally, the Department has the obligation to have the property appraised and to disclose the amount of just compensation to the property owner, unless the owner releases the Department from this obligation. The Donation Format Waiver of Appraisal and Just Compensation form (Form-568) is used to document the owner's acknowledgement and waiver of the right to just compensation and the owner's waiver of the right to have the property appraised.
  2. The transaction will require the development of a Public Highway Agreement and submit the donation through escrow. The scope of the assignment should be discussed with the Supervisory Right-of-Way Agent. It is very important that a title report be ordered as soon as possible to ensure the property is free and clear of any liens and encumbrances.
  3. A Deed of Gift of Real Property with signature page (Form 509) is prepared and recorded.
  4. Submit a package to the Staff Specialist with Memo (Form 500)
- B. An owner's willingness to donate real property shall not in any way affect relocation benefits to which the owner would otherwise be entitled.
- C. If a property owner waives the right to an appraisal and wishes to use a Departmental appraisal for tax purposes, they are to be directed to their tax professional.
- D. If a property owner offers to donate a parcel, which is not planned or designated as part of a federal-aid project area, the property owner shall be asked to put that offer in writing. The offer will be forwarded to the Chairman of the Surplus Property Committee with a recommendation from the District Right-of-Way staff. If the Committee decides to accept the donation, the matter will be referred to the Supervisory Right-of-Way Agent to complete the transaction.

## 5.424 Easements, Entry Permits, Options, Special Use Permits

### A. Temporary Easements

1. Temporary easements are usually needed for detours, haul roads, temporary structures, etc., which will be removed after their purposes is completed. A temporary easement should never be used to place a permanent improvement. For instance, a fill slope is not temporary and therefore a temporary easement deed will not acquire the necessary rights to place it on the property.
2. The Temporary Easement Deed (Form 513B) will be recorded.

### B. Permanent Easements

Permanent easements are used to acquire the necessary rights to locate a highway and/or related feature that is permanent in nature and usually requires ongoing maintenance, such as, cut or fill slopes, drainage facilities, etc. The Permanent Easement Deed form (Form 513), Permanent Easement Deed (Access Rights acquired) (Form 513A) is used to convey a permanent right. All correspondence, the agreements and the deed must clearly specify the type of easement being acquired and the reason for the acquisition.

### C. Entry Permits (Form 523)

1. This form is used when the Department desires to enter on private lands for the purpose of appraisals, soil sampling, material testing, surveying, archaeological studies, or other similar duties.
2. The form is self-explanatory, and the permit does not require the acknowledgment of signatures or recording.

### D. Negotiated Right of Entry Agreement (Form 524)

In some cases the District Right-of-Way Supervisor may determine that a Negotiated Right of Entry Agreement should be used and payment made to the owner. In this case the Agent submits a package to the Staff Specialist (See Section Payment Procedures, [Section 5.420](#)).

### E. Agreement for Construction Outside Right-of-Way (Form 528)

1. This format is used when the Department needs to enter upon private lands to construct a feature for the use and benefit of the landowner. Examples would be an area required to rebuild an owner's approach or construct an irrigation ditch belonging to the landowner and not associated with highway drainage. Eliminating the owner's permission to construct such features would not hinder the construction of the highway project.

2. Permission to construct such features outside the right-of-way may be obtained by adding clauses to the Public Highway Agreement, if acquisition of right-of-way is also necessary. If no right-of-way is required, the Agreement for Construction Outside Right-of-Way form shall be executed. This is a non-monetary agreement. The form refers to an attached sketch, which should be included in every instance to depict the area to be temporarily occupied for construction purposes. The agreement should be explicit about the type of work to be performed. To complete the document, the standard signature page for agreements with notary acknowledgment is used.
- F. Permission for Placement of Air Quality or Meteorological Equipment (Form 599)
- This form is completely self-explanatory, and also does not require acknowledgment of signatures or recording.
- G. Option and Agreement for Sale of Materials (Form 521)
1. The acquisition of a Material Site and the options to remove materials from private lands is accomplished by using the Option and Agreement for Sale of Materials. For material quantity prices, check with NDOT Roadbed Design and call large construction contractors.

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2. The form is self-explanatory and does not require acknowledged signatures, but is not recorded. However, care should be taken when using this form to include the mailing address of the property owner.
  3. This type of acquisition is processed in the same manner as fee acquisition, and documentation by a diary is also necessary.
  4. Some larger landowners, such as Southern Pacific Land Company may have their own forms. These may be used when modified to meet State Law.
- H. Special Use Permits from Counties
1. Since the removal of material is an item of concern, most counties require that the Department apply for a Special Use Permit regardless of the ownership of the land on which the material site is to be located.
  2. An Agent may be assigned such a task and will be responsible for studying the Department's plans and meeting with the County Officials, and formally making the application for the Department.

3. Representatives of the Testing Division may also be available to attend meetings with the Agent. In any case, the Agent must be aware of why the material is needed, if there are other sources, and how the Department plans to leave the site after the material has been removed.

#### 5.425 Ownerships Requiring Special Handling

##### A. Mining Claims

1. This form of property ownership falls into two categories, patented and unpatented claims. Patented claims are no different than other types of fee ownership and are processed accordingly. The only exception is that usually the owner will require that the subsurface mineral rights be reserved from the acquisition. This is understandable and, in cases of valuable properties, is the best course of action for both parties.
2. Unpatented mining claims require only a Quitclaim Deed and again, in some instances, the mineral rights may also be reserved from the acquisition.
3. The Agent should pay close attention to the appraisal of these lands since the mineral rights may or may not be included within the approved value. For this reason, the negotiator and the supervisor must be aware of what the value represents so that the agreement and deed convey the interest appraised. In other words, the Agent should never reserve the mineral rights from the acquisition if the fee simple title was appraised.

##### B. Junkyards and Billboards

1. Control of junkyards and off-premise advertising signs outside the right-of-way of NHS (National Highway System) highways is required by the [Highway Beautification Act, 23 CFR](#), [Nevada Revised Statutes Chapter 410](#) and [Nevada Administrative Code Chapter 410](#). Removal of non-conforming off-premise advertising signs and junkyards are under the auspices of the policies and procedures developed by the Utility Section.
2. Acquisition of junkyards within a proposed right-of-way are handled like any other ownership.
3. When acquiring a parcel with a tenant owned off-premise advertising sign, cell tower, etc. The agent will follow all applicable procedures under [Section 5.407](#).  
The agent will prepare Public Highway Agreement (Form 515B), making an offer to the property owner/lessor for the billboard site as part of the acquisition from the property owner. The agent will add language to the Public Highway Agreement as follows: The payment provided under 2.(a) above does not include the value of the billboard structure improvements

located on a portion of the premises being conveyed. It being understood that said improvements are personal property not owned by OWNER and are to be purchased, removed, or relocated by the STATE, or its authorized agents or contractors through agreements separately entered into with the owners of said improvements.

A separate letter of offer to purchase an off-premise sign must be prepared for each tenant. An Appraisal Summary Statement (Form 563) shall be included and with all tenant-owned improvements listed on the inventory, even those improvements which have no contributory value. Public Highway Agreement – Tenant-Owned Improvements (Form 544) is specifically for negotiations with the tenant for the acquisition of tenant-owned improvements. The transfer of title of tenant-owned improvements will be by Deed (G.B.S. – Tenant-Owned Improvements) (Form 512B) with an attached inventory, and the purchase will be handled through escrow. Recordation of the Deed at the local county recorder's office will be required.

C. Railroad Grant Lands

1. These lands generally are located outside of the railroad operating right-of-way and are negotiated through their land Departments. These Departments usually prefer to prepare their own agreements and deeds and will supply a rough draft of same for our approval. This draft should be submitted to the Staff Specialist for Draft Review and approval by our Legal Division as soon as it is received.
2. The railroad will not allow the Department to acquire property in fee if it is located within the operating right-of-way of the railroad. In such cases, the Department will pursue the acquisition of easement interests only.
3. The Agent is cautioned to negotiate with the responsible railroad representative. Negotiations with the railroad usually take considerable time, so the Agent should begin the effort as soon as possible.

**Note:** The Right-of-Way Utility Section may be able to provide contact or other information

D. State of Nevada Lands (See [Section 5.428](#))

1. In 1999, the last remaining State Select land offered by the Division of State Lands was patented. Therefore, there no longer is any State Select land available for purchase.
2. Other lands which are still held in fee by the Division of State Lands may be acquired in the usual negotiated manner.

3. State agencies, such as the Department of Prisons, Division of State Parks, Department of Employment, Training and Rehabilitation, Division of Wildlife, etc., are handled as follows:
  - a. All transactions (i.e., acquisitions, disposals, leases, easements, etc.) on state-owned properties will be handled through the Division of State Lands. Other agencies (except the University and Department of Transportation) are not able to legally hold title to any land; therefore, they have no legal right to buy, sell or encumber any land owned by the State of Nevada.
  - b. On properties not owned by the Division of State Lands, Buildings and Grounds will normally do all the negotiating for and on behalf of the other State of Nevada Departments and divisions.

E. County Lands

1. Generally, county lands of a public nature, such as airports, schools, parks, recreation areas, etc., are negotiated in the normal manner with the County Commissioners. Exceptions to this procedure will be found when tax delinquent lands have been conveyed to the County Treasurer.
2. For a small delinquent parcel of land, the entire parcel must usually be taken with public notices posted of the sale and approval obtained from the County Commissioners. The deed is drawn by the District Attorney and issued as a Trustee's Deed by the County Treasurer, who will arrange for recording. Payment is made in the usual manner.

F. Lands Owned in Fee by Incorporated Cities

City lands are negotiated through the City Council and the Mayor.

G. School Districts

1. School district lands are negotiated with the Board of Trustees for the school district. The School Board and Superintendent usually obtain their own appraisals. Differences between the Board's determination and the Department's usually can be reconciled.
2. Generally, the standard right-of-way deed and agreement forms are acceptable to school districts.

H. Non-Profit Organizations

Occasionally, an organization for religious, moral, charitable, scientific, etc., purposes will require, in addition to approval by its Directors, Trustees, etc., approval by a Judge of the District Court. This can be done by drawing a special

first page of the Right-of-Way Deed and Agreement in a fashion similar to that of a Court Order.

I. Certain Federal Lands

1. Federal lands are obtained for Department use by an application prepared by the Manager, Right-of-Way Engineering. This includes lands needed for material sites, material site access roads and highway rights-of-way.
2. National Park Service land may be obtained by the negotiator in the form of Special Use Permits which are obtained from the District Park Headquarters.
3. Forest Service lands required for material sites are obtained in the form of an application and Special Use Permit obtained from the District Ranger's office. Lands needed for right-of-way are obtained by the Manager, Right-of-Way Engineering in the form of an easement deed.
4. Considerable lead time must be allowed for federal land acquisitions. See the [Engineering section](#) of this manual for more detailed information.

#### 5.426 Appeal of Incidental Expense

In the event a property owner is dissatisfied with the State's determination of eligibility for payment, or the amount of payment for incidental expenses, the property owner shall have 60 days in which to file a written appeal. The negotiator shall provide the Incidental Expense Reimbursement Appeals Form (Form 597) and assist the property owner in filing an appeal to Right-of-Way Headquarters. The Right-of-Way District's view will be presented by the negotiator, the Supervisory Right-of-Way Agent and the Staff Specialist for Negotiations. All of the information will be reviewed by the Chief Right-of-Way Agent and designated members of Right-of-Way Administration. A written reply will be prepared containing a full explanation of the final disposition of the appeal. The final reply will be made by letter signed by the Director of the Department with a copy to the appropriate Supervisory Right-of-Way Agent.

#### 5.427 Functional Replacement

- A. In the event that real property owned by public agencies is required for right-of-way purposes, an option available to the Department is that of functional replacement. This acquisition function is defined as "the replacement of publicly owned real property, either lands or facilities, or both, acquired as a result of a highway or highway related project with lands of facilities, or both, which will provide equivalent utility".
- B. This program was initiated to aid public agencies affected by highway acquisition. In many cases, the affected agency's function is of great importance to the public, and the disruption of its facilities or operation would defeat the purpose of

both the highway program and the Agency. This method of acquisition is designed to ensure that the Agency's capabilities to serve the public are not diminished by the acquisition.

- C. The primary difference between functional replacement and a typical appraisal and negotiation is that functional replacement does not consider the age and condition of the affected improvements. The Department is responsible, together with the Agency, to complete the replacement of the facilities.
- D. Functional replacement is elective and not mandatory on the part of the Department. When a public facility is needed for right-of-way purposes, a determination must be made that functional replacement is in the best interest of the general public, and that the function of the facility and the facility itself are important enough to outweigh the potential additional cost of functional replacement. This consideration should not be taken lightly. The entire character of an area, city or town may be changing with a population decline or shift from one area to another. For example, a park once heavily used is no longer used or maintained and perhaps the local tax base will no longer support the park, in which case, functional replacement may not be appropriate.
- E. The purpose of functional replacement is to eliminate burdensome additional costs to local governments due to highway acquisitions. The problem becomes particularly acute when older improvements are involved because of the substantial difference between the payment determined under the fair market value concept and the present cost of a replacement facility with the same utility and usefulness, built in accordance with modern codes, laws and standards.
- F. The methods and processes utilized to accomplish a functional replacement must provide for: (1) early involvement and liaison between the acquiring agency and the affected agency; (2) orderly relocation to prevent interruption of necessary public services; and (3) specialized expert and technical services peculiar to the facility to be replaced.
- G. The functional replacement process can be separated into four major phases: (1) Conceptual Stage; (2) Agreement Stage; (3) Construction Stage; and (4) Certification Stage.
  - 1. Conceptual Stage
    - a. The applicability of functional replacement is established in the early stages of the project. The Department officials must communicate with the owning agency and discuss the effects of the acquisition and the desirability and applicability of functional replacement.
    - b. It is important that rapport be established with the owning agency at this time. The results of discussions and decisions concerning



functional replacement should be well documented and the acquisition of all publicly owned facilities should be discussed in the environmental impact statement.

- c. The draft Environmental Impact Statement (EIS) or Environmental Assessment (EA) should identify all publicly owned lands and facilities within the alternates proposed and should discuss possible solutions relating to the preservation or minimization of harm to those facilities.
- d. Solutions to be considered could include:
  - i. Fair market value of the acquired property
  - ii. A land trade plus cash equivalent to fair market value (damages to the remainder considered)
  - iii. Functional replacement of land where facilities are not affected
  - iv. Functional replacement of facilities and fair market value of the land acquired where the public agency has available lands and those acquired are not necessary to replace.
  - v. Functional replacement of land and owner retention/renovation of improvements.
  - vi. Fair market value of land acquired and owner retention/renovation of improvements.
  - vii. Use of construction features to preserve the utility of remainders:
    - a) Land service facilities
    - b) Use of air rights
    - c) Access and service roads
- e. All comments from the affected agencies on the draft EIS or EA should be carefully analyzed and utilized in the preparation of the final EIS.
- f. Once the corridor location is selected and approved, those agencies determined to be involved in functional replacement should be contacted and the program discussed in detail.
- g. As soon as right-of-way limits can be set at the public ownership location, authorization to appraise the property should be

requested from the Federal Highway Administration. The Department should have the property appraised and advise the owning agency of the amount established as just compensation. The owning agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. It should be noted, however, that in most situations, public agencies will waive the appraisal since functional replacement is usually far more advantageous than just compensation.

- h. If the owning agency chooses to accept functional replacement, they must make a formal request to the Department and explain in detail why it would be in the public interest to proceed with the functional replacement. If the Department agrees that the functional replacement is necessary and in the public interest, a specific request shall be submitted to the Federal Highway Administration for concurrence. This request may include cost estimate data relative to contemplated solutions, any tentative agreements reached at meetings between the Department and the owning agency, and an explanation of the basis for the Department's request. This request must include a statement that replacement property will be acquired in accordance with the provisions of the [49 CFR Part 24](#), Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Final Rule, January 4, 2005, as amended, and other applicable Federal Highway Administration directives.
- i. The Federal Highway Administration will give approval to the concept of functional replacement and the Department will select an architectural engineering firm if the circumstances warrant it.
- j. The preparation of plans, specifications, and estimates (PS & E) should be done by either a reputable architect who has recent experience in designing similar structures or by the Department's Architecture Division.

## 2. Agreement Stage

- a. At this point, an agreement between the owning agency and the Department should begin to take form as well as an agreement with the selected architecture and engineering firm, if needed. The agreement can be between the Department and the architect if the Department's contracting procedures are to be used or between the architect and the owning agency if the agency's general procedures are found to be acceptable to the Department.

- b. The functional replacement agreement should include an understanding of how the replacement is to proceed, 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 agreement should also set forth how the costs of the new facility are to be shared between the parties.
- c. Based upon the approved plans, specifications and detailed information submitted by the agency, a betterment report will be prepared by the Staff Specialist for Negotiations. The purpose of this report is to identify any betterments, other than those required by prevailing standards, code and current law. Those betterments not necessary to replace functional utility of the facility should be segregated for non-participation.

### 3. Construction Stage

- a. Where major improvements are involved, advertising for bids and letting of contracts to construct the facility may follow the general procedures utilized by the owning agency, if found acceptable by the Department. In any case, the contract should include a provision for the Department to inspect throughout the construction of replacement facility. Following approval of the plans and specifications for the project the parties to the functional replacement agreement should reconfirm the agreed upon rights, obligations and duties of each party, the acquisition of the replacement site, the construction of the replacement facility, and how the new facility costs are to be shared between the parties.
- b. Prior to construction of the new facility, it is suggested that photographs be taken of the existing facility and during the construction process a progressive pictorial history be made for the record. Included in this pictorial history should be a series of photographs showing the finished project.
- c. An inspector should be provided to ensure compliance with all agreements, plans and specifications. This inspector need not be the Department's contractor but must serve as an impartial overseer during the functional replacement process. The inspector should complete weekly reports and these reports should be retained by the concerned Right-of-Way District with a copy sent to the Staff Specialist for Negotiations. The District should provide an individual to represent the Department during the construction if a Department inspector is not provided.

#### 4. Certification Stage

Upon completion of the functional replacement project, an inspection should be conducted by officials of the Department and the owing agency. A written statement must be signed by both parties attesting to the inspection, certifying that all costs of the replacement facility were incurred in accordance with all agreements, and releasing the Department from any further responsibility.

#### H. Functional Replacement Responsibilities and Lines of Communication

1. Proper communications and knowledge of each section or division's area of responsibility cannot be over emphasized. Functional replacement is a complicated program in which confusion and project delays can occur if areas of responsibility, communications, and basic teamwork are not followed.

##### a. Right-of-Way District

i. District has the prime area of responsibility for the functional replacement. It is the District's responsibility to initiate all communications and negotiations with the owning agency, supervise the progress of the project, and ensure proper communications between the owning agency, District and Headquarters in Carson City. The District shall make the initial determination if functional replacement is desirable and applicable. If functional replacement is considered an appropriate option, the District should make a recommendation to the Chief Right-of-Way Agent on the applicability of functional replacement. If the Chief concurs, the District shall contact the owning agency and explain the functional replacement concept. The District should initiate an appraisal of the public owned facility, unless this step is specifically waived by the owning agency. The appraisal should be a detailed narrative with particular attention paid to the existing structures and their state of construction and condition. The results of this appraisal and determination of just compensation should be communicated to the owning agency.

The owning agency has the option of accepting functional replacement or just compensation. If the owning agency should choose functional replacement, the District shall have the agency initiate a formal request to the District. The District, in turn, will forward this request to the Chief

Right-of-Way Agent. After concurrence from the Federal Highway Administration, through Headquarters, the District and the owning agency may draw up a functional replacement agreement. This agreement is the keystone of the functional replacement project. Prior to execution of this agreement, the Department's Legal Division should review and concur in its contents. Upon execution of the functional replacement agreement, the District may authorize the preparation of plans, specifications, and estimates.

- ii. Once prepared, the plans, specifications and estimates are submitted to Headquarters for review. The District shall monitor the awarding of the bid for construction and the progress of the project during the construction phase. All progressive billings and change orders shall be forwarded to Headquarters through the District. The District shall review all submittals and make the initial authorization and approval for each progressive billing and approval of change orders. Upon completion of the project, the District shall participate in the final inspection and initiate the drafting of the acceptance statement by the owning agency.

b. Chief Right-of-Way Agent

The Chief Right-of-Way Agent shall be the focal point for coordination of all functional replacement projects. It shall be the Chief's responsibility to see that the project progresses properly and in accordance with this manual.

c. Staff Specialist for Negotiations

By delegation of authority from the Chief Right-of-Way Agent, the Staff Specialist shall be directly responsible for the monitoring of the functional replacement project. The Staff Specialist shall represent Right-of-Way Headquarters in all Departmental meetings, review or have reviewed all plans, specifications and agreements, review or have reviewed all change orders and progressive billings, authorize payments, and monitor all correspondence to ensure that all concerned divisions receive proper notification and copies as needed. The Staff Specialist shall represent the Department when dealing with the Federal Highway Administration and shall be present at the final inspection of the project and all project closeout meetings.

d. Internal Audit Division

The Internal Audit Division shall be kept informed of all agreements and other pertinent correspondence. It shall be the responsibility of Internal Audit to review all payments to ensure compliance with all agreements. The Staff Specialist for Negotiations shall coordinate with the Internal Audit Division to keep Internal Audit informed of all correspondence affecting their function.

e. Architecture Division

The Architecture Division shall review and approve all plans, specifications and change orders. It shall be the responsibility of the Staff Specialist for Negotiations to ensure that all plans, specifications, change orders and pertinent correspondence are routed to the Project Architect. The Project Architect may be asked to periodically inspect the functional replacement project to ensure compliance with all agreements and approved plans and specifications.

f. Legal Division

The Department's Legal Division shall, upon request of the Right-of-Way Division, review all formal agreements and legal documents pertaining to the functional replacement project to ensure legality of format and compliance with State law. It shall be the responsibility of the Staff Specialist for Negotiations to ensure this function is accomplished and all pertinent correspondence is routed to the Legal Division. All contact with the Legal Division shall be coordinated through the appropriate Staff Specialist, prior to contact.

g. Right-of-Way Control

It shall be the function of Right-of-Way Control to process all authorized requests for payment following approval from District and the Staff Specialist for Negotiations. The Staff Specialist shall ensure that all progress billing received will be processed promptly according to the procedure in this manual and ensure that all pertinent correspondence shall be routed to the Right-of-Way Control Section.

2. Department Participation

- a. The Department will participate in the actual functional replacement cost of the facility to be replaced and the appraised

current fair market value of the land to be acquired for highway purposes when the owning agency has land on which to relocate the facilities, or the reasonable cost of acquiring a functionally equivalent substitute site where lands in the same public ownership are not available or suitable. It must be made clear that the Department will purchase the land needed for highway purposes and replace the public owned facility or it will purchase a new site for the public owned facility, replace the physical improvements and receive the land needed for highway purposes in return.

- b. In the event the fair market value of the property to be acquired exceeds the cost of functional replacement, the Department may participate in the fair market value amount.

### 3. Participating and Non-Participating Improvements

The functional replacement concept provides for replacement of the owning agency's facility. Cost of increases in capacity and other betterments are not eligible for Department participation except for those necessary to replace utility. Those betterments that may be considered participating are those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

### 4. Functional Replacement – Initiation of Negotiations

Preliminary conceptual discussions conducted early in the project cannot be considered initiation of negotiations in the technical sense. Discussions between the Department and the public agencies over the acquisition of their facilities and possible functional replacements begin early in the project development process. The date the Federal Highway Administration authorizes acquisition and relocation may be considered the date of "initiation of negotiations" or it may be the date the Department issues the Notice of Intent to Acquire.

## 5.428 State Lands

When land required for a transportation project is administered by State Lands the Department shall provide an 'Application for a Permit, License or Other Authorization to Use State Land', as available from the State Lands website. State Lands' process requires a thirty (30) day review and comment period for adjacent property owners and other state agencies and may require a certification by State Lands to plot the legal description and all encumbrances.

If the required area is within the high water mark of navigable waters the application form to be used shall be the 'Application for Authorization To Use State-Owned Submerged Lands.'

Navigable Waters are designated on the State Lands website as:

- Carson River
- Colorado River
- Lake Tahoe
- Truckee River
- Walker Lake
- Washoe Lake
- Virgin River

The application may be scanned and sent electronically to provide faster queuing and response time but the original application with signatures must be provided at the earliest opportunity.

The application shall include a narrative of the proposed improvement, a legal description or GIS information to create an overlay on their parcel maps and as many maps and photos of the subject property as necessary to clearly depict the requirement. The application shall request the property rights required for the project.

To facilitate the most accurate and efficient transfer of the required property rights, while allowing for changes occurring during design or construction, State Lands will initially provide a Right of Entry Authorization to construct the improvements and assign the required property rights to the Department via an executed Deed after construction has been completed.

#### 5.429 Tribal Lands

Each Tribe functions as a sovereign nation. As such, each has its own tribal council and rules, which may vary from tribe to tribe. Obtaining right-of-way typically requires a Tribal Resolution from the specific tribal council governing that land and a Letter of Decision from the Bureau of Indian Affairs or Field Station.

The sequence of document approval is the BIA Superintendent approves of the Grant of Easement; the Findings and Decision document is then prepared; the Superintendent issues the Letter of Decision which then authorizes the BIA Land Titles and Records Office (LTRO) to record the right-of-way.

To begin the process, the State must obtain, complete and submit an application for Grant of Easement. Typically requests for:

Rights-of-way on tribal lands involving the Las Vegas area should be addressed to:

Southern Paiute Field Station  
P.O. Box 720  
Saint George, UT 84771  
Phone: (435) 674-9720



Rights-of-way for trust lands located **west** of Austin are addressed to:

Superintendent  
Western Nevada Agency  
Bureau of Indian Affairs  
311 E. Washington St.  
Carson City, NV 89701  
Phone (775) 887-3500, Fax (775) 887-3531

Rights-of-way for trust lands located **east** of Austin are addressed to:

Superintendent  
Eastern Nevada Agency  
Bureau of Indian Affairs  
1555 Shoshone Circle  
Elko, NV 89801  
Phone (775) 738-5165, Fax (775) 738-4710

In acquiring a permanent easement or adding land to a permanent easement, the responsible Realty Specialist with BIA will send the maps and documents to the Western Regional Office in Phoenix, Arizona for review and then to Albuquerque, New Mexico to the Bureau's regional Land Titles and Records Office (LTRO) for recording.

A separate Grant of Easement (GOE) is required for each different ownership of land. If 2 allotments and 1 section of Tribal trust land are affected, 3 Grants of Easement will be required.

If there are 3 or fewer parcels it is recommended by BIA that a separate application be made for each parcel. If there are more than 3 parcels, contact should be made with BIA to determine their requirements.

**Note: All contacts with the tribe shall be coordinated through the NDOT Cultural Resources Specialist.**

The one thing that can stop the entire process is the NEPA compliance. The rule of thumb is if we are disturbing vacant land that will trigger an Environmental Assessment. If we are digging up an existing roadway and putting in a new line a Categorical Exclusion would probably be sufficient. NDOT staff can perform either of those studies with the review by the BIA Regional Environmental staff. The earlier in the process we can inform and involve the BIA Regional EPA staff, the smoother the process becomes.

Obtain an Application for Grant of Easement for Right-of-Way, Application for Permission to Survey and procedural requirements of [25 CFR 169](#) from the Bureau of Indian Affairs (BIA) Realty Specialist or Trust Officer.

This application currently is approved by NDOT legal as the Right-of-Way Application (Form 507). Use the BIA forms and attach a blank Form 507 if necessary to verify prior legal approval of the BIA standard form.

Prepare background and justification for the project to include:

- A. Intent of the parties
- B. Legal description
- C. Purpose
- D. Term
- E. Provisions to be made inclusive in the Grant of Easement for Right-of-Way
- F. Permission to survey
- G. Landowners' consents
- H. Tribal resolution
- I. Maps
- J. Improvements
- K. Consideration/compensation, including appraisal
- L. Payment
- M. Fees
- N. Renewal
- O. Suitability of purpose in relation to the land
- P. Affidavits and certificates, if applicable
- Q. Insurance
- R. Bonds
- S. Business plans
- T. Feasibility analysis
- U. Environmental and historic preservation compliance
- V. Limited Power of Attorney
- W. Termination
- X. Condemnation

Tribal jurisdiction (As a result of several IBIA and court cases, the grant may need to include a provision that the respective tribe will retain jurisdiction over the fee corridor of the easement.)

BIA can provide a mailing list of names and addresses for each allotment to start the consent process. Unfortunately it only comes in PDF format.

Preliminary discussions are held with the landowner (the Tribal Council, BIA, or individual allottee) in coordination with the NDOT Cultural Resources Specialist. Be prepared to provide and explain:

- A. Legal description for the required area
- B. Purpose and need for the area being acquired
- C. Term (temporary or permanent)
- D. Provisions to be made inclusive in the Grant of Easement for right-of-way
- E. Permission to survey, if applicable
- F. How Landowners' Consents will be obtained
- G. Right-of-Way Maps and construction plans
- H. Improvements affected by the project and/or made on the property
- I. How Consideration/compensation will be determined
- J. How and when payment will be made
- K. Payment of Fees
- L. Environmental Feasibility analysis
- M. "Consent of Owners to Grant Right-of-way" or "Tribal Resolution", whichever is applicable

If the desired right-of-way is held in trust for the tribe a 'Tribal Resolution' will need to be obtained from the Tribal Council. This should be initiated by the Cultural Resources Specialist contacting the tribe to begin the information sharing process during the environmental assessment stage.

Permissions for Grants of Easement for right-of-way will not be approved over tribal trust lands without the prior written consent of a tribe. Permission for Grant of Easement for right-of-way will not be approved over individually-owned trust or restricted lands, in most instances, without the prior written consent of the owner(s).

#### *Approval to Commence Appraisal*

The BIA Office of Appraisal Services will not approve initiation of the appraisal process until the following three items have been received:

- A. A "Title Status Report" (called a TSR Request) which certifies land ownership is obtained from the Bureau's regional Land Titles and Records Office (LTRO). This is initiated by the BIA Realty Specialist. **Be sure to request a copy of the TSR be provided to NDOT upon completion by BIA;**
- B. A "Tribal Resolution" will be needed if the lands are held in in-trust for the affected Tribal property (this comes from preliminary discussion with the tribe and the NDOT Cultural Resource Specialist); and
- C. A set of right-of-way plans.

Once the responsible BIA Realty Specialist has forwarded the Title Status Report request, Right-of-Way plans and Tribal Resolution, if applicable, to the LTRO permission will be granted for NDOT to perform the appraisal. The appraisal may be completed by BIA, NDOT staff or contract appraisers however the process shall not begin until this approval from BIA is received. Because this process may take in excess of 6 months it is important that sufficient lead time be included in the project schedule.

If the appraisal is performed by NDOT it must be submitted to BIA Office of Appraisal Service for review. Be sure to include the Bureau of Indian Affairs and the tribe as users of the appraisal or it will be rejected, further complicating the project.

Upon approval of the appraisal the offer can be prepared and made to the owner (BIA, Tribe or individual allottee, as appropriate) following our standard procedures in compliance with the Uniform Act.

For parcels owned by multiple allottees the offer must be accepted by at least 51% of the property ownership. (Not 51% of owners)

Upon acceptance of the offer the Agent shall prepare and submit the Application for Grant of Easement for right-of-way in duplicate with the following to the BIA Realty Office:

- A. Written consent of the landowners which shall include a written statement that the applicant will pay damages when they are sustained.
- B. Public Highway Agreement
- C. Appraisal.
- D. Map of definite location. (Survey map and field notes)
- E. A tribal resolution submitted by the tribe's Federally recognized governing body and signed by duly authorized tribal officers, if required.
- F. A letter to the Agency, explaining NDOT's payment process and serving as a request that the Agency provide the Letter of Authorization so that the work can proceed, with the payment being forthcoming (if applicable).

Upon approval by BIA NDOT receives the 'GRANT OF EASEMENT FOR RIGHT-OF-WAY' from BIA. This is the recordable document proving NDOT's property right.

Guidance may be found in the BIA Procedural Handbook 'Grants of Easement for Right-of-Way on Indian Lands'.

#### 5.430 Bureau of Reclamation Lands

Lands owned by the Bureau of Reclamation (BOR) are managed by public agencies. The acquisition of these lands is performed by Right-of-Way Engineering. Should an acquisition impact a BOR project area managed by a public agency, the negotiating Agent will be responsible for coordinating with the Manager, Right-of-Way Engineering to obtain required consents. Written consent is required prior to project certification.

The BOR website at [www.usbr.gov/main/water](http://www.usbr.gov/main/water) may be used to determine which public agency has authority over a specific BOR irrigation project.

#### *Common Interest Ownerships*

These will include ownerships of common grounds typically found in condominiums, home owner associations, Real Estate Investment Trusts (REIT) and communal ownerships to name a few.

- A. Except as provided in the governing documents of a Condominium Association the association may:
  1. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property.  
  
Condominium Association may acquire, hold encumber or convey an interest in the common property of the condominium. ([NRS 116.3102](#), [NRS 116.3112](#))
  2. A Condominium Association may grant easements, leases, licenses and concessions through or over the common elements without a vote of the majority of allowed voters.
- B. Offers may be made directly to the Condominium Association for easements and if permission to convey real property rights have been granted to the Association in the governing documents offers to purchase real property may be made directly to the Association.
- C. Verification that the person signing for the Association has the authority to sign and that the Association approves of such action is required. This may be received through a resolution, power-of-attorney, by-laws or other governing document providing the authorization.

- D. The Association may grant easements across property held in the name of the Condominium as allowed under [NRS 116.3102](#).

#### 5.431 Right-of-Way Cost Estimates

During the preliminary design phase of transportation project, the project engineers are required to examine the impacts a project makes upon the surrounding property owners related to environmental, socioeconomic and political concerns. This analysis assists the engineers in selecting the preferred alternative for the project. Along with this analysis, the engineers attempt to assign a dollar cost to the acquisition of the right-of-way required for each alternative. Although this is by necessity a rough estimate of the projected right-of-way cost, for each alternative, it is important to understand the principles of valuing real property and any damages that may accrue to the property in order to provide logical support to the estimate.

The Right-of-Way Cost Estimate may include one or all of the elements of cost including an estimate of real property acquisitions, utility relocations and adjustments, relocation of displaced persons and staff effort.

This estimate should be continually refined based on the most current information and risk probability factors determined in an attempt to account for contingencies and changing requirements due to property owners concerns, desires, legal arguments etc. If the project is large enough to fit into specific federal guidelines this process will become very formal and include the Value Analysis procedures prescribed by federal regulation. On smaller projects the Project Manager may request this information from the Right-of-Way Division directly.

Estimates may be used for budgeting capital expenditures, staffing requirements, negotiating consultant contracts, and programming of fiscal requirements. Overestimating may result in a project being deferred or eliminated. Underestimating understates the Department's financial obligations and may adversely affect staffing projections and funding of projects when too many commitments are made.

As part of the estimating process the Estimator will need to review the right-of-way requirements to identify any unidentified needs related to such things as insufficient right-of-way width, damages to a parcel, uneconomic remainders, changes in access, larger parcel issues, drainage, slopes, work space (constructability), etc.

During the review of right-of-way requirements the estimator shall identify any sites with the potential for hazardous waste. Any sites or improvements suspected to contain hazardous waste shall be brought to the attention of the Environmental Services Division and noted on the Right-of-Way Parcel Data Sheet (Form 570).

Estimating may require the estimator to review information from numerous sources to gain a comprehensive understanding of the economic, social and political environment affecting the value of real property or construction of improvements, including utilities. This information may come from trade associations, private business or governmental agencies. Some of the more common sources used by estimators include:

- A. Economic Report of the President
  - 1. Consumer Price Index
  - 2. Housing starts and sales
  - 3. Interest Rates
- B. US Department of Housing and Urban Development
  - 1. Housing starts
  - 2. Financing
  - 3. Vacancy Rates
- C. US Department of Labor, Bureau of Labor Statistics
  - 1. Consumer Price Index
  - 2. Employment/unemployment data
  - 3. Earnings figures
  - 4. Spending & Time Use
- D. County Planner
  - 1. Zoning and land use
  - 2. Planned development
- E. County Assessor
  - Land values
- F. Multiple Listing Services
- G. Local Brokers

#### 5.432 Preparation of Estimates

##### *Staffing Estimates*

The estimating of staffing needs may be performed by an estimator using the Right-of-Way Staff Estimate Worksheet (Form 572), which attempts to assign staffing requirements to specific right-of-way tasks based on assumptions of difficulty for various types of activities within each discipline.

The required right-of-way activities for each project must be sufficiently defined to allow for categorization of each of the activities into the matrix.

All right-of-way activities required for the project are to be included in the staff estimate. The staffing estimate is based on the number of person-hours anticipated to be expended for each activity type by a journey level Agent or engineer performing the task. If dollar values are to be assigned to this estimate these values will be based on the highest applicable fully loaded rate (hourly rate + cost of employee benefits) for each position. This rate will normally be provided by the Project Manager.

### *Real Property Estimates*

Estimates are not appraisals and do not require the same amount of supporting detail in a formal report as an appraisal but should follow accepted appraisal principles to provide for consistency and reliability in the estimate as compared to the actual appraisal that will eventually follow.

The process for estimating the most probable value of the real property at the time the acquisition begins is to:

- A. Create a Right-of-Way Parcel Data Sheet, Form 570, for each property value to be determined;
- B. Determine the most probable highest and best use at the time the project is expected to proceed with acquisition. This requires an analysis of the current and planned future zoning, allowed uses under the zoning laws and conditional Use Permits;
- C. Gather market data for Project Database;
- D. Determine assumptions and limiting conditions;
- E. Consider planned and likely economic development of the property prior to the project;
- F. Determine current value based on market data;
- G. Damages accruing to the property shall be included in the estimate as a separate line item for each property;
- H. Apply an escalation rate based on current and projected economic data to estimate the future value of the real property;
- I. Complete the Right-of-way Data Sheet and transfer summary data to the Right-of-Way Estimate Worksheet.

### *Right-of-Way Parcel Data Sheet*

The Right-of-way Data Sheet shall be completed for each parcel. The Parcel Data Sheet shall indicate the comparable data used, the escalation rate applied, the Highest and Best Use determination, all assumptions and limiting conditions, all reasoning and justification applied to



the analysis, the indicated value and dated mapping shall be attached. The Estimator's name and date prepared shall be provided at the bottom of the form.

### *Project Database*

The database should define the comparable properties by physical address, Assessor Parcel Number, source of value data, date of value, and be numbered so as to enable comparison to the subject properties.

The comparable sales or assessor's data gathered to make these estimates should be compiled into a database of information to be applied to similar properties on the project. This database may be created in Microsoft Excel or Access and should be specific to the project. This database is to be maintained and controlled by the Supervisory Right-of-Way Agent. The database information shall become part of the permanent Project File. The database shall include as much information about the comparable properties as is necessary to make a reasonable comparison. Such factors may include:

- A. Property rights conveyed
  - Fee simple, Life Estate, Easement
- B. Financing Terms
  - Cash equivalency
- C. Conditions of Sale
  - Distress sale, related parties, tax considerations
- D. Location
  - View, Privacy, Exposure
- E. Physical Characteristics
  - Age, condition, size, topography, etc.
- F. Economic Characteristics
  - Operating Expenses, management, lease terms, renewals
- G. Use
  - Commercial, agricultural, multi-family residential, mixed use
- H. Non-Realty components
  - Furniture, fixtures and equipment, personalty, leasehold interests

Data used for the analysis of comparable market data may be obtained from:

- A. Staff appraisals of similar properties
- B. Assessor information
- C. Multiple Listing Service
- D. Broker Opinions

### *Assumptions & Limiting Conditions*

When creating the Right-of-Way Data Sheet all Assumptions and Limiting Conditions shall be documented on the Right-of-Way Data Sheet.

Limiting Conditions may include inadequate mapping, design information, short lead times or economic uncertainty that affect the estimator's ability to provide a refined estimate.

Assumptions are made because of limiting conditions or the need to predict values in the future when variables or data may be uncertain. Assumptions are expected to be reasonable, support the highest anticipated cost and use the most probable or justifiable project schedule. When doubt remains whether a parcel will be a full or partial acquisition a full acquisition will be assumed.

### *Project Influence*

Estimates shall consider all planned and likely development that will occur prior to the construction of the project but shall exclude any effects the project may have on the property.

### *Value determination*

Values shall be determined based on sound appraisal principles using an accepted approach to value appropriate for the subject property. Adjustments to comparables should be reasonable, verifiable and shall include separate line items for land, improvements, damages, replacement easements and construction contract work (CCW).

Economic and/or market data used to calculate capitalization estimate the value of any parcel under an accepted approach to value shall be clearly defined as to source and application to allow for verification by persons reviewing the estimate at a later date.

### *Escalation Rates*

Escalation can be defined as an increase in cost due to upward changes in market conditions. Because costs typically increase over time, escalation rates must be developed for estimating purposes. The rates are in the form of percentages and should be developed and used wherever possible for the greatest accuracy.

Data used in establishing escalation rates may be found in value trends from real estate sales, private and governmental forecasts, and construction and building cost indices. Past

experience in estimating, appraising, and acquisition in the subject area should not be overlooked.

Escalation rates may differ between property types and/or utilities and rates should be adjusted accordingly when appropriate.

Costs should be escalated using Future Value calculations for all years up to the projected year of acquisition.

### *Utility Estimates*

Intentionally left blank for this submittal.

### *Risk*

Estimators should be aware of the risk that estimates may not represent the actual conditions at the time of acquisition. Risk factors may be applied to estimates that would have a relevant impact to the estimate should a total acquisition or replacement easements be required. Risk factors are typically applied during review with the Project Manager based on the preferred method at the time.

### *Right-of-Way Estimate*

Upon completion of the Right-of-Way Data Sheets documenting the reasoning, assumptions, limiting conditions and value conclusions, the data is transferred in summary to the Right-of-Way Estimate Worksheet, Form 571. The Right-of-Way Estimate is then provided to the parties requesting the estimate. A copy is provided to the Right-of-Way Control section and a copy is maintained in the project files of the Staff Specialist and the Supervisory Right-of-Way Agent preparing the estimate.

### *Updating the Estimate*

Estimates prepared for project planning purposes must be updated whenever project scope, footprint, scheduling, or values change sufficiently to warrant the update. Estimates shall also be updated prior to programming. Updating an estimate may involve little more than substituting an amended page to an otherwise current Right-of-Way Data Sheet or could involve preparing a new Data Sheet.

Any written request for a revised data sheet may require a field review, a review of property ownerships, a new utility estimate, and a check with the environmental unit.

As the project progresses through acquisition to certification the estimate should be updated to reflect the most current cost information. This allows for the release and reprogramming of unused funds for other projects.

### 5.433 Waiver Valuation

When the Waiver Valuation process for non-complex parcels has been approved for use by the Deputy Chief Right-of-Way Agent the assigned Right-of-Way Agent shall follow the procedures indicated below to prepare the Waiver Valuation.

- A. Waiver Valuations should be prepared as follows:
  1. Comparable sales information gathered from the market is compiled into a district database of sales information during the preparation of the Right-of-Way Cost Estimate.
  2. The Right-of-Way Cost Estimate (used during the design phase of the project for budget and planning purposes) or Assessor's information may provide the information necessary to make a preliminary estimate of value for the purpose of determining if the parcel exceeds the \$10,000 or \$20,000 limits.
  3. If the value is estimated to be greater than \$10,000 but less than \$20,000 the property owner **must** be offered the opportunity to have an appraisal performed in lieu of a Waiver Valuation using the Waiver of Appraisal form (Form 520B).
  4. The Agent must be diligent in following up on receipt of this waiver to prevent a delay of the project. If the waiver is not received within 10 days the Agent must contact the owner personally and advise the Supervisory Right-of-Way Agent.
  5. The property owner will be offered the opportunity to accompany the person performing the valuation regardless of the estimated value, Administrative Value Determination Introductory Letter (Form 531B).
  6. The Right-of-way Agent shall inspect the property to verify all real and personal property within the proposed right-of-way.
- B. The Right-of-Way Agent shall prepare a report including:
  1. Cover Page
  2. Certificate of Waiver Valuation (Form 549)
  3. Waiver Valuation Transmittal (Form 550)
  4. Description of Project and Appraisal problem
  5. Definition of Market Value as defined in [NRS 37.009\(6\)](#)
    - a. Date of Value

- b. Date of Report
- c. Assumptions and Limiting Conditions

C. Subject Description

- 1. Brief descriptions of Area, City and Neighborhood Data
- 2. Property Data Description
- 3. Site Description
- 4. Topography, access, water, sewer, size, Highest & Best Use
- 5. Improvements Description
- 6. Sketch showing dimensions and all improvements
- 7. Identify any tenant-owned improvements.
- 8. Signs are divided into “off-premise” and “on-premise”.

D. Property History

- 1. Prior sales of the subject during the past five years.
- 2. Subject location map
- 3. Subject Photographs

E. Value of the whole

- 1. Analysis and conclusions – Sales Comparison Approach
- 2. Comparables, Form 551, Comparable Data Worksheet
- 3. Comparable Location Map
- 4. Comparables Photographs

F. Value of Part Taken

- 1. Description of Part Taken
- 2. Value of Part Taken including value of personal property and salvage values.

- G. Value of remainder
  - 1. Analysis and Value of remainder
  - 2. Damages
  - 3. Special Benefits
- H. Conclusion  
Waiver Valuation, Summary of Value Conclusions (Form 548)
- I. The Supervisory Right-of-Way Agent will approve the Waiver Valuation based on the information supplied by the Right-of-way Agent.
- J. The Supervisory Right-of-Way Agent will provide the Waiver Valuation to the Assistant Chief Right-of-Way Agent for the approval of Just Compensation.
- K. Separations of Duties will continue to apply to this process. No Agent performing a Waiver Valuation will negotiate for the acquisition of the same parcel.
- L. The Agent performing the valuation will maintain the highest level of ethics. The Agent shall not discuss values with the Owner, tenants, lessees or any other interested party. The Agent shall defer all questions related to the transfer of the property to the negotiating Agent.

**Note:** The Code of Federal Regulations allows the Department to prepare a Waiver Valuation up to \$25,000. The Chief Right-of-Way Agent has set the Department limit at \$20,000. This limit may be exceeded only with the express written permission of the Chief Right-of-Way Agent.

#### 5.434 Consultant Procedures

Right-of-Way Consultants may become involved at various stages of a project such as: preliminary planning, design, right-of-way acquisition and relocation research and cost estimates, right-of-way engineering functions, right-of-way setting, sub-contracting for appraisals, performing acquisitions, relocation assistance, utility relocations and submittals for condemnation of unresolved acquisitions.

#### 5.435 Project Coordinator

A senior Agent assigned as the Technical Staff on a Project Team, to the extent possible, with guidance and involvement from the appropriate Staff Specialist, will participate in the selection process of the consultant including preparing RFP's contract negotiations and preparation of agreements, assist, oversee and monitor all of the aspects of the right-of-way process performed by the Department's Right-of-Way Agents and the Consultant, to ensure Federal and State regulations and Department's policies are followed. The Team Member will attend all applicable Project meetings to stay informed and provide assistance and direction, as

necessary. The Team Member will inform the Supervisory Right-of-Way Agent if the Consultant or Right-of-Way Division has not adequately addressed any part of the project right-of-way needs and responsibilities.

The Team Member works with the Project Team to provide guidance on right-of-way matters and is required to adhere to Right-of-Way policies and procedures as published in the Uniform Act, Nevada Revised Statutes, Right-of-Way Manual, Project Management Guidelines, LPA Manual, Stewardship Agreement, State Administrative Manual, policy memos and Supervisory Right-of-Way Agent's instructions.

The Team Member shall review and coordinate the efforts within the right-of-way function, but shall make no decisions regarding Right-of-Way actions without the coordination of the Supervisory Right-of-Way Agent and appropriate Staff Specialist.

A. Initial File Preparation and Assistance

1. Provide the consultant with a copy of the Right-of-Way Manual and forms, if not previously given to them. (Available on CD)
2. To the extent possible, attend public and Informational meetings, arrange and attend in-house project status meeting and the following:
  - a. Field reviews
  - b. Review Design and Engineering Plans for Right-of-Way impacts
  - c. Keep Supervisory Right-of-Way Agent informed of the Project Status
  - d. Participate in or provide Right-of-Way cost estimates
  - e. Create and update Acquisition Project Status Report
  - f. Obtain, track expiration dates and renew Right-of-Way Entry Permits and provide copies to the appropriate personnel.
  - g. Other related responsibilities as required.
3. Obtain a copy of the Consultants Agreement/Contract, read and place in the Consultant's file.
4. Provide assistance and instruction as necessary to ensure compliance with Federal and State regulations and Departmental procedures.
5. Ensure the use and application of all appropriate forms.
6. Ensure the Consultant is aware that after the appraisal and review are completed, copies will be provided to the Department prior to the written offer being presented to the owner. Review Appraisals done by an

appraiser outside the Department, requires that the Assistant Chief Right-of-Way Agent issue a “Memo” establishing Just Compensation. When the consultant receives the Memo of Just Compensation they can then proceed to present the offer package and begin the negotiations.

If the review appraisal is done by the Department, the signed review may replace the Memo of Just Compensation. If the property is valued at less than \$25,000, the Department may issue a Waiver Valuation Memo in lieu of an appraisal and review.

**Note:** *The Code of Federal Regulations allows the Department to prepare a Waiver Valuation up to \$25,000. The Chief Right-of-Way Agent has set the Department limit at \$20,000. This limit may be exceeded only with the express written permission of the Chief Right-of-Way Agent. Be aware that the Nevada Constitution requires an appraisal be provided to the property owner should condemnation become necessary.*

**B. Consultant Acquisition Submittals and Documentation**

1. Ensure the acquisition, relocation and payment submittal packages have: a cover memo, contain the appropriate forms, documentation and correspondence, timesheets, invoices, receipts, etc. that support dollar amounts of the billings and are consistent and follow the Department’s standard Right-of-Way format to ensure efficient processing.
2. Verify all legal documents are accurate and legally complete before submitting for Departmental signatures, including the Public Highway Agreements, Deeds and other documents.

Ensure the appropriate Corporation, LLC, Partnership, Trust, Resolution or other document is obtained to verify signature authority and ensure the authorized person(s) name and title is included in the acquisition documents.

3. Complete a Request for Payment for the amount as stated in the PHA or other legal agreement.
4. Submit the package with a cover memo for execution of the Agreement and payment.

**C. Consultant Billing Submittals**

1. Review and verify the consultant’s billing invoices.

**D. Project Certification**



1. Verify that all Right-of-Way has been acquired by checking the deeds and appropriate documents (R/W Project Certification Checklist (Form 534), see [Section 5.388](#)).
2. The Project Coordinator will prepare a memo to the Supervisory Right-of-Way Agent, confirming that all the right-of-way has been acquired, all relocations have been completed and the right-of-way has been cleared.

#### 5.436 Project Oversight

If the local public agency acquires the right-of-way for a project, the local public agency must follow the NDOT Right-of-Way Manual and the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. NDOT's Right-of-Way Division shall provide oversight during the process, both to expedite acquisition and to assure that all federal and state requirements are met. The Supervisory Right-of-Way for Negotiations may delegate some activities to staff under their supervision but shall retain ultimate responsibility for the review of all products required and prepared by the local public agency's acquisition of right-of-way required for the project.

An independent appraiser used to create the appraisal reports for the local public agency must be listed on the NDOT Approved Appraiser list maintained by the Staff Specialist for Appraisals. In addition, an NDOT approved independent Review Appraiser must review the appraisal report.

The NDOT Right-of-Way Division shall review the appraisal reports and set just compensation before the local public agency can begin making offers.

The Right-of-Way Division reviews the local public agency's negotiations for property settlements with the affected property owners. The Supervisory Right-of-Way Agent for Negotiations shall document the review of the Local Agency's acquisition activities using the Review of Acquisition per Ownership Checklist (Form 924), and the Project Review Checklist (Form 925).

It shall be the policy of this Division that all Right-of-Way Acquisitions, relocations, property management, utility and railroad relocations are performed by the Right-of-Way Division. On rare occasions of if the LPA can prove competency to perform Right-of-Way Functions in accordance with the Uniform Act and Department Procedures, the approval from the Chief Right-of-Way Agent must be obtained to allow them to proceed with Department oversight.

## 5.450 FORMS

500	Memo to Staff Specialist for document submittal
501	Appraisal Summary Statement Clauses
502	Appraisal Summary Statement Clause Guide
503	Notice of Public Meeting - Transportation Board
504	Certificate of Mailing
505	Certificate of Service by Personal Delivery
506	R/W Insurance Addition
507	Right-of-Way Application
509	Deed of Gift of Real Property w/ signature page
511	Deed (GBS - Total Acquisition & Partial Acquisition)
511A	Deed (GBS – Partial Acquisition) including access rights (C of A)
512	Quitclaim Deed (Total Acquisition) w/ signature page
512A	Quitclaim Deed (Partial Acquisition) including access rights (C of A) w/ signature page
512B	Deed (GBS - Tenant-Owned Improvements) w/ signature page (tenants deed & inventory TOIs) (Tenant's Acknowledgement w/out Waiver)
513	Easement Deed (Permanent)
513A	Easement Deed (Permanent) including Access Rights (C of A)
513B	Easement Deed (Temporary) w/ signature page
514B	Corporation Acknowledgement w/ waiver (Partial Fee or PE)
514C	Corporation Acknowledgement without waiver (Total Fee)
515	Public Highway Agreement
515A	Public Highway Agreement, w/ signature page (Partial Acquisition, Vacant Land, including access rights (C of A))
515B	Public Highway Agreement, w/ signature page (improved property, partial acquisition)
515BT	Public Highway Agreement - Alternate page 2 for Tenant's/Lesseees

515C	Public Highway Agreement w/ signature page (improved property w/ access rights (C of A))
515N	3 extra Notary Acknowledgements
516	Draw Sheet
517	Letter Presenting Written Offer (Valuation)
517A	Letter Presenting Written Offer (Appraisal)
518	Valuation Summary Statement
519	Lease - State as Lessee
519PR	Protective Rent Agreement
520	Notice to Owner
520WA	Waiver of Appraisal
521	Option and Agreement for Sale of Materials
522	Inventory of Improvements
523	Entry Permit
523Ltr	Entry Permit (Letter)
524	Right of Entry Agreement w/ signature page
526	Escrow Instructions
526A	Manufactured Housing Escrow Instructions
527	Letter Transmitting Copy of Executed Public Highway Agreement & Deed to Owner
528	Agreement for Construction Outside Right-of-Way w/ signature page
529	Negotiator's Diary
531	Administrative Value Determination Introductory Letter
534	R/W Project Certification Checklist
542	Follow-up Letter – Tenant-Owned Improvements (Property Owner/Tenant)
543	Lessor's Release of Interest in Tenant-Owned Improvements
544	Public Highway Agreement - Tenant-Owned Improvements w/ signature page

545	Lessee's Certification of Ownership Statement - Tenant-Owned Improvements
546	Recommendation for Administrative Settlement
547	Acquisition, Ownership and Occupancy Data
548	Waiver Valuation - Summary of Value Conclusions
549	Certificate of Waiver Valuation
550	Waiver Valuation Transmittal
551	Comparable Data Worksheet
560	Parcel Closing Checklist
561	Negotiator's Report to Legal Division
563	Appraisal Summary Statement
567	Feasible Clauses for Legal Documents (PHA Agreements and Deeds)
568	Donation Format with Request for Appraisal
568A	Donation Format Waiver of Appraisal and Just Compensation
570	R/W Parcel Data Sheet
571	R/W Acquisition Estimate Worksheet
572	R/W Staff Estimate Worksheet
586	Condemnation Referral Letter Rescinding Offer
586A	Letter Rescinding Written Offer
586B	Letter of Rescission
587	Condemnation Referral Letter w/continued Negotiations
588	Tenant Release of Partial Interest and Certification
589	Mutual Release and Certification
597	Incidental Expense Reimbursement Appeals Form
598	Bill of Sale
599	Permission for Placement of Air Quality or Meteorological Equipment

**Administrative Services Agreements:**

1. Service Agreement
2. Amendment

Go to: <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>

## **6.000 RELOCATION**

### **6.100 INTRODUCTION**

The primary function of the Relocation Assistance Program is to provide information and assistance to individual owners or tenants of homes, businesses, non-profit organizations or farms who are displaced as a result of Federal or federally-assisted highway construction projects. This program is designed to ensure the fair, consistent and equitable treatment of all displaced persons. Appropriate payments will be issued to eligible displaced persons for moving costs and related expenses and certain replacement housing costs.

### **6.150 RESPONSIBILITIES**

#### **6.151 Chief Right-of-Way Agent**

The Chief Right-of-Way Agent is responsible overall for the Relocation Assistance Program and the administration thereof in accordance with Federal regulations and State policy and procedures.

#### **6.152 Staff Specialist for Relocation**

- A. By delegation of authority from the Chief Right-of-Way Agent, the Staff Specialist provides technical and procedural guidance to the Right-of-Way District offices in the field of relocation assistance.
- B. The Staff Specialist meets with Department Administrators and Federal Highway Administration representatives to develop specific plans for relocations requiring special handling.
- C. The Staff Specialist attends regular Division meetings and provides project control assistance, if required.
- D. The Staff Specialist develops Relocation Procedures and methods and works closely with the Right-of-Way Control Section to ensure proper fiscal control of relocation charges to projects.
- E. The Staff Specialist prepares and updates standard forms and procedures to achieve accuracy, uniformity and compliance with Federal Highway Administration directives. The Staff Specialist also issues special instructional memorandums as necessary and is responsible for the revisions of the Relocation Assistance Manual and the Relocation Brochure.
- F. Reviews all packages pertaining to relocation assistance for Federal Highway Administration, State and Department Policy and Procedure compliance.

- G. The Staff Specialist ensures that all required original documents pertaining to relocation are forwarded to the Central Records Section of the Department of Transportation Headquarters, in Carson City.

#### **6.153 District Supervisory Right-of-Way Agent**

- A. Relocation Assistance staff/personnel are located in the Right-of-Way District offices. The District Supervisory Right-of-Way Agent is responsible for the supervision of all relocation personnel in the District.
- B. The District Supervisory Right-of-Way Agents, by delegation from the Assistant Chief Right-of-Way Agent, may contract with independent consultants for Relocation Assistance services.
- C. The District Supervisory Right-of-Way Agents maintain a schedule of relocation progress for projects requiring deadlines and monitors the progress for certification.
- D. The District Supervisory Right-of-Way Agents review and approve all Relocation Assistance packages before they are sent to the Staff Specialist-Relocation for quality assurance and Federal compliance audit.
- E. The District Supervisory Right-of-Way Agents are responsible for the adherence by the Agents to the policy and procedures contained in this manual.

#### **6.154 Relocation Assistance Agents**

- A. Relocation assistance is normally provided by NDOT Right-of-Way Agents. However, when circumstances warrant, with the prior approval of the Chief Right-of-Way Agent, consultants may be hired as service providers to provide relocation services for a project. Each project must have sufficient relocation personnel, whether consultants or staff, to provide adequate relocation advisory services and relocation assistance.
- B. Basic training in Relocation Assistance is provided informally by the District Supervisory Right-of-Way Agent and senior Agents with the assistance and guidance of the Staff Specialist-Relocation. The Staff Specialist also prepares and maintains a reference manual to provide guidance and assist in training. Not all the many and varied circumstances which will be encountered in relocation can be covered or anticipated in any manual; however, the relocation manual is to be considered as the primary reference and authority. Unusual problems or circumstances should be discussed with the supervisor and resolved in consultation with the Staff Specialist. Formal training is provided by means of IRWA or FHWA courses as funding and scheduling permit.
- C. Relocation Agents personally contact all owner-occupants who will be displaced by highway construction. Unless there are unusual circumstances that prohibit

the scheduling, the initial contact with the owner is made at the time the negotiator presents the purchase offer. If contact is not made at this time, the owner will be contacted at the earliest possible time after the Initiation of Negotiations, preferably within 7 days. The owner occupant is informed verbally and in writing of the options, eligibilities, rights, and entitlements under the program.

- D. Using the information provided by the acquisition Agent on the Acquisition, Ownership and Occupancy Data form (Form 547), the Relocation Agent contacts tenants of a property being acquired. Unless there are unusual circumstances, which prohibit the scheduling, the initial contact is made on the same day as the Initiation of Negotiations with the property owner. If contact is not made at this time, tenants will be contacted at the earliest possible time thereafter, preferably within 7 days. Tenants are then informed verbally and in writing of the options, entitlements, eligibilities, and rights under the program.
- E. Relocation Assistance Agents meet with representatives from other departments, divisions, counties, cities, states and federal agencies as necessary to develop and implement the Relocation Assistance Program in compliance with Local, State and Federal regulations.
- F. Relocation Assistance Agents participate in the Public Hearing process and provide general information to the public about the relocation program. The Agents may also arrange meetings for groups of individuals affected by a project in order to disseminate more specific information regarding the project impact, availability of replacement housing, and relocation assistance payments.
- G. Relocation assistance Agents provide relocation assistance guidance to acquisition Agents and Legal Division personnel such as, Condemnation Coordinator or Assistant Condemnation Coordinator/Staff Specialist, to assure that the programs are coordinated, that the displaced person receives the benefits to which he or she is entitled, and that the displaced person is permitted at least 90 days from the purchase of the property or close of escrow in which to accomplish the move.
- H. Relocation assistance Agents cooperate with appraisers and the Appraisal Review Section in developing and maintaining real estate market information regarding housing, rental rates, interest rates, financing, and other pertinent information.
- I. Relocation assistance Agents notify property management personnel when a move has been accomplished and improvements are vacated by using the Property Management Notice B (Form 635).
- J. Relocation assistance Agents provide assistance to management in preparing responses to Ineligibility Notices received from Federal Highway Administration.



Relocation assistance Agents also provide information to management regarding appeals made by a displaced person relative to benefits to which they may be entitled.

- K. Relocation assistance Agents provide displacement data and replacement housing availability information to the Environmental Division. They also prepare relocation studies and plans as required by projects.

## 6.200 POLICY

### 6.201 Uniform Relocation Assistance Policies Act of 1970, as amended (Uniform Act)

The Relocation Assistance Program was initiated with the passage of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Public Law 100-17 Public Law 105-117 and Public Law 112-141 (Map 21). [49 CFR Part 24](#), provides the federal policy for the implementation of the Uniform Act.

### 6.202 General Relocation Requirements-49 CFR, 24 Subpart C

This subpart prescribes general requirements governing the provisions of relocation payments and other relocation assistance in this part.

These requirements apply to the relocation of any displaced person as defined:

“Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation.”

### 6.203 Nevada Revised Statutes

State Legislation enabling compliance with Public Law 91-646 was obtained through the passage of State Senate Bill 339 on April 8, 1971, effective retroactively to January 2, 1971. Statewide compliance of the Public Law was included in Chapter 408 of the Nevada Revised Statutes until the sixty-fifth session of the Nevada Legislature passed Assembly Bill 623 which amended [Chapter 342](#) of the Nevada Revised Statutes by adding the following enabling legislation:

- “1. Any department, agency, instrumentality or political subdivision of this state, or any other public or private entity, which is subject to the provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, [42 USC, Chapter 61, Subchapters I-III, Sections 4601-4655](#), and the regulations adopted pursuant thereto, and which undertakes any project that results in the acquisition of real property or in a person being displaced from his home, business or farm, shall provide relocation assistance and make relocation payments to each displaced person and perform such other acts and follow such procedures and practices as are necessary to comply with those federal requirements.

2. The Director of the Department of Transportation shall review the federal act and all amendments and regulations adopted pursuant thereto and adopt such regulations as he finds are necessary to enable the State of Nevada to comply with those federal requirements.”

#### **6.204 Title VI of the Civil Rights Act of 1964**

The Right-of-Way Division has the responsibility that all Right-of-Way functions and the results of those activities are executed in accordance with Title VI. Title VI of the Civil Rights Act of 1964 prohibits discrimination in Federal and Federally-assisted projects and programs based upon race, color, and national origin. Since 1964, additional Title VI-like statutes have prohibited discrimination based upon sex (Federal-aid Highway Act of 1973), age (The Age Discrimination Act of 1975), and disability (Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990). Taken together, FHWA has defined a Title VI/Nondiscrimination Program to prohibit discrimination based upon race, color, national origin, sex, age, or disability. <http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm>

Complaint procedures:

Refer Title VI complaints to the Civil Rights Officer and assist with the investigation of any complaints: All complaints received will be forwarded to the appropriate Supervisory Right-of-Way Agent Northern or Southern Districts. The Supervisor will forward any complaints to the Right-of-Way Title VI Staff Specialist overseeing Title VI compliance. The Staff Specialist will catalog the complaint and forward to the Chief Right-of-Way Agent and then the Civil Rights Officer.

#### **6.250 PROCEDURES**

- A. Because of the complexity of the Relocation Assistance Program, the procedures have been broken down into various sections along with a section on definitions.
- B. This Relocation Assistance procedures portion of the Right-of-Way Manual will also be the work manual for Relocation Agents; therefore, it is important that the Agents be familiar with the procedures as contained in the following sections.

#### **6.251 Relocation Planning**

- A. During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and non-profit organizations and develop solutions 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 persons with disabilities 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, the Agency should consider housing of last resort actions.
3. An estimate of the number, type and size of the businesses, farms and non-profit organizations to be displaced and the approximate number of employees that may be affected.
4. An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses, which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
5. Consideration of any special relocation advisory services that may be necessary from the 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.

### **Preliminary Relocation Activities**

- A. Procedures under this section consist of all relocation activities prior to the Initiation of Negotiations (ION) and acquisition of parcels on a project.
- B. Research and reports made at this stage will be used primarily for the Environmental Impact Statement, but will be updated for use at the Design Public Hearing and Relocation stage.

## Environmental Impact Statement & Corridor Public Hearings

- A. An assessment of potential impacts due to residential displacement must be conducted well before the highway location is finally approved and property acquisition begins. Thus, the relocation impact studies will begin prior to the draft Environmental Impact Statement/Corridor Public Hearing stage, while alternative alignments remain under consideration and are subject to detailed refinement and change.
  1. Information required for the Environmental Impact Statement and Corridor Public Hearing as a minimum, should include:
    - a. An estimate of households to be displaced, including the family characteristics (e.g., minorities, handicapped, income levels, the elderly, large families, length of occupancy, and owner/tenant status). Where the project is not complex from a relocation viewpoint and the impact on the community is slight, this information may be obtained by visual inspection and from available secondary sources. On complex relocation projects where the relocation will have a major impact on the community, a survey of affected occupants may be needed. This survey may be accomplished by a sampling process.
    - b. A discussion of available housing in the area and the ability to provide suitable relocation housing for each type of family to be displaced within the financial capabilities of the displaced person.
    - c. A description of any special advisory services that will be necessary for unique relocation problems.
    - d. A discussion of the actions proposed to remedy insufficient relocation housing, including a commitment to housing of last resort, if necessary.
    - e. An estimate of the number, type, and size of businesses to be displaced. The approximate number of employees for each business should be included along with the general impact on the business dislocation(s) on the economy of the community.
    - f. A discussion of the results of early consultation with the local government(s) and any early consultation with businesses potentially subject to displacement, including any discussions of potential sources of funding, financing, planning for incentive packaging (e.g., tax abatement, flexible zoning, and building requirements), and advisory assistance which has been or will be furnished along with other appropriate information.

- g. Impact on the neighborhood and housing community services where relocation is likely to take place. If there will be extensive residential and/or business displacement, the affected community may want to investigate other sources of funding from local and State entities as well as HUD, the Economic Development Administration, and other Federal agencies, to assist in revitalization of the community.
  - h. The result of discussions with local officials, social agencies, and such groups as the elderly, persons with disabilities, non-drivers, mass transit-dependent, and minorities regarding the relocation impacts.
  - i. A statement that the housing resources are available to all displaced persons without discrimination.
2. When the data is required for the Environmental Impact Statement and Corridor (location) Public Hearing, the District Supervisory Right-of-Way Agent will be requested to assign Agents to work with environmental staff to obtain the required information.
  3. The District Supervisory Right-of-Way Agent will request from Right-of-Way Engineering a parcel count and acreage total separated as to land in public and private ownerships, and for any alternate alignments.
  4. The District Supervisory Right-of-Way Agent obtains from Design Engineering whatever working data is available that will assist the Agent assigned to data gathering. If an aerial mosaic or recent topographic detail is available and is of sufficient scale to readily identify the improvements, it may be possible to layout an approximate number of displacements from such data.
  5. When such data is not useful for an estimation the displacement estimation may be obtained from a field survey. The field survey should be a determination of the approximate displacements broken down as to owner-occupants and tenants. Since the information required at this stage is only an estimate, door-to-door contacts are not recommended.
  6. After the estimate of the residential displacement is made, it will be necessary to prepare an estimate of replacement housing and sites that are available, or projected to be available. At this stage, the availability study should only reflect that there are a sufficient number of units available for the number of displacements. Available units may be obtained from sources such as brokers' list, the multiple listing service, newspaper ads, etc.

7. In addition to the estimate of residential displacements, an estimate of the businesses subject to displacement shall be prepared for each alignment, with an emphasis on those requiring extensive advisory assistance.
8. After the necessary information is acquired for each alignment, the information shall be correlated into final report. Copies of the information and a final report shall be retained by the appropriate Right-of-Way District Office.

### Design Public Hearing

- A. This hearing is held after the route location has been approved but before the Department is committed to a specific design proposal. In accordance with the design hearing schedule needs, the District Supervisory Right-of-Way Agent assigns a public hearing team member or members to answer questions on right-of-way at the design hearing.
- B. The information required for the design hearing is basically the same as that required for the corridor public hearing and environmental impact statement, except concentration will be made on a specific alignment and its impact.
- C. Since this data will be used through the acquisition phase of the project, the surveys shall be extensive enough to detect the problem areas and with solutions to resolve them.
- D. The design public hearing presentation on relocation may include discussions and provide information on the following:
  1. That no person shall be displaced from his or her residence unless a comparable replacement dwelling is made available.
  2. That no lawful occupant shall be required to move without receiving at least 90 days advance written notice.
  3. The eligibility requirements and payment procedures, including:
    - a. Eligibility requirements and payment limits for moving costs
    - b. Replacement housing and rent supplement payment eligibility requirements and payment limits
    - c. Mortgage interest rate differential eligibility requirements and payments
    - d. Payment of closing costs incident to the purchase of a replacement dwelling
    - e. Appeal procedures

4. Discussion of the advisory services available under the State's Relocation Assistance Program, the address and telephone number of the local relocation office and the name of the Supervisory Right-of-Way Agent or the assigned Senior Agent.
5. The estimated number of individuals or families to be relocated
6. The estimated number of dwelling units presently available that meet replacement housing requirements
7. An estimate of the time necessary for relocation and of the number of dwelling units meeting the replacement housing requirements that will become available during that period, and
8. Discussion of the brochure and when it can be obtained.

#### **6.252 Right-of-Way Stage Relocation Activities**

- A. Procedures under this section consist of those relocation activities following the design public hearing.
- B. The first contact with the displaced person will require that they be furnished with the written General Information Notice – Relocation Assistance (Form 631).
- C. The Relocation Assistance Program is explained in detail to potential displaced person (i.e., advisory services).
- D. Procedures for recordkeeping are outlined which are required for audit purposes.
- E. Relocation appeal guidelines are defined in order to provide a timely response to displaced persons.

#### **6.253 Pre-Negotiation Contact - General Information Notice**

- A. The General Information Notice – Relocation Assistance (Form 631) is the first personal contact with all potential displaced persons on a project explaining in writing the possibility of their displacement. As a minimum this notice includes the following:
  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 claim(s), and other necessary assistance to help the person successfully relocate.

3. 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 to the displaced person. No person will be required to move without at least 90 days advance written notice. (See 90-day Notice to Vacate – Relocation Eligibility Notice, [Section 6.255](#))
  4. Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent or child.
  5. Describes the displaced 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. Following the Design Public Hearing, a memo is issued by the Director to all division heads, advising them of the Location/Design Recommendation and giving authorization to proceed with their respective activities.
  - C. Upon receipt of notice to proceed, the District Supervisory Right-of-Way Agent will assign an Agent to prepare the General Information Notice for all potential displaced persons.
  - D. This notice should be mailed or delivered to potential displaced persons within thirty (30) days from the above authorization date.
  - E. Utilizing information gathered for the Environmental Impact Statement, information from the public hearing and assessor's parcel records, the District Supervisory Right-of-Way Agent will obtain the names of the potential displacements. Right-of-Way Engineering may also be utilized to supply this information.
  - F. When all the names and addresses have been obtained, the General Information Notice – Relocation Assistance (Form 631) shall be personally served or sent by Certified Mail or Registered U.S. First-Class Mail, Return Receipt Requested. Copies shall be retained in the Agent relocation parcel file, with copies sent to Central Files in Headquarters.
  - G. Since this is usually the first contact with a potential displaced person, it will be normal for some people to respond. Therefore, it is important to fully explain that this is only a notice of a possible displacement, and acquisition and relocation will not take place until appraisals have been completed.



## 6.254 Contacts at Initiation of Negotiations (ION) or Notice of Intent to Acquire \*

- A. Utilizing the basic work files available from the surveys made for the Environmental Impact Studies and the design hearing, an orderly, planned relocation program shall be constructed for a project. Individual parcel relocation work files, with diary, shall be prepared for all potential displaced persons as soon as possible in order to meet timing requirements for both owner-occupants and tenants.

\*Notice of Intent to Acquire” (Form 636): A Notice of Intent to Acquire is a displacing Agency’s written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Department intends to acquire the property. A Notice of Intent to Acquire establishes eligibility for relocation assistance prior to the Initiation of Negotiations and/or prior to the commitment of Federal financial assistance.

- B. For all projects, the basic procedure is as follows:
1. Upon receipt of the authorization from the Federal Highway Administration, via NDOT’s Project Approval & Engineering Authorization, accessible on the internet, to negotiate and relocate, the District Supervisory Right-of-Way Agent shall make written assignments to the Right-of-Way Agents to proceed.
  2. The Relocation Agent must obtain pertinent data from the appraisal report (which may include floor plan, improvement inspection report, site plan, and any other information regarding the improvements) with which the Agent can determine the displaced persons status and assist in the preparation of the appropriate forms. These forms along with the relocation brochure and the Title VI Compliance Questionnaire (Form 929A or 929B) and NDOT’s Division of Civil Rights Fact Sheet Brochure will become part of the presentation package. The Relocation Agent must obtain the Acquisition, Ownership and Occupancy Data form (Form 547) along with a copy of the inventory of real property from the acquisition Agent prior to the Initiation of Negotiations in order to coordinate these activities. The acquisition Agent shall be responsible for verifying the occupancy data prior to this contact and again at the time of legal possession.
- C. There are two basic time requirements for delivery of the relocation brochure.
1. All owners of parcels, whether occupants or non-occupants, or whether residential, business, farm or non-profit organizations must be provided the relocation brochure on the same date as the Initiation of Negotiations or Notice of Intent to Acquire and delivery must be documented in the Agents relocation diary.

2. All tenants, whether occupants or non-occupants, or whether residential, business, farm or non-profit organizations, must be provided the relocation brochure as soon as possible, preferably within seven (7) days of the Initiation of Negotiations or Notice of Intent to Acquire and delivery must be documented in the Agents relocation diary. In addition, the tenant must be notified in a written statement, of the date of Initiation of Negotiations for the parcel.
- D. In most instances involving residential relocation, there will be sufficient data available to calculate the probable entitlement prior to the Initiation of Negotiations, and to deliver the entitlement at the same time the acquisition offer is made. In any event, it is important to gather the needed information to calculate the entitlement so that it can be given to the displaced person(s) at the earliest possible date following the Initiation of Negotiations. When calculating the probable entitlement, the comparable replacement dwelling shall meet the criteria as outlined in the definition for a comparable replacement dwelling in Definitions, [Section 6.400](#).
  - E. An Agent relocation diary must be maintained listing each contact made, whether by phone or written, starting with the General information Letter, when the brochure was given, when the probable entitlement was given, dates when any other key data was given and any requests made by the displaced person. Other documentation requirements are included in the various relocation forms.
  - F. Whenever an Agent encounters a potential displaced person(s) who does not speak English, the Agent must secure the services of an interpreter to explain the Relocation Program. A [Service Agreement](#) (see Administrative Services SharePoint site) may be used to obtain this type of service. Contractors may be obtained through local universities and colleges.

#### 6.255 90-day Notice to Vacate – Relocation Eligibility Notice

- A. An important condition of the relocation program is that a displaced person is never required to move without at least 90-days advance notice and at least one comparable replacement dwelling being made available to the residential displaced person. (See Paragraph B. below.) These are accomplished by the 90-day written notice and Statement of Probable Entitlement. (See Replacement Housing, [Section 6.263](#) for entitlement guidelines.)
- B. To control the timing of required notices, the following steps are necessary:
  1. All owner-occupant displaced person(s) who are eligible for replacement housing and have at least 90-days continuous occupancy shall be delivered a Initial Occupant Residential Letter - 90-day Notice (Form 617), along with the Statement of Probable Entitlement – Replacement Housing Allowance (Form 610), for replacement housing and a listing of

an available comparable replacement dwelling. It is preferred that the 90-day Notice and Statement of Probable Entitlement be delivered to owner-occupants at the time of Initiation of Negotiations in order that they be fully informed of their benefits. If they cannot be delivered at this time, the brochure must still be delivered at the Initiation of Negotiations, with the notice and entitlement delivered in person or by certified or registered first-class mail, return receipt requested, as soon as possible after the Initiation of Negotiations.

2. All initial tenant-occupants having at least 90-day occupancy shall be delivered the Initial Occupant Residential Letter - 90-day Notice (Form 617), along with the Statement of Probable Entitlement – Replacement Housing Allowance (Form 610) and a listing of an available comparable replacement dwelling after the Initiation of Negotiations and preferably at the same time as the brochure is delivered. If the letter and entitlement are not delivered at this time, the brochure and a written statement of the Initiation of Negotiations must still be delivered in person or by certified or registered first-class mail, return receipt requested, as soon as possible thereafter, within 7 days after the Initiation of Negotiations.
3. Less than 90-day initial occupants shall be delivered the Initial Occupant Residential Letter - 90-day Notice (Form 617), along with a listing of an available comparable replacement dwelling as soon as possible after the Initiation of Negotiations and preferably at the same time as the brochure is delivered. Notification shall be delivered in person or by Certified Mail or Registered U.S. First-Class Mail, Return Receipt Requested.
4. Subsequent occupants shall be delivered the Subsequent Occupant – 90-day Notice (Form 617B) along with a listing of an available comparable replacement dwelling as soon as possible after they occupy the property. Subsequent tenants are advised that they must be in occupancy on the date the State acquires the property in order to be eligible for any benefits.

**Note:** The 90-day letter for less than 90-day occupants (Form 617B) is worded somewhat differently than the standard 90-day letter (Form 617). The notice shall be delivered in person or by Certified Mail or Registered U.S. First-Class Mail, Return Receipt Requested.

5. The 90-day written notice letter as referred to in Paragraphs 1 through 4 above shall contain reference to the specific attachments thereto.
6. When required, a 30-day notice shall be issued in person or by Certified Mail to a displaced person under the following circumstances:

- a. A 90-day informational letter (and statement of probable entitlement, if applicable) had been delivered 60 days prior to the 30-day notice.
  - b. The residential displaced person has been offered at least one available, comparable replacement dwelling.
  - c. The State has legal possession of the property whether by Grant, Bargain, and Sale Deed, Right of Entry or Order for Immediate Occupancy. Usually the date on which the State receives control or legal possession is contained in the body of the Right of Entry and Order for Immediate Occupancy, which can be obtained from the appropriate Northern/Southern Right-of-Way District Supervisor or maybe obtained from the Condemnation Coordinator or Assistant Condemnation Coordinator in the Legal Division.
- C. In the event the State is required to issue an eviction notice, the displaced person(s) shall be advised of his or her rights to still receive any relocation payments or advisory assistance.
- D. A comparable replacement dwelling will be considered to have been made available to a person, if:
1. The person has been offered at least one comparable replacement dwelling and when possible, three or more comparable replacement dwellings are made available; and,
  2. The person is informed of its location; and,
  3. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and,
  4. 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.
- E. Waiver

The Federal Agency funding the project may grant a waiver of the policy in paragraph D., above, 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 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended ([42 USC, Chapter 68, Subsection 5122](#));

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.
- F. Basic conditions of emergency moves: Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph E., above, of this section, the Right-of-Way Agent shall:
1. Take whatever steps are necessary to assure that the person is temporarily relocated to a Decent, Safe, and Sanitary (DS&S) dwelling;
  2. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility cost 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.)

#### 6.256 Advisory Services

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 USC, Chapter 21, Subchapter I, Section 2000d](#) et seq.), Title VIII of the Civil Rights Act of 1968 ([42 USC, Chapter 45, Subchapter I, Section 3601](#) et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described as follows:

- A. Relocation assistance advisory services listed below are intended, as a minimum, to assist persons in relocating to Decent, Safe and Sanitary (DS&S) housing that meets their needs. These services shall be provided by personal contact, except if such personal contact cannot be made, the Agent shall document the file via the relocation diary, to show that a reasonable effort was made to do so.
- B. Relocation assistance advisory services shall be offered to the following:
  1. Any displaced person as defined in the definitions.
  2. Any person occupying property immediately adjacent to the real property acquired when it is determined that such person is caused substantial economic injury because of the acquisition.

3. Any person who moves his business, farm or non-profit organization as a result of the acquisition of real property.

C. Minimum advisory services to be offered shall include the following:

1. Interview each person to be displaced to determine the person's relocation needs and preferences, and explain the relocation payment process 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 business. At minimum, interviews with displaced business owners and operators should include the following items.
  - a. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
  - b. Determination of the need for outside specialists in accordance with [49 CFR 24.301\(g\)\(12\)](#) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
  - c. For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal for the property.
  - d. An estimate of the time required for the business to vacate the site.
  - e. An estimate of the anticipated difficulty in locating a replacement property.
  - f. An identification of any advance relocation payments required for the move and the Agency's legal capacity to provide them.
  - g. Provide, for non-residential moves, 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.
2. Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments process and other assistance for which the person may be eligible, the related eligibility requirements and the procedures for

obtaining such assistance. This shall include a personal interview with each residential displaced person and should include the following:

- a. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move from a dwelling unless at least one comparable replacement dwelling is made available.
- b. As soon as feasible, inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment and the basis for determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.
- c. Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be Decent, Safe and Sanitary (DS&S).
- d. Provide minority persons reasonable opportunities to relocate to a DS&S 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.
- e. Inform any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling, as well as of the long-term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.
- f. All displaced persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.
- g. Minimize hardships of relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.





## 6.257 Relocation Records

- A. The Relocation Agent shall maintain a Diary (See Form 529, and change the title as applicable) of each relocation assignment. Copies of relevant Diary pages shall be submitted with each request for a relocation payment, and the complete signed original Diary shall be submitted with the closing relocation package. The Diary may be written in longhand or typed. The pages must be numbered and each entry initialed by Agent. The Diary shall include the date of each contact, whether personal or written, the amount of the replacement housing entitlement, if applicable, the dates on which the required notices (e.g., 90-day Notice (Form 617), 30-day Notice (Form 630), and General Information Notice – Relocation Assistance (Form 631), and the Relocation Brochure) were given, a summary of any discussion with the displaced person, any problems or concerns the displaced person may have and how they were resolved.
- B. The Non-Residential Relocation Closing Checklist (Form 619B) or Residential Relocation Closing Checklist (Form 619R) is to be completed and included in the closing relocation package. All spaces shall be filled in with the specified information, and a N/A (not applicable), entered in those spaces, which do not apply to the relocation.
- C. No payments made under the Relocation Assistance Program can be personally delivered by the displaced persons assigned Relocation Agent. Payments will be made by direct deposit.
- D. When the State has obtained legal possession of a parcel/property and the displaced person(s) have been relocated, the Relocation Agent shall complete the Property Management Notice B (Form 635), which turns the parcel/property over to the Property Management Section, of the Right-of-Way Division. The Relocation Agent will attach all the appropriate keys to this notice and reference any deficiencies associated to the parcel/property.
- E. At the close of each Federal fiscal year (October 1st through September 30th), a yearly relocation report shall be completed on the Uniform Relocation Assistance and Real Property Acquisition Statistical Report Form and retained by the Staff Specialist.
- F. All original supporting relocation documents/claims shall be submitted with the payment vouchers to the District Supervisory Right-of-Way Agent. After review and approval by the supervisor, the complete relocation package is forwarded to the Staff Specialist for a compliance audit, processing and payment. The Staff Specialist is responsible for approving all relocation payments in accordance with the Uniform Act and forwarding all original relocation documents/claims to the Central Records/Files Division for placement in the parcel relocation file as permanent records.

## 6.258 Relocation Appeals

- A. When a person indicates dissatisfaction with a determination of eligibility for a payment or an amount of payment offered under the relocation regulations, the Relocation Agent shall explain the appeal process and provide the person with a Relocation Appeals Form (Form 602). It must be made clear to the displaced person that the relocation appeal relates only to the Relocation Assistance Program and any dissatisfaction with the acquisition must be pursued through the Negotiation Agent.
- B. The displaced person is requested to complete the Relocation Appeals Form stating the reasons for dissatisfaction and submitting the appeal with a letter to the Director of the Department of Transportation. Although an appeal form is provided to the displaced person, an appeal will be reviewed regardless of format.
- C. The displaced person shall be advised that any appeal must be filed no later than sixty (60) days after the person receives written notification of the Department's determination on the relocation claim.
- D. Upon receipt of the appeal by the Director, it will be forwarded to the Chief Right-of-Way Agent for review. The District Supervisory Right-of-Way Agent, the Relocation Agent and Staff Specialist shall present to Right-of-Way Administration an explanation of the District's handling of the matter under appeal.
- E. The displaced person has the right to be represented by legal counsel or other representative in connection with the appeal at their own expense. Any meeting requested by the displaced person will be scheduled through the District Supervisory Right-of-Way Agent.
- F. Upon request, the displaced person may review the Department's file and copy any material pertinent to the appeal. The Department may impose restrictions on the use of other files not directly related to the displaced person.
- G. The Department shall make a thorough review of the documentation provided by the displaced person along with all other available information. Consideration shall be given to the appropriate laws governing the appeal and their application.
- H. After review of all information submitted by the displaced person in support of the appeal, the Department shall provide a written determination, including an explanation of the basis on which the appeal decision was made. In the event the displaced person is not granted the full relief requested in the appeal, the displaced person shall be advised of his or her right to seek judicial review.

- I. The written reply shall be signed by the Director or the Director's authorized representative. Copies of the reply will be furnished to the District Supervisory Right-of-Way Agent and Staff Specialist.
- J. Should an appeal proceed to a judicial review, all of the pertinent information shall be delivered to the Legal Division for their use.

#### 6.259 Relocation Payment Claims

- A. Any displaced person who is eligible for a relocation payment must be provided assistance necessary to complete and file any required claim for payment. All claims shall be supported by original documentation to justify the expenses incurred, such as bills, certified prices, appraisals, receipts, invoices or other evidence as required.
- B. The Agent shall confirm the displaced person's eligibility for each claim. Payment of any relocation claim shall be made as soon as possible after the expense has been incurred and sufficient documentation to support the claim has been received. The claimant shall be promptly notified as to any additional documentation that is required to support the claim.
- C. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agent may request the payment, provided that the necessary safeguards are taken to ensure that the objective of the payment is accomplished.
- D. All relocation payment claims shall be filed with the NDOT, Right-of-Way Division no later than 18 months after:
  - 1. For tenants, the date of displacement.
  - 2. For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later. NDOT can waive this time period for good cause.
- E. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of any relocation payment that would have been made had the occupants moved to one dwelling. However, if it is determined that two or more occupants maintained completely separate households within the same dwelling, such occupants would be entitled to separate relocation payments.
- F. Any advance payment made to a displaced person must be deducted from the respective final relocation payment. Refer to Disbursement of Replacement Housing Payments, [Section 6.266](#) for procedures concerning advance payment to a displaced person involved in a condemnation action.

- G. The agency may deduct from the relocation payment any rent owed, provided such deduction does not prevent the displaced person from obtaining a comparable dwelling. (See following examples.) No relocation payments can be withheld to satisfy an obligation to any other creditor.
- H. If NDOT, Right-of-Way, disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the claimant must be notified in writing of its determination, the basis of the determination and the procedures for appealing the determination.

**DEDUCTIONS FROM RELOCATION PAYMENTS**  
Section 6.259, Paragraph G.

**EXAMPLES:**

Rent for acquired dwelling	\$ 300.00
Rent for replacement dwelling	\$ 420.00
Replacement Housing Payment	\$5,040.00
Monthly income of displaced person	\$1,000.00
30% of gross income	\$ 300.00
Accrued delinquent rent	\$ 900.00
Amount that may be offset	\$ 0.00
Rent for acquired dwelling	\$ 300.00
Rent for replacement dwelling	\$ 420.00
Replacement housing payment	\$5,040.00
Monthly income of displaced person	\$1,250.00
Accrued delinquent rent	\$2,400.00
 <b><u>Step 1</u></b>	
Compute 30% of gross monthly income	\$ 375.00
 <b><u>Step 2</u></b>	
Deduct 30% of income from replacement rent	\$ 45.00
 <b><u>Step 3</u></b>	
Multiply result by 42	\$1,890.00

This is the amount in excess of the rent for the acquired dwelling which the displaced person can afford to pay based upon the 30% rule. It may, therefore, be deducted from the computed rent differential payment.

## 6.260 Alien 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.
  - 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 head of the household on behalf of other family members.
  - 3. In the case of an unincorporated business, farm, or non-profit 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 non-profit organization, that the corporation is authorized to conduct business within the United States.
- B. In computing relocation payments, if any member(s) of a household or owner(s) of an unincorporated business, farm, or non-profit organization is (are) determined to be ineligible because of failure to be legally present in the United States, no relocation payment may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or non-profit 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 non-profit organization, based on the ratio of ownership between eligible and ineligible owners.
- C. If a relocation claim form is returned without a signed certification, and it is believed that a mistake was made in not signing the certification, a letter may be sent out notifying the person or entity of the omission.
- D. The certification provided pursuant to paragraph "A". of this section, shall be considered to be valid. However, if the Agent has reason to believe that the certification may be invalid the Agent shall discuss the concern with the Supervisory Right-of-Way Agent and Relocation Staff Specialist.
- E. Any review of the certifications shall be conducted in a nondiscriminatory fashion. The same standard of review shall apply to all certifications received.
- F. If, based on a review of an alien's documentation or other credible evidence, the Supervisory Right-of-Way Agent or the Relocation Staff Specialist 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:

1. Obtain verification of the alien's status from the local of US Citizenship and Immigration Service (USCIS) Office. A list of local USCIS offices is available at: <http://www.uscis.gov/portal/site/uscis>. Any request for USCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation.
  2. 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 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 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; or
  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.

#### **6.261 Rent-free Occupancy by Displaced Persons**

- A. The Supervisory Right-of-Way Agent may authorize rent-free occupancy to former owners or tenants who remain on the premises of NDOT-acquired property after the State has gained control of the property. A displaced person would not be required to pay rent to NDOT during the approved grace period if such payment would create a hardship. Although rent-free occupancy is not an official requirement of the Relocation Assistance Program, the primary

responsibility for oversight of the rent-free occupancy period rests with the Relocation Agent. The following terms and conditions of rent-free occupancy shall apply:

1. Typically, the duration of the rent-free period will be up to 60 days beyond the date on which the State gains control of the property. Rent-free occupancy longer than sixty (60) days will require the approval of the Chief Right-of-Way Agent. The displaced person should be actively engaged in the relocation process during this grace period, communicating with the Relocation Agent and making efforts to move.
  2. The need for a grace period is often related to simultaneous financial commitments at the displacement and replacement properties, such as an obligation to pay rent at the replacement site while still occupying the State's property. A business displaced persons need for a grace period may be related to a delay in the readiness of the replacement site, contractor delays or unforeseen problems with equipment installation. A residential displaced persons need for a grace period may be related to a delay in the availability of the chosen replacement dwelling, or non-refundable or extraordinary start-up expenses required by written agreement with the new Lessor.
  3. The Relocation Agent shall verify and document the dual financial obligations or other hardship of the displaced person and request approval from the Supervisory Right-of-Way Agent to allow a rent-free period of occupancy. Once approval is obtained, the Relocation Agent shall notify the Property Management Agent, by memo, of the displaced person's rent-free status and the date when the grace period will terminate. At the end of the grace period, all displaced persons remaining in occupancy will be required to enter into a rental or lease agreement and pay current fair market rent.
- B. Rent-free occupancy may be granted for an individual parcel, a portion of a project, or an entire project when properties are acquired in a market where replacements are difficult to find.

## 6.262 Moving Payments

This section consists of the procedures for payment of actual moving related expenses to all eligible displaced persons.

### Basic Eligible Conditions

- A. Any qualified displaced person whether an initial owner-occupant, tenant-occupant, less than 90-day occupant, and who moves from a dwelling (including a mobile/manufactured home) or who moves from a business, farm or non-profit

organizations (See Definitions, [Section 6.400](#)) is entitled to payment of his or her actual moving and related expenses determined to be reasonable and necessary, such as:

1. For moving personal property located within acquired right-of-way.
2. When acquisition causes a person to move his or her personal property from other real property not acquired. (Temporary easement area)

B. Eligibility for moving expenses is based on the following conditions:

1. Displaced person is in occupancy at the time of the Initiation of Negotiations; or  
Displaced person is in occupancy at the time the property is acquired; or  
Displaced person is in occupancy at the time a written Notice of Intent to Acquire is given.  
(Whichever occurs first)
2. Displaced person actually moves from the real property or moves his or her personal property, after paragraph B.1. above occurs.

C. A displaced person must sign the appropriate claim form provided by the State within a time not to exceed 18 months after:

1. For tenants, the date of displacement.
2. For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

Unlawful Occupant: A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal right to occupy a property under State law. (See Definitions, [Section 6.400](#))

D. Payment shall be made after the move is completed. With written justification and prior approval from the Supervisory Right-of-Way Agent, payment may be made in advance for hardship cases.

E. A non-occupant owner of a rented mobile/manufactured home is eligible for actual cost reimbursement to relocate the mobile/manufactured home. If the mobile/manufactured home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described in [49 CFR, Chapter 24.502\(a\) \(3\)](#), the home-owner occupant is not eligible for payment for moving the mobile/manufactured home, but may be eligible for a payment for moving the mobile/manufactured home, but may be eligible for a payment for moving personal property from the mobile/manufactured home.



## Eligible Moving Expenses

- A. The following moving expenses are eligible in all types of dwelling moves when the displaced person elects to move on an actual cost basis 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.
1. Expenses for moving personal property within a radius of 50 miles. With a written justification and prior approval, exceptions to the 50-mile radius may be made to the nearest adequate and available site.
  2. Packing, crating, unpacking, and uncrating of the personal property.
  3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property.
  4. Insurance covering replacement value of personal property in connection with the move and necessary storage.
  5. Storage charges for a displaced person's property not to exceed 12 months. With a written justification and prior approval, storage in excess of 12 months may be granted.
  6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her Agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
  7. Reasonable transportation expenses when they are required by the move, such as taxi fare, expense of ambulance for invalid persons and meals and lodging enroute.
  8. Utility service reconnection charges shall be reimbursed, supported by receipted bills. Such costs are not applicable to items considered as real property in the appraisal.
  9. The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile/manufactured home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.
  10. The reasonable cost of repairs and/or modifications so that a mobile/manufactured home can be moved and/or made DS&S.
  11. The cost of a non-refundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if

the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

12. Other moving-related expenses that are not listed as ineligible as the Agency determines to be reasonable and necessary.

**B. Mobile/Manufactured Home Moves**

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile/manufactured home may be determined based on the cost of one, or a combination of the following methods:

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:
  - a. Fixed Residential Moving Cost Schedule
  - b. 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.

Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile/manufactured home include those expenses described in Eligible Moving Expenses, A.1. through A.12, under [Section 6.262](#)-Moving Payments.

In addition to the items mentioned above, the owner-occupant of a mobile/manufactured home that is moved as personal property and used as the person's replacement dwelling, is also eligible for moving expenses as described in Eligible Moving Expenses, A.1. through A.12, under [Section 6.262](#)-Moving Payments.

**C. The following moving expenses are eligible in non-residential (businesses, farms or non-profit organizations) moves when the displaced person elects to move on an actual cost basis:**

1. Expenses for moving personal property within a 50-mile radius. With a written justification and prior approval, exceptions to the 50-mile radius may be made to the nearest adequate and available site.
2. Packing, crating, unpacking, and uncrating of the personal property.

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property. This includes connection to utilities available within the building. It also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
  - a. Utilities may include the following internal service lines: water, gas, electrical, compressed air, vacuum, vent, sewer, and oil. They may be located overhead, underground, or on the surface. Some costs associated with these utilities are eligible relocation expenses; others are not.
  - b. The cost of extending utility service lines from the right-of-way line (or property line) to the building or major improvement is specifically excluded by the regulations and is not an allowable moving expense.
  - c. The cost of installing the actual service connections is not allowable. The connections typically include items such as water meters, gas meters and main electrical service panels (main or breaker panels on the building) that are the individual utility “distribution centers” for the utilities serving a particular building. From the viewpoint of the relocation program, these in-place service connections are real property improvements and the values associated with them become part of the real estate. Typically, this is also true of a building’s overhead lighting and perimeter electrical outlets. These in-place service connections may also include water and gas lines that would be typical for the type of building involved. Again, these costs become part of the real estate and are not allowable moving expenses. They may be eligible, however, as reestablishment expenses, up to \$25,000.
  - d. An eligible business or farm is entitled to receive reimbursement of costs for reinstalling relocated machinery and equipment (M&E) and other personal property, including substitute personal property described in Purchase of a Substitute Item, paragraph F, under [Section 6.262](#)-Moving Payments, Moving Expenses – Businesses, Farms and Non-Profit Organizations. This includes connection to utilities nearby and modifications necessary to adapt the utilities at the replacement site to the personal property.
  - e. From a relocation standpoint, the Department can pay the cost to connect or hook up any item of M&E or other personal property

from the piece of equipment to the nearest available utility connection, but only to the extent these services were required at the displacement property. This connection might be an outlet located nearby or a sub-panel located some distance away. In no event would the connection go beyond the main utility distribution center for the building. The Department will only pay to connect M&E and other personal property (or substitute personal property) that the Department is paying to relocate. Realty items retained by the displaced person and items acquired by the state and subsequently repurchased by the displaced business are **not** eligible relocation expenses. The Department also will **not** pay to connect any newly added items of M&E, or pay for any betterments.

- f. The cost to adapt or convert relocated M&E to a different type of power supply may also be an allowable moving expense. Examples of alternative power supplies include conversion from direct current to alternating current, from 3-phase to single-phase, from 440 volts to 220 volts, or from one heat source to another (e.g., from bottled or natural gas to electricity). Examples of ways to adapt either the M&E or the power supply include new motors, transformers, rectifiers, and similar equipment necessary to accomplish the required conversion. Except in unusual circumstances, actual payment shall be limited to the least expensive alternative; that is, the cost to adapt the M&E to available utilities or to provide compatible utilities to the M&E.
- g. The displaced person may be reimbursed for the cost of adapting personal property to the replacement structure or replacement site. To be reimbursable, costs for personal property modifications must be necessary, unavoidable and reasonable. Repairing, rebuilding, increasing value and extending life are not eligible personal property modification costs.
- h. The displaced person may be eligible for reimbursement of costs to make physical changes at the new location as a moving expense under the following provisions and limitations:
  - i. The physical changes must be necessary to permit the reinstallation of machinery or equipment (or substitutes) necessary for the continued operation of the business.
  - ii. The cost of foundations and concrete pads or other similar construction required for reinstallation of relocated or substitute machinery or equipment may be eligible provided that construction is necessary for proper

operation of the equipment and compensation for a similar installation was not made as part of the price paid to acquire the former property.

- iii. Changes in or to a building or structure may not increase the value of the building or structure for general purposes. Changes may not increase the structural or mechanical capacity of the building or its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute. Changes may not include building or structural alterations required by local building codes and ordinances. No relocation payment for structural change shall be made for any items that were paid for on the acquired property.
4. Insurance for the replacement value of the personal property in connection with the move and necessary storage.
5. Storage charges for a displaced person's personal property not to exceed 12 months. Upon written justification and prior approval, storage in excess of 12 months may be granted.
6. Insurance for replacement value of the personal property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her Agent, or employee) where insurance covering such loss, theft or damage is not reasonably available.
7. Utility service reconnection charges shall be reimbursed, supported by receipted bills. Such costs are not applicable to items considered as real property in the appraisal.
8. 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.
9. Professional services as the Agency determines to be actual, reasonable and 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.
10. Relettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move. Stationery reprint shall be reimbursed based on a certified inventory of those items to be reprinted.
11. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. (See Moving

Payments – Businesses, Farms or Non-Profit Organizations, paragraph E., under [Section 6.262](#)-Moving Payments)

12. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expense, not to exceed \$2,500.00, as the Department determines to be reasonable, which are incurred in searching for a replacement location. (See Search Expenses, paragraph G., under [Section 6.262](#)-Moving Payments, Moving Expenses – Businesses, Farms and Non-Profit Organizations)
13. Time spent in obtaining permits and attending zoning hearings; and time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.
14. Purchase of substitute personal property. (See Purchase of a Substitute Item, paragraph F, under [Section 6.262](#)-Moving Payments, Moving Expenses – Businesses, Farms and Non-Profit Organizations)
15. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
16. Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, 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 the new business location.  
  
Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals, and other similar items of personal property as determined by the Agency.
17. Provisions of utilities from right-of-way to improvements on the replacement site.
18. Feasibility surveys, soil testing and marketing studies.
19. Professional services in connection with the purchase or lease of a replacement site.
20. Impact fees or one-time assessments for anticipated heavy utility usage.
21. Other moving related expenses that are not listed as ineligible in the Ineligible Moving and Related Expenses section, below, as the Department determines to be reasonable and necessary.

The Agent must obtain approval from the supervisor to pay for any such uncommon relocation expenses.

### Ineligible Moving and Related Expenses

- A. A displaced person is not entitled to payment for:
1. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in Reestablishment Expenses, paragraph D, under [Section 6.262](#)-Moving Payments, Moving Expenses – Businesses, Farms and Non-Profit Organizations.
  2. Cost of moving any structure, or other real property improvements in which the displaced person reserved ownership
  3. Changes to the replacement property or replacement site other than those included in eligible moving expenses and in Reestablishment Expenses, paragraph D, under [Section 6.262](#)-Moving Payments, Moving Expenses – Businesses, Farms and Non-Profit Organizations.
  4. Interest on loans to cover moving expenses
  5. Loss of goodwill
  6. Loss of trained employees
  7. Loss of profits
  8. Personal injury
  9. Any legal fee or other costs for preparing a claim for relocation payment or for representing the claimant before NDOT.
  10. Expenses for search cost in connection with locating a replacement dwelling
  11. Storage costs on real property already owned or leased by the displaced person.
  12. Physical changes to the real property at the replacement location of a business or farm operation except as provided in Reestablishment Expenses, paragraph D, under [Section 6.262](#)-Moving Payments, Moving Expenses – Businesses, Farms and Non-Profit Organizations.
  13. Refundable security and utility deposits

- B. If in doubt about any moving expenses, the Agent should check with the District Supervisory Right-of-Way Agent or the Relocation Staff Specialist for a determination and/or guidance.

### Moving Payments – Homeowners and Tenants

- A. Residential homeowners and tenants are eligible for their actual reasonable moving expenses based on the cost of one, or a combination of the following methods:
  - 1. Upon request by the displaced person, the State will select a commercial mover and pay the mover directly. (See paragraph J. of this subsection for agreement procedures)
  - 2. A displaced person may select a commercial mover and be reimbursed for the actual costs supported by paid itemized bills.
  - 3. A displaced person may elect to move himself and be reimbursed for actual reasonable expenses, which must be documented by paid itemized invoices.
- B. Under these actual expense options, the primary payment of moving costs shall include items, A.1., A.2., A.3. and A.4., of Eligible Moving Expenses, under [Section 6.262](#)-Moving Payments.
- C. Payment of other eligible moving-related expenses may be reimbursed upon submission of the required documentation. (See Eligible Moving Expenses and Ineligible Moving and Related Expenses, under [Section 6.262](#)-Moving Payments)  
  
Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.
- D. In lieu of the above actual expense moving options, a displaced person may elect to receive a fixed rate moving allowance based on the number of furnished and unfurnished rooms. (See Self-move option, Fixed Rate Schedules, Form 634) Election of a fixed-rate moving allowance prohibits the displaced person from receiving reimbursement for any additional incidental or related moving expenses.
- E. The Moving Expense Application, Homeowners and Tenants (Form 601) must be completed for all types of dwelling displacements where moving expenses are being claimed.
  - 1. Completion of this form should be done in the presence of the displaced person, since much of the information must be obtained from the displaced person.



2. Although most of the information required is self-explanatory, the following is a clarification of various items contained on the form.
    - a. State the full name(s) of the eligible parties and the street address.
    - b. The room tally shall include attics, basements, storage sheds or garages if they contain sufficient personality to constitute a room. **Bathrooms are usually not included in the room count.**
    - c. Signatures of displaced persons must include both husband and wife, if applicable.
- F. After the Moving Expense Application, Homeowners and Tenants (Form 601) is completed and the displaced person has chosen a moving option, various other forms must be completed.
1. Claim for Relocation Payments – Moving Payments and Related Expenses (Form 603). Whenever a displaced person chooses one of the actual expense options on the Moving Expense Application, this form must be submitted with the payment voucher. The top portion of this form is to be completed using information from the Moving Expense Application. The mailing address must be obtained if different from the street address.
  2. Under Moving Payments, the applicable box must be checked with the moving cost amount entered under Related Expenses. If residential, check those spaces applicable to the displaced person's move and fill in the amounts and enter the total amount of claim. The displaced person must sign in those spaces indicated. If the displaced person selects and pays the commercial mover, the original paid itemized invoices must be obtained and submitted with the claim. If the displaced person requests a commercial mover to be paid by the State, see paragraph J. for procedures.
  3. Claim for Relocation Payment – Storage Charges (Form 605). Whenever it is determined that storage of personal property is necessary, this form is used for either reimbursing the displaced person for the moving and storage costs or directly paying the moving/storage company. The top portion of this form must be filled in completely and the Initial Claim information must be completed with the first payment request. The form must be signed by the displaced person on the Initial Claim. A copy of this form must be submitted with each month's storage bill. When the personal property is moved out of storage, the final payment must be requested.

4. Claim for Relocation Payment – Moving Expense Schedule (Form 604). This form is used when the displaced person elects the fixed rate schedule move. The Agent must make an accurate count of the movable rooms. If it is found that the displaced person has both furnished and unfurnished rooms, a split of the schedules may be used, such as 2 furnished and 2 unfurnished. Complete all spaces on the form and have displaced persons sign in the space provided.
- G. When the displaced person has completed the move and signed the appropriate forms, the Agent will submit the Request for Payment and the Payment Voucher/Purchase Order. The original Moving Expense Application – Homeowner’s and Tenants (Form 601) will be included in the first payment package. The original and two photocopies of the signed Claim of Relocation Payment (Form 603, 604, or 605, depending on the circumstances) must be attached to the Payment Voucher, along with documentation to justify paying the claim and copies of relevant diary pages. The Residential Relocation Closing Checklist (Form 619R) and the Agent’s complete original diary will be included in the final payment package.
- H. In rare cases of hardship, payment of a displaced person’s moving costs may be made in advance of the actual move. If such a payment is requested, the words “ADVANCE PAYMENT” shall be entered on the claim form in the space for “Date of Move”. A written explanation of the hardship must be attached to the relocation package. The replacement address and the anticipated date of actual move must be obtained before the hardship payment will be issued.
- I. Whenever a displaced person operates a business within the residence, the business move must be carved out and moved separately from the residential move. Moving costs for the business will be based on applicable procedures under Moving Payments, [Section 6.262](#).
- J. Whenever a displaced person requests the option of moving by a commercial mover paid directly by the State, the Agreement – Cost of Moving – Commercial Mover (Form 623) must be completed. This Agreement is a three-way document between the Department, the displaced person and a moving company. It provides a legal means to directly pay a moving company’s invoice. The Agent may use any moving company in the area and must request a moving estimate prior to the move. The three-way moving agreement must be signed by all parties prior to the actual move. The displaced person shall be advised to request replacement insurance commensurate with the value of the personal property, since any damages would be recovered through this insurance.

## Moving Payments – Businesses, Farms and Non-Profit Organizations

- A. The owner of a displaced business, farm or non-profit organization is eligible to receive a payment for actual reasonable moving expenses based on one of the following options:
1. Upon request by the displaced person, the State will select a commercial mover and pay the mover directly. (See paragraph C.4. below in this subsection for agreement instructions)
  2. A displaced person may select a commercial mover and be reimbursed for the actual costs supported by paid itemized bills.
  3. A displaced person may elect to move himself and be reimbursed for an amount not to exceed the lower of 2 bids or estimates obtained by the State.
  4. A displaced person may elect to move himself and be reimbursed for a low-cost or uncomplicated move based on a determination or finding by an Agent or based on a single bid or estimate obtained by the State.
  5. A displaced person may elect to move himself and be reimbursed for the actual reasonable expenses, which must be supported by paid itemized invoices.
- B. The initial actual moving expense payment shall include all those costs in Eligible Moving Expenses, paragraphs C.1., C.2., C.3. and C.4, under [Section 6.262-](#) Moving Payments. Reimbursement of other eligible related expenses will be made upon submission of the required documentation such as receipted itemized bills or invoices.
- C. Actual Reasonable Moving Expense Provisions:
1. Before a business, farm or non-profit organization moves, a certified inventory of the personal property must be prepared and delivered to the Agent. The Inventory of Personal Property to be Relocated form (Form 618) may be used, or the business may submit a computerized inventory of the personal property to be moved. The owner must certify that the inventory is true and correct by signing a certification statement on the inventory. The Agent must verify and accept the inventory by reviewing the personal property list, initialing the form and noting it in the relocation diary. The Agent must ensure that the personal property inventory does not include tenant-owned improvements or any other items or real property. Photographs of the personal property, the displacement site and the new location are beneficial.

2. On all actual cost moves, the displaced person must provide advance notice of the start of the move in order for the Relocation Agent to provide surveillance commensurate with the nature and cost of the move. The Agent must document in the diary any problems which arise. It is important that all the items listed on the inventory are moved or an adjustment is made to the moving cost if an item is not moved.
3. After the business, farm or non-profit organization is moved, the displaced person must then certify that all items listed in the inventory have been moved. This certification is included on the claim form to be signed by the displaced person.
4. If the move is made by a commercial mover, the displaced person may elect to be reimbursed the amount of the paid itemized bill or may choose to have the State pay the mover direct. The Agreement – Cost of Moving – Commercial Mover (Form 623) is a three-way document between the Department, the displaced person and a moving company, which provides a legal means for us to directly pay a moving company's invoice. A moving estimate must be obtained from the moving company and attached to the Agreement and signed by all parties prior to the actual move. If the mover's estimate appears to be unreasonable or excessive, the Agent shall obtain a second estimate and select the lower of the two.
5. If a displaced person elects to take full responsibility for the move of the business, farm or non-profit organization, the displaced person will be reimbursed by one of the following methods:
  - a. The Agent will obtain two acceptable moving estimates based on the inventory and the displaced person will be paid the lower of the two estimates. The moving estimates shall be obtained by the Agent, from two reputable movers in the area based on the personal property inventory. Expenses for preparing these estimates are a reimbursable cost. The moving companies making the estimates shall be requested to submit the estimates as though they would be required to do the work. If there is a wide difference in the two estimates, or if the estimates are too close, a third estimate may be obtained with prior approval from the Staff Specialist. In any event, the Agent may negotiate a lesser amount than the lowest estimate.
  - b. On a low-cost or uncomplicated move, a single bid or estimate may be obtained, or a disinterested Agent can make a moving expense finding or determination based on previous moves charged by professional moving firms including profit and overhead. The Agent shall include a detailed justification of the basis of finding.

D. Reestablishment Expenses:

1. When a small business (as defined in [Section 6.400](#)) has moved under paragraph C. above, the displaced person is entitled to receive an additional payment, not to exceed \$25,000.00, for certain expenses actually incurred in relocating and reestablishing the business, farm or non-profit organization at the replacement site. These expenses must be reasonable and necessary as determined by the Department. Any expense that may be questionable shall be referred to the Staff Specialist for a determination of eligibility. Eligible expenses may include, but are not limited to the following:
  - 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. (See paragraph D.3.c. below in this subsection)
  - 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
    - iv. Utility charges excluding impact fees
  - h. Other items that the Department considers essential to the reestablishment of the business.
2. The displaced person is required to provide evidence of the expenses incurred by submitting receipted, itemized invoices or statements. Evidence for the increased cost of operation in item D.g. above may be obtained through the comparison of the business expenses on the

previous 2 years income tax records versus actual and/or estimated business expenses at the new location, using such sources as the new lease, utility company projections for utility charges and assessor's records for tax increases.

3. The following is a nonexclusive listing of ineligible reestablishment expenses not considered as reasonable and necessary. (See Ineligible Moving Expenses, under [Section 6.262-Moving Payments](#))
  - a. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
  - b. Purchase of manufacturing material, production supplies, product inventory, or other items used in the normal course of the business operation.
  - c. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph D.1. of this subsection.
  - d. Interest on money borrowed to make the move or purchase the replacement property.
  - e. Payment to a part-time business in the home, which does not contribute materially to the household income.

E. Actual Direct Losses of Tangible Personal Property

1. When a displaced person elects not to relocate personal property, he or she may be eligible for actual direct losses of that property.
2. There are certain circumstances when it is advantageous for the owner to select the direct loss provision instead of moving certain items of personal property used in the business.
  - a. The item(s) may be worn out, obsolete or no longer needed.
  - b. The item may have a low public sale value compared to the fair market value for continued use.
3. To be eligible for a direct loss payment for an item of personal property, the following conditions must be met:
  - a. The item must be personal property that the business owner is entitled to move but elects not to move, and
  - b. The owner of the personal property must make a good faith effort to sell the item. If the item is abandoned with no effort made by the owner to sell the item, the owner will not be entitled to a

payment, unless the Agent with the written concurrence of the Supervisory Right-of-Way Agent determines that the effort is not necessary.

4. The payment shall consist of the lesser of:
  - a. The fair market value in place of the item, as is for continued use minus the proceeds from its sale.
  - b. The estimated cost of moving the item, as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.
5. Reasonable costs of an attempt to sell an item, such as advertising, commissions, salaries of employees conducting the sale, are reimbursable.

F. Purchase of a Substitute Item

1. 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 owner is entitled to payment of the lesser of:
  - a. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - b. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low-cost or uncomplicated move may be based on a single bid or estimate.
2. Reasonable costs of an attempt to sell an item, such as advertising, commissions, salaries of employees conducting the sale, are reimbursable.
3. The owner of the personal property must make an effort to sell the item. If the item is abandoned with no effort made by the owner to sell the item, the owner will not be entitled to a payment, unless the Agent with the written concurrence of the Supervisory Right-of-Way Agent determines that the effort is not necessary.

G. Search Expense

1. An owner of a business, farm or non-profit organization may be reimbursed for actual reasonable search expenses up to \$2,500.00 for the following:
  - a. Actual travel costs. (Transportation)
  - b. Costs for meals and lodging, while away from home.
  - c. Time spent searching, based on reasonable salary or earnings.
  - d. Real estate Agent's or broker's fees exclusive of any fees or commissions related to the purchase of such site.
2. Documented search expenses incurred prior to the Initiation of Negotiations may also be considered eligible.

#### H. In-Lieu Payment – Business

1. In lieu of those moving expenses described in paragraphs A., B., C., D., E., F. and G. of this subsection, the owner of a displaced business is eligible to receive a payment equal to the average annual net earnings of the business, which payment cannot be less than \$1,000.00 nor more than \$40,000. (See [Section 6.400](#) for the definition of Average Annual Net Earnings) The displaced person will be eligible for the minimum payment of \$1,000.00 on statements showing a net loss.
  - a. In calculating the payment, net earnings would include the net taxable income of the business plus any compensation received from the business by its owner, the owner's spouse and dependants. Compensation, which could be in the form of salaries, bonuses, consultant fees, etc., will be considered on the gross income basis, prior to any personal deductions or exemptions.
  - b. To the extent that reported income/profit on tax returns has been reduced by the inclusion of expenses not actually incurred in the tax reporting year, the reported income/profit will be adjusted by adding back such expense (e.g., a loss carried over from a previous year or carried back from a later year, or declared depreciation in excess of actual or straight line depreciation). To the extent that reported income/profit was inflated by receipts not earned during the tax reporting year (e.g., income included because a deduction taken in a previous year was disallowed), the reported income/profit may be adjusted by subtracting such amount.



- c. For tax years where an annual net loss is reported, a zero amount will be used in computing the fixed payment amount, rather than the reported amount of the loss.
  - d. If a business has been in operation for only a short period of time (e.g., 6 months) prior to displacement, the fixed payment will be based on the net earnings of the business at the displacement site for the actual period of operation projected to an annual rate. The existing net earnings income data will be extrapolated and used to project what the net earnings could have been if the business had been in operation for a full two years.
- 2. The owner of the business must furnish financial statements to support net earnings. The most acceptable form of documentation is a copy of the owner's IRS Schedule C, Profit or (Loss) From Business, or IRS Form 1120, U.S. Corporation Income Tax Return. If Internal Revenue Service forms cannot be obtained, a certified financial statement must be provided showing the complete income and expenses with a net income for each month.
- 3. For the owner of a business to be entitled to this payment, the State must determine that:
  - a. The business owns or rents personal property, which must be moved in connection with the displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site.
  - b. The business cannot be relocated without a substantial loss of its existing clientele or net earnings. A business is assumed to meet this test unless the Department demonstrates otherwise. However, the relocation file must include sufficient documentation to explain how the business satisfies this provision. Some of the situations that may create a substantial loss of existing patronage are:
    - i. The displaced business occupied rented quarters and the only replacement sites are for sale but not within the financial capabilities of the displaced business. The same situation could occur even though the original business quarters were owned.
    - ii. Substantial additional expense for the move which may not be compensable.
    - iii. The nature of the business and type of clientele served.

- c. The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See definition of [Contributes Materially](#))
  - d. The business is not part of a commercial enterprise having more than three other entities not being acquired by the State or the United States, which are engaged in the same or similar business.
  - e. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.
  - f. The business is not operated at the displacement site solely for the purpose of renting the site to others.
4. A business does not have to go out of business to qualify for the fixed payment in lieu of actual moving expenses.
  5. 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:
    - a. The same premises and equipment are shared;
    - b. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
    - c. The entities are held out to the public, and to those customarily dealing with them, as one business; and
    - d. The same person or closely related persons own, control, or manage the affairs of the business.
  6. A part-time individual or family occupation in the home must contribute materially to the income of the displaced family to be eligible for this payment.
  7. If the in-lieu option is selected, **no additional** relocation payments are made.
- I. In-Lieu Payment – Farm Operations
    1. In lieu of those moving expenses described in Paragraphs A., B., C., D., E., F., and G. of this subsection, the owner of a displaced farm operation is eligible to a payment equal to the average annual net earnings of the farm operation, which payment cannot be less than \$1,000.00 nor more than \$40,000.
    2. To establish eligibility, the State must determine the following:

- a. The farm operator has discontinued or relocated his farm operation.
- b. In the case of a partial acquisition, the operator will be considered to have been displaced from a farm operation if:
  - i. The taking caused the farm operator to be displaced from the farm operation on the remaining land, or
  - ii. The taking caused a substantial change in the principal operation or the nature of the farm operation.
3. The owner of the farm operation must furnish financial statements to support his net earnings.

J. In-Lieu Payments – Non-Profit Organizations

1. In lieu of the moving expenses described in paragraphs A., B., C., D., E., F., and G. of this subsection, the non-profit organization may be paid an in-lieu payment of \$1,000.00 to \$40,000.00 if it is determined that the organization cannot be relocated without a substantial loss of its existing patronage. This includes the clientele or membership of the community affected by the activities of the organization. A non-profit organization is assumed to meet this test unless the Department demonstrates otherwise.
2. Any payment in excess of the minimum \$1,000.00 must be supported by financial statements for the 2 years prior to acquisition. The amount to be used for the payment is the average of 2 years gross income from all sources less administration expenses which includes rent, utilities, salaries and other like items.

K. The Moving Expense Application – Businesses (Form 600) must be completed for all business, farm operation or non-profit organization displacements.

1. Completion of this form should be done in the presence of the displaced person since much of the information must be obtained directly from the displaced person.
2. It is important that all blanks be filled in on the top portion of the form, and the specific option be checked.

L. After the Moving Expense Application is completed and the displaced person has chosen a moving option, various other forms must be completed.

1. Before the displaced person starts moving, a certified inventory of the personal property must be delivered to the Agent. The owner must certify

that the inventory is accurate and complete. The Agent must verify the inventory and initial the form.

2. Claim for Relocation Payment – Moving Payments and Related Expenses (Form 603). Whenever a displaced person chooses any one of the actual expense options on the Moving Expense Application for reimbursement of actual moving expenses, this claim form must be submitted with the payment voucher. The top portion of this form is completed using information from the Moving Expense Application. Under “Moving Payments”, the appropriate payment option is checked and the payment amount is entered. The “Related Moving Expenses” are completed in the same manner. If the displaced person chooses to have the moving bill reimbursed, the displaced person’s original paid itemized invoices must be obtained and submitted with the claim. If the displaced person is to be paid the lower of two estimates, the estimates shall be attached to this claim. If the displaced person chooses the self-move actual expenses, paid itemized invoices shall be provided to document the claim.
3. If the displaced person chooses the option of having a commercial mover to be paid by the State, the Agreement – Cost of Moving – Commercial Mover, (Form 623), must be completed. The Claim for Relocation Payments (Form 603) will be used as the payment claim under this option.
4. Claim for Moving Payment – Payment Determined by Department (Form 606). This form is used for the actual expense option, payment determined by Nevada Department of Transportation, of the Moving Expense Application. When a move is of an uncomplicated nature, an Agent other than the one handling the claim can make a moving cost estimate or finding based on previous moves by professional movers not to exceed commercial mover rates. This amount will be paid to the displaced person upon completion of the move and signing this claim.
5. Claim for Relocation Payment – Storage Charges (Form 605). Whenever it has been determined by the State that storage of personal property is necessary, this form is used for either reimbursing the displaced person for the moving and storage or directly paying the moving and storage company. If the payment is made to the moving company, the Agreement for Commercial Mover must also be completed. A copy of this form must be submitted each month accompanied by the storage invoice. When the personal property is moved out of storage the final payment is requested. Storage expenses may be paid for a period not to exceed 12 months, unless a longer period of time is justified and approved by the Supervisory Right-of-Way Agent.

6. The Claim for Relocation Payment – In Lieu of Moving Expenses – Businesses, Farms or Non-profit Organizations (Form 608) and Request for Payment In Lieu of Moving Expenses – Businesses, Farms or Non-profit Organizations (Form 607) must be completed if a displaced person is eligible for an in-lieu payment. In order to determine eligibility, documentation must be submitted to the Staff Specialist outlining the conditions and reasons why the displaced person is eligible based upon the eligibility criteria contained in paragraphs H., I., or J. in this subsection above. Upon approval of eligibility, the forms must be completed and submitted along with the displaced person’s income tax returns.
- M. When the displaced person has completed the move and signed the appropriate forms, the Agent will submit the Request for Payment and the Purchase Order and Voucher Payable. The original Moving Expense Application - Businesses (Form 600) will be included in the first payment package. The original and two photocopies of the signed Claim for Relocation Payment (Form 603, 605, 606, or 608, depending on the circumstances) must be attached to the Payment Voucher, along with documentation to justify paying the claim and copies of relevant diary pages. The Non-Residential Relocation Closing Checklist (Form 619B) and the Agent's complete original diary will be included in the final payment package.
- N. In rare cases of hardship, payment of a displaced person’s moving costs may be made in advance of the actual move. If such a payment is requested, the words “ADVANCE PAYMENT” shall be entered on the claim form in the space for “Date of Move”. A written explanation of the hardship must be attached to the relocation package. The replacement address and the anticipated date of actual move must be obtained before the hardship payment is issued.
- O. Whenever a displaced person operates a business in conjunction with his or her residence, the business will be considered a separate move and payment made under this Section. The residential portion shall be relocated under the regulations of Moving Payments - Homeowners and Tenants, under [Section 6.262-Moving Payments](#).

### **Moving Payments – Off-Premise Signs**

- A. Outdoor advertising structures which are required to be moved as a result of the project, shall be moved in accordance with the provisions of non-residential moves as a business.
- B. The owner of a displaced advertising sign is eligible to receive a payment for actual moving expenses based on the provisions in Moving Payments – Businesses, Farms and Non-Profit Organizations, paragraphs, A., B., C., F., G. and K. through O, under [Section 6.262-Moving Payments](#). In order to receive an in-lieu payment, the owner must prove that this is not a part of a commercial

enterprise having more than three other entities not being acquired by the State or the United States which are engaged in the same or similar businesses, and contributes materially to the owner's income. (See Moving Payments – Businesses, Farms and Non-Profit Organizations, paragraph, paragraph H., under [Section 6.262](#)-Moving Payments)

- C. In substitution of Moving Payments – Businesses, Farms and Non-Profit Organizations, paragraph E., under [Section 6.262](#)-Moving Payments, if the owner of a displaced advertising sign elects not to relocate the sign, the owner may be reimbursed for actual direct losses which will be the lesser of the following:
  - 1. The depreciated reproduction cost of the sign as determined by the State, less the proceeds from its sale; or
  - 2. The estimated cost of moving the sign determined in paragraph B. above with no allowance for storage.
- D. If an owner does not respond to offers of relocation benefits nor to requests to remove the sign, after normal, proper, and documented notices the sign may be considered to be abandoned and an encroachment. If this is the case the owner may not be entitled to any relocation benefits or payments. The file should be documented to reflect all circumstances as a claim may be filed at a later date.

### **Moving Payments – Junkyards**

- A. A displaced junkyard is eligible for the actual moving costs based on the following:
  - 1. The displaced person may be reimbursed for the actual moving costs in accordance with Moving Payments – Businesses, Farms and Non-Profit Organizations, under [Section 2.262](#)-Moving Payments, to a replacement site, or
  - 2. The displaced person may be reimbursed for the reasonable costs involved in shipping the inventory to a disposal site or recycling center. If the closest disposal site or recycling center is in excess of 50 miles, the State may authorize the move in excess of the 50 miles.

### **Personal Property Moves**

- A. Eligible expenses for a person who is required to move personal property from real property but is not required to move from any type of dwelling (including a mobile/manufactured home), business, farm or non-profit organization or storage unit, include expenses described as follows:

1. Transportation of the displaced person's personal property. Transportation costs for a distance of 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 household appliances and other personal property.
4. Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary and is justified.
5. Insurance for the replacement value of the property in connection with the move and necessary storage.
6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her Agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
7. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, 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 the new location.
8. Other moving-related expenses that are not listed as ineligible in Ineligible Moving Expenses under [Section 2.262](#)-Moving Payments, Moving Payments – Businesses, Farms and Non-Profit Organizations, as the Department determines to be reasonable and necessary.

## 6.263 Replacement Housing

### Basic Eligibility Conditions

- A. Owner-occupants with a least 90-days occupancy are eligible for an amount up to \$31,000.00 on a purchase supplement. An owner-occupant that elects to rent a replacement dwelling can receive more than \$7,200.00 if the market rent supports a higher rental amount. (See this subsection, paragraph N.2.)
- B. Owner-occupants with at least 90 days occupancy are eligible for an amount up to \$7,200.00 on a down-payment including incidental expenses or up to \$7,200.00 on a rental supplement.

- C. Tenant-occupants with at least 90 days occupancy are eligible for an amount up to \$7,200.00 on a rental supplement or an amount of \$7,200.00 on a down-payment including incidental expenses. This category includes tenants in public housing.
- D. The displaced persons must purchase, rent and occupy a Decent, Safe and Sanitary (DS&S) dwelling within one year from the date of acquisition or the date a comparable replacement dwelling has been made available, whichever is later. Displaced persons must apply for replacement housing within 6 months after the expiration of the one year period during which they must have occupied a replacement dwelling. Application will be made on a form provided by the State.
- E. A displaced person is considered to have met the requirement for renting or purchasing a replacement dwelling if the following has occurred:
  - 1. Rents a replacement dwelling.
  - 2. Purchases a replacement dwelling.
  - 3. Relocates a dwelling purchased for a replacement.
  - 4. Constructs a replacement dwelling on another site.
  - 5. Contracts for the purchase or construction of a replacement dwelling.
  - 6. Has previously purchased a dwelling to be used as the replacement, value of which is to be based on the current fair market value.
- F. A DS&S Inspection must be made by the State of the replacement dwelling before payment can be certified. (See Decent, Safe and Sanitary Inspection, [Section 6.267](#))
- G. The displaced person's claim must be based on the actual cost of the replacement dwelling with the payment not to exceed the amount of the probable entitlement computed by the State.
- H. All entitlements will be calculated using comparable housing and at least one comparable must be available to the displaced person at the time the displaced person is given the 90-day notice to vacate. Sufficient time must be given the displaced person to purchase or lease a replacement dwelling.
- I. All entitlements will be calculated based on the initial type of occupancy and using comparable housing. Owner-occupants over 90-days will receive entitlements based on the purchase option; tenants over 90-days will receive entitlements based on a rental supplement along with their eligibility to receive a down-payment in lieu of the rental supplement.



- J. If a displaced person requests a change in the type of occupancy (such as owner to tenant or tenant to owner) the Agent shall compute another entitlement based on the alternate type of occupancy. This new calculated amount will be the amount the displaced person will be entitled to for this change in type of occupancy, providing it does not exceed the statutory maximum replacement housing amount. If the new entitlement amount exceeds the statutory maximum replacement housing amount, last resort housing provisions will apply only if a last resort housing situation existed in the original calculation for like housing. (See Replacement Housing Payment (RHP) – Owner-Occupant, 90-days, paragraph N. under [Section 6.263](#)-Replacement Housing and Last Resort Housing, [Section 6.350](#) for procedures)
- K. The replacement housing payment to an owner is locked in one year after the final acquisition payment or deposit of estimated just compensation in court. During the one-year period, however, replacement housing entitlements must be reviewed whenever the following situations occur:
1. The acquisition appraisal is revised.
  2. The purchase price for the displacement dwelling is increased by legal or administrative settlement.
  3. There is a change in the number of occupants or in the unique circumstances of the displaced person(s).
  4. There is an error in the initial replacement housing calculation.
  5. There is a significant and long-term effect on housing prices, such as closure of a major employer.
  6. There is a significant change in the availability of comparable housing, such that the entitlement no longer reflects the market.
- L. A replacement housing entitlement may be reduced or withdrawn on a case-by-case exception basis, approved by the District Supervisory Right-of-Way Agent. Whenever it is necessary to change a replacement housing entitlement, the displaced person must be notified of the change in writing and must be given sufficient time to locate and purchase a replacement dwelling based on the new allowance. Before a revised entitlement is issued, consideration must be given to any irrevocable commitments the displaced person might have made.
- M. In the event an owner-occupants property is re-appraised prior to condemnation, a revised calculation will be made of the replacement housing entitlement and the amount may be more or less than the original entitlement.

- N. When the replacement housing claim is submitted for payment, both the original and the revised entitlements, all comparables and calculation forms shall be included in the relocation package.
- O. Whenever a displaced person's replacement housing entitlement along with the expected incidental expenses and increased interest payments exceeds the maximum amounts of 31,000.00 and \$7,200.00, last resort housing provisions will apply. (See Last Resort Housing, [Section 6.350](#) for procedures)
- P. The above paragraphs apply to those persons who were in occupancy at least 90 days prior to the Initiation of Negotiations. The provisions for less than 90-day occupants are somewhat different. Less than 90-day occupants are entitled to relocation assistance advisory services in assisting them to locate comparable replacement housing. Monetary assistance for less than 90-day tenants may be provided only under the provisions of Last Resort Housing, [Section 6.350](#).

#### Replacement Housing Payment (RHP) – Owner-Occupant 90-Days

- A. The displaced owner-occupant with at least 90-days occupancy is eligible to receive replacement housing payments for the costs necessary to:
  - 1. Purchase a replacement dwelling.
  - 2. Reimburse owner for incidental expenses. (See Incidental Expenses Payment, [Section 6.264](#))
  - 3. Compensate owner for loss of favorable financing. (See Increased Interest Payments, [Section 6.265](#))

The statutory maximum replacement housing allowance is \$31,000.00. Payments in excess of this amount are considered last resort housing payments. (See Last Resort Housing, [Section 6.350](#) for procedures)
- B. Upon the Initiation of Negotiations or when the owner is actively looking for a replacement dwelling, the State shall calculate an amount necessary to purchase a comparable replacement dwelling based on listings of comparable dwellings.
- C. Replacement Housing Calculation Sheet (Form 609), shall be used in this calculation with the top portion of this form completed using information provided by the negotiator and obtained from the appraisal and previous contacts.
- D. Utilizing information from sources such as the multiple listing service, classified ads and field reviews, listings of available, comparable dwellings must be selected, described and ranked in order of comparability. Whenever possible, three or more comparable dwellings should be selected and analyzed. The Rental/For Sale Listing form (Form 626) must be completed for each comparable dwelling and a photo of the property attached to the bottom of each form. The

Displacement & Comparable Property Description and Analysis (Form 629) must be used to describe and compare the displacement dwelling and selected comparable replacement dwellings. The location of the subject and comparables must be plotted on a map of the area.

- E. All of the criteria contained in the definition of a “comparable” should be examined when making the comparison between the owner’s dwelling and listings, with emphasis on “functionally equivalent”. The comparable replacement dwelling must perform the same function and provide the same utility of 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 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 rundown substandard displacement dwelling.
- F. Less than three comparables may be used only when additional comparable listings are not available in areas where there is a minimal real estate market.
- G. Adjustments must be made to the asking price of comparable listings, to the extent justified by local market information. If the Agent determines that no adjustments are necessary, the Replacement Housing Calculation Sheet (Form 609) must include an explanation of that decision. Adjusting the asking price of comparable listings requires that the Relocation Agent provide advisory assistance to the displaced person concerning negotiations, so that the displaced person may enter the real estate 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.
- H. If no comparables are available in the market, the replacement housing entitlement will be based on the itemized construction costs of a comparable dwelling estimated by a builder in the area. Since this option would only be used in rare cases, the file must be documented.
- I. If the most comparable dwelling used in the computation lacks a major exterior attribute of the displacement dwelling site, the value of such attribute shall be

subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If a buildable residential lot remains after a partial taking and the owner of the remaining property refuses to sell the remainder to the displacing agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the payment.

- J. In certain cases, the acquisition price of the owner's residence and site must be carved out of the State's total offer. The file must be documented to show how the acquisition amount was determined by the Relocation Agent. The following shall be used as a guide.
1. If the acquisition is a partial take, the following two rules on acquisition price shall apply:
    - a. If the acquired dwelling is located on a tract typical in size for residential use in the area, the acquisition price used will be the actual acquisition price of the dwelling and the tract on which it is located.
    - b. If the acquired dwelling is located on a tract larger in size than typical for residential use in the area, the acquisition price used will be the actual acquisition price of the dwelling plus the actual acquisition price of that portion of the acquired land which represents a typical residential home site in the area.
  2. If the acquired dwelling is located on a tract where the fair market value is established on a higher and better use, the acquisition price used will be the actual acquisition price of the dwelling plus the actual acquisition price of that portion of the acquired land which represents a typical residential home site in the area.
  3. Carve-outs of improvements may be made when there is more than one residential improvement on a residential lot, and will be carved out using the acquisition appraisal. If an owner lives in a multiple family dwelling such as a duplex, the acquisition price will be one-half of the fair market value of the total property and the comparables used would be of the same density.
- K. The most comparable listing amount, adjusted to reflect market tendencies, will be entered on the first line of Section I on the Replacement Housing Calculation Sheet (Form 609) and will be used in the calculation.
- L. The acquisition price entered on the second line of Section I of the calculation sheet will be the fair market value of the owner-occupants residence and site. This amount will be obtained from the acquisition appraisal and must reflect that amount the owner is receiving for his personal residence and site.

- M. The difference in the adjusted most comparable sales price and the acquisition price will be the probable replacement housing allowance and entered on the third line of Section I on the calculation sheet.
- N. A 90-day owner-occupant, who could be eligible for a replacement housing payment for an amount up to \$31,000.00 on a purchase supplement, as previously discussed, but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent, established by the State's appraisal, for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in the same manner as for 90-day owner-occupants and 90-day tenants (See Replacement Housing, [Section 6.263](#)) except that the limit of \$7,200.00 **does not apply**, and at the Agency's discretion, may be disbursed in either a lump sum or in installments. Under no circumstances would the rental assistance payment exceed the amount that could have been received had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling. The following restrictions apply:
1. The market must support a higher rental amount.
  2. The owner could get "up to" the amount of the purchase RHP if the rental computation support the supplement.
  3. Income **is not** considered when calculating a rental assistance payment for a 90-day owner **electing to rent**.
- O. The calculated amount of probable replacement housing allowance as determined in paragraphs B. through N. above, purchase option or rental option, will be entered on the Statement of Probable Entitlement - Replacement Housing Allowance (Form 610) in the space provided. On the top portion of this form, the "entitlement statement date" shall be the date this entitlement is delivered to the displaced person.
- P. Upon completion of the entitlement it shall be delivered to the displaced person along with the letter of 90-day notice. At least one comparable dwelling must be made available to the displaced person at this time. The available dwelling address will be listed on the Statement of Probable Entitlement (Form 610) with the adjusted listing amount. A photograph of the selected most comparable dwelling may also be provided to the displaced person.
- Q. Examples of computations for the replacement housing purchase option are shown as follows:

REPLACEMENT HOUSING, 90-DAY OWNERS  
RENT REPLACEMENT OPTION

EXAMPLE 1:

CALCULATE REPLACEMENT HOUSING PRICE DIFFERENTIAL:

LIST PRICE OF COMPARABLE DWELLING	\$180,000.00
ACQUISITION PRICE	\$170,000.00
 MAXIMUM PRICE DIFFERENTIAL (RHP)	 \$ 10,000.00
 FAIR MARKET RENT (ACQUIRED PROPERTY)	 \$ 1,600.00
REPLACEMENT RENTAL PROPERTY	\$ 1,800.00
DIFFERENCE	\$ 200.00
 MULTIPLY BY 42 MONTHS = RENTAL ASSISTANCE PAYMENT (RAP)	 \$ 8,400.00

NOTES:

1. The owner must be informed of the price differential even if they announce their intention to rent a replacement prior to the calculation of the differential.
2. Within one year, the owner may change their election and purchase a replacement home costing at least \$180,000 and claim their remaining eligibility (\$1,600.00) (Max. price differential of \$10,000 less RAP of \$8,400 = \$1,600).

If the "List Price of Comparable Dwelling" in the above case was \$176,000, the maximum price differential would then be \$6,000. Under this rule, the owner would receive only \$6,000 for rental subsidy since that is their maximum eligibility.

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 REPLACEMENT HOUSING, 90-DAY OWNER  
 PURCHASE OPTION  
ADMINISTRATIVE SETTLEMENT

FAIR MARKET VALUE OF OWNER'S DWELLING	\$80,000.00
COST OF COMPARABLE REPLACEMENT	<u>\$85,000.00</u>
MAXIMUM REPLACEMENT HOUSING PAYMENT	\$ 5,000.00
ADMINISTRATIVE SETTLEMENT	\$87,000.00
ALLOWABLE REPLACEMENT HOUSING PAYMENTS	\$ 0.00

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PURCHASE OPTION

FINAL ORDER OF CONDEMNATION

FAIR MARKET VALUE OF OWNER'S DWELLING	\$80,000.00
COST OF COMPARABLE REPLACEMENT	<u>\$85,000.00</u>
MAXIMUM REPLACEMENT HOUSING PAYMENT	\$ 5,000.00
CONDEMNATION AWARD	\$84,000.00
ALLOWABLE REPLACEMENT HOUSING PAYMENT	\$ 1,000.00

.....  
REPLACEMENT HOUSING, 90-DAY OWNER  
PURCHASE OPTION  
OWNER RETENTION

FAIR MARKET VALUE OF OWNER'S DWELLING	\$90,000.00
COST OF COMPARABLE REPLACEMENT	<u>\$95,000.00</u>
MAXIMUM REPLACEMENT HOUSING PAYMENT	\$ 5,000.00
RETENTION COST TO OWNER	\$11,500.00
FAIR MARKET VALUE OF REPLACEMENT LOT	\$24,500.00
PERMITS	\$ 1,100.00
UTILITY HOOKUPS (GAS, SEWER, WATER, ELEC.)	\$12,500.00
SITE PREPARATION & LANDSCAPING	\$12,000.00
BASEMENT	\$15,000.00
COST TO MOVE DWELLING	<u>\$16,500.00</u>
TOTAL REESTABLISHMENT COST (REPLACEMENT COST)	\$93,100.00
FAIR MARKET VALUE OF OWNER'S DWELLING	<u>\$90,000.00</u>
ACTUAL REPLACEMENT HOUSING PAYMENT	\$ 3,100.00

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REPLACEMENT HOUSING, 90-DAY OWNER

MULTIPLE-UNIT DWELLING  
OWNER-OCCUPANT

FMV OF FOUR-UNIT APARTMENT HOUSE ALL UNITS OF APARTMENT ARE SIMILAR	\$100,000.00
VALUE OF UNIT OCCUPIED BY OWNER 1/4 OF \$100,000.00	\$ 25,000.00
NO FOURPLEX UNITS AVAILABLE FOR SALE	
NO TRIPLEX UNITS AVAILABLE FOR SALE	
MOST COMPARABLE DUPLEX AVAILABLE THE INDIVIDUAL DWELLING UNITS ARE SIMILAR - $\$70,000.00 \div 1/2 =$	\$ 35,000.00
ESTIMATED COST OF MOST COMPARABLE	\$ 35,000.00
ACQUISITION PRICE	- <u>\$ 25,000.00</u>
COMPUTED MAX REPLACEMENT HOUSING PMT	\$ 10,000.00
RELOCATEE BUYS TRIPLEX	\$ 90,000.00
TWO SMALL UNITS \$25,000.00 EACH	\$ 50,000.00
ONE LARGE UNIT, OWNER TO OCCUPY	\$ 40,000.00
ACTUAL COST OF REPLACEMENT	<u>\$ 40,000.00</u>
OWNER ELIGIBLE TO CLAIM FULL RHP PAYMENT	\$ 10,000.00

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REPLACEMENT HOUSING, 90-DAY OWNER

PAYMENT TO OWNER-OCCUPANT WITH ONE-HALF OWNERSHIP

CASE: TWO OWNERS WITH ONE-HALF INTEREST EACH, ONLY ONE OWNER IN OCCUPANCY

REPLACEMENT HOUSING ENTITLEMENT:

ACQUISITION PRICE OF DWELLING	\$80,000.00
COMPARABLE REPLACEMENT DWELLING	<u>\$90,000.00</u>
MAXIMUM REPLACEMENT HOUSING ENTITLEMENT	\$10,000.00
OWNER-OCCUPANT'S SHARE OF ACQUISITION PAYMENT	\$40,000.00

REPLACEMENT HOUSING PAYMENT WILL BE THE LESSER OF:

(a)	ACTUAL COST OF REPLACEMENT DWELLING	\$75,000.00
	OWNER-OCCUPANT'S SHARE – ACQUISITION PAYMENT	<u>\$40,000.00</u>
<b><u>or</u></b>		\$35,000.00
(b)	ACQUISITION AMOUNT OF OWNER'S DWELLING	\$80,000.00
	COMPARABLE REPLACEMENT DWELLING	<u>\$90,000.00</u>
		\$10,000.00
	MAXIMUM REPLACEMENT HOUSING PAYMENT – (b)	<u>\$10,000.00</u>

**Note:** IN THE CASE WHERE TWO OWNERS WITH ONE-HALF INTEREST EACH, BOTH OWNERS ARE IN OCCUPANCY, BUT WILL RELOCATE SEPARATELY. EACH OWNER IS ENTITLED TO ONE-HALF OF THE REPLACEMENT HOUSING ENTITLEMENT.

REPLACEMENT HOUSING, 90-DAY OWNER

PAYMENT TO OCCUPANT WITH A PARTIAL OWNERSHIP

CASE: FIVE OWNERS EACH WITH A ONE-FIFTH INTEREST, ONLY ONE OWNER IS IN OCCUPANCY

ACQUISITION PRICE OF DWELLING UNIT	\$80,000.00
COMPARABLE REPLACEMENT DWELLING	<u>\$90,000.00</u>
MAXIMUM RHP	\$10,000.00
OWNER-OCCUPANT SHARE OF ACQUISITION PRICE	\$16,000.00

PAYMENT WILL BE THE LESSER OF:

	ACTUAL COST OF DECENT, SAFE & SANITARY (DS&S) REPLACEMENT	70,000.00
(a)	OWNER-OCCUPANT'S SHARE OF ACQUISITION PRICE	<u>\$16,000.00</u>
<b>or</b>		\$54,000.00
(b)	DIFFERENCE BETWEEN ACQUISITION PRICE	\$80,000.00
	AND COST OF A COMPARABLE DWELLING	<u>\$90,000.00</u>
	MAXIMUM RHP	\$10,000.00
	REPLACEMENT HOUSING PAYMENT IN THIS CASE IS	\$10,000.00

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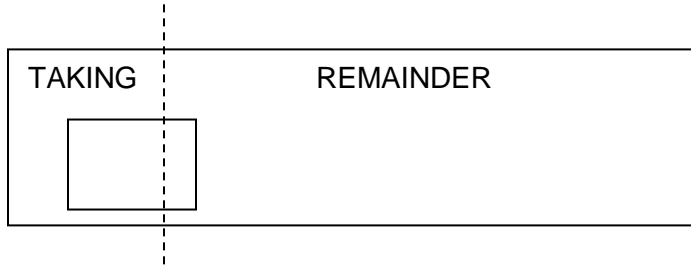
REPLACEMENT HOUSING, 90-DAY OWNER

MAJOR EXTERIOR APPURTENANCES

A.	FAIR MARKET VALUE OF ACQUIRED DWELLING INCLUDING SWIMMING POOL	\$ 90,000.00
	ESTIMATED COST OF COMPARABLE REPLACEMENT DWELLING INCLUDING SWIMMING POOL	<u>\$100,000.00</u>
	MAXIMUM REPLACEMENT HOUSING ALLOWANCE	\$ 10,000.00
	ACTUAL COST OF DWELLING WITH SWIMMING POOL	\$105,000.00
	MAXIMUM REPLACEMENT HOUSING PAYMENT	\$ 10,000.00
B.	FAIR MARKET VALUE OF ACQUIRED DWELLING INCLUDING SWIMMING POOL	\$ 90,000.00
	CONTRIBUTORY VALUE OF SWIMMING POOL	<u>\$ 10,000.00</u>
	ADJUSTED FMV OF ACQUIRED DWELLING	\$ 80,000.00
	ESTIMATED COST OF COMPARABLE REPLACEMENT DWELLING WITHOUT SWIMMING POOL	\$ 90,000.00
	MAXIMUM REPLACEMENT HOUSING ALLOWANCE	\$ 10,000.00
	ACTUAL COST OF REPLACEMENT DWELLING WITHOUT SWIMMING POOL	\$ 88,000.00
	MAXIMUM REPLACEMENT HOUSING PAYMENT	\$ 8,000.00

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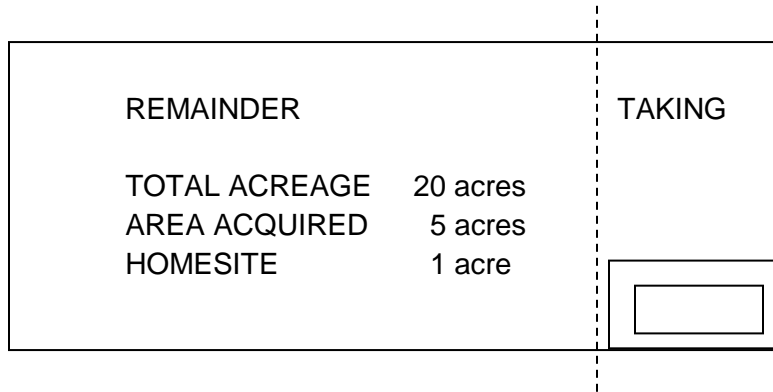
REPLACEMENT HOUSING, 90-DAY OWNER  
DWELLING ON LAND WITH HIGHER AND BETTER USE



TAKING – 6 ACRES @ \$50,000.00	\$300,000.00
RESIDENCE (INTERIM VALUE)	<u>\$ 10,500.00</u>
TOTAL BEFORE VALUE	\$310,500.00
<u>REPLACEMENT HOUSING PAYMENT COMPUTATION</u>	
COMPARABLE REPLACEMENT DWELLING ON TYPICAL LOT	\$ 55,000.00
RESIDENCE (INTERIM VALUE)	\$ 10,500.00
HIGHEST AND BEST USE VALUE (1/2 ACRE)	<u>\$ 25,000.00</u>
VALUE OF PART TAKEN	<u>\$ 35,500.00</u>
REPLACEMENT HOUSING PAYMENT	\$ 19,500.00

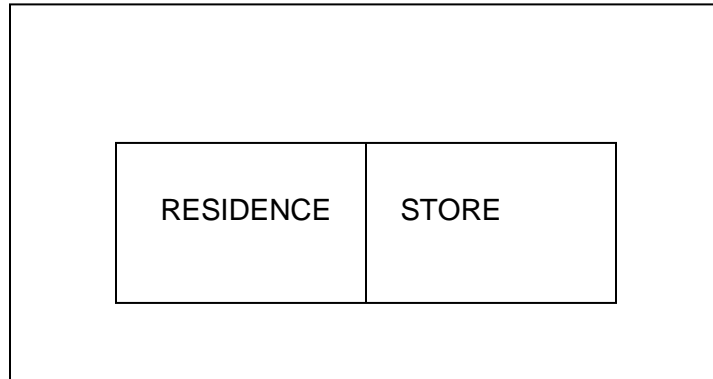
REPLACEMENT HOUSING, 90-DAY OWNER

PARTIAL TAKING – LAND IMPROVED TO HIGHEST AND BEST USE



AREA ACQUIRED - 5 ACRES @ \$20,000.00	\$100,000.00
DWELLING, WELL, LANDSCAPING, ETC.	<u>\$ 80,000.00</u>
TOTAL FMV OF ACQUIRED PROPERTY	\$180,000.00
COST OF COMPARABLE REPLACEMENT PROPERTY	\$115,000.00
FMV DWELLING, ETC.	\$ 80,000.00
FMV HOMESITE	\$ 20,000.00
TOTAL	<u>\$100,000.00</u>
COMPUTED REPLACEMENT HOUSING PAYMENT	\$ 15,000.00

CARVE-OUT ON ACQUIRED PROPERTY



RESIDENCE WITH HOME BUSINESS

TOTAL FMV OF ACQUIRED PROPERTY	\$140,000.00
CARVE OUT VALUE OF DWELLING AND TYPICAL LOT	\$ 60,000.00
ESTIMATED COST OF MOST COMPARABLE AVAILABLE	\$ 70,000.00
COMPUTED REPLACEMENT HOUSING PAYMENT	\$ 10,000.00

**Replacement Housing Payment Rental Supplement, Occupants Over 90-Days**

- A. The displaced tenant or owner with over 90-days occupancy, is eligible to receive a rental supplement, the total not to exceed \$7,200.00 to enable the displaced person to rent a comparable replacement dwelling for 42 months, or is eligible to receive down-payment assistance in an amount of \$7,200.00 to purchase a replacement dwelling. (See paragraph M., below, for clarification of super-payments)
- B. The rental assistance payment not to exceed \$7,200.00 is that amount obtained by subtracting 42 times the “base monthly rental” of the displacement dwelling from the lesser of:
  - 1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling as determined by the Department; or
  - 2. The actual monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.
- C. The “base monthly rental” for the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities for the previous 3 months at the displacement dwelling. For owner-occupants, the fair market rent for the displacement dwelling will be used. For tenants paying little or no rent, the fair market rent of the displacement dwelling will be used, unless its use would result in a hardship because of the person's income; or
  2. Thirty (30) percent of the person's average gross income based on appropriate evidence. A full-time student or resident of an institution will be assumed to be a dependent, unless the person demonstrates otherwise; or
  3. The total of the amounts designated for shelter and utilities if receiving an assistance payment from a program that designates said amount. It is important to confirm that the assistance will continue upon relocation.
- D. Both the "base monthly rental" and the estimated replacement housing rental must include costs for utilities prior to calculation of the probable entitlement. It is necessary for the Agent to consider the costs for light, heat, water and sewer. To estimate the utility costs, the Agent should obtain documentation from the tenant or owner and the local utility offices. Another method would be estimating utility costs based on square footage of the unit and number of occupants.
- E. Upon the Initiation of Negotiations or when the tenant is actively looking for a replacement dwelling, the State shall calculate an amount necessary for the displaced person to rent a comparable replacement dwelling based on listings of comparable dwellings.
- F. The Replacement Housing Calculation Sheet (Form 609) shall be used for the rental computation with the top portion of this form completed using information obtained from the appraisal and previous contacts.
- G. Utilizing information from sources such as classified ads, real estate firms, rental advertising magazines and field reviews, comparable listings of available rental dwellings must be selected, described and ranked in order of comparability. Whenever possible, three or more comparable rental dwellings should be selected and analyzed. Adjustments to the monthly rental rates shall be made to include utilities in accordance with paragraph D. above. The Rental/For Sale Listing form (Form 626) must be completed for each comparable dwelling and a photo of the rental attached to the bottom of the form. The Displacement & Comparable Property Description and Analysis (Form 629) must be used to describe and compare the displacement dwelling and selected comparable replacement dwellings. The location of the subject and comparables must be plotted on a map of the area.
- H. In selecting listings, it is important that all of the criteria contained in the definition of a "comparable" be examined when making the comparison between the

displacement dwelling and listings, with emphasis on “functionally equivalent”. This means that the comparable replacement dwelling must perform the same function and provide the same utility of the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

- I. Under the calculation for “Rental Supplement” on the Replacement Housing Calculation Sheet (Form 609), the first line, “Monthly Rent + Estimated Average Utilities for...”, will be calculated using the Most Comparable listing amount. From one of the next three lines the base monthly rental will be derived. The “Monthly Rent + Utilities at Displacement Site” will be the displaced person’s present rental rate plus actual utility expenses. If the present contract rent is substantially less than the fair market rent, the fair market rental amount will be entered on the form. The “Financial Means Rent” equals 30% of the displaced person’s gross monthly income. The Base Monthly Rental (usually the lowest amount) will then be subtracted from the “Monthly Rent + Utilities at Displacement Site” and the difference will be multiplied by forty-two (42) to arrive at the Replacement Housing Allowance. Should the amount exceed \$7,200.00, the overage will be entered as a Last Resort Housing Allowance.
- J. This Probable Replacement Housing Allowance is then transferred to the Statement of Probable Entitlement - Replacement Housing Allowance (Form 610) in the space provided. The top portion of the form is self-explanatory except that the Entitlement Statement date would be the date a copy of the entitlement is delivered to the displaced person. Keep in mind that the letter of 90-day notice cannot be delivered before the entitlement; they must be delivered simultaneously.
- K. The tenant will also be advised on the Statement of Probable Entitlement – Replacement Housing Allowance (Form 610) that he or she is eligible for the down-payment option in the amount of \$7,200.00, if the displaced person purchases a replacement dwelling. Additionally, the Agent shall explain the eligibility conditions of the down-payment option.
- L. Replacement housing payments for tenants of sleeping rooms shall be calculated in the same manner as the above rental supplement and down-payment option.
- M. In the event the calculated rental supplement or down-payment exceeds the maximum \$7,200.00 replacement housing amount, the provisions of Last Resort Housing, [Section 6.350](#) will apply.
- N. Examples of the replacement housing rental supplement are shown as follows:





## 6.264 Incidental Expenses Payment

- A. The incidental expenses payment is the amount necessary to reimburse the homeowner for the actual costs incurred incident to the purchase of the replacement dwelling, but not for prepaid expenses. Such costs may include the following items if normally paid by the buyer:
1. Legal, closing and related costs including those for title search, preparing conveyance contracts, notary fees, surveys, preparing surveys or plats and recordation fees.
  2. Lenders, FHA or VA appraisal fee.
  3. FHA, VA or conventional loan application fee.
  4. Professional home inspection, certification of structural soundness and termite inspections when required.
  5. Credit report.
  6. Owner's title policy, title insurance or abstract of title, not to exceed the costs for a comparable replacement dwelling.
  7. Escrow Agent's fee.
  8. State revenue stamps, documentary stamps, sales or transfer taxes, not to exceed the costs for a comparable replacement dwelling.
  9. Such other costs as the Agency determine to be incidental to the purchase.
- B. Reimbursement of the purchaser's points and loan origination or service fees actually paid by the displaced person is eligible based on the original unpaid mortgage balance of the displacement dwelling less the amount determined for the reduction of such mortgage balance under Increased Interest Payments, [Section 6.265](#).
- C. Reimbursement of the FHA mortgage insurance premium is eligible when the displaced person is required to pay it in a single lump sum payment at the close of escrow. This fee will be limited to the actual mortgage insurance premium paid or an amount based on the original mortgage balance, if lesser.

- D. Not considered as reimbursable incidental expenses would be any items paid in advance by the seller of the real property and prorated between the seller and the buyer at the close of escrow such as real property taxes, fire insurance, homeowners' association dues and assessment payments.
- E. A certified copy of the escrow closing statement with the above costs itemized must be received prior to closing the parcel. Also, the closing statement must show the amount of the replacement housing payment received from the State as a separate line item.

#### 6.265 Increased Interest Payments

- A. Increased interest payments are provided to compensate the 90-day owner-occupant for the increased interest costs required for financing a replacement dwelling. In the following procedures, the term "mortgage" will be referred to as the security instrument given as security for repayment of a loan on real property.
- B. The payment for increased interest shall be the amount which will reduce the mortgage balance on the new mortgage to an amount which could be amortized with the same monthly principal and interest payment as that for the mortgage on the displacement dwelling. (Any debt service costs will be reimbursed in accordance with Incidental Expenses Payment, [Section 6.264](#))
- C. The calculation for the increased interest payment shall be based on the unpaid mortgage balance on the displacement dwelling; on the remaining term of the mortgage of the displacement dwelling, or if shorter, the term of the new mortgage; and the interest rate on the new mortgage, or if lower, the prevailing interest rate for conventional mortgages.
- D. In the event the person obtains a smaller mortgage than the mortgage balance computed in the buy down determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 90-days prior to the Initiation of Negotiations or the balance on the date of acquisition, whichever is less.
- E. In order to be eligible for an increased interest payment, the following criteria must exist in all cases.
  - 1. The displaced person must meet the basic eligibility conditions stated in Basic Eligibility Conditions, under [Section 6.263](#)-Replacement Housing.
  - 2. The mortgage encumbering the displacement property must have been a valid lien for not less than 90-days immediately prior to the Initiation of Negotiations for the parcel and the displaced person must have occupied the premises during that period.

3. The displaced person must encumber a new mortgage on the replacement property at the time of purchase with a higher interest rate than the mortgage on the displacement.
  4. The note and trust deed or mortgage on both the displacement property and replacement property must specifically name the owner and property and must be recorded.
- F. An increased interest payment may be made on more than one mortgage on the acquired displacement dwelling if it meets the criteria set out in Paragraph E. above. Should a mortgage on the displacement property have a higher interest rate than the replacement, there will be no calculation.
- G. If the acquisition was based on a partial take, multi-family or mixed uses, the computed increased interest payment will be based on the percentage of only the owner-occupied portion. This same rule would also apply to the replacement dwelling. (See examples under Paragraph L.)
- H. Circumstances affecting the increased interest payment are as follows:
1. If the term of the new mortgage is the same as or greater than the term of the existing mortgage, use the monthly payment of the existing mortgage to compute the number of months actually necessary to pay off the existing mortgage (See paragraph L., Example 1).
  2. If the term of the new mortgage is less than the term of the existing mortgage, use the term of the new mortgage to compute the monthly payment necessary to pay off the existing mortgage using the shorter term (See paragraph L., Example 2).
  3. When the displacement dwelling is encumbered with a variable rate mortgage, the interest rate and payment at the time of acquisition will be used in the calculation.
  4. If a displaced person has made larger or more payments on the displacement dwelling mortgage, the number of payments remaining will be adjusted to reflect the actual number required should the balance be paid at the original principal and interest payment. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee.
- I. The calculation sheet for increased interest payments is Computation of Increased Interest Payment (Form 613). A financial calculator will be required to make this calculation. Data required to complete these forms include the following:

1. Copy of the original mortgage or trust deed on the acquired dwelling which shows the principal amount, annual interest rate and term or number of months.
  2. Document showing final payoff (principal balance only) on acquired dwelling. This may be obtained from the lender or Title Company.
  3. Copy of the mortgage or trust deed or note on the replacement dwelling which shows the principal amount, annual interest rate, and term or number of months. This interest may not exceed the prevailing interest rate currently charged by lending institutions in the area.
- J. The displaced person shall be advised of the approximate amount of this payment and conditions as soon as the required data is available in order that the payment can be used to reduce the principal balance on the replacement dwelling.
- K. The Application and Claim for Replacement Housing - Incidental Replacement Housing Expenses and Increased Interest (Form 612) will be used when making a reimbursement for an increased interest payment.
- L. The following are examples of the increased interest payment in unusual cases:

REPLACEMENT HOUSING  
INCREASED INTEREST CALCULATION  
HIGHER INTEREST ONLY

EXAMPLE 1:

Old Mortgage	Balance	\$50,000.00
	Monthly Payment (P&I)	\$458.22
	Interest Rate	7%
	Compute the Remaining Term	174 Months
New Mortgage	Monthly Payment	\$458.22
	Interest Rate	10%
	Remaining Term	174 Months
	New Mortgage Amount	\$42,010.18
Increased Mortgage Interest Cost		
	\$50,000.00 - \$42,010.18 =	\$7,989.82
	* 3 Points on \$42,010.18 =	\$1,260.31
	Total	\$9,250.13

\* Points are usually paid with the incidental expenses in accordance with [Section 6.264](#).

REPLACEMENT HOUSING  
 INCREASED INTEREST CALCULATION  
NEW MORTGAGE – SHORTER TERM/HIGHER INTEREST

EXAMPLE 2:

Old Mortgage	Balance	\$50,000.00
	Monthly Payment (P&I)	\$458.22
	Interest Rate	7%
	Compute the Remaining Term	174 Months

New Mortgage	Terms	120 Months
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Step 1 – Compute Monthly Payment for Old Mortgage Assuming 120 Month Term

Balance	\$50,000.00
Interest Rate	7%
Remaining Term	120 Months
Mortgage Payment	\$580.54

Step 2 – Compute New Mortgage Principal Based on \$580.54 Monthly Payment

Monthly Payment	\$580.54
Interest Rate	10%
Remaining Term	120 Months
New Mortgage Amount	\$43,930.14

Buy down Amount Payable:	\$50,000.00 - \$43,930.14 =	\$6,069.86
	* 3 Points on \$42,010.18 =	\$1,317.90
	Total	\$7,387.76

\* Points are usually paid with the incidental expenses in accordance with [Section 6.264](#).

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REPLACEMENT HOUSING  
 INCREASED INTEREST CALCULATION  
NEW MORTGAGE – LONGER TERM/HIGHER INTEREST

EXAMPLE 3:

Old Mortgage	Balance	\$50,000.00
	Monthly Payment (P&I)	\$458.22
	Interest Rate	7%
	Compute the Remaining Term	174 Months
Computed Buy down-payment		\$7,989.82
3 Points on \$42,010.18		\$1,260.31
	Total	\$9,250.13
 New Mortgage	Monthly Payment	 \$458.22
	Interest Rate	10%
	Remaining Term	360 Months
	New Mortgage Amount	\$52,224.55
	* 3 Points	\$1,566.44
	Total	\$53,780.99
 Cash Retained:	 \$59,250.13 - \$53,780.99 =	 \$5,469.14

\* Points are usually paid with the incidental expenses in accordance with [Section 6.264](#).

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REPLACEMENT HOUSING  
 INCREASED INTEREST CALCULATION  
SMALLER NEW MORTGAGE/HIGHER INTEREST

EXAMPLE 4:

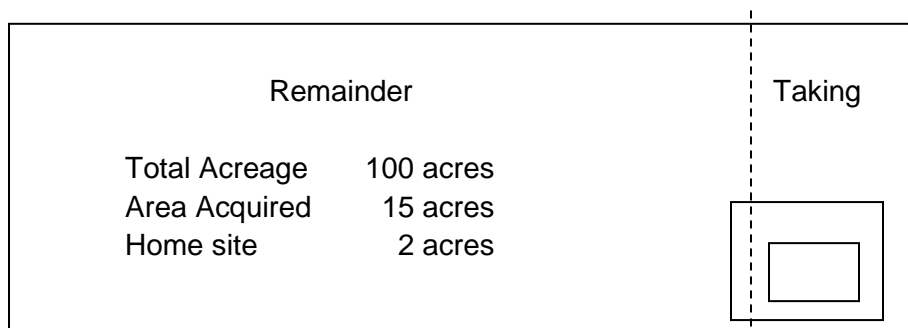
New Mortgage	Monthly Payment	\$458.22
	Interest Rate	10%
	Compute the Remaining Term	174 Months
	Computed Mortgage	\$42,010.18
	Computed MID Payment	\$7,989.82
	* 3 Points on \$42,010.18	\$1,260.31
	Total Payment & Points	\$9,250.13

Actual New Mortgage (at 10% - 174 Months)		\$35,000.00
Adjustment Factor:	$\$35,000.00 \div \$42,010.18 =$	\$.83
Actual Buy down-payment:	$\$9,250.13 \times \$.83 =$	\$7,706.57

\* Points are usually paid with the incidental expenses in accordance with [Section 6.264](#).

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REPLACEMENT HOUSING  
PARTIAL TAKING – DWELLING ON TRACT LARGER THAN TYPICAL

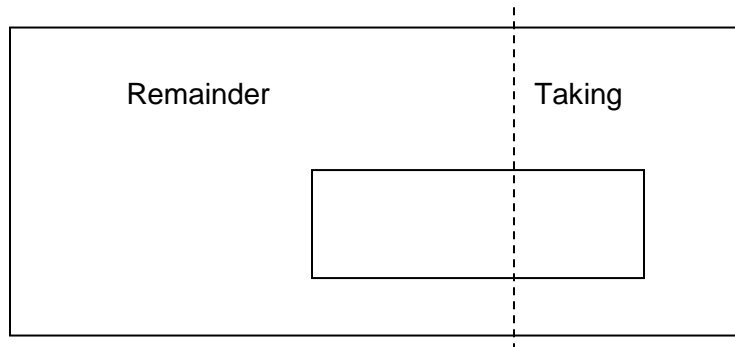


FMV Total Farm	\$100,000.00
Appraised Value – Residence & Home site	\$30,000.00
Total Mortgage on Entire Farm	\$50,000.00
\$30,000.00 is 30% of \$100,000.00	

Therefore, the maximum amount on which an interest differential may be paid (for dwelling and home site) is \$15,000.00, which is 30% of \$50,000.00.



REPLACEMENT HOUSING  
 INCREASED INTEREST CALCULATION  
PARTIAL TAKING FROM TYPICAL RESIDENTIAL LOT



Before Value	\$40,000.00
Acquisition Price	\$30,000.00 or 75%
Computed Interest Payment	\$2,675.33
\$30,000.00 is 30% of \$100,000.00	

- A. Mortgage payoff required – Owner gets full payment
- B. Mortgage payoff not required –  
Owner gets 75% of computed payment, or \$2,006.50

**6.266 Disbursement of Replacement Housing Payments**

- A. The Application and Claim for Replacement Housing Allowance (Form 611) must be completed for any displaced person who is eligible for and is claiming a replacement housing payment.
- B. The top portion of this form is to be completed, using information from previous replacement housing forms.
- C. Under the headings of “Owner-Occupants With 90-Days or More Occupancy”, and “Tenants With 90-Days or More Occupancy”, check the appropriate box which designates the replacement housing option the displaced person chooses. The heading refers to the displaced person’s present status and the parenthesis refers to the displaced person’s choice of replacement housing.
- D. Under “Replacement Housing Payment”, the option will be checked with the dollar amount of the actual replacement housing allowance entered. If the payment is a rental supplement, the total payment will be entered in the designated space. If the rental supplement is to be paid in installments, the type of installment will be indicated on the fourth line with the amount in the payment space.

- E. The bottom portion of the form must be signed by the displaced person or displaced persons, as applicable. Displaced persons eligible for the rental supplement must also sign the second set of signature lines and check the appropriate box for the lump sum or annual payment.
- F. If the displaced person chooses the rental supplement in installment payments, it is important to keep a tickler file to remind the Agent when a payment is due.
- G. Under the purchase and down-payment options, the only time a replacement housing payment is made directly to the displaced person is after the displaced person furnishes a closing statement from a bank or Title Company or other appropriate documentation certifying that the displaced person has expended the specified amount required to be reimbursed. (See Paragraph N. below) If a displaced person has purchased a replacement dwelling prior to the State's acquisition, the actual cost of the replacement dwelling at the time of purchase shall be used to calculate the replacement housing reimbursement, keeping in mind the "spend to get" provision. In all cases, the upper limit of this entitlement is based upon the cost of a comparable replacement dwelling, as determined by the State.
- H. In most cases, purchase and down-payment replacement housing payments are paid to a third-party acting as an escrow Agent. When it is agreed to by the displaced person, enter the name of the third-party (i.e., Escrow Company) in that space designated as Direct Deposit To on the Application and Claim for Replacement Housing Allowance (Form 611). When making payment to an escrow, the Agent should write a letter confirming the payment and stating the purpose. It is very important to work closely with the title company when there is no realtor involved, since the Relocation Agent is acting as the displaced person's representative.
- I. At the close of escrow, payment for the displaced person's escrow charges or incidental expenses will be made on the Application and Claim for Replacement Housing - Incidental Replacement Housing Expenses and Increased Interest (Form 612). The top portion of this form shall be completed using information from the calculation forms. Incidental expenses may be paid directly to the displaced person or to the escrow company. If this payment is made directly to the displaced person, a certified copy of the closing statement, marked by the escrow company as "paid", must be received prior to making payment. If payment is made directly to the escrow company, the Agent is responsible for obtaining a certified copy of the closing statement after escrow closes. The escrow statement must show an itemization of the closing costs, along with the actual replacement housing payment shown as a separate line item, as received from the State.

- J. If an escrow company is not utilized and a displaced person purchases a replacement dwelling from a private party, the Agent is responsible to obtain certified documents to verify the sale before any payments can be made.
- K. Increased interest reimbursement shall be disbursed using the same Application and Claim for Replacement Housing – Incidental Replacement Housing Expenses and Increased Interest (Form 612). After the increased interest has been calculated, the amount will be entered on this form and submitted along with the backup documentation for the increased interest payment.
- L. When submitting replacement housing incidental expenses or increased interest payments, the Agent must attach two copies of the claim form to the payment voucher, along with all other original documents pertinent to the specific payment.
- M. When disbursing replacement housing payments, incidental expenses and increased interest, the combined total shall not exceed \$31,000.00 for the purchase option and \$7,200.00 for the down-payment option. Also, rental supplements shall not exceed \$7,200. If the total payment exceeds these amounts, a Last Resort Housing situation exists and Last Resort Housing, [Section 6.350](#) of this manual will apply.
- N. For a displaced person to receive the full amount of the entitlement calculations should be guided by the “spend to get” provision. For example, if an entitlement for a 90-day owner-occupant was calculated using a \$250,000.00 listing as the most comparable, the displaced person must spend at least that amount on a replacement dwelling. If a displaced person spends less than the amount of the most comparable, the replacement housing purchase supplement payment will be reduced by that amount. However, the displaced person is still eligible for increased interest and incidental expenses. In the case of a down-payment, the total amount of \$7,200.00 for the down-payment is eligible provided it is applied to the actual down-payment and incidental expenses. On rental supplements, if the displaced person rents a dwelling for less than the most comparable, the rental supplement will be recalculated using the actual rent paid. A copy of the actual rental receipt must be attached to the replacement housing package before payments can be made on rental supplements.
- O. If a displaced person, (initial occupant only) whose original payment calculation and entitlement exceeded the \$7,200.00 and \$31,000.00 maximums, subsequently rents or purchases a decent, safe and sanitary dwelling for an amount less than the maximum, the payment may be made directly to the displaced person upon receipt of documentation based on the actual cost. Payments over the \$7,200.00 and \$31,000.00 maximums must be paid in accordance with the provisions of Last Resort Housing, [Section 6.350](#).

- P. If the displaced person chooses to retain the displacement dwelling and utilizes it as the replacement home, the replacement housing payment, if any, shall be the amount by which the costs to relocate the retained dwelling exceed the acquisition price of that dwelling. These costs shall include the actual costs of acquiring a comparable site and any expenses incident to moving of the dwelling and restoring it to a decent, safe and sanitary condition. To receive the original entitlement amount, the displaced person must spend all of the acquisition amount, plus the amount of the entitlement. The displaced person must submit a complete itemization of all expenses incident to this option, including receipted paid bills or other forms of documentation and proof of purchase of the site. If the displaced person moves the dwelling onto the remainder property or a previously owned site, the current fair market value of the site shall be utilized as the site value.
- Q. If the displaced person chooses to construct a replacement dwelling, the actual costs of construction shall be considered as the purchase price. The displaced person is required to submit the itemized bills for construction along with the escrow statement for the land costs. All costs must be itemized in a list with a certification of the total amount signed by the displaced person.
- R. All relocation payments must be fully justified. In all cases where the displaced person is requesting a direct reimbursement, a complete itemization must be submitted along with canceled checks or certification that all expenses are true and correct and payment thereof has been made.
- S. A property owner cannot be deprived of an early replacement housing payment in condemnation cases. An advance payment may be made after the owner-occupant is advised that upon the final order of condemnation, this payment will be re-computed using the court determined acquisition price. If the Agent is required to make an advance payment, it will be computed by using the State's original offer as the acquisition price. Upon receipt of the final order of condemnation, the replacement housing entitlement will be re-computed using the acquisition price determined by the Court.
1. If this court award is less than the State's original offer, a portion of the replacement housing payment must be refunded from the court award. In no case will the displaced person be required to refund more than the replacement housing payment advanced.
  2. If this court award is greater than the State's original offer, the replacement housing payment will be increased to equal the entitlement.
  3. Amounts in excess of the final settlement or award shall not be deducted from the property owner's relocation payment if such deduction would prevent the displaced person from obtaining a comparable replacement dwelling.

## 6.267 Decent, Safe and Sanitary (DS&S) Inspection

- A. Before any replacement housing payment or last resort housing payment is made, a decent, safe and sanitary inspection must be made on the displaced person's replacement dwelling.
- B. The Replacement Housing Inspection Report (Form 614) shall be completed by the Agent requesting the replacement housing payment. The top portion of the form is self-explanatory along with the heading of "Occupancy". Under the heading of "Dimension", the dimensions of the rooms will be entered for only those rooms applicable. If a dwelling contains an extra room not mentioned, it will be entered under "Other" rooms and identified as to type of room. Exercise care when completing the bottom portion of this form. If a "no" answer is entered, an explanation must be made.
- C. As a rule, a preliminary decent, safe and sanitary inspection should be made of the replacement dwelling prior to any commitment or final decision on the part of the displaced person. The displaced person must clearly understand that he can buy or rent anything he wants, but in order to receive the replacement housing payment, the dwelling will have to pass the decent, safe and sanitary inspection.
- D. Exceptions may be granted to the decent, safe and sanitary standards in cases of extreme hardship or extenuating circumstances, with written concurrence from the Federal Highway Administration. Any exception must be brought to the attention of the Staff Specialist.
- E. If a displaced person moves to another state, a courtesy decent, safe and sanitary inspection shall be requested from the other state's right-of-way division by a letter to the Chief Right-of-Way Agent. Names and addresses may be obtained from the Staff Specialist.
- F. When an Agent is working in a specific area, a copy of the local housing codes should be obtained from the local city or county building department to use in making decent, safe and sanitary inspections.
- G. Decent, safe and sanitary standards are based on local housing codes. To meet minimum decent, safe and sanitary standards, the dwelling shall:
  - 1. Be structurally sound, weather tight, and in good repair.
  - 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. 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 handicapped displaced person, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by a displaced person who is handicapped.
- H. The standards for decent, safe and sanitary housing, as applied to rental of sleeping rooms, shall include the minimum standards above and a lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

## **6.300 MOBILE / MANUFACTURED HOMES AND RECREATIONAL VEHICLES (RV)**

### **6.301 General**

- A. In Nevada, mobile/manufactured homes and recreational vehicles are considered as personal property and will be relocated as personal property, unless they have been classified as real property under [NRS 361.244](#).
- B. A mobile/manufactured home classified as real property will be appraised and acquired under the acquisition process. The occupants will be eligible for the same moving and replacement housing benefits as occupants of other residential dwellings. The procedures outlined in this section of the manual refer to mobile/manufactured homes which are classified as personal property.
- C. Advance planning and evaluation are required for the acquisition of any mobile home park, as at least a 180-day written notice must be given to each tenant under Nevada law. A displacement study should be made to assure that there are an adequate number of spaces and/or replacement mobile homes available in the market prior to entering into negotiations. In instances where the availability of replacement spaces or replacement mobile homes is questionable,

a thorough study of the market should be made prior to entering into the appraisal process. The closure of a mobile home park is regulated by [NRS 118B](#).

- D. When a partial acquisition of a mobile home park would leave the remainder in a condition such that the continued operation of the park is unfeasible, and NDOT determines that the mobile homes located on the remainder of the property must be relocated as a direct result of the project, the owner and any tenants shall be considered as displaced persons and eligible for relocation assistance and payments.
- E. A recreational vehicle (RV) located within the proposed highway project that is functioning as a permanent dwelling will be reviewed on a case by case basis to establish relocation eligibility and replacement potential. If classified as a dwelling on real property to be acquired, the occupants will be entitled to the same moving and replacement dwelling benefits as occupants of other residential dwellings. If classified as personal property it will be relocated as personal property.

**Note:** The following scenarios should be considered for relocation:

1. An RV on a parcel located in a mobile home or RV park serving as a primary residence, may or may not be self-propelled (the unit may no longer run or may have to be towed, but still provides a DS&S dwelling)
2. An RV at a residential property with utility hook ups, providing the equivalent of “mother-in-law” living quarters for a permanent residence, (this occurs frequently in rural areas) or
3. Any situation where the occupant(s) of an RV are living in the unit on a full-time basis and the unit meets the DS&S standard.

### 6.302 Initial Mobile Home Contacts

- A. At the time of initial contact with a displaced person of a mobile home, the Mobile Home Park Occupancy Data Report (Form 615) must be completed. This form shall apply to all mobile home occupants whether they are located in a park or on other property. Also at this time, the Replacement Housing Inspection Report (Form 614) shall be completed to certify whether the mobile home is decent, safe and sanitary before the mobile home is moved. In addition to the Mobile Home Occupancy Data Report and Decent, Safe and Sanitary Inspection Report, a photograph of the subject mobile home shall be attached.
- B. The Mobile Home Park Availability Survey (Form 616), shall be used when listings of mobile home park spaces are required for replacement housing purposes. This survey should be completed for each mobile home park in the project area and updated, as necessary, for computing replacement housing

entitlements. A photograph of the mobile home park may also be attached. If a park has written regulations, obtain a copy and attach it to this form.

### 6.303 Moving Payments

- A. Owner-occupants of mobile/manufactured homes are eligible for actual moving expenses for moving their mobile/manufactured homes and personal property. The following rules apply to actual moving expenses:
1. Reimbursement will be made to the displaced person based on itemized receipted bills upon completion of the move, or the State will contract directly with a mover and pay the mover's bill. (See Paragraph G. below for moving contract procedures)
  2. Reimbursement of actual costs for meals, lodging and transportation are eligible when determined to be reasonable and necessary because of the move.
  3. Reimbursement of utility service charges and any license or permit fees are eligible when required because of the move.
  4. If a mobile/manufactured home requires repairs and/or modifications so it can be moved or made decent, safe and sanitary, such repairs are reimbursable as a moving expense when the Department determines it is economically feasible to relocate the mobile/manufactured home.
  5. Reimbursement of a non-refundable mobile home park entrance fee is eligible to the extent it does not exceed the fee at a comparable mobile home park or to the extent said payment is necessary to effect relocation.
- B. Actual expenses for moving a mobile/manufactured home in paragraph A.1. above, shall include the cost of unblocking, disconnecting, crating, loading, insuring, moving, reblocking, reinstalling and reassembling any personal property and attached appurtenances which includes expanding rooms, "pop-outs", porches, decks, awnings, skirting, steps and anchoring the unit if required.
- C. If an owner-occupant of a mobile home sells or trades-in the mobile home, the owner is eligible only for a payment for moving the personal property from the mobile home. This payment will be based on the actual moving costs in accordance with Moving Payments – Homeowners and Tenants, under [Section 6.262](#)-Moving Payments or the self-move in accordance with the Fixed Rate Schedules.
- D. Tenant-occupants of mobile/manufactured homes are eligible for their moving expenses in accordance with Moving Payments – Homeowners and Tenants,



under [Section 6.262](#)-Moving Payments as though they were occupying a conventional dwelling.

- E. For additional eligible and ineligible moving expenses and forms to be used, refer to Moving Payments, [Section 6.262](#).
- F. Non-occupying owners of mobile homes are eligible for their moving expenses in accordance with Actual Expense provisions in Moving Payments-Businesses, Farms and Non-Profit Organizations, under [Section 6.262](#)-Moving Payments,.
- G. Agreement Cost of Moving – Mobile Home Transporting (Form 624) is a three-way document between the Department, a mobile home transporter and the displaced person. It provides a legal means for direct payment of the transporter's invoice. It may be used for either owners or owner-occupants of mobile homes, and is used with the actual expense option.
- H. In conjunction with paragraphs A.4. and B., it is noted that skirting, awnings and other appurtenances which are moved with the mobile home are considered as re-installation of personal property and charged as a moving expense. If the skirting and awnings cannot be moved without substantial damage or unreasonable costs, or a mobile home does not have skirting and awning but park regulations require same, costs for them will become a replacement housing payment.
- I. In the event an owner of a mobile home chooses to sell the mobile home in place, the owner shall not be reimbursed for moving expenses until the mobile home is removed from the site. Moving expense reimbursement for the owner will be based on Moving Payments, [Section 6.262](#), Moving Payments – Business, Farms and Non-Profit Organizations.

#### **6.304 Replacement Housing**

- A. To establish eligibility for replacement housing payments, the following general rules shall apply:
  - 1. The ownership or tenancy of the mobile/manufactured home will determine the occupant's status as an owner or a tenant.
  - 2. The length of ownership and occupancy of the mobile/manufactured home on the mobile/manufactured home site or park will determine the occupant's status as a 90-day owner or tenant.
  - 3. The mobile/manufactured home must be occupied on the same site for the required 90 days to make the occupant eligible for the appropriate payment limitations of \$7,200.00 or \$31,000.

- B. After the displaced person's status is determined, the replacement housing payment is computed in two parts.
1. The replacement housing or rent supplement payment for the mobile/manufactured home is computed in accordance with those procedures outlined in Replacement Housing, [Section 6.263](#).
  2. The replacement housing or rent supplement payment for the mobile/manufactured home site will also be computed in accordance with those procedures outlined in Replacement Housing, [Section 6.263](#).
  3. The sum of the two parts computed in B.1. and B.2. above cannot exceed the maximum limitation of the \$7,200.00 or \$31,000.
- C. The following shall be used as a guide for determining eligibility for replacement housing payments. Please refer to Replacement Housing, [Section 6.263](#) for computation.
1. Owner-Occupants Over 90-Days:
    - a. Acquisition of Mobile/Manufactured Home and Site: Eligible for purchase supplement for a mobile/manufactured home and site or rental supplement for a mobile/manufactured home and site.
    - b. Acquisition of Mobile/Manufactured Home Only, Owner-Occupant Rents Site: Eligible for purchase supplement on a mobile/manufactured home or rental supplement for a mobile/manufactured home, plus rental supplement or down-payment on a site.
    - c. Acquisition of Site Only, Mobile/Manufactured Home Moved: Eligible for purchase supplement on a site or a rental supplement on a site.
    - d. Acquisition of Rented Site Only, Mobile/Manufactured Home Moved: Eligible for a rental supplement or down-payment on a site.
  2. Tenant Occupants Over 90-Days:
    - a. Acquisition of Mobile/Manufactured Home and Site: Eligible for rental supplement or down-payment on a mobile home and site.
    - b. Acquisition of Mobile Home Only, Owner-Occupant Rents Site: Eligible for rental supplement or down-payment on a mobile home plus a down-payment or rental supplement on a site.

- c. Acquisition of Site Only, Mobile Home Moved: Eligible for a rental supplement or down-payment on a site.
    - d. Acquisition of Rented Site Only, Mobile Home Moved: Eligible for a rental supplement or down-payment on a site.
  - 3. In paragraphs C.1. and C.2. above, the total replacement housing payment shall not exceed the maximum payment (either \$31,000.00 or \$7,200.00) permitted under the section that governs the computation for the dwelling.
- D. Since a mobile home is classified as personal property under Nevada State Law, the displaced owner-occupants may be entitled to a replacement housing payment for the mobile home, only in the following instances:
  - 1. The mobile home is not decent, safe and sanitary, or
  - 2. The structural condition of the mobile home prevents it from being moved without substantial damage or unreasonable costs, or
  - 3. The mobile home does not meet comparable mobile home park requirements.
- E. If one of the conditions in paragraph D. above exists, and it is not economically feasible to correct the condition, the replacement housing payment will be the lesser of the following:
  - 1. Purchase price of a comparable mobile home less the trade-in value for their present mobile home, or
  - 2. Purchase price of a comparable mobile home presently set up in a park less the salvage value of their present mobile home.
- F. The trade-in value (in paragraph E.1. above) will be obtained from a reliable mobile home dealer in the area where the Agent is searching for a comparable mobile home. The trade-in value will be deducted from the cost of the replacement mobile home.
- G. The salvage value (in paragraph E.2. above) is similar to a retention value and will be determined by a Property Management Agent. The salvage value will be used only when the mobile home cannot be traded in because of condition or when the most comparable mobile home is set up in a park. The salvage value will be paid directly to the displaced person unless otherwise requested.
- H. In addition to the purchase option entitlement in paragraph E. above, the displaced person may also be eligible for a rental supplement based on the difference between their present rent and the space rent at an available park. (See Replacement Housing, [Section 6.263](#) for computation)

- I. An owner-occupant may also be eligible for a replacement housing payment if the mobile home does not meet comparable mobile home park entrance requirements. The amount of replacement housing payment will be determined by using the “trade-in value” (as discussed in paragraph E. above) or the cost to rehabilitate the existing mobile home, if less. The Agent must submit an explanation along with the replacement housing package to justify this option.
- J. Examples of mobile/manufactured home replacement housing calculations are as follows:

REPLACEMENT HOUSING

MOBILE/MANUFACTURED HOMES

DISPLACED PERSON OWNS MOBILE/MANUFACTURED HOME  
AND RENTS THE SITE:

COMPARABLE LISTING	\$225.00 x 42 =	\$9,450.00
PRESENT RENT	<u>\$160.00</u> x 42 =	<u>\$6,720.00</u>
DIFFERENCE IN RENT	\$65.00 x 42 =	\$2,730.00
TOTAL REPLACEMENT HOUSING PAYMENT		\$2,730.00

DISPLACED PERSON RENTS THE MOBILE/MANUFACTURED  
HOME AND SITE:

COMPARABLE LISTING	\$550.00 x 42 =	\$23,100.00
PRESENT RENT	<u>\$450.00</u> x 42 =	<u>\$18,900.00</u>
DIFFERENCE IN RENT	\$100.00 x 42 =	\$4,200.00
TOTAL REPLACEMENT HOUSING PAYMENT		\$4,200.00

REPLACEMENT HOUSING

MOBILE/MANUFACTURED HOMES

OWNER-OCCUPIED NON-DSS MOBILE/MANUFACTURED  
HOME AND RENTAL SITE

COMPARABLE MOBILE HOME COST		\$25,000.00
TRADE-IN VALUE OWNER'S UNIT		<u>\$12,000.00</u>
REPLACEMENT HOUSING FOR MOBILE HOME		\$13,000.00
COMPARABLE RENTAL SITE	\$200.00 x 42 =	\$8,400.00
PRESENT RENT	\$150.00 x 42 =	<u>\$6,300.00</u>
REPLACEMENT HOUSING FOR SITE		\$2,100.00
TOTAL REPLACEMENT HOUSING PAYMENT		\$15,100.00

## 6.350 LAST RESORT HOUSING

### 6.351 General Requirements

- A. The procedures under this section apply when it has been concluded that a project cannot proceed in a timely manner because comparable replacement housing is not available and cannot be made available within the monetary limits of Replacement Housing, [Section 6.263](#) through Decent, Safe and Sanitary Inspection, [Section 6.267](#) for owners and tenants.
- B. A decision to utilize last resort housing will be made on a case by case basis only after consideration has been given to the availability studies, other methods of providing housing, the displaced person's individual circumstances, and a determination that last resort housing is necessary for a timely completion of a project and such assistance is cost effective to the project as a whole.
- C. No person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person, and no person may be deprived of any rights the person may have under the Uniform Act. Also, the displaced person is not required to accept a dwelling provided by the State in lieu of any acquisition or relocation payment unless the person has agreed in writing to do so.
- D. Although a displaced person is not required to relocate to the last resort housing provided by the State, the State's obligation will have been fulfilled when comparable replacement housing has been made available or assistance necessary to provide such housing is offered to the displaced person.

### 6.352 Utilization of Last Resort Housing

- A. Last resort housing funds shall be utilized in the following situations:
  - 1. 90-day owner-occupant: when it has been determined that comparable replacement housing is not available for sale or that comparable replacement housing is available but the purchase supplement exceeds the \$31,000.00 maximum under Replacement Housing Payment – Incidental Expenses Payment, [Section 6.264](#) and Increased Interest Payments, [Section 6.265](#), or
  - 2. 90-day tenant occupant: when it has been determined that comparable replacement housing is not available to rent or that comparable replacement housing is available but the rental supplement exceeds the \$7,200.00 maximum under Replacement Housing Payment, and Replacement Housing Payment Rental Supplement, Occupants over 90 days under [Section 6.263](#)-Replacement Housing, or

3. Less than 90-day tenants and subsequent tenants: when it is determined that the tenant will be required to pay more than 30% of their gross monthly household income for comparable replacement rental housing. Any payment made to these occupants is termed a last resort housing payment since they are not eligible under Replacement Housing Payment Rental Supplement, Occupants over 90 days, under [Section 6.263](#)-Replacement Housing.
- B. When comparable replacement housing is not available on the market and cannot otherwise be made available, the State may provide such housing at a reasonable cost on a case-by-case basis by one of the following methods:
1. A replacement housing payment in excess of the limits under Replacement Housing Payments (Owner-occupant and Occupants over 90 days) under, [Section 6.263](#) Replacement Housing, known as a last resort housing super-payment.
  2. Rehabilitation of and/or additions to an existing replacement dwelling which may include the removal of barriers for a handicapped person.
  3. The construction of a new dwelling, if cost effective.
  4. The relocation and if necessary, rehabilitation of a dwelling.
  5. The purchase of land and/or a replacement dwelling by the State and a subsequent sale, exchange or lease to the displaced person.
  6. A provision of a direct loan to enable the displaced person to acquire replacement housing, with financing arrangements commensurate with the displaced person's income.
  7. A change in the displaced person's ownership or tenancy status with his concurrence, when it is cost effective to do so.
- C. In all cases, the Agent is required to place the initial displaced person into comparable housing. If the displaced person requests a change in the type of occupancy, such as tenant to owner or owner to tenant, the Agent will be expected to recalculate an entitlement for the change of occupancy. The amount computed for the alternate type occupancy will be the amount the displaced person is eligible to receive, except if this amount exceeds the statutory maximum replacement housing amount, last resort housing provisions will apply only if a last resort housing situation existed in the original calculation for like housing. The payment shall then be the least of the following: the entitlement

amount calculated for comparable like housing; the amount calculated for alternate housing; or the amount actually incurred.

- D. Under special circumstances and consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort allows the consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling 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.
- E. For 90-day tenant occupants, the maximum amount available under last resort housing shall be limited to the amount calculated under the rental supplement option. Therefore, a down-payment will be limited to the maximum rental supplement entitlement. F. All last resort housing construction contracts must be let in accordance with Department of Transportation contract requirements and Standard Specifications. The Staff Specialist will provide procedural guidance for construction contracts.

#### 6.353 Disbursement of Last Resort Housing

- A. When it has been determined to be cost effective to provide replacement housing by means of a last resort housing super-payment for initial occupants with at least 90-days occupancy, calculation of the last resort housing payment will be made in accordance with Replacement Housing, [Section 6.263](#), except that a last resort housing situation will occur only when the maximum \$7,200.00 and \$31,000.00 limitations are exceeded. However, if the amount actually spent for replacement housing is less than the maximum, no Last Resort Housing situation will occur.
- B. On the Replacement Housing Calculation Sheet (Form 609) the Last Resort Housing Entitlement line shall be filled in when the amount calculated exceeds the \$7,200.00 and \$31,000.00 maximums.
- C. The last resort housing entitlement amount will then be entered on the Statement of Probable Entitlement – Replacement Housing Allowance (Form 610), in the space designated as Last Resort Housing Allowance.
- D. Payment of last resort housing, purchase and down-payment options will be made on the Application and Claim for Replacement Housing Allowance (Form 611). Generally these payments will be paid to an escrow company, unless the displaced person furnishes proof that he or she has spent the amount and requests reimbursement.



- E. Payment of the last resort housing rental supplement will be made on the Application and Claim for Replacement Housing Allowance (Form 611). The last resort rental supplement may be provided in installments rather than a lump sum, if the Agent and supervisor determine installment payments to be in the public interest. The relocation file will be documented to explain the reasoning behind the choice of a disbursement method. If the rental supplement is paid by NDOT directly to the landlord, the landlord must sign the Last Resort Housing Landlord Agreement (Form 633), which will serve as an acknowledgment of the payment arrangements between the landlord and the State.
1. If a displaced person has paid a total month's rent, reimbursement of the amount allowed will be made only when the displaced person has provided a rental receipt verifying payment.
  2. All rental supplement payments shall be made for 42 consecutive months; no payments will be made after the 42 months has elapsed.
  3. Rental increases will be reimbursed only when the displaced person has not obligated the maximum entitlement and will be allowed only to the maximum. When a displaced person relocates to a dwelling obligating the maximum entitlement, no further rental increase will be allowed for that dwelling. If the displaced person has received the lump sum payment, no additional increases will be allowed.
  4. If a tenant who is receiving payments moves within a period for which rents were paid in advance, the Agent will be required to collect any unearned rents from the landlord. Any subsequent occupancy must be approved in accordance with the decent, safe and sanitary regulations.
- F. In order for a less than 90-day tenant to receive last resort housing payments, it must be determined that the tenant is required to pay more than 30% of the total gross monthly household income for renting replacement housing. Gross monthly income includes gross wages, commissions, fees, tips, Social Security or other retirement income, disability benefit payments, worker's compensation, unemployment insurance, public assistance, annuities, insurance policies, pension or death benefits, alimony, child support, military pay, veteran payments, net income from operation of a business, income on assets, such as interest and dividends, net income from rental property, net income from other capital investments.
- G. If the Agent determines that the less than 90-day tenant does, in fact, fail the financial means test, then the displaced person is eligible for a replacement housing rental supplement. The Agent's diary must reflect the steps taken to verify the person's eligibility status.

- H. To prepare the Replacement Housing Calculation Sheet (Form 609), the Agent will require a complete Verification of Income form (Form 627) from the tenant. At a minimum, evidence of the last three months of income shall be obtained in the form of pay stubs, income receipts and other documentation. The previous year's income tax return should also be considered. All rental supplement calculations based on financial means must be thoroughly documented.
- I. It is the responsibility of the tenant to provide this income verification, and the Agent must receive it before the replacement housing entitlement is delivered. If a tenant will not provide evidence of income, the tenant's refusal will be considered a waiver of any last resort housing payments.

**6.354 Disposal of Last Resort Housing**

- A. Last resort housing units which have been acquired or constructed by the State may be disposed of in accordance with the accepted property management guidelines for public auctions and transfers to other public agencies. (See Property Management, Disposal Guidelines, [Section 8.310](#))

LAST RESORT HOUSING  
90-DAY OWNERS AND TENANT'S WHO RENT

EXAMPLE 1:

There may be instances where the rental supplement will exceed the maximum allowable payment as provided in the Uniform Act. These cases will then be funded under last resort housing provisions provided it is more economical than constructing a rental replacement dwelling.

Open Market

Rent or comparable dwelling		\$800.00
Actual or economic rent being paid		<u>\$600.00</u>
Monthly rental difference		\$200.00
Rent supplement	(\$200 per month x 42 months)	\$8,400.00

In this example, the \$8,400.00 rent supplement would be made under a last resort housing project subsequent to the displaced person renting a dwelling on the open market for at least \$800.00 per month.

LAST RESORT HOUSING  
90-DAY OWNER WHO PURCHASES

(Replacement Housing Determination Exceeds Maximum)

EXAMPLE 2:

There may be instances where the replacement housing payment determination is less than the maximum allowable payments as provided in the Uniform Act; however, with the interest differential and incidental costs added to the replacement housing payment determination, the total payment will exceed the \$31,000.00 maximum. These cases will be funded under the last resort housing provisions. An economic analysis of such a situation is as follows:

Asking price of comparable dwelling	\$179,000.00
Acquisition price of subject dwelling	<u>\$160,000.00</u>
Replacement housing payment determination	\$19,000.00
Estimated incidental expenses	\$2,500.00
Estimated mortgage interest differential	<u>\$6,200.00</u>
Estimated total relocation payments	\$27,700.00
Acquisition price of subject dwelling	\$160,000.00
Total cost of parcel including all relocation payments (except moving costs)	<u>\$187,700.00</u>
Cost of construction of comparable replacement dwelling	\$195,600.00

In this example, the \$19,000.00 maximum replacement housing payment would be justified and the \$27,700.00 relocation payment would be eligible under a last resort housing project subsequent to the displaced person purchasing and occupying a decent, safe and sanitary dwelling costing in excess of \$179,000.

## LAST RESORT HOUSING

### SALE TO THIRD-PARTY

#### EXAMPLE 3:

In the event the State purchases a dwelling to be utilized as replacement housing for a displaced person, the State may sell the dwelling in accordance with accepted Property Management procedures.

Prior to disposition, the State shall enter into a lease agreement with the displaced person. The monthly rental rate shall be the economic rent of the dwelling.

The State may sell this property in the open market subject to the written lease or rental agreement entered into with the displaced person. The State shall transfer fee simple title to the highest responsible bidder whereupon the displaced person then becomes a tenant of the new owner of the property.

If a rental replacement payment is due, the State shall make payments to the purchaser of the property to make up the difference between the rent the displaced person pays and the replacement dwelling's economic rent, thereby fully compensating the new owner for the entire economic rent.

Economic rent of last resort dwelling	\$650.00
Actual rent being paid by displaced person	<u>\$450.00</u>
Monthly rent difference	\$200.00

To be paid for up to 42 months as long as displaced person occupies at this location.

## 6.400 DEFINITIONS

### **Acquiring agency:**

Nevada Department of Transportation or other political subdivisions who has the authority to acquire property by eminent domain under State law.

### **Acquisition date:**

That time when the acquisition agency obtains legal possession of the real property.

### **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:

- A. 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

- B. 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.

**Average annual net earnings:**

Are one-half of any net earnings before Federal, State, and local income taxes, during 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 dependants. 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.

**Base monthly rental for displacement dwelling:**

The base monthly rental for the 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. 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
- B. Thirty (30) percent of the person's average, gross household income. If the person refuses to provide appropriate evidence of income or is a dependant, the base monthly rental shall be based on paragraph A. above. 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.

**Business:**

Any lawful activity, except 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, or marketing of products, commodities and/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. For outdoor advertising display purposes when the display must be moved as a result of the project under the moving regulations.

**Citizen:**

The term “citizen” includes both citizens of the United States and noncitizen nationals.

**Comparable replacement dwelling:**

A dwelling which is:

- A. Decent, safe and sanitary, as described in Decent, Safe and Sanitary Inspection, [Section 6.267](#).
- B. Functionally equivalent to the displacement dwelling meaning that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present.
- C. Adequate in size to accommodate the occupants.
- D. In a location not generally 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.
- E. In an area not subject to unreasonable adverse environmental conditions.
- F. On a site that is typical in size for residential development with normal site improvements and customary landscaping.
- G. Currently available on the private market to the displaced person,
- H. Within the financial means of the displaced family or individual. (See definition for [Financial Means](#))
- I. Fair housing regarding race, color, religion, sex, national origin or handicap.

**Note:** [49 CFR 24.2\(a\)\(6\)\(ix\)](#) address the occupants of subsidized housing and indicates for them comparable will be determined by the family composition at the time of displacement and the current housing program criteria, not the size of the unit currently occupied.

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 (See appendix A, [49 CFR 24.2 \(a\) \(6\) \(ix\)](#)).

#### **Contributes materially:**

This term means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as determined to be more equitable, a business or farm operation:

- A. Had average annual gross receipts of at least \$5,000.00; or
- B. Had average annual net earnings of at least \$1,000.00; or
- C. Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.
- D. If the application of the above criteria creates an inequity or hardship in any given case, other criteria may be used with prior approval.

#### **Conventional loan:**

A mortgage commonly given by banks, savings and loan associations and other finance companies to secure advances on or the unpaid purchase price of real property, payment of which is not insured by an agency of the State or Federal Government (i.e. FHA, VA, HUD).

#### **Decent, Safe and Sanitary (DS&S):**

A dwelling which conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations. (See Decent, Safe and Sanitary Inspection, [Section 6.267](#) for standards)

#### **Displaced person:**

Except as provided under definition of "[persons not displaced](#)", the term "[displaced person](#)" means any person who moves from real property or moves his or her personal property from the real property:

- A. 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; or
- B. As a direct result of rehabilitation or demolition for a project; or
- C. 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. Eligibility under C

applies only for purposes of obtaining relocation assistance advisory services and moving expenses. (See definition of [Persons Not Displaced](#))

**Dwelling:**

The place of permanent or customary and usual residence of a person, according to local custom or law. It includes 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/manufactured home, RVs used as residence or any other residential unit. **Note:** See definition of [Recreational Vehicle \(RV\)](#).

**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.

**Eligible person:**

Any displaced person who is or becomes lawfully entitled to any relocation payment.

**Entitlement:**

An amount determined by the State as necessary to occupy a comparable replacement dwelling.

**Family:**

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

- A. 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 a part of the family unit, or
- B. Are not related by blood or legal ties but live together by mutual consent.

**Farm operation:**

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 and income.

**Federal Financial Assistance:**

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.

**Financial means:**

To be within the “financial means” of the displaced person means that with the available replacement housing supplement, the displaced person is made – whole as prior to acquisition based on the following:



- A. A replacement dwelling purchased by 90-day owner-occupants is considered to be within the homeowner's financial means if the owner will receive the full replacement housing differential, increased interest costs and incidental expenses.
- B. A replacement dwelling rented by 90-day occupant is considered to be within the person's financial means if after receiving the rental supplement, 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.
- C. For a less than 90-day occupant, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30% 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 amounts designated for shelter and utilities. Rental assistance under this paragraph will be paid under last resort housing.

#### **Functionally equivalent:**

Having the ability to perform the same function, and provides the same utility as the displacement dwelling. While a comparable replacement dwelling need not possess every feature of the displacement, 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. Some possible trade-offs are a separate pantry versus equal kitchen cupboard storage; insulated and heated garage space versus basement workshop; dining area versus separate dining room; and attic storage space versus basement storage. Under unusual circumstances, a DSS replacement dwelling with fewer rooms and less living area may be found to be functionally equivalent to a large run-down substandard displacement dwelling.

#### **Gross monthly household income:**

The average total monthly income of a family or individual irrespective of expenses and voluntary or involuntary deductions (includes gross wages, salary, commissions, fees, tips, Social Security or other retirement income, disability benefit payments, workers compensation, unemployment benefits, public assistance, annuities, insurance policies, pension or death benefits, alimony, child support, military pay, veteran payments, net income from operation of a business, income on assets, such as interest and dividends, net income from rental property, net income from other capital investments). It does not include income received or earned by dependent children and full-time students under 18 years of age.

#### **Hardship acquisition:**

The acquisition of real property for public use prior to the date of Initiation of Negotiations for the approved project, due to a particular hardship on the owner.

### Household income:

The 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, worker's 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.

### HUD:

The area office or, where none exists, the regional office of the [Department of Housing and Urban Development](#) (HUD).

### Illegal alien:

See "Alien not lawfully present in the United States".

### Initiation of Negotiations (ION):

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 required for the project.

**Note:** If the Federal or State agency issues a notice of its intent to acquire 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 actual move of the person from the property.

**Note:** ION also occurs when property is being acquired **without the threat** of eminent domain/voluntary transactions. (See Real Property [Negotiations/Acquisitions Section](#) of manual)

### Initial occupant:

Any person who:

- A. Is in occupancy of real property at the Initiation of Negotiations for the acquisition of the real property in whole or in part; or
- B. Is in occupancy of real property at the time he is given a written notice of the State's intent to acquire the real property by a given date; and
- C. Moves from the real property or moves his personal property from the real property subsequent to the earliest date established in A. or B. above.

### Lawful costs:

When relocation costs are lawfully incurred.

### Lead agency:

The U.S. Department of Transportation acting by and through its Federal Highway Administration.

### Length of occupancy:

Counting the number of days (months, years) that owner/occupant or tenant/occupant actually occupies a dwelling before the date of Initiation of Negotiations on a parcel.

**Less than 90-day occupant:**

Any person who is an initial occupant with less than 90-day occupancy prior to the Initiation of Negotiations.

**Loss of existing patronage:**

The net annual dollar volume of business during the 2 taxable years immediately preceding the taxable year in which the business is displaced. Net loss would be determined by comparing this amount to the estimated net income of the business for the 12-month period after relocation.

**Mobile home:**

A movable home for human habitation, or for carrying persons and property on its own structure and designed to be drawn by a motor vehicle, including trailer homes. This term includes manufactured homes and recreational vehicles used as residences.

**Mortgage:**

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.

**Moving expense:**

The cost of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading, and reinstalling of personal property, including service charges in connection with effecting such reinstallations, reestablishment expenses, personal property losses, search expenses, and necessary temporary lodging and transportation of eligible persons. In lieu of the above, eligible party may receive a fixed payment.

**National:**

A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Non-profit organization:**

An organization that is incorporated under the applicable laws of a State as a non-profit organization and is exempt from paying Federal income taxes under [Section 501](#) of the Internal Revenue Code.

**Notice of Intent to Acquire or notice of eligibility for relocation assistance:**

Written notice furnished a person to be displaced that establishes eligibility for relocation benefits prior to the Initiation of Negotiations.

**Owner:**

A person who purchases or holds any of the following interest in real property:

- A. The fee title, a land contract, a life estate, a 99-year lease, or a lease with at least 50 years to run including options from the date of acquisition of the property; or

- B. An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- C. A contract to purchase any of the foregoing estates or interest; or
- D. Any other interest, including a partial interest, which warrants consideration as ownership.
  - 1. 90-day owner-occupant – an initial occupant who has owned and occupied the dwelling from which he is being displaced for at least 90 consecutive days immediately prior to the Initiation of Negotiations.

**Person:**

Any individual, family, partnership, corporation, or association.

**Person relocated:**

When in fact a person has been relocated by the project or from the right-of-way approved for such project.

**Personal property:**

Generally, movable items, that is those not permanently affixed to and made a part of the real estate. Determining factors to be considered are:

- A. The manner in which it was annexed,
- B. The intention of the party who made the annexation (that is, to leave permanently or remove at some time),
- C. The purpose for which the premises are used.

**Persons not displaced:** (include the following):

- A. A person who moves or has moved before the Initiation of Negotiations unless it's determined that the person was displaced as a direct result of the project; or
- B. A person who initially enters into occupancy of the property after the date of its acquisition for the project; or
- C. A person who has occupied the property for the purposes of obtaining assistance under the Uniform Act; or
- D. A person who is not required to relocate permanently as a direct result of a project as determined by the State; or
- E. An owner-occupant who moves as a result of a voluntary transaction outside of the project area; or
- F. A person whom is not displaced as a direct result of a partial acquisition; or

- G. A person who, after receiving a notice of relocation eligibility, is subsequently notified that he or she will not be displaced for a project. Said subsequent 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 after the date of notice of relocation eligibility; or
- H. An owner-occupant who voluntarily conveys his or her property after being informed in writing that if a mutual agreement of the conveyance terms cannot be reached, the agency will not acquire the property. In such cases, any tenant displaced shall be eligible for relocation assistance and payment; or
- I. A person who retains the right of use and occupancy of the real property for life following its acquisition; or
- J. A person 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 P.L. 93-477 or P.L. 93-303; or
- K. A person who is determined to be in unlawful occupancy prior to the Initiation of Negotiations or a person has been evicted for cause under applicable laws of state or local jurisdiction.
- L. 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 Alien Not Lawfully Present in the United States, [Section 6.260](#).
- M. Tenants required to move as a result of the sale of their dwelling to a person using down-payment assistance provided under the American Dream Down-payment Initiative ([ADDI](#)) authorized by Section 102 of the American Dream Down-payment Act.

**Program or Project:**

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.

**Recreational Vehicle (RV):**

A Vehicular-type unit primarily designed as temporary living quarters for travel, recreational or camping use, which may be self-propelled, mounted upon, or drawn by, a motor vehicle.

**Note:** A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met:

The recreational vehicle is purchased and occupied as the “primary” place of residence; it is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the displacing Agency’s inspection; and, the dwelling, as sited, meets all local, State and Federal requirements for a decent, safe and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

**Relocatee:**

Any person who meets the definition of a displaced person.

**Relocation payment:**

Any payment made under the provisions of the Uniform Act.

**Rent supplement:**

The amount in addition to present rent – or economic rent – which is necessary to enable a displaced person to lease or rent a comparable replacement dwelling, not to exceed \$7,200.00, said amount will be determined by the State in accordance with established procedures.

**Replacement housing payment for 90-day owner:**

The amount, if any, which when added to the amount for which the State acquired his dwelling, equals the actual cost which 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, plus increased interest and incidental expenses, if applicable, the total not to exceed \$31,000.00, or a rent supplement.

**Replacement housing payment for 90-day tenant:**

A rent supplement or an amount that would be required or determined by the State to enable him to make a down-payment on the purchase of a replacement dwelling not to exceed \$7,200.

**Salvage value:**

The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer’s expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this 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 Moving Payments – Businesses, Farms and Non-Profit Organizations, paragraph D.- Reestablishment Expenses, under Moving Payments-[Section 6.262](#), of this manual.

**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.

**Subsequent occupant:**

Any person who commences occupancy after the Initiation of Negotiations for the parcel.

**Tenant:**

Any person, individual, or family who rents, or has the temporary use and occupancy of real property owned by another.

**Uniform Act:**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amendments thereto.

**Unlawful occupant:**

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

**Utility costs:**

Are expenses for electricity, gas, other heating and cooking fuels, water and sewer.

**Utility facility:**

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.

**Utility relocation:**

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 a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also shall 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 the project construction.

**Waiver valuation:**

The valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to [49 CFR 24.102 \(c\) \(2\)](#) Appraisal Waiver Provisions.

## 6.550 FORMS

- 600 Moving Expense Application – Businesses
- 601 Moving Expense Application – Homeowners and Tenants
- 601A Moving Expense Application - Storage Unit Tenant
- 602 Relocation Appeals Form
- 603 Claim for Relocation Payments - Moving Payments & Related Moving Expenses
- 604 Claim for Relocation Payment - Moving Expense Schedule
- 605 Claim for Relocation Payment - Storage Charges
- 606 Claim for Relocation Payment Determined by Department
- 606A Claim for Relocation Payment Determined by Department (Storage Units)
- 607 Request for Payment in Lieu of Moving Expenses - Business, Farm or Non-profit Org.
- 608 Claim for Relocation Payment in Lieu of Moving Expenses – Business, Farm or Non-profit Org.
- 609 Replacement Housing Calculation Sheet
- 610 Statement of Probable Entitlement - Replacement Housing Allowance
- 611 Application and Claim for Replacement Housing Allowance
- 612 Application & Claim for Replacement Housing - Incidental Replacement Housing Expenses & Increased Interest
- 613 Computation of Increased Interest Payment
- 614 Replacement Housing Inspection Report
- 615 Mobile Home Park Occupancy Data Report
- 616 Mobile Home Park Availability Survey
- 617 90-day Notice - Initial Occupant (Residential)
- 617A 90-day Notice - Spanish Letter
- 617B 90-day Notice - Subsequent Occupant
- 617C 90-day Notice - Initial Occupant (Business)
- 618 Inventory of Personal Property to be Relocated



- 619B Non-Residential Relocation Closing Checklist
- 619R Residential Relocation Closing Checklist
- 620 Relocation Diary
- 623 Agreement - Cost of Moving – Commercial Mover
- 624 Agreement - Cost of Moving – Mobile Home Transporting

(See Service Agreement located on Agreement Svcs. SharePoint site for Forms 623 & 624:  
<http://shptsrv1/070/agree/Shared%20Documents/Service%20Agreement%20Shell.doc> )

- 626 Rental or For Sale Listing
- 627 Verification of Income
- 628 Listing - Mobile Home Space/Lot/Estate
- 629 Displacement & Comparable Property Description & Analysis
- 630 30-day Notice (letter format)
- 631 General Information Notice - Relocation Assistance
- 632 Letter for Escrow Services
- 633 Last Resort Housing Landlord Agreement
- 634 Self-Move Option - Fixed Rate Schedules (Exhibit "A")
- 635 Property Management Notice B
- 636 Notice of Intent to Acquire

"Protective Rent" Agreement - See Form 519PR

**Administrative Services Agreements:**

1. Service Agreement
2. Amendment

Go to: <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>

## 6.600 LEGAL

### 6.650 INTRODUCTION

- A. It is the purpose of this section of the Right-of-Way Manual to set forth the basic responsibilities, policies and procedures of Legal Services as they affect the Right-of-Way Division, the Deputy Attorneys General, Right-of-Way Agents and Right-of-Way Supervisors.
- B. Legal Services (also known as the Attorney General's Transportation Division) consists of a Chief Deputy Attorney General/Chief Counsel, several Senior Deputy Attorneys General, and several Deputy Attorneys General employed by the Attorney General and assigned to the Department of Transportation. It also employs two Tort Claims Adjusters a Legal Researcher and Legal Secretaries assigned to the Department. Department employees assigned to and supervised by the Chief Deputy Attorney General and housed with Legal Services include a Condemnation Coordinator and an Assistant Condemnation Coordinator. The Condemnation Coordinator supervises the Assistant Condemnation Coordinator and an Engineering Technician IV, a Department employee also housed with Legal Services.
- C. Legal Services provides what its name indicates – legal services to the Department. The legal services include and are not limited to advice and counsel on legal questions and procedures, and the effect of proposed actions or non-actions, review and preparation of legal documents including agreements and contracts and court filings. Legal Services is accessible and available to all of the Department's Divisions at all times in any matter which affects the Department directly or indirectly. Legal Services' client is the Department as a state agency and while this may include defense of individual Department employees, the Department remains the primary client.
- D. Legal Services works closely with the Right-of-Way Division and its several sections on all legal issues. It provides advice and counsel on statutory and constitutional limitations and interpretation of state procedures, prepares and approves legal documents, prepares and assists in acquiring the necessary property needed by the Department for highway improvements and assists in all matters relating thereto.
- E. Legal Services provides assistance to the several District Engineers and Resident Engineers on any legal issues and problems which may arise. It provides assistance in preparing, attending and defending the adequacy of public hearings, administrative regulations and other necessary procedures.

- F. Legal Services, in collaboration with other Department personnel, develops proposals for legislative action to amend, add or repeal the Nevada Revised Statutes to conform to federal legislation, regulations or directives and to further enable the Department to carry out its required duties as primarily set forth in Chapters [408](#) and [410](#) of the Nevada Revised Statutes.
- G. Legal Services handles condemnation proceedings for the Department unless there is a conflict of interest or the project is beyond Legal Services' staffing resources, in which case outside counsel may be employed.

## 6.700 RESPONSIBILITIES

### 6.701 Attorney General, State of Nevada

The Attorney General is the Chief Legal Officer of the state and appoints the Chief Deputy Attorney General/Chief Counsel who leads Legal Services comprised of senior deputy attorneys general, deputy attorneys general, tort claim adjusters, a legal researcher and legal secretaries.

### 6.702 Chief Deputy Attorney General/Chief Counsel

- A. The Chief Deputy Attorney General/Chief Counsel ("Chief Counsel") leads Legal Services. This individual is responsible to the Attorney General and acts as the attorney and legal advisor of the Department in all actions, proceedings, hearings and all matters relating to the Department and to the powers and duties of its officers. The Chief Counsel also provides counsel and advice specifically to the Department's Director and the Board of Directors of the Department of Transportation. The Chief Counsel attends Board of Directors' public meetings and approves and endorses as to legality and form all contracts, instruments and documents executed by the Department. The Chief Counsel also attends meetings and conferences and interacts with federal, state and local agencies or officials in matters pertaining to their and the Department's mutual interests.
- B. The Chief Counsel coordinates and assigns cases and provides general guidance to Legal Services' deputy attorneys general, outside counsel, and staff, initiates administrative and operational policies and procedures is generally responsible for the control and supervision of Legal Services. The Chief Counsel also monitors and coordinates with outside counsel.
- C. The Chief Counsel or an assigned Senior Deputy Attorney General or Deputy Attorney General participates with and advises Condemnation Review Boards as to whether all necessary state and federal procedural requirements pertaining to property acquisition have been followed. This individual is currently a non-voting participant. The Condemnation Coordinator and Assistant Condemnation Coordinator also participates with the Condemnation Review Board and advises it as to whether or not a condemnation action should be recommended on

property that cannot be acquired through the negotiation process. They are currently non-voting participants.

- D. The Chief Counsel initiates status and informative reports and data as requested by the Attorney General, the Assistant Attorney General, the Department's Director, the Board of the Directors of NDOT, the Federal Highway Administration representatives and State Legislature.

### **6.703 Senior Deputy Attorneys General and Deputy Attorneys General**

Under the direction of or upon assignment by and in the absence of the Chief Counsel, the Senior Deputy Attorneys General and the Deputy Attorneys General have authority to perform any duty required or permitted by law to be performed by the Chief Counsel.

### **6.704 Condemnation Coordinator**

The Condemnation Coordinator as necessary: furnishes liaison assistance between Legal Services and the Department's multiple Divisions and outside counsel and consultants; contracts with Fee Appraisers and other expert witnesses; independently reviews the appraisal reports, title search and files of properties recommended for condemnation for completeness and accuracy; evaluates assembled data and prepares an analytical report for Legal Services; coordinates the preparation of all additional material and data required for court action such as exhibits, photographs, missing data, etc.; ensures that all original source data is returned to permanent files upon conclusion of court action; is currently a non-voting member of the Condemnation Review Board and attends project status meetings, Legal Services and other legal, and right-of-way staff meetings.

### **6.705 Assistant Condemnation Coordinator (Staff Specialist – Legal)**

Under the direction of or in the absence of the Condemnation Coordinator, the Assistant Condemnation Coordinator has the responsibility to perform any duty required to be performed by the Condemnation Coordinator.

### **6.706 Engineering Technician IV**

Under the direction of the Condemnation Coordinator and/or the Assistant Condemnation Coordinator, the Engineering Technician IV has the responsibility to perform various duties, including but not limited to, the evaluation of assembled data, the preparation of additional material and data required for court action such as exhibits, photographs, missing data, and the maintenance of the Legal Services' permanent Department working files.

## **6.750 POLICY**

### **6.751 Property Description**

Property descriptions used by Legal Services in the condemnation resolutions and condemnation complaints are prepared by and checked by Right-of-Way Engineering personnel and double checked by the Condemnation Coordinator, Assistant Condemnation Coordinator and Engineering Technician IV against a set of the approved right-of-way plans.

### **6.752 Review of Appraisals**

Appraisal reports and valuation findings are informally reviewed by the Condemnation Coordinator and additionally by the Right-of-Way Reviewing Appraisers, when requested by Legal Services.

### **6.753 Cost Coding**

Costs are coded and itemized for each case filed in accordance with the Department's Cost Code System. A list of costs and amounts deposited with the clerk of the court pursuant to statute or court order is maintained in each case file.

### **6.754 Case Preparation Checklist**

Written guidelines are available as a checklist for the preparation of cases. In addition each attorney and assigned legal secretary check to ensure against oversights, that documents are not misplaced or not available and that court procedures are strictly followed.

### **6.755 Outside Counsel**

It is the goal of the Attorney General's Office and the Department to not use outside counsel except under unusual or necessary circumstances.

### **6.756 Legal Services Case Responsibility**

Legal Services handles cases throughout the state and may, upon request and pursuant to agreement, assist local entities in highway related projects either by joint or sole appearance in court actions or other necessarily related matters.

### **6.757 NRS 37 and NRS 408**

Chapters 37 and 408 of the Nevada Revised Statutes govern state condemnation proceedings. In addition, proceedings are conducted pursuant to the Nevada Rules of Civil Procedure and Federal Rules of Civil Procedure and applicable state and federal appellate procedures.

### **6.758 Drafting of Contracts**

Legal Services drafts, or assists in drafting, standard legal contracts, leases, agreements and other documents in conformance with state, federal and local requirements.

### **6.759 Endorsement of Contracts**

All contracts, instruments and documents executed by the Department must be first approved and endorsed as to legality and form by the Chief Counsel or designee thereof.

### **6.760 Surrender of Possession by Owner**

No owner shall be required to surrender possession of real property until the Department has paid the agreed purchase price or deposits with the court, for the benefit of the owner, an amount not less than the Department's approved appraisal of the fair market value of the property. A copy of the appraisal must be provided to the owner prior to the Department obtaining possession.

### **6.761 Coercion**

The Department shall not advance the time of condemnation or defer negotiations or the deposit of funds in court for the use of the owner or take any other action coercive in nature to compel an agreement on the price to be paid for the property.

## **6.800 PROCEDURES**

### **6.801 Procedures for Use of Outside Counsel**

On any occasion where Legal Services has a conflict of interest in the acquisition of real or personal property by negotiation or condemnation or when deemed necessary by the Chief Counsel and approved by the Director, outside counsel may be employed. The Director of the Department must approve any contract for such services.

### **6.802 Condemnation Coordinator Procedures**

- A. The following procedural guidelines are set forth to promote and enable the consistent and thorough evaluation and preparation of actions for the condemnation of property by the Department. The guidelines are set forth as a step-by-step process, primarily coordinated by or through the Condemnation Coordinator, so that all aspects of the facts concerning subject properties are identified, considered, and that all prudent steps are taken to ensure that condemnation actions are fully prepared for trial. The Condemnation Coordinator's primary responsibilities include, gathering information to enable the timely and accurate filing of condemnation actions, acting as the primary liaison between the Right-of-Way Division and Legal Services, facilitating the flow of information between the Department, the Right-of-Way Division, and Legal

Services, assisting the attorney in the preparation of condemnation cases and aiding the attorney during the course of the trial. References hereafter to “the attorney” may include the Chief Counsel, deputy attorneys general and outside counsel.

1. Pre-Referral Duties

- a. A condemnation package is prepared by the Right-of-Way Division when it becomes apparent that a parcel or parcels will not be successfully acquired through the negotiations process in time to accommodate the Department’s proposed construction schedule or, when negotiations reach an impasse. The Negotiating Agent prepares a condemnation package for each acquisition that includes a copy of the Negotiator’s Report to Legal followed by the applicable items (1) through (13), as listed in Section 16 of the report (See Negotiator’s Report to Legal Division, Form 561) and the Synopsis of Negotiator’s Report to the Legal Division (Form 917). (See Condemnation, [Section 5.422](#) in the Negotiations Section)

Depending on the number of acquisition referrals, the condemnation package is submitted to the Condemnation Coordinator at least two weeks, and preferably longer, prior to convening the Condemnation Review Board.

- b. Upon receipt of the condemnation package, the Condemnation Coordinator will thoroughly review its entire contents and may, to the greatest practicable extent, field review and thoroughly inspect the external premises of the subject property. The Condemnation Coordinator may interview the assigned acquisition Agent to review the history of the negotiation. The Condemnation Coordinator will review available design plans, along with specific construction limits when available, and may review the area proposed to be acquired with the roadway designer to verify and understand the need for the acquisition.
- c. A Condemnation Review Board (“Review Board”) will be convened at the request of Right-of-Way administration when it becomes apparent that property needed for a project cannot be successfully acquired through negotiations. The Review Board may be composed of the following **voting** members: Chief Right-of-Way Agent, as Chairman or designated alternate thereof; Deputy Chief Right-of-Way Agent or designated alternate thereof; District Assistant Chief Right-of-Way Agent; District Supervisory Right-of-Way Agent; Supervisory Right-of-Way Agent – Appraisal;

Supervisory Right-of-Way Agent – Utilities or appointee; and Staff Specialist for Negotiations.

The following are currently **non-voting members**: the Negotiating Right-of-Way Agent; Chief Counsel or appointee; and Condemnation Coordinator or appointee.

Condemnation referrals will not be considered without the attendance of the Chief Counsel and the Condemnation Coordinator or their appointees.

The following attendees may be invited, as **non-voting members**, upon request: Project Manager; and non-Right-of-Way or Legal Services personnel, including, but not limited to, other Department employees, consultants and or service providers.

- d. At the Review Board, the purpose of the property acquisition, negotiation history, current status of the negotiation and whether or not a good offer has been made will be reviewed. The Condemnation Coordinator and Assistant Condemnation Coordinator will participate in the Review Board discussions and will ask appropriate questions based on their prior review of the impending action to determine the interests to be condemned and reasons for initiation of condemnation proceedings. After reviewing the status of the negotiation, the Review Board will discuss the matter and decide by majority vote whether to refer the acquisition to Legal Services. The Chief Counsel or designee, Condemnation Coordinator, and Assistant Condemnation Coordinator are currently non-voting participants. If the property is referred for condemnation, Legal Services will then seek authority from the Transportation Board of Directors to commence condemnation proceedings.

## 2. Duties Upon Receipt of Referred Parcel

- i. After a parcel is referred for condemnation, the Condemnation Coordinator, Assistant Condemnation Coordinator and the Engineering Technician IV thoroughly review the provided title package and performs a thorough title search sufficient to ensure that all owners and occupants of the property are identified, along with any and all liens and encumbrances including financial documents of record (in some cases this will be an abstract of title).



The Engineering Technician IV organizes and summarizes the title data procured and provides two copies of the title summary and all supporting documents to the Condemnation Coordinator or the Assistant Condemnation Coordinator who thoroughly review the entire package. One copy of this package is provided to the attorney assigned to the case and the Condemnation Coordinator retains one duplicate copy for the office file. The Engineering Technician IV obtains copies of the final signed-off legal descriptions and right-of-way plans prepared by the Right-of-Way Engineering Section relating to each acquisition and verifies the description and area, checks the right-of-way plans against the final signed-off legal description for accuracy, has these modified, if necessary, by Right-of-Way Engineering and reports the results of their work to the Condemnation Coordinator and/or Assistant Condemnation Coordinator who reviews the rechecking done by the Engineering Technician IV.

The Condemnation Coordinator, through the Engineering Technician IV, then determines a physical address for each defendant to be named in the condemnation action so that each defendant can be legally served the summons and complaint. The Condemnation Coordinator, Assistant Condemnation Coordinator and Engineering Technician IV check the title report and supporting documents to reaffirm the parties to be named in the condemnation resolution and pleading documentation.

- ii. The Engineering Technician IV works with Right-of-Way Engineering to assign colors for each property owner delineated on the set of right-of-way plans that are an attachment to the condemnation resolution. They also coordinate the preparation of a location sketch map prepared by Right-of-Way Engineering which gives a general overview of the location of the project for inclusion in the Transportation Board package.
- iii. At this point, the Condemnation Coordinator and/or Assistant Condemnation Coordinator prepare the condemnation resolution for review by the Chief Counsel. The condemnation resolution must clearly state the property interest(s) to be acquired (fee, easement, temporary easement) the purposes for the acquisition of the property (to accommodate the highway project and/or provide replacement utility easements, etc., the Department is obligated to provide), and must name the vested owner of record. After incorporating any changes made by the Chief Counsel, the Condemnation Resolution is finalized and signed by the Chief Counsel.

- iv. The Condemnation Coordinator and the Assistant Condemnation Coordinator thoroughly review each condemnation package for content. They prepare a Condemnation Referral Report which includes the project description, immediate entry data, title report data, the list of defendants (including those entities who are in trespass), with service address information, appraisal data, photo and map exhibit data, the area being acquired and the environmental data and physical features of the acquisition area and remainder, if any. The most important item in this report for use in gaining immediate occupancy is the defendant list with the service addresses. The function of the Condemnation Referral Report is to provide the attorney assigned to the case with a broad overview of the project, the area being acquired, the negotiations issues and any title or valuation deficiencies.
- v. The Condemnation Coordinator and/or the Assistant Condemnation Coordinator prepare a Transportation Board Memo that is a part of the transportation board package which is sent to the board members prior to the Transportation Board meeting. The memo contains a brief synopsis of the project, ownership, characteristics of the property owned, the necessary acquisition, date(s) of offer, the appraised compensation and the status of the negotiations. A copy of the Transportation Board Memo is given to the Chief Right-of-Way Agent for review. After incorporating any changes made by the Chief Right-of-Way Agent the memo is finalized and signed by the Chief Right-of-Way Agent.
- vi. Once the Transportation Board Memo, Location Sketch Map, Condemnation Resolution, and right-of-way plans are finalized, Sections [408.503](#) and [241.034](#) of the Nevada Revised Statutes are included to create the Transportation Board package. A copy of this package is given to the Front Office for review. After incorporating any changes made by the Front Office, the transportation board package is finalized. Legal Services provides Right-of-Way Administration with the original transportation board package for copying and distribution. The Assistant Condemnation Coordinator retains a copy of the transportation board package for distribution to the Chief Counsel, Condemnation Coordinator, Chief Right-of-Way Agent, Deputy Chief Right-of-Way Agent, Assistant Chief Right-of-Way Agent (North and/or South), Supervisory Right-of-Way Agent (North and/or South) and Right-of-Way Engineering.

- vii. After approval by the Board of Directors, the original Condemnation Resolution and attachments are returned to the Condemnation Coordinator under memorandum from the Chief Right-of-Way Agent. The Assistant Condemnation Coordinator sends the original transportation board package to Central Files for retention.

3. Duties Following Resolution of Condemnation

**In the following sections, the references to the Condemnation Coordinator also pertain to the Assistant Condemnation Coordinator.**

- a. The Condemnation Coordinator arranges to have the pleadings prepared (the complaint, the summons for each defendant, the motion for and the proposed order granting immediate occupancy, the Lis Pendens, the service instructions and receipt of service prepared, and any other necessary documents required by the applicable district court, using the data in the Condemnation Referral Report. The Condemnation Coordinator thoroughly checks all of the documents for accuracy, prior to filing the condemnation action. The drafted pleadings are given to the Chief Counsel for review. After review by the Chief Counsel, the Condemnation Coordinator incorporates any changes made by the Chief Counsel, and obtains sufficient copies of the right-of-way plans to attach one copy for each defendant, two copies for the court clerk to be filed with the complaint, and four copies for the Legal Services' files. The Condemnation Coordinator requests a warrant, commonly known as a check, for the court deposit from the Right-of-Way Division, at least two weeks in advance of the date of the occupancy hearing, to allow for the processing of the purchase order and issuance of the State's warrant.
- b. Either before or after filing, the case is assigned to an attorney with whom the Condemnation Coordinator reviews the file, including aspects relating to use and necessity of the property. The Condemnation Coordinator makes sure that, in addition to the information already in the legal file, the motion for order permitting occupancy has an Affidavit of Public Use, Necessity and Value attached that is signed by the Chief Right-of-way Agent, or their designee. If it appears that the occupancy may be contested, the Condemnation Coordinator arranges to have the appropriate witness for valuation and necessity at the occupancy hearing in the event testimony is needed. A copy of the Affidavit of Public

Use, Necessity and Value discussed above must be attached to the warrant/court deposit submitted to the court clerk.

- i. After the order for occupancy is granted, the Condemnation Coordinator arranges to have the property appraised using a date of value acknowledging the date of service of the summons on the first defendant in the action. In cases involving partial acquisitions with the potential for large damages to the remaining property, or in expensive properties (normally \$500,000.00 or more), consideration shall be given to having two appraisals. The Condemnation Coordinator shall also arrange meetings with persons most knowledgeable and expert witnesses as necessary during the preparation of the case, and the Condemnation Coordinator shall hire expert witnesses as needed to assist in the preparation and presentation of the State's case. The expert witnesses may include appraisers, engineering witnesses (Department staff engineers will be utilized where practicable), land use planners, billboard valuation experts, environmental specialists, market analysts, hydrologists, traffic, and/or noise specialists, etc. The Condemnation Coordinator will prepare the service agreements to hire these specialists, will coordinate their efforts with the case development, and will process required payments to them through the Right-of-Way Division.
  - ii. When the conformed copy of the Lis Pendens is received by Legal Services, a copy is provided to the appropriate District Supervisory Right-of-Way Agent. At this time, the Negotiating Right-of-Way Agent should send a letter to the property owner, or their representative citing that any further negotiations will be handled through Legal Services. A copy of said letter should be provided to the Condemnation Coordinator for inclusion in the Coordinator's working file and the assigned attorney's working file.
- c. The Condemnation Coordinator reviews the case with the assigned attorney prior to the early case conference required by [Nevada Rules of Civil Procedure](#) (NRCP) 16.1 to ensure that the attorney has all information available to enable the attorney to make full and proper discovery requests of the property owner's counsel and to ensure that appropriate information is disclosed by the State under the court rules.

- d. The Condemnation Coordinator shall assist in the preparation of and review answers to interrogatories, requests for production of documents and requests for admissions and will attend depositions of property owners and their expert witnesses upon the request of the attorney.
- e. The Condemnation Coordinator will monitor the status of work being performed by the State's expert witnesses, set needed meetings with the experts to assess the State's case, and shall be available to participate in strategy sessions to determine how the State's case is to be presented and to assist in anticipating the case to be presented by the property owners. The Condemnation Coordinator may also have appraisals submitted by the State's expert witnesses to the Appraisal Review Section of the Right-of-Way Division to be checked, although not formally reviewed.
- f. The Condemnation Coordinator shall arrange to have needed exhibits, including aerial and ground level photographs, charts and sales maps, and other exhibits as needed, prepared by the Engineering Technician IV for the trial. The exhibits will be complete and available one month before the trial insofar as is practicable.
- g. The Condemnation Coordinator may participate in Alternative Dispute Resolution (ADR), or arbitration meetings. This is a settlement procedure in which a third party reviews the case and imposes a decision that is legally binding for both sides. Other forms of ADR include mediation, a form of settlement negotiations facilitated by a neutral third party. Arbitration can be either voluntary or mandatory and can be either binding or non-binding. The principal distinction is that a mediator attempts to help the parties in the lawsuit find a common or middle ground on which to compromise, whereas the non-binding arbitrator does not attempt to settle the lawsuit. They review the facts and give a determination of liability, and, if appropriate, an indication of the quantum of damages payable.
- h. When it becomes certain that settlement of the case is unlikely and that a trial will most likely be necessary, the Condemnation Coordinator obtains copies of all deeds for the comparable sales to be used at trial, both those of the State and the property owner, arranges to have them plotted on a sales map, prepares a comparable sales book containing all relevant data regarding each comparable sale, arranges to physically review each sale with the

assigned attorney, takes photos of each sale as needed, notes conditions of the comparable sale and the surrounding area including all relevant factors such as recent area or site changes, and the local street configuration and utility availability. The review of the comparable sales performed by the Condemnation Coordinator and the attorney is then compared to the analysis and comments of the comparable sales performed by the applicable appraiser.

- i. In conjunction with the Department's appraiser, the Condemnation Coordinator and the assigned attorney repeat the physical review of all comparable sales expected to be used at the trial (although somewhat redundant, the additional review of the sales is necessary to provide maximum familiarity with them and to ensure that all relevant knowledge is gained). Any sales which seem suspicious or which were verified from the public record are re-verified with the buyer or seller, or the broker handling the transaction, insofar as practicable. The sales will preferably be re-verified with the buyer so the buyer's motivation and constraints can be assessed. The Department's appraiser will be provided with all information relating to the comparable sales used by the property owner's appraiser so that the Department's appraiser can assess and verify them, preferably with the buyer. The local planning office and utility company offices will be checked to determine if all aspects of the comparable sales have been accurately stated and considered to ensure that legitimate comparisons have been made to the property being condemned. The existing utilities available to the site and the streets available for access, as of the date of sale, must be assessed to determine comparability to the parcel being condemned.
- j. At least thirty days prior to the scheduled trial, the Condemnation Coordinator will provide all the exhibits prepared for use at trial to the assigned attorney for review and will arrange to have the exhibits at the trial at its commencement. The exhibits may not all be taken to the courtroom at the commencement of the trial but will be available as needed for use and introduction.
- k. The Condemnation Coordinator attends the trial, takes accurate notes as to the testimony being presented and provides these notes to the attorney trying the case. The Condemnation Coordinator tracks and records all exhibits being offered and entered and provides an updated listing to the attorney of such exhibits. The Condemnation Coordinator will, at the direction of the attorney, contact the State's witnesses to coordinate and

arrange their appearance for testimony, and will be available to check information as it comes forth during the trial. The Condemnation Coordinator will prepare or arrange to have prepared exhibits that are determined to be necessary during the trial and will modify or change existing exhibits as needed. The Condemnation Coordinator will closely observe all proceedings, including jury reactions to testimony or evidence presented and will note and report all observations to the attorney.

- I. After the trial, the Condemnation Coordinator will interview as many of the jurors as possible, particularly the jury foreperson, to determine the reasons for the verdict rendered and to learn the jury's impression of the State's presentation of its case. The Condemnation Coordinator will attempt to determine those areas that the jury liked and found helpful, in terms of witnesses, exhibits and overall presentation, and also the areas the jury did not like, found confusing, or did not understand or believe and report the findings to the attorney.
- m. The Condemnation Coordinator will start preparation of the Report of Trial, preparing and completing the areas of factual data, and will transmit the partially completed form to the attorney to be completed. The completed Report of Trial must accompany the purchase order requesting the payment for the jury award, and the purchase order must be requested expeditiously to minimize the interest charges assessed. The actual purchase order will be prepared and requested through the Right-of-Way Division by the Condemnation Coordinator. All interest calculations will be made by the Right-of-Way Management Analyst and may be verified by the Condemnation Coordinator.
- n. The Condemnation Coordinator will retrieve any needed exhibits after their release by the court.

#### 4. Duties Upon Closing a Case

- a. In the event a case is settled prior to going to trial, the Condemnation Coordinator prepares or assists in the preparation of the proposal for legal settlement, including assisting with writing the justification, and processes the payment for the settlement through the Right-of-Way Division. A copy of the approved proposal for legal settlement must accompany the purchase order processed for payment. All proposed legal settlements of condemnation actions must be reviewed by Right-of-Way administration and approved by the Department's Director or their authorized representatives. For highway projects funded in whole

or in part by federal funds, concurrence of the settlement should be sought from Federal Highway Administration.

- b. The Condemnation Coordinator will actively maintain the Condemnation Coordinator's file until the case is closed and will review the legal file, insuring that it contains all relevant data, until the case is closed and the file is transmitted to central records for final filing in the Department's records.
- c. The Condemnation Coordinator will review all bills submitted by retained expert witnesses and will process them for payment.
- d. The Condemnation Coordinator will develop and maintain a status report of all condemnation cases.

#### **6.803 Procedures for Additional Appraisals**

- A. Appraisals are contracted for by Legal Services to conform to the legal date of value.
- B. Multiple appraisals may be commissioned if the value of the property is of such a magnitude that an additional appraisal is warranted.
- C. The Chief Reviewing Appraiser may be requested by Legal Services to obtain a reappraisal if the preparer of the appraisal for negotiation purposes is retained as an expert witness for trial purposes.

#### **6.804 Settlement Procedures**

- A. The attorney assigned to the case reviews all documentation and history contained in the parcel file. The attorney consults personally with the Right-of-Way administration and other personnel of the Right-of-Way Division, including the Condemnation Coordinator and the Assistant Condemnation Coordinator. The attorney attempts to arrive at a settlement with the property owner and/or the property owner's attorney. If immediate occupancy is required, the settlement attempts may be made concurrent with the filing of a condemnation action.
- B. If the settlement attempt is successful, the attorney prepares written support of the settlement proposal requesting settlement authority to a maximum amount. The settlement proposal is recommended by the Chief Right-of-Way Agent, or designee, Trial Counsel and the Chief Counsel, with approval requested by the Department's Director, or their designee. Support for the settlement proposal follows guidelines outlined in the federal highway program manuals and contains as a minimum:



1. Reason for the settlement.
  2. Appropriate support data.
  3. An explanation of the attorney's opinion of the risks or exposure if the case is taken to trial.
  4. The settlement is compatible with the greatest public good and the least private injury.
- C. Payment for the property settlement is processed by the Right-of-Way Division. Legal Services' request for payment is typically accompanied by a fully executed settlement agreement and a copy of the memorandum memorializing settlement authority from the Director's office. The original approved settlement recommendation and settlement authority memo are filed in the attorney's working file.

#### **6.805 Pretrial Procedures**

- A. The condemnation complaint is filed in the state district court for the county in which the land is situated.
- B. To enable the Right-of-Way Division to be able to certify the project and obligate the project funding, an order for immediate occupancy pending entry of judgment may be obtained from the district court pursuant to either stipulation between NDOT and the property owner or after an occupancy hearing. A copy of the order for immediate occupancy is forwarded to the Condemnation Coordinator and/or the Assistant Condemnation Coordinator for distribution, by memo, to members of the Right-of-Way Division for inclusion in their working files. Copies should be distributed to the District Supervisory Right-of-Way Agent, Chief Right-of-Way Agent, and the Staff Specialist – Negotiations. If the property is improved, a copy of the order for immediate occupancy should also be distributed to the Staff Specialist - Property Management for relocation of owner of tenants, verification of physical inventory and clearance of the right-of-way.

#### **6.806 Trial Report**

- A. After trial has been completed, the attorney with assistance from the Condemnation Coordinator prepares a signed statement entitled "Report of Trial" containing as a minimum:
1. An explanation of any substantial variance between the Reviewing Appraiser's determination of value and the amount of the State's testimony at trial or the amount stipulated to by both parties and submitted to the court.

2. A brief factual account of the trial, including the range of testimony and the major issues.
3. Comments on availability of prejudicial legal errors, or other basis for appeal.
4. An explanation of action regarding motions for remittitur, new trial or the taking of appeal.

#### **6.807 Case Files and Safeguarding of Records**

- A. Legal Services or the outside counsel prepares and maintains a case file on each case. Copies of all important documents shall be forwarded to the Right-of-Way Division for inclusion in the parcel file. These include, but are not limited to:
  1. Notice of pendency of action (Lis Pendens).
  2. Any order for occupancy (also any stipulations for occupancy).
  3. Recorded and certified copy of Final Order of condemnation for inclusion in the next Lands Acquired Report.
- B. Copies of the correspondence with property owners, property owner's attorneys, and appraisal or valuation witnesses are to be found in the legal files. Much of the preceding is deemed to be attorney work product and of possible use in future cases.

#### **6.808 Right-of-Way Liaison - Condemnation Coordinator, Assistant Condemnation Coordinator, and Engineering Technician IV**

- A. Property Management and Relocation

It is the Condemnation Coordinator and/or the Assistant Condemnation Coordinator's responsibility to notify the District Supervisory Right-of-Way Agent and Right-of-Way Control's Management Analyst of the occupancy date by submitting to them a copy of the order for immediate occupancy or stipulation and order granting right of occupancy.
- B. Appraisal Review

The Condemnation Coordinator and the assigned attorney may work with the Reviewing Appraiser when legal questions arise on appraisals for condemnation cases.

C. Right-of-Way Negotiation

A deputy attorney general, outside counsel, the Condemnation Coordinator and/or the Assistant Condemnation Coordinator may work with the District Supervisory Right-of-Way Agent and the Negotiating Right-of-Way Agent to settle cases, which have been referred for condemnation action.

D. Engineering Technician IV

The Engineering Technician IV may work with the Right-of-Way Engineering Section in the production of the attachments to the Condemnation Resolution, exhibits to the court pleading documents and to resolve discrepancies involving title, mapping and legal descriptions for cases referred for condemnation.

## 7.000 UTILITIES

### 7.100 INTRODUCTION

The sections of this manual have been prepared for the purpose of developing a set of procedures that will satisfactorily meet the requirements of the certification acceptance procedures provided in [23 CFR Part 645](#) Utilities, Subpart A – Utility Relocations, Adjustments and Reimbursement; and [23 CFR Part 645](#) Utilities, Subpart B – Accommodation of Utilities, [23 CFR Part 646](#) Railroads, Subpart A – Railroad Highway Insurance Protection; and [23 CFR Part 646](#) Railroads, Subpart B – Railroad Highway Projects, and [23 CFR Part 750](#) Highway Beautification as set for in the [Code of Federal Regulations](#), Nevada Revised Statute ([NRS](#)) [Chapter 408](#), Nevada Administrative Code [NAC Chapter 408](#), Transportation Policies ([TP's](#)) and to update existing procedures to comply with the more recent Federal and State directives.

### 7.150 PURPOSE

This manual is not intended to be all-inclusive, but rather is intended to delineate the necessary steps, in their proper order, leading from inception to ultimate conclusion of utility involvement in a highway project. The main purpose of this manual is to provide not only conformance with governing statutes, rules and regulations, but is to promote consistency and equality in the applications of such rules and regulations.

The last section, Policy on the Accommodation and Installation of Utilities ([Section 7.700](#)) is a comprehensive update and revision of the Department's policy on the accommodation and installation of utilities on State and Federally-Aided Highways. This was prepared in the interest of safety and protection to the traveling public and to allow future development of highways with a minimum of conflict to utility installation and highway construction.

It is the Department's intention that this Manual will provide a clear and comprehensive description of its utility policy and procedures.

This Manual supersedes "Outdoor Advertising Control Job Handbook" and the "Outdoor Advertising Control Manual" as well as previous issues of the Utility Manual and is effective upon receipt.

### 7.200 RESPONSIBILITIES

- A. The Utilities Section is established as a section of the Right-of-Way Division. The Chief Right-of-Way Agent has delegated necessary authority to the Supervisory Right-of-Way Agent, Utilities Section, to meet the established responsibilities of the Section. The Utilities Section is comprised of a Supervisory Right-of-Way Agent and five Right-of-Way Agents at District I and

Headquarters, a Permit Coordinator and Engineering Technician at Headquarters. Additionally, each of the Districts has one or more Utility Inspectors who provide field functions related to utility and railroad adjustments, outdoor advertising and junkyard control, and encroachment permit processing. These Districts include:

1. District I, Las Vegas – 4 Utility Inspectors
  2. District II, Reno – 2 Utility Inspectors
  3. District III, Elko – 2 Utility Inspectors
  4. District III, Ely – 1 Utility Inspector
  5. District III, Winnemucca – 1 Utility Inspector
- B. The Supervisory Right-of-Way Agent, Utilities Section, provides technical assistance and advice to the Utility Inspectors. The District I Right-of-Way Office is responsible for all utility related matters within their jurisdiction; however, the Utilities Section performs liaison functions between the Department and the utility companies.

By delegation of authority from the Assistant Chief Right-of-Way Agent, each Supervisory Right-of-Way Agent shall direct and supervise the activities of District Right-of-Way Agents who work within their jurisdictional area. The Supervisory Right-of-Way Agent shall ensure that all policies and procedures specified in this manual are followed.

- C. The Staff Specialist – Utilities has numerous responsibilities. They are as follows:
1. Responsible for administrative coordination of the periodic Right-of-Way manual changes.
  2. Research, interpret and apply Federal and State laws.
  3. Liaison between Department and FHWA relative to utilities, railroad, junkyard regulation, outdoor advertising, encroachment permits and telecommunications in highway right-of-way.
  4. Consult with Right-of-Way District Supervisors on special problems of utilities, railroad, junkyard regulation, outdoor advertising, encroachment permits and telecommunications.

5. Prepare required reports for the Department and FHWA on utilities, railroad, junkyard regulation, outdoor advertising, encroachment permits and telecommunications.
  6. Coordinate programs with other government agencies.
  7. Coordinate with the Staff Specialists, for Relocation and Property Management and Appraisal and Negotiations to continue functions of either position during the absence or vacancy of either position.
  8. Assist management with special studies and other related assignments pertinent to the division.
- D. Right-of-Way Agent works under the direct supervision of the Supervisory Right-of-Way Agent. It shall be the responsibility of the individual Agents to familiarize themselves with, and adhere to, the current policies and procedures presented in this manual.

## 7.250 UTILITY RELOCATION

### 7.251 Authority, Rules and Regulations

The authority, rules and regulations governing utility relocation are delineated below:

- A. Title 23, Code of Federal Regulations, Part 645 Utilities, Subpart A ([link](#))
- B. Title 23, Code of Federal Regulations, Part 645 Utilities, Subpart B ([link](#))
- C. Nevada Revised Statutes [408.407](#) and [408.423](#)
- D. Nevada Administrative Code [408.010](#) through [408.557](#)
- E. Transportation Policy ([TP](#)) 1-10-1
- F. Rule 9

## 7.300 DEFINITIONS

### ADA:

Americans with Disability Act ([link](#)).

### Authorization:

Any written authority granted by the Department to a utility to begin any phase of a project.

**Backfill:**

The material used to replace or the act of replacing material:

- A. During Construction; or
- B. Adjacent to a structure or around and over a pipe or conduit.

**Betterment:**

Any improvement of a utility's facility being adjusted or relocated which is not attributable to the project of the Department and is made primarily for the benefit and at the election of the utility owner.

**Carrier:**

Pipe directly enclosing a transmitted fluid (Liquid or Gas).

**Casing:**

A larger pipe, conduit, or duct enclosing a carrier.

**Clear Zone:**

The total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry.

**Conduit:**

An enclosed tubular runway for protecting wires or cables.

**Consultant:**

An individual or firm providing professional services as a party to the agreement. The firm may be a proprietorship, partnership, corporation, co-venture, or joint venture. The term "consultant" includes not only individual engineers and engineering firms, but also professionals in other disciplines.

**Control of Access:**

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

**Cost of Relocation:**

The entire amount paid by a utility properly attributable to the relocation of its facilities, including removal, reconstruction and replacement after deducting therefrom any increase in value of the facility and any salvage value derived from the old facility, and includes the costs of all rights

and interests necessary in land and the costs of any other rights required to accomplish such relocation.

**Cost of Removal:**

The money spent to remove a facility, including the cost of demolishing, removing, transporting or otherwise disposing of the facility and of cleaning the site so as to leave in a safe, neat, clean and presentable condition.

**Direct Costs:**

Those costs which are readily identifiable with a specific job or work order, including wages, materials and equipment.

**District Engineer:**

The supervisor or head of a district office of the Department.

**Encroachment:**

Any tower, pole, pole line, wire, pipe, pipeline, fence, billboard, approach, road, driveway, stand or building, crop, or crops, flora, or any structure that is placed in, upon, under or over any portion of highway rights of way.

**Expressway:**

A divided arterial highway for through traffic with partial control of access and generally with grade separations at major intersections.

**Facility:**

Any property or improvement to the property of a utility which is used to supply telegraph, telephone, electric power and light, gas, water, sewer or any other service to members of the public.

**FHWA:**

Federal Highway Administration.

**Freeway:**

A divided arterial highway with full control of access and grade separations at intersections.

**Full Control of Access:**

The authority to control access is exercised to give preferences to through traffic by providing access connections with selected public roads only by prohibiting crossings at grade or direct private driveway connections.

**Highway:**

Any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved.



**Indirect Costs:**

Those costs which are not readily identifiable with a specific job or work order, including indirect labor, social security taxes, insurance, store's expenses and general expenses for the maintenance of the office and support services.

**Intersection:**

The crossing of two highways either at grade or in conjunction with an interchange.

**Median:**

The portion of a divided highway separating the traveled way for traffic moving in opposite directions.

**NAC:**

Nevada Administrative Code.

**NRS:**

Nevada Revised Statute.

**Occupancy Permit:**

An agreement in which the Director, pursuant to [NRS 408.423](#), authorizes and approves the use by a utility of a specified portion of a highway or right-of-way.

**Partial Control of Access:**

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

**Permittee:**

The corporation(s), person(s), entities(s), or their Agent(s) to whom the occupancy permit may be issued.

**Pipe:**

A tubular product made as a production item for sale as such. Cylinders formed from plate in the course of the fabrication of auxiliary equipment are not pipe.

**Project:**

Any construction or reconstruction of an improvement which is completed pursuant to the authorization of the Department.

**Reconstruction:**

The construction of a highway or of its parts to a degree that new or substantially improved traffic service is provided and significant geometric or structural improvements are made.

### **Relocation:**

The adjustment of a utility's facility to accommodate a project of the Department. The term includes:

- A. The removal and reinstallation of the facility, including any necessary temporary facilities;
- B. The purchase of any necessary right-of-way for the new location;
- C. The moving, rearranging or changing of an existing facility, including the taking of any necessary safety and protective measures; and
- D. The construction of the most economical replacement facility which is equal in utility to the existing facility and necessary for the continuous operation of the utility, the containment of the costs of a project or the sequence of the construction of the project by the Department.

### **Right-of-Way:**

Land, property or any interest therein acquired for or devoted to highways whether or not the entire area of such is actually used for highway purposes.

### **Roadside:**

A general term denoting the area adjoining the outer edge of the roadway. Extensive area between the roadways of a divided highway may also be considered roadside.

### **Roadway:**

The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

### **Salvage Value:**

- A. The money received from the sale of the property of a utility because of and at the expense of a project; or
- B. The value of the recovered material which is charged to the account of the utility if the material is retained for reuse or recycling.

### **Shall:**

Means that an action is mandatory and must be performed. No alternative action is to be considered in its place.

### **Should:**

How a regulatory provision is to be implemented under most circumstances. Unusual circumstances may warrant different action, after careful consideration and discussion with all affected parties and management consent.

### **Shoulder:**

The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use and the lateral support of the base and surface.

### **Traveled Way:**

The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

### **Utility:**

Any privately, publicly or cooperatively owned systems for supplying telegraph, telephone, electric power and light, gas, water, sewer and like service to the public or a segment of the public.

## **7.350 PRELIMINARY PROJECT INVOLVEMENT BY UTILITY SECTION**

- A. Upon initial receipt of a new project description, the Supervisory Right-of-Way Agent will assign the project to an Agent by the Agent Assignment Memo (Form 723).
- B. At this early stage, the Agent shall:
  - 1. Create a project file.
  - 2. Create a diary for the project.
  - 3. Notify the Designer and request preliminary design plans, notification of the Preliminary Design Field Study (PDFS) meeting and notification of project meetings.
  - 4. Pull permit listing from IRWIN to identify existing utility facilities within the project limits.
  - 5. Obtain control section number and research the control index to obtain contract numbers for all previous projects within that control section.
  - 6. Print all previous contracts within the current project limits from IRWIN.
  - 7. Obtain copies of all permits for utility facilities within the project limits.
  - 8. Complete a field review to get familiar with the project and the utility facilities that are within the project limits.
  - 9. Send a general information letter, General Information Letter (Form 716) to the utility companies notifying them of the Department's project and the scope of work.

10. Attend the PDFS meeting and write a memo to the Supervisory Right-of-Way Agent detailing the scope of work for the project, what utilities are within the project limits and what utilities may be affected by the project.
- C. For projects that have proposed multiple alignments and/or require public hearings, the Agent will field review each proposed alignment and develop cost estimates for utility adjustments for each proposed alignment. The Agent shall research past relocation activities on previous projects and work with the utility companies to develop these cost estimates.
1. These estimates are to be compiled for public hearing data and are not expected to be precise, but as close as can be determined with available information.
  2. If the Agent determines any highway line adjustments that may substantially lower utility relocation or adjustment costs, the Agent should meet with the Design Division and make recommendations.
- D. The estimates for the various proposals will be compiled and submitted to the appropriate divisions requesting them for inclusion in the Public Hearing presentation. A list of the names and addresses of the involved utility companies and railroads will be sent to the Project Manager to be notified as to the date, time and place of the Public Hearing. Although utility adjustments are considered “minor actions” the Public Hearing is an excellent time for the Department’s Environmental Analysts to evaluate the impact of the various proposed adjustments in relationship to the overall project. Any pertinent data and informational data available should be submitted to the Environmental Division prior to the Hearing date.
- E. After the necessary public hearings and filing and approval of the Environmental Impact Statement, a formal line selection is made allowing our process to continue.
- F. After the formal line selection is made, all available data concerning the alignment is updated and re-evaluated to derive realistic estimates of all associated railroad and utility costs, including our administrative costs, for submission to the Project Manager. This submittal will be in memo form and the costs at this early stage need not be broken down unless requested by Programming.

### 7.351 Subsurface Utility Engineering (SUE)

- A. Subsurface Utility Engineering is the process of identifying, locating and mapping the exact location of existing utilities in the field. Depending on the scope of the project (widening, drainage, guardrail, soundwalls, etc.), obtaining consultant services for SUE may be necessary, but is not required for every project. SUE is completed in two phases:
  - 1. Designation is the process of using surface geophysical methods to interpret the presence of a subsurface utility and to mark its approximate horizontal position (designation) on the ground surface. Designation includes:
    - a. Quality Level D – Research of records such as as-built drawings, utility system drawings, permits and oral recollections.
    - b. Quality Level C – Field review to visually verify surface features such as manholes, valves, fire hydrants, pull boxes, telephone pedestals and overhead facilities.
    - c. Quality Level B – Surface geophysical methods to designate or mark the approximate horizontal position of subsurface utilities.
  - 2. Locating is the process of exposing and recording the precise vertical and horizontal location of a utility, through the use of vacuum excavation. Quality Level A – potholing.
- B. When it has been determined that SUE will be needed for the project, the Agent shall utilize the Department's On-Call process (see Request for Approach (RFA) and Request for Proposal (RFP) [Section 7.352](#) for procedures on obtaining a consultant to complete SUE). The determination for SUE can be prior to or after the availability of preliminary design plans depending on the project timeline. SUE may be needed for the entire project or a portion of the project. The Agent shall work closely with the Designer to determine the limits of SUE.

### 7.352 Consultant Service Agreements RFQ/RFP

- A. The Administrative Services Division administers the ~~On-Call Program~~ Procurement for SUE services. All forms for this procedure can be obtained from the Administrative Services SharePoint site.
- B. Request for Quote.
  - 1. The Agent shall calculate the lineal feet of existing utilities using data taken from NDOT permits.

2. The Agent will complete the in-house SUE Cost Estimate (Form 771) and insert the lineal feet information on the estimate. The estimate is for purposes of programming the cost of SUE work. This estimate shall not be included in the Service Agreement. If the estimate is below \$29,999.00, the Agent can move forward with the Request for Quote. It is highly recommended that if the estimate is close to \$29,999.00, then the RFP might be a better approach (see procedures below). This should be discussed with Supervisory Right-of-Agent to decide which process to move forward with.
3. Once the estimate has been completed and it is determined if the RFQ is applicable, the Agent shall prepare and submit the Form 2a through DocuSign using the link found on the R/W SharePoint site. Once the 2a has been approved the agent will complete a DBE goal request through DocuSign. The link for the DBE Goal can be found on the Agreement services SharePoint site.
4. Once the agent has both documents approved they will work with agreement services to generate a quote shell. The agent will fill out the quote shell and email it back to agreement services along with contact information for three SUE companies.
5. Agreement services will identify the lowest bidder and create a draft Service Agreement and email it to the Agent. The Agent will add the needed information along with all supporting documentation and submit it to the Staff Specialist for review.
6. When the draft review has been completed, Administrative Services will provide the final Service Agreement to the agent. The agent will forward the Service Agreement to the SUE Company for signatures.
7. The SUE Company will either send the signed Service Agreement to Administrative Services or to the Agent. Should the Agent receive the signed Service Agreement, the Agent shall ensure that the insurance information is provided with the Agreement and forward the agreement to the Staff Specialist – Utilities for execution.
8. The Staff Specialist – Utilities will forward the executed Service Agreement to the Agent. The Agent will retain a copy of the executed agreement in their file and send a copy of the executed agreement to the SUE Company. The SUE Company shall not begin any work until the Company receives their copy of the executed agreement as the executed agreement constitutes the “Notice to Proceed” from the Department.

C. Request for Proposal (RFP)

1. The Agent shall calculate the lineal feet of existing utilities using data taken from NDOT permits.
2. The Agent will complete the in-house SUE Cost Estimate (Form 771) and insert the lineal feet information on the estimate. The estimate is for purposes of programming the cost of SUE work. This estimate shall not be included in the Service Agreement.
3. Once the estimate has been completed and it is determined if a RFP will be required, the Agent shall prepare and submit the Form 2a through DocuSign using the link found on the R/W SharePoint site. Once the 2a has been approved the agent will complete a DBE goal request through DocuSign. The link for the DBE Goal can be found on the Agreement services SharePoint site.
4. After the Director's Office approval has been obtained, the Agent shall complete the committee appointment memo. The committee appointment memo will be sent to the Staff Specialist – Utilities to obtain signatures/approvals. The Staff Specialist – Utilities will prepare the Consultant Criteria Evaluation Form and obtain the necessary approval.
5. When all the appropriate signatures and approvals have been obtained, the Agent shall complete the RFP and send the RFP electronically to the Staff Specialist - Utilities for review. The Staff Specialist - Utilities will forward the RFP to Right-of-Way Control, who will send all the original memos and the RFP to Administrative Services for the procurement.
6. Administrative Services will advertise and (if a list is provided) email the RFP request to all the firms listed. There will be time allowed for firms to ask questions and the Department to respond to those questions. Once the deadline is met and the proposals have been received, Administrative Services will provide the proposals to the review committee for scoring.
7. Administrative Services will calculate the scores and rank the firms. Once this has been completed, Administrative Services will inform the Staff Specialist – Utilities of the firm that ranks number one and provide the Service Agreement shell for negotiations. The Staff Specialist – Utilities will forward the Service Agreement shell to the Agent and request the Agent to begin negotiations with the firm.
8. During negotiations, the Agent will request a cost estimate from the SUE Company and verify that the work can be completed by the Department's deadline. The Agent will compare the SUE Company's estimate to the in-house estimate to verify that enough money has been programmed for

the SUE services. If not, another Form 2a will need to be completed along with a justification for additional money. Any other issues will be worked out at this time as well. Once the negotiations are successful, the Agent will prepare the Service Agreement and forward the Service Agreement to the Staff Specialist – Utilities for draft review.

9. When the draft review has been completed, Administrative Services will provide the final Service Agreement to the Staff Specialist – Utilities, who will forward the Service Agreement to the Right-of-Way Agent to obtain signatures from the SUE Company.
10. The SUE Company will either send the signed Service Agreement to Administrative Services or to the Agent. Should the Agent receive the signed Service Agreement, the Agent shall ensure that the insurance information is provided with the Agreement and forward the agreement to Agreement Services through the Staff Specialist – Utilities for execution.
11. The Staff Specialist – Utilities will forward a copy of the executed Service Agreement to the Agent. The Agent will retain a copy of the executed agreement in their file and send a copy of the executed agreement to the SUE Company. The SUE Company shall not begin any work until the Company receives their copy of the executed agreement as the executed agreement constitutes the “Notice to Proceed” from the Department.
12. After the SUE work has been completed and all billings have been paid, the Agent shall fill out a Consultant Performance Evaluation form which can be found on Administrative Services SharePoint site and forward to the Staff Specialist – Utilities. The Performance Evaluation will be retained in the Administrative Services file for the Service Agreement.

### **7.353 Preliminary Engineering and Negotiating by the Utility Section**

- A. Upon receipt of initial plans detailing the project, one of the first and most important activities is a comprehensive field review with the Utility Inspector in which the Agent becomes familiar with the highway project, affected utilities, and to a certain degree, the surrounding area. It is critical that the Agent and Utility Inspector work together at this preliminary stage to ensure that all potential utility impacts are addressed (relocations, adjustments, new services, etc.)
- B. The Agent will send a set of preliminary design plans to the Utility Inspector and request a manhole and valve count, locations and utility ownership of the manholes and valves by memo. Upon receiving this information from the Utility Inspector, the Agent will prepare the Manhole/Valve Cover Agreement Letter (Form 714) and send it to the affected utility companies for signature. It is the



responsibility of the utility company to verify the locations for all manhole and valve covers identified in the letter.

- C. Department policy requires that on highway reconstruction projects outside of urban areas where no curb and gutter section exists, all approaches must be identified that are to be perpetuated and brought up to current standards and secure permits for unpermitted approaches. Only regularly used approaches, not those infrequently or seasonally used such as an approach allowing access to a farmer's fields, will be improved. All permitted approaches are to be paved.
1. The Designer will check the Department's records to determine which of the approaches that qualify for perpetuation are currently located under an encroachment permit. The Designer shall provide a list of the undocumented approaches that should be paved, along with a set of plans showing the undocumented approaches to Right-of-Way Engineering.
  2. Right-of-Way Engineering will perform an assessor's check to determine the property owners served by the undocumented approaches. Right-of-Way Engineering shall furnish the set of design plans showing the undocumented approaches and the assessor's information on property ownerships to the District Supervisor of the Utility Section.
  3. The Supervisory Right-of-Way Agent shall forward the design plans and assessor's information to the assigned Agent. The Agent will contact the property owners using the 3-R Projects Undocumented Approaches form (Form 726) to get the undocumented approaches under permit. The incentive that is offered to the owners is the paving or repaving of the approach to at least the Department's minimum standards at the Department's expense, rather than at the expense of the property owner. The minimum permit fee shall be waived. This information is needed at the earliest possible time as any owner who refuses to get the permit will not get his approach paved.
- D. The Agent will send two sets of preliminary plans to the utility companies along with written authorization Adjustment or Relocation of Utilities Facilities Letter (Form 708) for them to incur costs for the preparation of plans and estimates. The Agent shall check with Right-of-Way Control to assure the project is under an approved Federal or State funded program prior to authorizing preliminary engineering.
1. On one set of plans, the utility will be requested to verify the facilities shown, make any additions or corrections, note the occupancy status enjoyed by their facilities, and return it as soon as possible.

2. The Agent shall send all stages of design plans (preliminary, intermediate and advanced print) to the utility companies. As plans progress, design changes and/or additions are added to the plans, it is critical that the utility companies receive these plan changes because their facilities could be affected. The Agent must maintain an extremely close liaison relationship between the designer and the utility companies to ensure that the project progresses as smoothly as possible.
  3. Subject to certain conditions, the companies may be allowed to retain consultant-engineering services to assist in their engineering upon written approval from the Department (see Preliminary Engineering Agreement and Consultant Agreement Procedures, [Section 7.356](#)).
  4. All utility companies in the area, whether seemingly involved in the project or not, will be sent a plan set for informational purposes.
- E. This is a good time for the Agent to start working with the Traffic Division to determine if any new power and telephone service is needed for the project and/or upgrades to any existing services. Coordination between Traffic/Design, the Agent and the District Utility Inspector is necessary to identify locations for service pedestals. (See Utility Service Agreement Procedures, [Section 7.355](#) for obtaining agreements for power services)
- F. After the utility companies have had the initial submission for a long enough time to have the work assigned and reviewed, the Agent shall schedule a meeting and field review with all of the affected utilities.
1. This will be a joint review with all companies represented as often the facilities of various companies can be consolidated resulting in greater economy and resolution of conflicts among facilities, which are not compatible.
  2. Having the designer assigned to the project in attendance at the field review can greatly assist in presenting and explaining the proposed construction.
- G. After the joint meeting and field review, the Agent will formally contact all utilities that operate in the area of the proposed project to determine if they have any planned plant expansion or renovation within the project limits.
1. Substantial savings may be realized if such expansion or renovation can be made in accordance with the Code of Federal Regulations.
  2. This essentially allows the State to pay only the additional costs imposed upon the utility company by constructing their improvement to avoid or minimize conflicts with the proposed highway facility.

- H. During this negotiation stage, the Utility Section may coordinate requests to have projects field staked, to get particular drawings such as x-sections prepared, or a myriad of other items in order to ensure that the project is clear in advance of construction.
- I. When it has been determined that a permitted facility within the right-of-way is required to relocate for a project, the Agent shall send the utility company a 30-day Notice by Personal Service Letter (Form 700) to relocate their facilities. Although by Law the Department is required to give the utility company a minimum of 30 days notice to relocate, the Agent shall send this notice as soon as possible to maximize the utility company's time in order to design, obtain property rights if needed, order materials, obtain a contractor and construct the relocation.
- J. When it has been determined that a utility is required to relocate its facility to accommodate the project and the utility is eligible for reimbursement, the Agent shall inform the utility that the relocation of the facility will need to comply with Buy America. Buy America is a federal code (23 CFR § 635.410) that states any permanently incorporated steel and/or iron materials on the project shall be produced in the United States. Minimal use of foreign steel will be permitted provided the cost of said materials does not exceed one tenth of one percent of the total project cost or \$2,500.00, whichever is greater. The only time Buy America does not apply is when a utility required to relocate when the utility occupies highway right-of-way by means of a Revocable Occupancy Permit as State law does not allow for the reimbursement of these costs.

Additionally, miscellaneous steel and iron components, subcomponents and hardware necessary to encase, assemble and construct the above component are not subject to Buy America. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc.

#### **7.354 Public Utilities Commission**

- A. The Public Utilities Commission (PUC) is the regulating authority for all utility companies and the railroad companies in the State of Nevada. The mission of the PUC is to supervise and regulate the operations and maintenance of utility services in the State.
- B. The PUC must be notified of all projects that include any type of work within the railroad right-of-way. Depending on the type of highway work, an application for a modification of a Railroad Crossing may be necessary.

1. As soon as the preliminary plans have been received, the Agent shall contact Safety Engineering to obtain the milepost, NDOT number and Railroad number of the crossing.
2. The Agent will email a set of the plans to the PUC Railroad Safety Inspector for review. The email must describe the scope of work for the project and include the milepost, NDOT number and Railroad number of the crossing.
3. Once the PUC has reviewed the plans, the Railroad Safety Inspector will inform the Agent if an Application to Construct, Alter or Eliminate a Railroad Crossing is necessary. If not, the Agent will continue to work with the Railroad. Typically, if there are any modifications made within the Railroad Right-of-Way (widening, extending existing guardrail, etc.), construction of a new crossing or the elimination of a crossing, an application will be required.
4. The Agent shall prepare an application package for the PUC. Templates for the PUC application are available on the Right-of-Way SharePoint site. These templates are not forms and the Agent shall modify the templates according to their specific project.
5. Once the application has been completed, the Agent shall send the application package to the Staff Specialist for review and to obtain the necessary signatures.
6. The application package and application fee will be sent to the PUC for review. The PUC will add the application to their docket and vote to either approve or deny the application.

#### **7.355 Utility Service Agreement Procedures**

- A. **Definition:** For purposes of this section, a Utility Service Agreement is a formal contract or arrangement between the Nevada Department of Transportation and a (private or public) utility providing for the arrangement and installation of utilities necessary to serve facilities on Federal-aid and State Highway projects for a highway purpose. The utilities would serve, for example, power for roadside lighting and traffic signals, communication networks for monitoring tunnels and traffic control synchronization, and water and/or gas to roadside rest areas or comfort stations.
- B. **Public Utilities Commission – Governing Authority.** Each public regulated or enfranchised utility must submit to the Commission a statement of policy and procedures for long line extensions (General Rule No. 9 – Overhead and General Order No. 9 – Underground). These policy procedures, after approval by the

Commission, then have the full force and effect of law. The above referred General Rules and Orders may vary with each utility and type of service. The rules and orders govern, among other things, loading an capacity limits, refund procedures, agreement stipulations, ownership of facilities, tariff revisions, customer betterment's, permanent service applications, routes of extensions, costs of extensions, replacement of overhead with underground, etc. Since the Department is a customer requesting a service, the Department will comply with Rule 9 policy and procedures.

C. General Procedures

1. When it has been determined that new service or upgraded service is required for a project, the Agent shall request plans showing the service locations.
2. The Agent will provide plans and coordinate with the Utility Inspector who will assist in obtaining an agreement from the Utility Company. It will be the responsibility of the Utility Inspector to contact the Utility Company for obtaining new service or upgrading existing service.
3. Upon receipt of the Line Extension Agreement or Service Agreement, the Utility Inspector will forward the agreement to the Agent. The Agent shall ensure that the agreement is signed by the Utility Company and there are two original agreements with attached plans. The Agent will then forward the agreement to the Staff Specialist – Utilities for processing and payment. Utility Service Agreements are the only agreements that the Department pays in advance of the services being provided.
4. After the Staff Specialist – Utilities has reviewed the agreement package, the agreement will be forwarded to Right-of-Way Control for execution and a check request for payment.
5. Once executed, R/W Control will add the executed agreement to the tracking log. The Agent shall receive one executed original agreement and a check which will be forwarded to the Utility Company.
6. Within two years of executing the Line Extension Agreement, the Department may request a refund. R/W Control will monitor the dates of the Line Extension Agreement and request a refund in writing. If a refund is issued, the refund will be applied to the agreement and then the agreement will be closed out. If a refund is not due, the agreement will be closed out by R/W Control.

D. Line Extension and Service Agreements

1. Insofar as practical and consistent with the above, the Utility Service Agreement will follow the policy and procedures prescribed by the Department's Utility Accommodation Policy and [Section 7.700](#) of this manual:
  - a. To the maximum extent possible, the serving utility will adhere to the State's and FHWA's Clear Roadside Policy and follow the provisions related to safety and scenic enhancement prescribed in the above cited references. (In some instances, however, the Public Utilities Commission (PUC) prescribes the extension be made by the shortest possible route, which may be in conflict with the Clear Roadside Policy).
  - b. The utility shall make every possible effort to locate all service points, i.e., meters, dip-poles, transformers, valve boxes, access terminals, pull boxes, drop poles, etc. outside the control of access fence or boundary.
  - c. Where possible, the company will be reimbursed for actual costs incurred, and prior to the execution of an agreement, will submit an itemized estimate of costs for labor, equipment and materials to be incorporated in the agreement for billing comparison purposes.
  - d. Most utility companies have provisions in their Rule No. 9 to grant customer betterment if the new facility is of greater capacity or length than required or requested. For those utilities that have no betterment rule on file with the PUC, the method of determining it will be that as prescribed in the above-cited references.
  - e. Advance ordering of materials prior to the execution of a Service Agreement is precluded in instances by PUC rules. If project timetables or requirements are such that such advance ordering may become necessary, an application to the PUC excepting that portion of Rule No. 9 should be made by the State at the earliest possible date.
2. The FHWA has indicated that where possible, refunds to the State due to costs reduced by usage be resolved by early settlement. In most cases, the utility's refund formula is on file with the PUC, thus the present worth discount determination will need to be integrated with the utility's formula if early settlement is desired.

3. It is important to note that in the event of exceptional cases, the utility may file an appeal or apply to the PUC for an exception or deviation to the rules on file with the Commission. It is, therefore, imperative that the State makes an early inquiry to determine if an exception will need to be filed to facilitate the Department's requirements under a Service Agreement.
4. While the form of the utility service agreement is not prescribed, for Federal-aid projects, it must contain in addition to the applicable provision set forth in Occupancy Documents, [Section 7.359](#) of this manual, assurances that the utility will:
  - a. Adequately maintain such facilities and provide continuous quality service.
  - b. Record the cost of such facilities as a contribution by the State and maintain related accounting records in accordance with applicable provisions of the Uniform System of Accounts prescribed by the Federal Power Commission – esp., Account 271 – Contributions in Aid of Construction, its equivalent or its successor;
  - c. Eliminate from the rate determination process (1) the original cost to the State of all such facilities and (2) the corresponding current and cumulative depreciation amounts; and
  - d. Relinquish ownership and possession of all such facilities to the State should the utility either go out of business or be sold to another company, and the new company is unwilling to abide by the terms of the agreement.
    - i. Where a publicly owned utility is involved, b. and c. above may be modified as appropriate to reflect current accounting and rate determination practices used by the utility.
5. Line Extension Agreement procedure.
  - a. Once a utility agent has been assigned a project, the agent shall contact the project Designer, ITS, and Traffic Operations to determine the need for any new power associated with the project.
  - b. Once the locations of the alignment/pedestals have been determined the agent will work with the District Utility Coordinator to initiate the appropriate paperwork to start the process with NV Energy. This paper work is usually a Design Initiation Agreement (DIA) and a Line Extension Agreement (LEA).

- c. The company provides plans to the utility agent. The agent will scan the plans and email them to the Manager R/W Engineering, currently Anthony Whittington. The subject line of the email shall be **“Right-of-Way Verification for NV Energy Line Extension Agreement”** and shall copy the Assistant Chief R/W Agent, Acquisitions/Relocations, currently Margaret Orca, the Supervisory R/W Agent, Acquisitions, currently Jessica Biggin, (northern projects) Glendyne Shull, (southern projects) and their Supervisory R/W Agent, Utilities.
- d. If the requested location is within NDOT R/W where the Department holds a fee interest, then NV Energy will prepare the necessary documents which will be used to transfer an easement right from the Department to NV Energy. R/W Engineering will review and approve this information. The mapping and legal descriptions will be submitted to the Supervisory R/W Agent, Acquisitions and the transfer process will commence. The time needed to prepare the necessary documents and mapping varies from four to six months.
- e. Once R/W Engineering has researched the location where NV Energy states they need an easement and if falls outside the NDOT R/W or within R/W for which the Department holds an easement interest, then an easement will need to be acquired from the underlying fee owner for NV Energy’s use. If the easement falls on private property R/W Engineering will notify the Designer that a R/W Setting meeting will be needed. R/W Engineering will prepare the necessary documents to acquire easement rights for NV Energy and the acquisition process will commence. **This process will take 18 to 24 months.**
- f. If the area is held by BLM, BOR or USFS then the utility agent will notify NV Energy that the company must work directly with the federal agency to obtain the rights they require.
- g. The acquisition agent is responsible for completing the acquisition process to ensure all rights have been transferred to NV Energy. The utility agent will ensure all permits and line extension agreements are in place. The utility agent will also be responsible for tracking the progress of the acquisition process to ensure that it is completed. To this end, the utility agent shall contact and coordinate with the acquisition agent. The acquisition agent should expect to provide progress reports and inform the utility agent when the written offer has been presented, when the Public Highway Agreement and Deeds have been fully executed and when the transfer to NV Energy has taken place. A copy of the deed of transfer will be provided to the utility agent. It is imperative that the agents have open communication and that the Supervisory R/W Agents have communicated and coordinated schedules for these activities.



### 7.356 Preliminary Engineering Agreement and Consultant Agreement Procedures

- A. The scope of this section encompasses all Utility Consultant Agreements and any amendments, revisions, or supplements thereto, covering engineering and allied services.
- B. There may be instances when it is necessary for preliminary engineering costs to be reimbursed under a preliminary engineering Agreement for Reimbursement of Preliminary Engineering Costs (Form 711). Typically when a utility relocation is so large that it can take months to engineer, a preliminary engineering agreement will be warranted in order to reimburse the utility company for costs incurred in a timely matter. Once it has been determined that a preliminary engineering agreement will be necessary, the Agent shall verify the prior rights documentation, review the cost estimate and prepare the preliminary engineering agreement in accordance with Preparation of the Agreement, [Section 7.360](#) of this manual.
- C. When a utility is not adequately staffed to perform utility engineering, such utility (public, municipal or private) may be eligible for reimbursement for the engaging of engineers, architects and others for required engineering and allied services, provided the fees for such services are not based on a percentage of the cost of relocation.
- D. It must be strongly emphasized that consultant work will not be eligible for reimbursement when: (1) such work is performed prior to the State's written authorization in accordance with [NAC 408.317](#), and (2) when such work is performed prior to FHWA written approval and State's written authorization for agreements.
- E. The hiring of any and all consultants will be done in accordance with the latest version of the Consultant Agreement Procedures manual prepared by the Administrative Services Division, Agreement Services Section with the Department of Transportation.

### 7.357 Reviews & Research Conducted Upon Receipt of Estimates & Plans from the Companies

- A. Upon receipt of the utility company package containing their estimate(s), plans and prior rights documentation, the Utility Section will first start an intensive review of the prior rights documentation since this is the basis for the company's claim to reimbursement.
  - 1. All the affected utilities will be examined in light of the documentation presented to ensure that the documents presented are applicable to the affected facilities.

2. A review of the package is essential to ensure that everything is in compliance with [NAC 408.333](#) and [NAC 408.337](#).
  3. A utility company will have a prior right if it can prove that it has a right of occupancy in its existing location if it holds the fee, an easement, a franchise right, prescriptive right or any other interest in real property which is compensable under eminent domain pursuant to [NAC 408.307](#). Additionally, a utility may be reimbursed for relocation costs if the facility was in place when the highway became a state highway. It is incumbent upon the utility to provide proof of a prior right to the Department.
  4. Should the company claim reimbursement by virtue of a franchise right with a local government, a copy of the franchise agreement will be required for review. The franchise agreement can be maintained in a separate file to avoid repetitive filing in each project for which franchise rights are claimed.
  5. Should the company claim reimbursement by virtue of a prescriptive easement, they will be required to submit an Affidavit of Compensable Interests (Form 702) deposing to their adverse occupancy. The documentation and affidavit shall be sent to Legal from the Supervisory Right-of-Way Agent for review. Legal's review is necessary due to the possibility that a prescriptive right may need to be perfected in court before an agreement can be executed.
  6. Should any question come up concerning the company's rights, the package will be submitted (through the Supervisory Right-of-Way Agent) for legal review and determination.
  7. During the prior rights review, it will be necessary to research the Encroachment Permit file and previous contract plans to ensure that none of the facilities for which reimbursement is claimed are located pursuant to [NRS 408.423](#), in which event they would have to be adjusted at no cost to the State.
- B. The Utility Section will next review the plans for the proposed utility adjustment to determine that the proposal is logical, economical, and in conformance with [Nevada Administrative Code](#) and the [Code of Federal Regulations](#). During the review of the relocation plans, the Agent will fill out the applicable portions of the Utility Agreement Checklist (Form 721) after which the plans and check list will be submitted to Design and Bridge Divisions (if applicable) for their review and acceptance.

- C. After completing the reviews of the prior rights documentation and relocation plans, the Utility Section will review the estimate for accuracy and conformance with the requirements of [NAC 408.337](#).
1. In either the estimate of the letter of transmittal, the company will give an explanation as to why or why not betterment and expired service life credits have been offered.
  2. Again, the Utility Agreement Checklist (Form 721) will be filled in concerning the statement.
  3. A utility company can consult out for engineering services if the utility obtains prior written approval from the Department. (See Preliminary Engineering Agreement and Consultant Agreement Procedures, [Section 7.356](#))
  4. The Department will be required to obtain written approval from the Federal Highway Administration for agreements on Federal-Aid projects that are expected to exceed \$25,000.00 in accordance with [NAC 408.317](#).
  5. At the point where all the utility estimates have been received, the project shall be re-programmed reflecting the more refined cost data available. The Agent shall inform the District Supervisor of the updated costs and the Supervisory Right-of-Way Agent will contact Right-of-Way Control by memo or email and request that additional funds are programmed for utility relocation costs.
- D. After accomplishing these necessary reviews, if the adjustment exceeds \$500,000.00, the relocation plans and estimate will be sent to the Federal Highway Administration for their review and recommendation. The Supervisory Right-of-Way Agent shall schedule a meeting with FHWA to discuss the plans and estimate.
- E. Depending on the size and type of the relocation, it may be necessary for a utility company to purchase materials in advance of the relocation. If the utility company is entitled to reimbursement, the Agent will enter into an Agreement for the Advance Acquisition of Materials (Form 743). The Agent shall obtain a cost estimate from the utility for the materials and this estimate will be an exhibit to the agreement. The Agent will prepare the agreement in accordance with Section 7.360 of the Manual. The Staff Specialist – Utilities will request a check from R/W Control for the agreement amount. The check will be forwarded to the Agent for submission to the utility company. It will be the Agents responsibility to monitor this agreement and keep in regular contact with the utility company as to when the materials will be delivered. Once the utility company has received the

materials, the Agent shall request a copy of the invoice for the materials purchased. The Agent will compare the invoice to the agreement amount and if the invoice is less than the agreement amount, the Agent shall request a refund, in writing, from the utility company. Once the refund is received, the Agent shall forward the refund to R/W Control so it can be applied to the agreement.

### 7.358 Reimbursement Criteria

When the utility is being reimbursed, the Utility Section will thoroughly review the utility's submitted estimate of costs and plans of adjustment to ensure compliance with [NAC Chapter 408](#). This review will include and emphasize the following:

- A. The utility will be reimbursed for:
  - 1. The existing facility being adjusted and/or rearranged.
  - 2. A replacement facility functionally equal to the facility or portion thereof being replaced. For example, should a facility or a portion of a facility be obsolete and it is no longer feasible to replace the facility in-kind, then a functional replacement will be allowed for reimbursement. Care must be taken in reviewing the functional replacement to ensure that no betterments are included.
  - 3. The costs of any additions, improvements, removal or replacement facility necessitated by or in accommodation of the highway project.
- B. The utility will not be reimbursed and appropriate credits shall be given for:
  - 1. Betterment's not necessitated by the highway project.
  - 2. The difference in costs where the replacement facility is of greater functional capacity or capability than the one it replaces. Exceptions can be made where the existing facility must be replaced and like conductors or materials are out of stock or are no longer being manufactured.
  - 3. Any salvage value derived from the old facility in accordance with [Title 23 CFR, Part 645, Subpart "A"](#).
  - 4. The Accrued Depreciation Credit (ADC) of the existing facility when being substituted by a replacement facility is:
    - a. Credit for ADC need NOT be given where:
      - i. The facility being replaced is a line crossing the highway.

- ii. The total facility being replaced is less than one continuous mile in length and the replacement facility is not of greater functional capacity or capability than the one it replaces and includes no betterment.
  - iii. The utility can demonstrate in writing, proof that the replacement facility will not remain in use or service for a period longer than the existing facility would have remained in service, had the replacement not been made.
  - iv. The utility can demonstrate and document predicted functional and economic obsolescence of the replacement facility. Documentary evidence must be furnished by the utility that a replacement or up grading of the system cannot be accomplished at the time or prior to the adjustment of the facilities.
- b. Credit for ADC shall be given for the facility being replaced where:
  - i. The replacement facility is functionally equal to the replaced facility and the total, contiguous segment being replaced is more, that one mile in length.
  - ii. The replacement facility is other than a segment of the utility's service distribution or transmission line, such as a building, pumping station, filtration plant, power plant, substation, storage facilities or any other operating unit.
  - iii. The replacement facility involves betterment's not necessitated by the highway project or is of greater functional capacity or capability than the one it replaces when the replaced facility is a segment of one mile or more in length.
- c. Where it has been determined that a credit for ADC is due the project the credit shall be derived as follows:
  - i. ADC credit is defined as credit, which bears the proportion to the original cost of the facility being replaced, as its existing age bears to its total life expectancy.
  - ii. The estimated "total life expectancy" is defined as the sum of the period of actual use and the period of expected remaining service life.
  - iii. ADC is thus computed by the following formula:

$$\text{Period of Actual Use} / \text{Expectant Remaining Service Life} \times \text{Original Cost} = \text{Accrued Depreciation Credit}$$

Example: The original cost of a pumping substation in 1973 was \$80,000, and the original facility was expected to have a service life of 40 years. The facility is replaced in 2003 as part of a utility relocation on a Federal or State funded project. The original facility has served 30 of the expected 40 years. The accrued depreciation credit amounts to:

30 years	40 years remaining	\$80,000	\$60,000 Accrued
Actual Use /	Service Life $\times$	Original Cost =	Depreciation Credit

- iv. It may be impossible because of meager records or the absence of records to establish original costs. In such cases a historic cost may be developed by using cost trends at or near the date of original construction.
  - v. Credit for expired service life will be determined jointly by the utility company and the state, subject to the concurrence of the FHWA Division Engineer, and such determination shall be set forth in the detailed agreement estimate.
- C. Additional costs incurred by a utility when complying with governmental and industry codes, or current design practices, regularly followed by the utility in its own work, may be reimbursed, provided:
1. There is a direct benefit to the highway project.
  2. Compliance with such codes or practices is required under Federal, State or local governing laws and regulations. Written documentation of the code will be required for review.
- D. The utility may be reimbursed for the installation of facilities of a type different than the facilities being replaced, provided that the replacement facility is: (1) functionally equal to the one being replaced, and (2) the most economical of any other alternative facility.
- E. Where an addition to an existing facility is required by the highway construction, the actual costs of the addition are reimbursable provided the materials of the addition are not of a type or class superior to the materials in the existing facility, except as necessitated by project construction.
- F. The costs incurred for rehabilitating, moving or replacing the buildings of a utility company, including the equipment and operating facilities therein, which are used for the production, transmission, or distribution of the utility's products, are reimbursable to the extent that such costs are the most feasible and economical

and that appropriate betterment's and credits are considered and given in accordance with the applicable provisions of B. above. Except where it is demonstrated that the existing building and/or facilities are required to remain in place and in service until a (new) replacement, building or facilities are constructed and in service of a new location, the Utility Section will make an analysis to determine the cost and feasibility of the following:

1. To rehabilitate the building at its existing location.
  2. To move it as a unit intact to its new location.
  3. To dismantle it and reassemble or reconstruct it at its new location.
  4. Replace it with a new building at the new location.
- G. In no event should the total of all credits as described in this Section exceed the total cost of adjustments, exclusive of improvements necessitated by highway construction.

#### 7.359 Occupancy Documents

- A. Where utility facilities are to cross or otherwise occupy the right-of-way of a proposed or planned Federal-aid project, the Utility Agreement must provide that a satisfactory occupancy agreement has been or will be entered into between the State and the utility for such occupancy in accordance with the provisions of the Policy of the Accommodation and Installation of Utilities, [Section 7.700](#) of this manual and the applicable provisions of Sections [1.23](#) and [1.27](#) of the Title 23, Code of Federal Regulations. A format of the type of Occupancy Document shall be incorporated in the Utility Agreement by reference and by attachment as an exhibit.
- B. There are five basic types of Occupancy Documents, the first three of which constitute perpetuations of existing prior rights status. The Agent shall make all efforts in executing the Occupancy Document prior to finalizing the Agreement for the Adjustment of Utility Facilities (Form 705). There may be situations when this cannot be accomplished. When this occurs, the Agent shall obtain a written letter from the utility company stating the company will continue with relocation efforts prior to the execution of the Occupancy Document.
1. Consent to Common Use Agreement (Form 709) – This document is used where the utility remains in its existing right-of-way, which is encompassed by the new highway rights of way. This essentially embodies an agreement by and between the State and utility whereby they recognize one another's right of occupancy. This document must be recorded.

2. Joint Use Quitclaim Agreement (Form 713) – This form of agreement is used where a utility is relocated from one location within the highway right-of-way to a new location within the highway right-of-way. At the conclusion of the successful arrangement for the utility relocation and the acquisition of replacement easements of no greater right than the utility enjoyed in the old location, the utility quitclaims their right, title and interest in that portion of their former easement lying within the highway right-of-way. This document must be recorded.
  3. Occupancy Agreement (Form 717) – This agreement is used primarily where the utility is claiming reimbursement by right of franchise and of necessity must remain in the highway right-of-way. This group will be encountered mostly in the urban areas and will consist chiefly of crossings. This document restricts reimbursement in future relocations dependent upon Federal participation ([NRS 408.407](#)). This document must be recorded.
  4. Occupancy Permit (Form 725) – This permit is issued under the provisions of [NRS 408.423](#) in cases where a utility wishes to occupy the highway right-of-way and cannot establish a right for an existing occupancy. The procedures for this permit are set forth in R/W Occupancy Permits, [Section 7.500](#) of this manual.
  5. Non-Revocable Occupancy Permit (Form 765) – This permit is issued for utility relocations and/or adjustments under a prior right and for Line Extension and Service Agreements for NDOT projects that require power, telephone, etc., service for a highway purpose.
- C. While the form of the (1) Consent to Common Use, (2) Joint Use Quitclaim, and (3) Occupancy Agreements are not prescribed; they should contain as a minimum the following:
1. A description of the location, size, type, nature and extent of the utilities being located within the highway right-of-way.
  2. Adequate drawings showing the existing or proposed facilities.
  3. The conditions of occupancy for each party, including the rights vested in the State and the rights and privileges retained by the utility.
  4. The obligations, responsibilities, and liabilities of each party including the costs of existing and future utility adjustments and the maintenance thereof.
  5. That the portion of right-of-way to be used occupied or otherwise enjoyed by the utility shall be of a nature and extent adequate for the construction, safe operation and maintenance of the highway project.



### 7.360 Preparation of the Agreement

- A. When the project has progressed to the point that the estimate, plans and prior rights documentation have all been favorably reviewed and verified, the Agent will draft the necessary relocation and occupancy agreements and assist the utility company to obtain their permit.
  - 1. The relocation agreement, Agreement for the Adjustment of Utility Facilities (Form 705) or Authorization for Minor Utility Adjustments Agreement Not to Exceed 100,000.00 (Form 707) will be prepared in its final form citing all applicable rules, regulations and restrictions.
  - 2. The occupancy documents will be drafted to complete form.
- B. Next the Agent will prepare the draft review package of the agreement and send to the Staff Specialist – Utilities for review. The Staff Specialist – Utilities will review the draft review package to assure that the agreement meets all state and federal laws. If so, the Staff Specialist – Utilities will initial the draft agreement cover sheet, after which the draft review package will be submitted to Legal for review and approval. In the review, Counsel will: (1) determine if all contractual liabilities are in accordance with State statutes; (2) review any prior rights documentation submitted for consideration of the reimbursable right and any subsequent occupancy status agreed to in accordance with State statutes and; (3) certify that the form of the document is such that it meets with prescribed Federal regulations and State statutes.” The draft review package shall contain:
  - 1. Memo to the Staff Specialist – this memo shall contain all pertinent information regarding the utility relocation, the property rights involved, who will be completing the work and any other information that may be helpful in the review of the package.
  - 2. Draft Agreement Review Cover Sheet (Form 918)
  - 3. The Agreement or Occupancy Document
  - 4. Prior rights documentation
  - 5. Cost estimate (if applicable)
  - 6. Relocation plans (if applicable)
  - 7. Exhibits called out in the agreement (i.e. permit, occupancy document, specifications, etc.)
  - 8. Utility Agreement Checklist (Form 721)

9. Right-of-Way Package Review form (Form 922)

- C. After the above reviews and approvals have been accomplished, the draft review package will be returned to the Agent for any corrections. Once the Agent has completed the corrections, the agreement and draft review package will be submitted to the Supervisory Right-of-Way Agent to ensure that all corrections have been completed. The agreement and draft review package will be returned to the Agent and the Agent will prepare a cover letter and send the agreement to the utility company for signature.
- D. Upon receipt of the signed agreement from the utility company, District I staff will submit the agreement to the District Engineer and Legal Division for signature. The Agent will then send the signed agreement and draft review package to the Staff Specialist – Utilities for processing. Headquarters staff will submit the signed agreement from the utility company and the draft review package to the Staff Specialist – Utilities for processing.

The cover memo to the Staff Specialist – Utilities shall include the contact person, phone number and address for the utility company and the utility company's business license information. If the utility company is a local public agency, state agency or federal agency, they will be exempt from a business license. This information shall also be included in the cover memo.

- E. When the agreement has all signatures and has been executed, Right-of-Way Control will distribute the agreement in the following manner:
- Central Records (Original Agreement)
  - Utility Company (Certified True Copy)
  - Right-of-Way Agent (One Copy)
  - Right-of-Way Accounting (One Copy – Agreement Only)
  - Accounting Division (One Copy – Agreement Only)
  - Financial Management (One Copy)
  - District Engineer (One Copy)
  - Utility Inspector (One Copy)
  - Construction Division (One Copy)
  - Design Division (One Copy)
  - Specifications (One Copy – point out special and exceptional conditions in transmittal)
- F. After the relocation has been completed and all billings have been paid, a copy of the agreement will be sent to Internal Audit along with a request for review if the agreement amount is \$500,000.00 and above. There may be special circumstances requiring an agreement to be audited if it is below \$500,000.00. The Chief Right-of-Way Agent shall make the request to the Audit Division if an agreement needs to be audited under the \$500,000.00 threshold.

- G. When the certification of adequacy is received from Internal Audit, the agreement, checklist, and findings of the audit review, will be submitted to Right-of-Way Control for an overall review.

#### 7.361 Utility Work Performed By State's Contractor Procedures

- A. There are occasions when it is practical and necessary to include work for utilities, counties, cities and other governmental and municipal agencies in the Department's road contract. This work is usually done when it is uneconomical, impractical or impossible for the agency or company to accomplish the work with its own forces prior to the road construction or to work concurrently with the State's contractor.
- B. In these cases, the company or agency, upon notification by the Department that their facilities will need to be relocated or adjusted, will normally reply in writing that they do not have the capability, time or finances to perform the adjustment work with their own forces and will request that the State perform the work under its proposed contract.
- C. When the above method is acknowledged by the Department to be the better of all alternate methods considered, an agreement will be executed between the State and the utility, setting forth the terms and provisions of the utility adjustment.
- D. The form for this type of agreement is not prescribed by the Federal-Aid Highway Program Manual, but it should contain, as a minimum, the following:
  - 1. A paragraph stating that the utility's facilities need to be relocated and/or adjusted as a result of the proposed road construction, and statements setting forth the utility's prior rights, and that reimbursement costs are eligible pursuant to [NRS 408.407](#).
  - 2. A provision wherein the utility agrees to allow the State to perform the adjustments.
  - 3. A statement giving the estimated cost of adjustment and that the adjustment will be entirely at the State's expense.
  - 4. A provision wherein the utility agrees to accept the work, the facility and the maintenance thereof with no further obligation to the State.
  - 5. A provision wherein the utility agrees to quitclaim to the State its interest to the location of the existing facility within the Highway right-of-way and to accept a Joint-Use Agreement for the location of the adjusted facility.

6. A clause providing for inspection of the installation by the utility to ensure the protection and integrity of its facilities. Also, a provision stating that any costs for such inspection will be borne by the State.
  7. A provision detailing the restrictions to the utility in the after condition, for access to its facilities from within the Control of Access and a provision providing for access in the event of extreme emergency.
  8. Any other provisions that may be peculiar to or necessary in accomplishing the adjustment.
  9. The Agreement will be processed in accordance with Preparation of the Agreement, [Section 7.360](#) of this manual.
- E. It is essential that the Agent assigned to the project, work closely with the Design and the utility company to ensure that all pertinent quantities, materials and other required utility features are included in the engineer's estimate, the Contract's plans and special provisions. ([Title 23 CFR, Chapter 645](#)).
- F. There are also occasions where a Utility (primarily municipalities), upon notification of a proposed Highway Project, will request the Department to incorporate in its contract, utility items which are not replacement facilities and which will be situated in locations for which the Utility has no reimbursable rights. These facilities are generally sewer and water lines, empty conduits and other underground facilities which will be incorporated into the municipality's long range plans for expanded service into new or planned sub-divisions and other areas.
- G. In these cases, (F. above), after the Utility's request has been initially approved by the Department, it will be necessary for the State and Utility to enter into an agreement providing for the reimbursement to the State by the Utility for this work. The agreement shall contain as a minimum the following:
1. Provisions whereby the Utility agrees to reimburse the State at the contract bid price(s) of the requested utility facilities.
  2. A clause holding the State harmless from any liability resulting from the facility subsequent to its construction and installation.
  3. A clause relieving the State of any maintenance obligation to the Utility or its facility.
  4. Provisions wherein it states the Utility's status of occupancy (usually pursuant to [NRS 408.423](#)).
  5. Provisions for reasonable access to the facility by the Utility.

6. The Agreement will be processed in accordance with Preparation of the Agreement, [Section 7.360](#) of this manual.

### 7.362 Function of the Utility Section Immediately Prior To and During the Adjustment Stage

- A. When the relocated utility facilities are to be located outside State Highway rights-of-way, the company may be authorized to negotiate their own easements.
  1. Since costs incurred by the companies in their right-of-way acquisitions are eligible for reimbursement, and since the facilities to be located upon these lands will be adjusted with Federal funds, the companies must follow all the applicable rules and regulations specified in [Title 23 CFR, Part 645, Subpart "A"](#).
  2. Should the company not be adequately staffed or experienced to make their acquisitions in conformance with the applicable rules and regulations, or should the company experience insurmountable difficulty in their negotiations, the State may include the replacement easements in our right-of-way package upon receipt of a written request and justification.
  3. In extreme cases where neither the company nor the State has been able to negotiate replacement easements, the required rights of way may be referred for condemnation in order to obtain a right of entry.
- B. When all of the necessary right-of-way is available for occupancy, the company will be issued a written Notice to Proceed (Form 715) with the work.
  1. This authorization will be furnished in the letter (Form 715) transmitting a Certified True Copy of the agreement.
  2. The letter of transmittal will contain statements requiring the company to notify our District Utility Inspector in writing prior to commencing the work and a statement requiring that all change orders and/or amendments have prior approval of the State and Federal Highway Administration before commencing any work associated with the change order (change order and amendment procedures will be detailed in succeeding paragraphs).
- C. In order to keep the number of Change Orders and/or amendments to an absolute minimum, it is essential that the Agent thoroughly check the final set of contract plans for any changes or revisions that could affect planned utility adjustments or existing facilities. This will give lead-time to modify the agreement without placing undue hardship on the utility company.

### 7.363 Project Certification

- A. One of the more important duties of the Agent assigned to a given project are to coordinate with the District Utility Inspector and the utility company, the scheduling and target dates of the relocation and/or adjustments. This is essential, especially on Federal-aid projects in order to satisfy the requirements of [Title 23 CFR, Part 645](#).
- B. After written authorization to the utility company to proceed with the adjustments, the Agent shall have the responsibility to perform and affect the following:
  - 1. Maintain liaison with the utility and District Utility Inspector to ensure that:
    - a. All necessary materials, equipment and manpower are available to complete the adjustment.
    - b. The utility's crews and/or contractor commence work at an early enough date to complete the adjustments prior to project advertisement.
  - 2. Assist the District Utility Inspector in:
    - a. Processing Change Orders and amendments.
    - b. When requested, coordinate with the Resident Engineer, District Utility Inspector and the utility company to resolve any problems that may occur on the job site.
    - c. Forwarding or relaying requests to the utility's parent company when necessary.
  - 3. When for any reason it appears that the adjustment cannot be completed prior to the project advertisement date the District Utility Inspector and/or Agent shall inform the Supervisory Right-of-Way Agent of the facts and submit a written report if necessary. This should be done as soon as the situation becomes obvious to allow the Supervisory Right-of-Way Agent time to institute corrective action such as, arranging for: overtime, extending the project target dates, expending material shipments, etc.
  - 4. It may be necessary, due to the type and nature of the adjustment for the utility to work concurrently with the State's contract operations. In this case, arrangements should be made to coordinate these adjustments with the physical construction to preclude any unnecessary delay or cost to the contract operations. On Federal-aid projects, prior FHWA approval may be required for this concurrent work. The Agent shall ensure that information regarding all concurrent work is inserted into the special

provisions. This information must include the utility company, utility type, location of concurrent work and completion date of concurrent work. Additionally, the Agent shall verify that the contact information for each utility and any special instructions to the contractor for protecting a utility in-place are included in the special provisions.

- C. At a time, generally just prior to project advertisement, the Assistant Chief will request from the Utility Section a memorandum of certification for a given project. The Supervisory Right-of-Way Agent, will prepare the certification and state that either all utilities and/or railroad work has been relocated and cleared or a fully executed agreement is in place as required for proper coordination with the State's construction schedules. The Supervisory Right-of-Way Agent shall ensure that all agreements are executed prior to certifying the project.

#### 7.364 Amendments and Change Orders

- A. An amendment, Addendum to Agreement for the Adjustment of Utility Facilities (Form 706) to an agreement is a document that reflects changes to an existing provision in the original agreement and/or additional conditions, items, stipulations, provisions and pertinent costs thereto not contained in the original agreement and/or the relocation costs exceed 10% of the agreement amount. It is processed in the same manner as an agreement (See Preparation of the Agreement, [Section 7.360](#)). If the amendment provides for significant additional reimbursable costs, the Agent must immediately upon anticipation of same, ascertain an estimate thereof and the Supervisory Right-of-Way Agent shall submit a request to Right-of-Way Control to program additional funds. Prior approval will be required from FHWA to authorize additional funds on Federal-Aid projects if Amendments increase the relocation costs over \$500,000.00. The Agent shall also obtain a letter of explanation justifying the increased costs from the utility company.
- B. District Utility Inspectors normally initiate Change Orders in the field when the method of adjustment cannot be constructed according to the agreement plans and provisions. The Change Order provides for acceptable, alternate procedures and a utility change order form is provided for this purpose. The District Utility Inspector may authorize Change Orders up to and including \$5,000.00 providing it does not affect the general scope of work.

#### 7.365 Billings

- A. After an agreement has been executed and the Utility Company has been issued a Notice to Proceed, the Utility Company may submit progress billings for costs incurred. In accordance with [NAC 408.379](#), each billing must include the agreement number and be clearly marked as either a progress or final bill. The Utility shall submit the final billings within one year following completion of the

utility relocation work. If final billings are not received within this one-year period, the Department may:

1. Consider previous payments made to the utility to be final.
  2. Make a final payment when the final billing is received if the Department and the Utility Company have agreed in advance that a longer time period is needed to alleviate undue hardships.
- B. Upon receipt of a utility bill, the Agent shall verify that the bill is submitted in accordance with [NAC 408.379](#).
1. Preliminary Engineering bill – The Agent shall ensure that supporting documentation includes charges to labor by hours, class and rate. Timesheets to support labor charges are preferable as supporting documentation, but timesheets are not required.
  2. Materials and Labor bill – Billings for materials must be itemized in the billing statement so all costs can be compared to the estimate. The Agent shall forward all material and labor bills to the Utility Inspector for review and approval. When the Agent receives the bill from the utility inspector, the Agent will review the billing statement against the cost estimate and verify the supporting documentation against the billing statement. The supporting documentation shall include copies of invoices for the purchase of materials and invoices that the Utility Company paid to their subcontractors. Preliminary Engineering may be included in this bill if the agreement estimate included preliminary engineering costs.
  3. Lump sum bill – These bills will not require any supporting documentation. The Agent shall forward the bill to the Utility Inspector for review and approval. Upon receipt from the Utility Inspector, the Agent shall verify that the invoice is for the agreement amount.
- C. When the Agent has verified that the supporting documentation is acceptable and it equals the invoice amount, the Agent will write “o.k. to pay”, date and initial the invoice. The Agent will then submit the original plus the one copy of the bill to the Staff Specialist – Utilities for review and processing. The cover memo to the Staff Specialist shall include all pertinent information regarding the bill including if the work was completed within the timeframe referenced in the agreement.
- D. If it is deemed that there is insufficient supporting documentation or there are other issues discovered during the review of the billing, the Agent shall write a letter to the Utility Company explaining what the issues are and why the Department cannot reimburse the utility for those costs. The Agent shall work closely with the Utility Company and/or the District Utility Inspector to resolve any problems with the bill. If a portion of the bill is acceptable, then the Agent shall



submit that portion of bill to the Staff Specialist – Utilities for partial payment as the Department has 60 days to make payment upon receipt of the bill. The cover memo to the Staff Specialist shall detail the amount that is o.k. to pay, the amount that is being withheld from payment and why a portion of the payment is being withheld. This documentation is necessary for payment and audit reasons.

### 7.366 District Utility Inspector Duties and Responsibilities

These duties fall into the following categories:

- Responsibilities
  - Utility Adjustments and Railroad Inspection
  - Revocable Occupancy Permits
  - New Service and Upgrading Existing Service
  - Assisting the District Engineer
  - Outdoor Advertising Control
- A. Responsibilities
1. The District Utility Inspector is primarily charged with inspection duties for the relocation and/or adjustment to the facilities of utilities occasioned by the Federal-Aid Highway Construction Program in accordance with the applicable governing Federal and State regulations and procedures. The District Utility Inspector may also be required to assist Headquarters Utility and Right-of-Way personnel in the preparation of agreements and plans.
  2. Railroad inspection is of the nature of at-grade crossing construction, shoofly tracks, relocation and adjustment to signal and communication lines and checking the personnel furnished by the railroad for flagging and railroad engineering inspection necessitated by highway construction.
  3. Assisting the Right-of-Way Agent in obtaining new or upgraded utility services when required for the Department's projects.
  4. When requested by memo from the Right-of-Way Agent, provide a count of manhole and valve covers that will require adjustment noting the type of cover and location by station and offset.

5. Assisting the District Engineer in reviewing all revocable occupancy permits, requests, etc., and field review, if required; also assisting in miscellaneous right-of-way matters that might occur locally.
6. Utility Occupancy Permit Inspection: The District Utility Inspector shall be required to inspect the actual permit installation to ensure all provisions of the permit are complied with and the installation conforms to State and Federal regulations.
7. Outdoor Advertising Control and Inspection: Initial processing of Sign Permit Applications, updating inventories, inspection of sign installation and removal, sign encroachment patrol and other related assigned tasks shall be included in the District Utility Inspector's duties.

B. Utility Relocations and Railroad Inspection

1. The District Utility Inspector is issued a copy of the utility adjustment agreement or railroad agreement after the agreement is executed. The agreement contains the estimate and plan of relocation, together with applicable drawings upon which are depicted the existing, as well as the proposed, relocation of the facilities. The utilities' facilities are placed on highway construction drawings and correlated to highway engineering stationing.
2. The District Utility Inspector will be thoroughly familiar with the applicable governing Federal and State regulations as well as the work to be performed and the area of the relocation. In this respect, it may be necessary for the District Utility Inspector to obtain a complete set of contract plans and conduct field reviews, as necessary.
3. The District Utility Inspector is notified in writing of the company's impending construction by being advised by the utility company of its intended work schedule. The Right-of-Way Agent gives instructions concerning the intended work schedule to the utility company when transmitting the fully executed and approved copy of the agreement to the utility company.
4. The District Utility Inspector should check the field stakes to ascertain the accuracy of the location of the relocation or the adjustment.
5. Daily entries in the Daily Diary and Report of Time (Form 729) shall be made to record the work being performed. The Daily Diary and Report of Time should be used to record details such as personnel, hours, equipment, type, size, material, etc., and to record daily accomplishments and discussions of items such as general quality of work, defects, action taken to correct the deficiencies, working and safety conditions, special

problems encountered, field engineering determinations and instructions given or received that are pertinent to the relocation. Duplications of recorded material on the Daily Diary and Report of Time are neither necessary nor required.

6. When it has been determined that a Utility Company's relocation will exceed the agreement amount by 10%, the District Utility Inspector shall coordinate with the Agent to amend the Utility Company's Agreement for the additional cost. The District Utility Inspector will document the reason for the increased cost and provide a copy of the documentation to the Agent.
7. Utility Agreement Change Orders may be authorized by the District Utility Inspector, up to and including \$5,000.00 providing it does not affect the general scope of work, without prior approval of the Utility Engineer or the FHWA. Notice should be made of any special instructions given the company, improvement in technique and methods used and any and all discussion and actions pertinent to the job. The Change Order must be approved by the Chief Right-of-Way Agent or Deputy Chief Right-of-Way Agent by delegation. The District Utility Inspector shall provide a copy of the Change Order to the Agent for billing purposes.
8. Upon completion of the work contained in the governing agreement, the District Utility Inspector and the company will establish a date and place where the salvage, if any, recovered from that job and when the District Utility Inspector will be available for inspection. The Supervisory Right-of-Way Agent shall be notified of the date and place of the salvaged material, by the District Utility Inspector, with a copy included for the FHWA. The Supervisory Right-of-Way Agent will in turn notify the FHWA who may elect to accompany the State representative on the inspection function in conformance with established policy. The District Utility Inspector will complete the Salvage Inspection Report (Form 733) and take pictures of the salvage to be included in the final report.
9. At the conclusion of the inspection function for any particular job, the individual daily figures for time, materials, equipment, hours, etc., shall be tabulated and recorded in the Final Report of the job. The agreement and all other material pertinent to the relocation, including pictures, should be included in the Final Report. The report is to be transmitted to the Agent with a memo of transmittal containing a brief narrative synopsis of the work accomplished, in order to give the reader the general chronological sequence. The Final Report is to be transmitted to the Agent within 30 days of the completion of the relocation.

10. Final Acceptance by FHWA:
  - a. Pursuant to [Title 23 CFR, Part 645](#) the Division Engineer from the FHWA is charged with the responsibility of making inspections on all phases of Federal-aid projects to ascertain if the State's control procedures are effective in assuring that the construction is being performed in reasonably close conformity with the approved plans, specifications, and contract provisions, and, if not, to arrange for the necessary remedial action to be taken. Work or adjustments performed by utilities, railroads, State, or other public agency forces are included, and upon completion, shall require inspection and final acceptance by the FHWA
  - b. The items to be covered in the inspection and final acceptance include, but are not limited to:
    - i. Materials
    - ii. Workmanship
    - iii. Observance of actual construction operations
    - iv. Verification of dimensions and placement of facilities
    - v. Documentation of quantities of materials
    - vi. Adequacy of field notes, diaries, and other necessary documentation
    - vii. Justification for overruns and deviation from plans
    - viii. Labor hours.
  - c. For large and complex adjustment, the resident engineer will keep in sufficiently close touch with all phases of the work as it progresses that to the maximum extent possible all feasible problems will be disposed of prior to final inspection. Such problems may include necessitating radical changes in adjustment plans due to unforeseen circumstances or preventing delays in utility adjustments due to material shortages, labor strikes, adverse weather conditions, or poor management.
11. The final (or progressive) billing, as submitted by the utility or Railroad Company shall be verified by the District Utility Inspector assigned to the project. The verification shall include the adjustment completion date and the agreement date as set forth below:

“The above-listed adjustments were completed on \_\_\_\_\_ and were made in accordance with the agreement with the Nevada Department of Transportation dated \_\_\_\_\_”

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Utility Inspector      *Date*

If it is determined that there is insufficient documentation or a discrepancy during the verification of the billing, the District Utility Inspector shall notify the Agent of the issues with the billing. The District Utility Inspector may contact the Utility Company or Railroad to resolve issues with the billing. This verification shall be accomplished and the bill returned to the Utility Division within a period of not more than twenty (20) working days from receipt of the bill. If the District Utility Inspector is working with the Utility Company or Railroad on resolving problems with the bill at the end of the twenty (20) working days, the District Utility Inspector shall return the portion of the bill that is acceptable to the Utility Division for partial payment. The remainder of the bill will be paid when the District Utility Inspector resolves the ongoing issues of the bill.

12. The objective in conducting the inspection function is to be assured that the various companies comply with the approved agreements covering their activity and fully conforms to the necessary specifications and standards of work required by approved and accepted highway standards. Additionally, the desirability of having accurate records of the personnel and equipment in order to verify and check the company's bill should be self-evident. In the final analysis, it is of the utmost importance to have inspection and an adequate daily diary in order to be in a position to certify the final bill, which is prerequisite to reimbursing the company.

C. Utility Revocable Occupancy Permits

1. A copy of this manual and the Department's Utility Accommodation Policy will be made available to the Utility Inspector.
2. The District Utility Inspector will assist the District in processing the permit applications following the procedures as outlined in Encroachment Permit Processing Time Schedule, Transportation Policy ([TP](#)) 1-10-3.
3. The District Utility Inspector is charged with the inspection duties of the permit installation.
4. If Department resources allow, the District Utility Inspector should update the District as-built plans. After the work for each permit is accomplished, the District Utility Inspector will plot the location, clearances, date and

type of installation, etc., on the District's plans and submit a copy to the Headquarters Utility Office.

D. New Utility Service and Upgrading Existing Service

1. It may be necessary to obtain new utility service and/or upgrade existing utility service such as water, power and telephone for Department projects. The District Utility Inspector will coordinate with the Agent to obtain an agreement for new utility services. Depending on the Utility Company and the type of upgrade, an agreement may be necessary for an upgrade to an existing service.
2. The District Utility Inspector will review the Utility Company's plans against the Department's contract plans to ensure that there are no conflicts.
3. The Utility Inspector will coordinate with the Utility Company to have the facilities inspected and tagged, if necessary, and submit the meter request form to the Utility Company for service installs.

E. Assisting the District Engineer

1. In all Districts, when requested, the District Utility Inspector will assist the District Engineer in reviewing all revocable permits, requests, etc., and field review, if required.
2. The District Utility Inspector may be requested from time to time to represent the Utility Section at Contract Preconstruction Conferences. It is essential that there is coordination between the Agent and the District.
3. The District Utility Inspector may be requested by the District Engineer to assist with District contracts.

E. Outdoor Advertising Control

1. The District Utility Inspector shall complete physical inventorying, surveillance and control of signs in accordance with Outdoor Advertising Control General Information, [Section 7.600](#) of this manual.

### 7.367 Alternate Procedure Applicability

- A. Upon application by the State and approval of the FHWA, the State can, pursuant to [Title 23 CFR, Part 645.119](#), elect to adopt an alternate procedure wherein the State acts in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other

related matters required as prerequisites for authorizing the utility to proceed with and complete work on all Federal-aid projects including interstate.

- B. The scope of the State's approval authority under this procedure includes all actions necessary to advance and complete all types of utility work under the provision of this section, except in the following instances, which are to be reviewed and approved in the normal manner on a case-by-case basis by the FHWA as prescribed previously in this section:
1. Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations, reservoirs, and the like.
  2. In cases where the utility to be relocated occupies Federal lands.
  3. Where the utility facilities to be relocated or adjusted occupy in part or in whole, any rights-of-way authorized by FHWA prior to a public hearing or location/design approval.
  4. In cases where the utility is installing or is planning to install new facilities on or across the proposed right-of-way of a future planned highway project, prior to the time such right-of-way is purchased by or under control of the State, and the utility is eligible for participation in the additional costs incurred, which are attributable to and in accommodation of the planned highway project.
  5. Where all efforts of the State and utility fail to bring about written agreement of their separate responsibilities under the provisions of this section.
- C. The FHWA may, under an approved alternate procedure, authorize the State to proceed with utility relocations on a project subject to the following conditions:
1. The utility work has been included in an approved program as prescribed elsewhere in this section.
  2. The State submits in writing a request for such authorization, which shall include a list of the utility relocations on the project which are to be processed under the alternate procedure, along with the best available estimate of the total costs involved.
- D. The request and authorization prescribed under Paragraph C above should be made at the earliest feasible date in advance of the planned highway construction. Authorization by the FHWA for the work described under Paragraph B above may be combined with the authorizations issued pursuant to Paragraph C with the understanding that later referral of the State-utility

agreements, supporting plans, and cost estimates, to the FHWA for review and approval will be required.

- E. If, due to unforeseen circumstances, the State later finds that additional utilities must be relocated on a project, they shall inform the FHWA of the additional work to be processed under the alternate procedure and request separate authorizations thereof in accordance with the manner prescribed in Paragraph C above. Emergency situations may be handled by advance oral arrangement and later confirmed in writing to the State by the FHWA.
- F. Any changes, additions, or deletions the State proposes to the alternate procedure approved by the Division Administrator, FHWA, pursuant to this paragraph are to be submitted by the State to the Division Administrator, FHWA, for review, recommendations, and referral to the Division Administrator for approval prior to implementing the proposed modifications. Such requests by the State must be accompanied by a statement signed by the Chief Right-of-Way Agent of the Nevada Department of Transportation, verifying the certification made [Title 23 CFR, Part 645](#), and its application to the proposed modifications. The Division Administrator may continue to approve utility work under the previously approved alternate procedure, pending approval of the proposed modifications.
- G. The provisions of this Chapter do not alter the FHWA approval actions relevant to the following:
  - 1. The State's legal authority to reimburse the utility and those laws are consistent with the terms of [Title 23 CFR, Part 645](#), regarding Federal-aid participation.
  - 2. The State's legal authority, consistent with [Title 23 CFR, Part 645](#), to reimburse the utility on Federally-aided projects, where the utility is occupying public lands under a state franchise.
  - 3. Evidence that the State has paid the utility for work accomplished under this section out of State funds and that an audit has been performed, excepting that work performed under a lump sum agreement.
  - 4. Proof by the State that it has entered into a satisfactory agreement with the utility pursuant to the provisions of this section.
  - 5. Provisions and terms governing the conditions of occupancy by a utility covered under a permit issued by the State pursuant to [NRS 408.423](#).



## 7.400 RAILROAD AGREEMENTS

### 7.401 REFERENCES

- A. Title 23 Code of Federal Regulations (CFR), [Part 646](#)
- B. Title 23, United States Code (USC), Part 140, Subpart I ([link](#))
- C. Nevada Revised Statutes (NRS) [704.300](#) and [704.305](#)
- D. Nevada Public Service Commission (PSC) – Order in Case No. 1159

### 7.402 PURPOSE

To prescribe the procedures preparatory to, and for, entering into agreements with railroad companies and/or utility companies, which own or jointly own or use facilities with a railroad for the purpose of:

- A. Relocating, adjusting and protecting railroad facilities required by, or in connection with the construction of a highway project under the supervision of the Nevada Department of Transportation, and
- B. Eliminating hazards of railway-highway crossings by constructing grade separations, installing crossing protection devices and relocating highways and/or railways or eliminate at-grade crossings.

### 7.403 SCOPE

The foregoing shall encompass all road and street systems under the direct supervision and control of the Nevada Department of Transportation and those road and street systems, which are now or may hereafter be designated by State or Federal law or other authority to be under the control of supervision of the Nevada Department of Transportation.

### 7.404 DEFINITIONS

Definitions and meaning of the words and terms used herein may be ascertained by consulting the above-cited references in References, [Section 7.401](#), paragraph A.

## 7.450 PROCEDURES TO BE FOLLOWED PRIOR TO THE PREPARATION OF RAILROAD AGREEMENTS

- A. When making a field review of the various proposed alignments and estimating utility costs, the Agent assigned to a project will also check for railroad involvement. If Railroads are involved, the Agent will estimate costs for grade separations (with assistance of the Structure Division), adjustment of railroad owned or operated utilities, widening or signalization of existing at-grade

crossings, etc., and follow the procedures as set forth in Preliminary Project Involvement by Utility, [Section 7.350](#).

- B. After preliminary design plans are available and during the period when the Agent makes the comprehensive field review, it would also be an ideal time to have a representative of the railroad accompany the Agent and a designer meet in the field, if scheduling can be arranged. Prior to this review, the Design Division should have already made initial contact with the railroads for their tentative approval of the proposed alignment. During the review the Agent, designer and railroad representative(s) should discuss any problems observed and not previously foreseen and the alternatives available, such as alignment shifts, access consideration, off-track maintenance roads, extra structure width for future tacks, drainage, temporary adjustment of communication and signal facilities to clear for bridge construction, etc. At the conclusion of the review, the Agent should write a synopsis and a copy sent to each member of the field review.
- C. When adequate Bridge and Design plans are available, they shall be forwarded to the railroads with a request for general approval of any structures. It is imperative that the Agent works and coordinates these efforts with the Design Section during this time and especially the Structure Division if grade separations are involved. It is important that the Agent check the Design Division's plans to ensure that any planned additional tracks, off-track maintenance roads, structure dimensions, etc., are in accordance with the provisions of [Title 23 CFR, Part 646, Subpart B, 646.214](#), Code of Federal Regulations and Nevada Public Service Commission (PSC) – Order in Case No. 1159. Any cost estimate updates shall be forwarded to Right-of-Way Control from Design and Utilities.
- D. During the formal plan submittal to a railroad, written authorization to incur costs for the preparation and plans and estimates shall also be forwarded. If the project is Federal-aid, a check should be made to assure that it is under an approved Federal-aid program prior to authorizing preliminary engineering. The authorization should include a request for plans and cost estimates for the following:
  - 1. Relocation and/or adjustment plans for Railroad utilities such as signal and communication lines and any other utility that is essential or directly involved with the railroad's actual track operations (railroad owned or affiliated utilities that provide service to other than railroad facilities, such as oil pipelines will be relocated under the provisions of [Title 23 CFR, Part 645, Subpart A](#)).
  - 2. Construction flagging costs (this will be dealt with in more detail in succeeding paragraphs).
  - 3. Engineer – inspection costs.

4. Installations of grade crossing protection devices and additional trackage, if applicable.
  5. Any other work the railroad may be required to do with its own forces.
- E. Simultaneous with or preferably prior to D. above, a finding will be made as to the railroad's obligation, if any, pursuant to law, ordinance, franchise, easement, grant, court or PSC order or otherwise, to move or change its facilities at its own expense, when said facilities occupy public lands or rights of way. The extent to which a railroad is obligated or relieved of its obligation shall be set out in the agreement between the State and Railroad.
- F. During the time in which the railroad is preparing the cost estimate and plans, a determination will be made of the railroad's liability, if any, for determined benefits that will result from the proposed highway project. This determination shall be made in accordance with the provisions as set out in [Title 23 CFR, Part 646, Subpart B, 646.210](#).
- G. Where it is determined in F. above, that the railroad has a liability and the benefits have been established, a determination will be made as to the railroad's share of costs to the project and application of its contribution. This determination shall be made in accordance with the provisions as set out in [Title 23 CFR, Part 646, Subpart B, 646.210](#), [Title 23, USC, Sections 120\(d\) and 130](#), and [NRS 704.300](#).
- H. Sometime during this phase, a meeting between the Federal Highway Administration and the Department of Transportation will have taken place for the purpose of approving or disapproving the Design and Bridge plans. The Supervisory Right-of-Way Agent and Agent assigned to the project will be in attendance at the meetings to answer questions and to give input to the considerations being discussed.
- I. After the Design plans have been approved and where there is a crossing of the railroad's tracks by the proposed highway, the State will, pursuant to [NRS 704.300](#), petition the PSC to order the crossing. The general form of this petition can be obtained from the Public Utility Commission. The petition shall include the Statutory authorities of the State; the ownership of the railroad, the necessity for the crossing; type of crossing (new grade separation; reconstruction of an existing railway-highway grade separation structure; widening of an existing grade crossing, grade crossing protection, etc.); description and location of the project, drawing and plans of the crossing; cost estimates; that Federal-aid funds are available if applicable; the amount to be apportioned between the State and the railroad; the design criteria governing the need for and the type of crossing; and railroad approval; and any other feature that may be relevant to the Petition. Due to Notice and Hearing requirements, at least 120 days should be allowed for the Order to the Petition to be issued by the PSC.

- J. After the railroad has had the State's plans, proposal and authorization for a time long enough to assign the work and be reviewed, the Agent will contact the railroad to ascertain if they require additional drawings, cross-sections, the project field staked, etc. This will be done primarily to assist the railroad in the preparation of the work to be accomplished by their own forces, such as railroad and utility adjustments to ensure timely completion prior to the start of project construction. The Agent will also request the railroad to review their protective liability insurance requirements and state any additional coverage or exceptions to the Standard Provisions as set forth in [Title 23 CFR, Part 646, Subpart A](#).
- K. Upon receipt of the estimates and plans from the railroad, the State will
  - 1. Review and research the railroad's submittal for accuracy and conformance with the requirements of the [Title 23, CFR, Part 646, 646.214](#).
  - 2. Send the submittal to the Federal Highway Administration for their review and recommendations.

#### 7.451 Preparation of the Agreement

- A. Based on past experiences with the various railroads operating within the State of Nevada, the particular circumstances involving the project and depending on which railroad is involved, it is generally a matter of convenience as to who draws up and prepares the agreement – the railroad or the State.
- B. The draft agreement shall be submitted to the railroad for their approval. This is essential where the railroad does not take part in the initial preparation of the agreement.
- C. Pursuant to [23 CFR, Chapter 1, Part 646, Subpart B, 646.216](#), when the agreement has been prepared in an initial draft form, and Federal funds are involved, it shall be submitted to the Federal Highway Administration for review as soon as possible after the project has received program approval.
- D. After tentative approval of the draft by the FHWA, the agreement shall be submitted to the Financial Management Division for a program-funding update.
- E. It is essential at this time to forward a copy of the draft agreement to the Specification and Design Divisions to provide lead-time to incorporate the following into the Contract Plans and Special Provisions:
  - 1. Structure and crossing clearances (vertical and lateral). If the PSC Order has not been received by this time, the clearances as requested in the Petition shall be used.

2. Railroad protective insurance provisions as set forth in [23 CFR, Chapter 1, Part 646, Subpart A, 646.107](#).
  3. Flagging and flagging billing provisions as set forth in [23 CFR, Chapter 1, Part 646](#).
  4. Any other provision that deals with the Contractor's operations and liability on, within, or adjacent to railroad property.
- F. A copy of the draft agreement will also be sent to the Internal Audit Division along with a request for a review in accordance with [23 CFR, Part 140](#).
1. This copy provides assurance as to the adequacy of the railroad's accounting system to segregate and accumulate reasonable, allocable and allowable costs for the work performed by their own forces.
  2. This copy also provides the Department an overall evaluation of the railroad's accounting and billing procedures, which must be taken into consideration during negotiations.
- G. It is essential that the Project Manager review the drafts in order that all necessary features to be incorporated in Contract Special Provisions are current and correct. Any proposed or subsequent changes in railroad protection, insurance, flagging, etc., that affects the highway contract shall also be brought to the attention of the Project Manager.
- H. A copy of the draft agreement will next be taken to the Legal Division for review as to legality and form. This is imperative when the railroad is preparing the agreement as some legal points may have to be negotiated, such as additional coverage of the railroad liability protective insurance.
- I. When the agreement has been prepared and assembled in its final form, that is, ready for execution, the following procedures will be affected:
1. The agreement will be sent to the railroad for formal execution.
  2. After the railroad returns the executed agreement, it will be forwarded to the Staff Specialist for Utilities will review the agreement and, if satisfactory, will initial it as approved.
  3. The Chief Right-of-Way Agent or designated representative will review the agreement and, if satisfactory, sign it as approved.
  4. The Legal Division will review for formal approval as to legality and form.
  5. The agreement will then be forwarded to the District Engineer or designated representative for execution.

6. If Federal-aid funds are involved, the agreement will be submitted to the Staff Specialist for Utilities, Chief Right-of-Way Agent and for approval.
7. After their review and approval, the Assistant Director – Engineering will return the agreement to the Utility Section for final distribution as provided in Function of the Utility Section Immediately Prior to and During the Adjustment Stage, [Section 7.362](#), paragraph C.
8. When the railroad prepares the agreement, the procedures are that both copies of the agreement (a copy will be marked “Railroad Original” and a copy will be marked “Highway Original”) will be forwarded to the Nevada Department of Transportation for execution; the District Engineer, Chief Right-of-Way Agent, Staff Specialist – Utilities, the Legal Division and the Assistant Director – Engineering will execute the agreement in that order. The agreement will then be sent to the FHWA for approval if Federal-aid funds are involved, prior to returning the agreement to the railroad. The railroad will execute both documents and send the Department the “Highway Original”.

#### 7.452 Utility Section Functions Immediately Prior To & During the Adjustment Stage

##### A. Right-of-Way

1. Normally, the State will acquire any additional right-of-way required by the railroad to relocate or adjust their facilities, permanently or temporarily, when it can be shown that such right-of-way is necessary as a result of a highway project and the railroad is not required to move or relocate its facilities at its own expense.
2. Where it is necessary for the railroad to acquire additional right-of-way, the costs of acquisition are eligible for reimbursement-subject to the provisions A.1. above, and provided that where a contribution is being made by the railroad to the cost of the project, the costs of any rights of way incurred prior thereto, at the option of the State, be considered a part of the contribution. Where this is the case, the procedures as set forth in [23 CFR, Part 646](#), shall be followed.
3. Acquisition of rights of way by the State for a railroad (A.1. above) as well as the taking of a railroad’s real property (including any buildings or other structures) that are not part of the railroad’s operating facilities, by the State, shall be in accordance with [23 CFR, Part 646.216](#), Section 2, subsection C.

- B. When all of the necessary right-of-way is available for occupancy, the company will be issued a written authorization to proceed with the work to be accomplished by their own forces.

1. This authorization will be furnished in the letter transmitting a Certified True Copy of the agreement. If the railroad prepares the agreement, the agreement copy transmittal will not of course, be necessary.
  2. The letter of authorization will contain statements requiring the company to notify our District Utility Inspector in writing and Headquarters Utility Section prior to commencing the work and a statement requiring that all change orders shall have prior written approval of the State and the FHWA before commencing any work associated with the change order.
- C. During this time, copies of the agreement will be distributed in the following manner:
- Railroad (One Certified True Copy)
  - FHWA (One Certified True Copy)
  - Central Records (Original Agreement)
  - Accounting (One Copy – Agreement portion only)
  - Construction Division (One Copy)
  - Design Division (One Copy)
  - District Engineer (One Copy)
  - Utility Inspector (One Copy with an additional set of drawings)
  - Chief Right-of-Way Agent (One Copy)
  - Right-of-Way Control (One Copy)

#### 7.453 Project Certification

- A. The same procedures and provisions contained in paragraph C of the above section will apply to railroads with the following additions:
1. After the contract has been awarded and prior to the State's contractor commencing work, the Agent will contact the Department's Contract Compliance to ensure that the successful bidder has the adequate types and amount of Railroad Protective Insurance as specified in the agreement and Contract Special Provisions. If the contractor's insurance is deficient in this regard, the contractor or contractor's sub-contractor will not be permitted to work on, near or adjacent to railroad's property or facilities. Contract Compliance will also keep a record of any insurance renewal dates and send timely reminders to State's contractor that the policy must be renewed if work is adjacent to or on railroad property and



is not completed prior to the renewal date. Estimates of working days on railroad property to assist in this can be obtained from the project Resident Engineer.

2. The Agent will also assist and coordinate with the Utility Inspector in the field, work performed by the railroad during construction operations, principally flagging and engineering inspections.
  3. The Agent will assist the Right-of-Way Control Officer in processing progress billings for engineering inspection, utility work and flagging.
- B. The Director, pursuant to [NRS 408.383](#), withholds 5% of the contract bid price from State's contractor until final acceptance by the FHWA. Prior to final acceptance, the Department publishes a "Notice to Creditors" for claims against the contractor. At this time, the Construction Division submits to the Utility Section a memorandum, Contract Final Payment (Form 730) stating that work has been completed and asks if there are any charges or amounts to be withheld prior to final payment to the Contractor. This memorandum was devised between the Construction Division and the Utility Section primarily to ensure that there were no outstanding or past due billings from the railroad for flagging charges. The actual costs of flagging are directly recoverable from the Department of Transportation. It is, therefore, the Agent's responsibility to work closely with the Project Manager to ensure that the railroad submits timely billings for flagging in order that no unnecessary delay is incurred in making final payment to the State's contractor.
- C. The Utility Inspector must bear in mind that the Inspector not only must inspect the railroad utility adjustments prior to construction, but also keep accurate records of flagging, engineering inspection and other work performed by railroad forces during the construction phase. The duties of the Utility Inspector for railroad agreements are essentially as those specified in Project Certification, [Section 7.363](#), paragraph C.

#### 7.454 Consultant Agreements

- A. Where the railroad is not adequately staffed to prosecute the work to be performed in connection with the making of the changes to its properties, which are required by the construction of a highway project, the railroad may engage the services of consultant engineers, architects and others for the required technical services.
- B. The procedures governing the engagement of and the agreements with such consultants are set forth in Request for Approach (RFA) and Request for Proposal (RFP), [Section 7.352](#) of this Manual. An added reference to that section is [Title 23 CFR, Part 140, Subpart I, 140.906](#).



## 7.500 RIGHT-OF-WAY OCCUPANCY PERMITS

### 7.501 Purpose

To establish procedures for the control, preparation and issuance of permits for the occupancy of state highway right-of-way.

### 7.502 Authority, Rules and Regulations

The authority, rules and regulations governing Right-of-Way Occupancy Permits are delineated below:

- A. Title 23, Code of Federal Regulations (CFR), [Part 645](#) Utilities, Subpart A
- B. Title 23, Code of Federal Regulations (CFR), [Part 645](#) Utilities, Subpart B
- C. Nevada Revised Statutes (NRS) [408.210](#) and [408.423](#)
- D. Nevada Administrative Code (NAC) [408.403](#) through [408.557](#)
- E. Transportation Policies ([TP](#)) 1-10-1 and 1-10-3

### 7.503 Definitions

#### **Non-Revocable Permit:**

Permits that are issued for utility relocations and/or adjustments under a prior right and for Line Extension and Service Agreements for NDOT projects that require power, telephone, water and/or gas services for a highway purpose.

#### **Permittee:**

The corporation(s), person(s), entities(s), or their Agent(s) to whom the permit may be issued.

#### **Revocable Permit:**

Right-of-Occupancy Permit issued pursuant to the provisions of [NRS 408.423](#), [NRS 408.210](#) and [NAC 408](#).

#### **Temporary Permit:**

Permits which authorize activities within highway right-of-way on a temporary or intermittent basis for the commemoration of holidays, local celebrations, conducting sporting or special interest events that promote tourism or economic development, i.e. foot races; bicycle, motorcycle or automobile races; parades; film making; or any activities that may temporarily affect traffic. The Traffic Engineer at the discretion of the District Engineer may issue these permits.

### Terms and Conditions Booklet:

Current edition of the Terms and Conditions (relating to this section only) relating to Right-of-Way Occupancy Permits.

**NDOT:** Nevada Department of Transportation.

### Utility Facilities and/or Utilities:

Includes all privately, publicly or cooperatively owned lines and all connections thereto for facilities and systems for producing, transmitting or distribution of communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems, street lighting systems and television cable systems, which directly or indirectly serve the public or any part thereof. The term "utility" means the utility company, i.e. any person or private or public entity owning and/or operating utility facilities as defined in this paragraph, including any wholly owned or controlled subsidiary.

### 7.504 Policy

To limit the occupancy of state highway rights-of-way to only permittees specifically authorized by [NRS 408.423](#) and [NRS 408.210](#). [NRS 408.423](#) states in part, "No state highway or right-of-way shall be disturbed, dug up, crossed, encroached upon or otherwise used for the laying or re-laying of pipelines, ditches, flumes, sewers, poles, wires, approach roads, driveways, railways or for any other purpose, without the written permit of the director." [NRS 408.210](#) states the manner in which encroachments are to be removed. All approvals and installations shall be in accordance with [NAC 408](#) and all pertinent sections of the Utility, Right-of-Way manual, and [Title CFR 23](#). All approved users of the right-of-way shall be covered by a permit or other form of written agreement, prepared by the Department.

### 7.505 Scope

Occupancy Permits shall only be issued for those utilities defined in Additional Requirements, [Section 7.506](#) below, including sidewalks, curbs, gutters, approaches and landscaping, or any other aesthetic type improvements upon application.

### 7.506 Additional Requirements

Right-of-Way Occupancy Permits issued for a paving project other than standard approaches will also require the Applicant to enter into a multi-use lease or license for the right-of-way being occupied. This would include but not be limited to: parking lots, recreation and picnic areas, commercial and private roadside stands, vending operations, etc. These leasing arrangements must be handled through the appropriate assigned Right-of-Way Section.

## 7.507 Responsibility

- A. The Right-of-Way Division is responsible for the initiation and revision of the policy and procedures relating to any occupancy of interstate and state highway right-of-way.
- B. The District Permit Coordinator is responsible for the control and processing of the “Application and Permit for Occupancy of Nevada Department of Transportation Right-of-Way” form (Form 725), the review of the application and permit, recommendation sheet and the Terms and Conditions Relating to Right-of-Way Occupancy Permits Manual. It is also the Permit Coordinator’s responsibility to send the permit to the appropriate division for review and recommendation and to ensure that the Permittee receives a copy of the Terms and Conditions Relating to Right-of-Way Occupancy Permits booklet.
- C. The District Permit Coordinator is designated by the respective District Engineer and whose responsibility it is to receive and review permit applications for completeness of the applications in their respective District and may, at the discretion of the District Engineer, complete all those tasks, duties and responsibilities as directed. The responsibilities of the Permit Coordinator also apply to the District Permit Coordinator.
- D. The Headquarters Permit Coordinator is a representative assigned to the Right-of-Way Utilities Section in Carson City and who will stock the “Terms and Conditions” booklet for distribution to the Divisions and Districts. Also, the Headquarters Permit Coordinator will review permits from Districts that require a specialized review, all permits on the Interstate and obtain [Federal Highway Administration \(FHWA\)](#) approval for those permits,
- E. It shall be the responsibility of the District Engineer to review and approve or deny all permits within their District. Shall a permit be denied, the District Engineer will send the applicant a letter of explanation as to why the permit is denied.
- F. The Staff Specialist – Utilities, will be responsible for updating the “Application and Permit,” and the “Terms and Conditions Relating to Right-of-Way Occupancy Permits” booklet as required.
- G. The District Encroachment Committee is personnel at the District level who have separate responsibilities to review the permits for roadway design, traffic engineering, cultural resources protection, maintenance, right-of-way and utility. The District Engineer in each District shall be responsible for designating personnel in their District who shall assume responsibility in each of these areas.

## 7.508 Procedures

- A. All applications and permits must be applied for at the appropriate District Office in which the encroachment is to take place. The District Permit Coordinator will schedule a desk audit appointment with the applicant within ten (10) working days from receipt of a permit request from the applicant. Prior to accepting the application and permit the District Permit Coordinator will ensure that the following items are included in the permit packet, if applicable:
1. Fee – The appropriate fee will be collected based on the permit type outlined in the “Terms and Conditions Booklet” and in accordance with NRS 408.423. The fee outlined in the booklet is a minimum fee and is non-refundable. Any permit, regardless of the category, requiring a greater than normal amount of engineering, technical review or inspection may be charged actual cost based on the Department’s direct and related indirect costs. Local governmental entities (including general improvement districts, water districts, etc. when incorporated by an act of the State legislature) and other state agencies, when working on their own systems, and not performing work necessitated by or on behalf of a private development, are exempt from the fees. It is the responsibility of the PERMITTEE to demonstrate its qualification for exemption when questions arise.
  2. Plans – The PERMITTEE must attach a minimum of four complete sets of detailed plans, drawings or maps to each permit to allow for simultaneous review. No permits (except, residential driveways and minor improvements, at the discretion of the District Engineer) will be processed without detailed plans reviewed and stamped by a Licensed Engineer in the State of Nevada. The criteria for the submitted plans can be found in the “Terms and Conditions Booklet”.
  3. Traffic Control Plan – At the discretion of the District Engineer, a traffic control plan may be required for a permit. An approved traffic control plan must be submitted prior to commencement of work when one is required.
  4. Traffic Impact Study – A Traffic Impact Study is required for all driveway and/or street permits, which serve major traffic generators, in accordance with the Department’s Access Management System and Standards. The traffic impact study for major traffic generators (100 or more vehicles per hour generated during peak hours) will be required and will contain the requirements set forth in the [Traffic Impact Study Requirements, Appendix “A” of the “Terms and Conditions Booklet”](#).
  5. Drainage Impact Study – The Drainage Information Form in Appendix “B” of the “Terms and Conditions Booklet” must be submitted with the permit.

A Drainage Impact Study may at the discretion of the District Engineer be required for any development or construction impacting drainage within the highway right-of-way and must be prepared in conformance with the drainage policy as outlined in the [Drainage Information Form in Appendix “B” of the “Terms and Conditions Booklet”](#).

6. Cultural Resources Survey – Those encroachments requiring compliance with cultural resources preservation regulations must have a Cultural Resource Survey and/or project effect recommendations attached to the permit.
  7. Approval From Other Public Agencies – The PERMITTEE, in addition to obtaining the Right-of-Way Occupancy Permit, must also obtain any and all other permits required by Federal and State law or local ordinances.
- B. The 45 working day processing period starts once the application has been accepted for processing. Upon receipt of a completed application from an Applicant, the District will assign in the appropriate block on the “Application and Permit”, a milepost location number constructed as follows:

Example:  $\frac{\text{IR 080-WA-234.56E.} \quad 2}{(\text{Milepost Number}) \quad (\text{Dist. Number})}$

The permit number will be automatically generated by the database software.

- C. The District Permit Coordinator will distribute the application within ten (10) working days of acceptance to the appropriate divisions for review and recommendation.
- D. Each reviewer shall have a maximum of ten (10) working days from receipt of the application for review and shall forward all comments to the District Permit Coordinator prior to the end of the tenth day. Comments may be sent to the District Permit Coordinator by e-mail or hard copy.
- E. The District Permit Coordinator shall have five (5) working days to compile and reconcile comments. Once this has been completed, the District Permit Coordinator will either send a letter to the applicant and engineer for revisions or prepare the application for review by the District Engineer, or prepare and send the application to the Headquarters Permit Coordinator for [Federal Highway Administration \(FHWA\)](#) or Assistant Director’s approval or denial. The Headquarters Permit Coordinator shall have five (5) working days to compile Headquarters comments and transmit them back to the District Permit Coordinator. Should the District Permit Coordinator send the applicant a letter for revisions, the applicant has sixty (60) calendar days from the receipt of the letter to address issues and return the revisions to the District Permit Coordinator. During this time, the forty-five (45) working day processing period

will be suspended. Failure on the part of the applicant to respond within this timeframe will constitute a cancellation of the permit application.

- G. Once the revisions have been received from the applicant, the District Permit Coordinator shall have five (5) working days to compile, reconcile and distribute the application package to the appropriate Divisions for re-review.
- H. The reviewers shall have ten (10) working days to re-review the application and provide the District Permit Coordinator with comments by the tenth day. An additional fifteen (15) working days will be added to the original forty-five (45) working day processing period.
- I. If FHWA review is required of the permit application, after Environmental Division approval is received, the Headquarters Permit Coordinator will prepare the permit package and transmittal letter to be signed by the Chief Right-of-Way Agent. The transmittal letter will include a request for either approval or denial of the permit application within ten (10) working days. Permits submitted to FHWA cannot be subject to the forty-five (45) working day processing period as NDOT can only request a ten (10) working day review from FHWA, not require it.
- J. Once the permit has gone through the review process and all the approvals have been obtained, the District Engineer or Assistant Director shall sign the permit for issuance or a denial letter within five (5) working days of presentation.
- K. The District Permit Coordinator will prepare the permit or letter for release within two (2) working days of the final signature. The applicant/permittee shall have forty-five (45) calendar days from receipt of the letter to return to NDOT any required bond or traffic control plan.
- L. All deviations from the proposed method of installation must have the written concurrence of the District Engineer and plans submitted to show the as-built condition. Any such deviation without said approval and plans would subject the permit to revocation.
- M. Should a conflict arise between NDOT and the applicant that appears intractable, the issue as written and agreed to by both parties shall be introduced into an established Conflict Resolution Process. The timeline requirements shall be suspended at that point and will resume upon conflict resolution.
- N. Block wall agreement procedures.

The shell for the Block Wall Agreement is located on the 030 forms drive. The form number is 926 (company) or 927 (owner).

1. The District Permit Coordinator will draft the Block Wall Agreement using milepost station and offset reflected in the permit.

2. The District Permit Coordinator will send the draft Block Wall Agreement, any exhibits, and a copy of the associated permit to the Staff Specialist - Utilities (currently Jay Martinkus) for accuracy verification of the draft agreement in relation to the permit.
3. The Staff Specialist will send the final draft to the District Permit Coordinator.
4. If there are any changes to the permit, steps 1 and 2 above will need to be repeated.
5. The draft Block Wall Agreement will be sent by the District Permit Coordinator to the Permittee's legal representative to see if they concur with the terms of the final draft agreement.
6. If the Permittee's legal representative has comments the final draft Block Wall Agreement will be sent by the District Permit Coordinator to the NDOT AG's office.
7. If there are any changes to the permit steps 5 and 6 above will need to be repeated.
8. Once the NDOT AG's office has approved of all changes required by the Permittee's legal representative the District Permit Coordinator will send the Agreement to Developer for a notarized signature
9. The District Permit Coordinator will send the Agreement to the District Engineer for signature.
10. The District Permit Coordinator will send the Agreement to the NDOT AG's office for signature.
11. The Agreement and the issued permit will be sent to the Staff Specialist for an Agreement Number and review prior to being taken to the Right of Way Chief and Front Office for signatures.
12. The Staff Specialist will send the executed original Agreement to the District Permit Coordinator so the Agreement can be recorded.
13. The original will be sent to the Staff Specialist who will send the original to Central records. A copy will be sent to the Permittee. A copy will be Uploaded into IRWIN and placed in the District hardcopy file.

#### 7.509 Temporary Permit

- A. Temporary permits are issued for traffic control issues associated to a special event, emergency repair work/access to a facility, surveying, potholing, exploratory soil bore, monitoring wells, construction activities, movie/commercial filming and overhead wire installation over the interstate. The duration of these permits can range from 1 day to 1 year, but shall not exceed beyond 1 year without requesting FHWA approval for a permit extension.

- B. The District Permit Coordinator will review the application to ensure that it is complete and that the application includes the event dates, appropriate law enforcement approvals and when applicable, the appropriate amount of Liability Insurance has been provided. An advanced planning meeting may be required for events such as film shoots and big bike events that have major impacts to the highway.
- C. The hours of work for the event and/or activity will be reviewed for approval by the District Permit Coordinator, taking into account the impacts on the Interstate flow of traffic.
- D. The traffic control plans will be reviewed by the District Permit Coordinator and may be reviewed by the Traffic Engineer if necessary.
- E. If the temporary permit impacts the Interstate system, the Environmental Services Division must provide an environmental clearance document and the Headquarters Permit Coordinator will be required to review the permit application for completeness and provide notice to FHWA.
- F. Once the reviews have been completed and the application approved, the temporary permit will be issued to the permittee. The review and approval process shall take no more than ten (10) business days to complete.
- G. Temporary permits for events/activities that would cause the constant interruption of Interstate traffic (such as the transport of large machinery) and a notice provided to FHWA.

#### **7.510 Revocation of Permit**

- A. Any installation of work performed under the terms of the permit must be completed within one year from date of approval by the Department. Only under exceptional circumstances may an exception to the above completion date requirements be granted. Failure to comply with the above restrictions will further subject the permit to revocation. The Department of Transportation Headquarters Permit Coordinator and/or District Engineer shall diligently monitor the permittee to determine if the permit's terms have been violated and if revocation is warranted.
- B. Any member of the Department who is involved in the processing or inspection of the permit or permittees work may initiate revocation procedures by a memorandum to the Director, attention: District Engineer. The memorandum should contain all pertinent facts and documentation (photos if applicable) supporting the revocation charges. The District Engineer will review the facts and circumstances and submit their recommendations to the Director for a final determination.



#### 7.511 Accounts Receivable

- A. Should it be determined that the permittee be required to reimburse the Department for inspection services, engineering assistance, work performed by the Maintenance Division or any other costs incurred by the Department relative to the permit, the Permit Coordinator will contact Right-of-Way Control for a unique work order number specific to the permit.
- B. Right-of-Way Control will contact the Accounting Division as soon as possible after the determination is made in order to set up the proper billing procedures and accounting records.
- C. The Accounting Division will be furnished a copy of the permit, pertinent correspondence and all necessary documentation to establish the basis of any charges assessed the permittee by the Department.

## 7.600 OUTDOOR ADVERTISING CONTROL GENERAL INFORMATION

### 7.601 Authority, Rules and Regulations

The Authority, Rules and Regulations governing the Outdoor Advertising Control Program are delineated below:

- A. United States Code ([USC](#)), [Chapter I, Section 131](#).
- B. Title 23, Code of Federal Regulations ([CFR](#)), [Chapter 1, Part 750](#).
- C. The [Highway Beautification Act](#) of 1965.
- D. Highway Agreement No. 4-1-72-019 (the effective dates of this agreement, upon which applicable State Statutes are contingent, is March 15, 1972, which was thirty days after the executed agreement was filed with the Nevada Secretary of State under Administrative Procedures Act and an updated Agreement executed on March 5, 1999).
- E. Nevada Revised Statutes (NRS) [410.220](#) through [410.410](#).
- F. Nevada Revised Statutes (NRS) [405.020](#) through [405.110](#).
- G. Nevada Administrative Code (NAC) [408.433](#).
- H. Nevada Administrative Code (NAC) [408.700](#) through [408.830](#).
- I. Nevada Administrative Code (NAC) [410.200](#) through [410.800](#).

### 7.602 Definitions

#### **Abandoned Sign:**

One in which no one has an interest, or as defined by State law.

#### **Acquired for right-of-way:**

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.

#### **Act:**

[Part 750 of Title 23, Code of Federal Regulations](#) (1999) commonly referred to as the Highway Beautification Act of 1965.

### **Centerline of the highway:**

A line equidistant from the edges of the medial separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a non-divided Interstate Highway.

### **Commercial and industrial zones:**

Those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these later are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

### **Commercial or industrial activated for purposes of unzoned commercial or industrial areas:**

Those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:

- A. Outdoor advertising structures.
- B. Agricultural, forestry, ranching, grazing, farming and related activities, including but not limited to, wayside fresh produce stands.
- C. Transient or temporary activities.
- D. Activities not visible from the main-traveled way.
- E. Activities more than 660 feet from the nearest edge of the right-of-way.
- F. Activities conducted in a building principally used as a residence.
- G. Railroad tracks and minor sidings.

### **Conforming Area:**

An area,

- A. Which the Department finds is within an unacceptable commercial or industrial zone; and,
- B. In which the Department finds that a commercial or industrial activity exists or is contemplated for the near future.

### **Controlled portion of the Interstate System:**

Any portion which,

- A. 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);

- B. 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
- C. 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 regulations or control, or which traverse other areas where the land use as of September, 1959, was clearly established by State law as industrial or commercial.

**Defined Area:**

An area which,

- A. Has clearly established geographic boundaries; and
- B. Can be evaluated as an economic entity.

**Destroyed:**

40% to 60% or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for: in the case of wooden sign structures, replacement of the broken supports or, in the case of metal sign structures, replacement of at least 20% to 30% of the length above ground of each broken, bent, or twisted support.

**Directional Sign:**

- A. A sign containing directional information for the traveling public about:
  - 1. A public place owned or operated by the federal or state government or a local government or one of its agencies;
  - 2. A publicly or privately owned natural phenomenon;
  - 3. A historic, cultural, scientific, educational or religious site; or
  - 4. An area of natural scenic beauty or an area naturally suited for outdoor recreation.
- B. The term is limited to an official sign and a sign of public utility, service club, religious organization or a public service sign.

**District Utility Inspector:**

Those individuals in the various Highway Department Districts who are charged with the responsibility for overseeing Outdoor Advertising Control activities within that District.

**Edge of the right-of-way:**

The property line between the area acquired for State highway right-of-way and the abutting area.

**Entrance roadway:**

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.

**Erect:**

To construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or normal maintenance or repair of a sign structure.

**Federal-aid primary highway:**

Any highway within that portion of the State highway system as designated, or may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to [Title 23 Code of Federal Regulations \(CFR\)](#).

**Grandfathered:**

Any sign lawfully in existence in a commercial or industrial area on November 16, 1973 may remain even though it may not comply with the size, lighting or spacing criteria at the sign's particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered under the Grandfathered clause, which do not comply with the agreement criteria, have the status of non-conforming signs.

**Headquarters Staff:**

Those individuals in the Utility Section, Right-of-Way Division of the Department of Transportation Headquarters in Carson City who are assigned to work in Outdoor Advertising Control.

**Illegal sign:**

One which was erected and/or maintained in violation of State law.

**Industrial Activity:**

An activity which is permitted only in an industrial zone or a less restrictive zone by the nearest zoning authority within the state or if prohibited by the authority is generally recognized as

industrial activity by other zoning authorities within the state, except that none of the following is an industrial activity:

- A. Any erection or maintenance of an outdoor advertising structure.
- B. Any agriculture, forestry, ranching, grazing, farming or related activity, or operation of a wayside stand for sale of fresh produce.
- C. Any activity normally and regularly in operation less than 3 months of the year.
- D. Any transient or temporary activity.
- E. Any activity not visible from the traffic lanes of the main-traveled way.
- F. Any activity more than 300 feet from the nearest edge of the main-traveled way.
- G. Any activity conducted in a building principally used as a residence.
- H. Any operation of railroad tracks, a minor siding or a passenger depot.
- I. Any creation or maintenance of a junkyard as defined in Title 23 USC Part 136.

**Information centers:**

Areas or sites established and maintained at safety rest areas for the purpose of informing the traveling public of places of interest within the state and providing such other information as the state highway engineer may consider desirable.

**Interstate highway:**

A portion of the National Highway System of Interstate and Defense Highways located within this state, as officially designated pursuant to the provisions of [Title 23, USC](#).

**Junk:**

Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

**Junkyard:**

- A. 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 operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, auto recycling yard, 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.

- B. 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.
- C. An illegal junkyard is one which was established or is maintained in violation of the law.
- D. A non-conforming 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 non-conforming.

**Landowner:**

The owner of the land upon which a junkyard is located.

**Legible:**

Capable of being read without visual aid by a person of normal visual acuity.

**Maintain:**

To allow to exist.

**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 separate roadways for traffic in opposition is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

**National Highway System:**

The system presently defined in and designated pursuant to [Title 23 Code of Federal Regulations \(CFR\)](#).

**Non-conforming outdoor advertising sign:**

An outdoor advertising sign which was erected and has been maintained lawfully, but does not conform to the provisions set forth in [NRS 410.220](#) to [410.410](#) inclusive.

**Official sign:**

A sign or notice erected and maintained by a public officer or agency within the territorial or zoning jurisdiction of the officer or agency pursuant to law, ordinance or regulations for the purposes of carrying out an official duty or responsibility.

### **Operator:**

The owner of a junkyard or any person, firm, partnership, association or corporation engaged in the operation or maintenance of a junkyard.

### **Outdoor advertising, outdoor advertising sign, display or device and sign:**

- A. Any outdoor sign, display, device, light, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary highway systems.
- B. The terms do not include a sign that is required to be erected and maintained in a gaming enterprise district pursuant to [NRS 463.3092](#).

### **Primary Highway:**

A portion of the connected main highway as officially designated pursuant to the provisions of [Title 23, USC Chapter 1, Section 103\(b\)](#).

### **Protected Areas:**

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 terminated 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.

### **Public service sign:**

A sign which,

- A. Is located on a shelter at a school bus stop if the shelter is authorized or approved by a law, ordinance or regulation and is at a place approved by the city, county or state agency controlling the highway involved; and
- B. Identifies the donor, sponsor or contributors of the shelter.

### **Public utility sign:**

Warning signs, information signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

### **Safety rest areas:**

Areas or sites established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.



**Service club or religious organization sign:**

A sign or notice whose erection is authorized by law and which relates to a meeting of a non-profit service club, charitable association or religious service.

**Sign, display or device:**

See outdoor advertising.

**Traveled way:**

The portion of a roadway for the movement vehicles, exclusive of shoulders.

**Unzoned area:**

An area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

**Unzoned industrial area:**

Any area which is,

- A. Occupied by the regularly used building, parking lot or storage or processing area of an industrial activity located within 1,000 feet of an interstate or primary highway;
- B. Located on the same side of the highway as the part of that activity;
- C. Not predominantly used for residential or commercial purposes; and
- D. Not zoned by any state law or regulation or by any local ordinance or regulation.

**Urban area:**

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 of the United States Department of Commerce, 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 in cooperation with each other, subject to approval by the Secretary of Transportation of the United States. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

**Visible:**

Capable of being seen without visual aid by a person of normal visual acuity. For the purposes of [NAC 410.010](#) to [410.120](#), inclusive, a junkyard is not visible if the junk cannot be seen over, under, through, or outside of the screen.

**Zoned commercial or industrial area:**

An area zoned for commercial or industrial uses by authority of state or local law, ordinance or regulation.

### 7.603 Effective Dates

The various effective dates of legislation and regulations are extremely important. The following illustration will provide some insight into the relevance of what we term our critical dates:

A. Prior to October 22, 1965

Signs legally erected and maintained during this time, which became non-conforming pursuant to the 1965 Highway Beautification Act, are eligible for purchase under the Outdoor Advertising Control Program. Signs in conforming areas are granted “Grandfathered” status as to size, spacing and lighting requirements imposed.

B. October 22, 1965

As per [NRS 410.340](#) and [410.350](#), this is the effective date of the 1965 Highway Beautification Act.

C. March 15, 1972

Effective date of the State’s enabling authority implementing the Outdoor Advertising Control Program.

No sign construction in non-conforming areas is to be allowed after March 5, 1972. All signs legally existing and all signs legally constructed after this date are required to have permits and in the case of new construction, must meet all criteria pertaining thereto.

The State may purchase any non-conforming sign which was legally erected and maintained on or prior to March 15, 1972, so long as such sign has enjoyed continuous and legal occupancy up to the time of purchase.

D. November 16, 1973

Last possible date to accept permit applications for signs in non-conforming areas and “Grandfathered” conforming signs unless extenuating circumstances exist. Such circumstances will be considered individually and must be due to an error or inaction on behalf of the Department (i.e. not posting a sign informing the owner that a permit is required). If a permit was not submitted by this time for a non-conforming or “Grandfathered” conforming sign, and the sign owner was notified of the need for a permit (by physically posting a Violation Notice to the structure if the owner was unknown or by a Violation Notice sent via Certified Mail if the owner was known), the sign is subject to removal by the State under its police powers.

E. After November 16, 1973

After this time, all non-conforming signs will be removed by purchase, if eligible, or by the sign owner, if not “Grandfathered.” Conforming signs will not be purchased, but will come down through attrition, as they incur damage not allowing re-construction, reach economic or functional obsolescence, etc. New sign construction will be allowed subject to permit requirements.

**Note:** The anticipated date by which all non-conforming signs will be removed is March 15, 1977.

#### 7.604 Operational Organization

- A. Responsibility for administering outdoor advertising control is delegated from the Chief Right-of-Way Agent to the Supervisory Right-of-Way Agent – Utilities.
- B. Operational responsibilities are as follows:
- C. Inventory control and Permit program – Headquarters Utility Section
- D. Sign and site ownership determination and violations – District Utility Inspectors
- E. Permit processing – District Utility Inspectors and Headquarters Utility Section
- F. Sign removal can be completed by State forces, service providers, or the sign owner whether the sign is compensable, illegal or abandoned.
- G. Application and permit fees are collected by the District Utility Inspector and sent to Accounting for processing. Accounting will bill the customer for the annual fees.
- H. Physical inventorying, surveillance and control – District Utility Inspectors

#### 7.605 Permit System (Exhibit 7.658)

In order to exercise effective control over the Outdoor Advertising Control Program, the Department devised a Sign Permit System, which is designed to utilize the operational milepost system already established by the Department. A permit is required for all signs within the control area and contains provisions for recording necessary data to ensure that new signs can be legally erected and also allows for identification of those existing signs eligible for purchase. Each sign is individually and uniquely indexed by milepost and is cataloged in computer memory banks. Any change in the status of a sign that is illegal pursuant to State Statutes and/or regulations, and which is not corrected under the terms of a Violation Notice, may result in cancellation of the permit and subsequent removal of the sign under the State’s police powers. Any sign removal accomplished by virtue of the State’s police powers will negate any compensation the sign and site owners may have been due should the sign have been eligible for purchase by the State under other areas of the Outdoor Advertising Control Program. An example of the milepost system to which the permit system is keyed is included as an exhibit.

## 7.606 Physical Limitations (Exhibit 7.659)

New signs, which may be constructed only in conforming areas with the exception of permitted directional and official signs, must meet certain criteria as to size, spacing, and lighting, in addition to being in a zoned or unzoned commercial or industrial area prior to being constructed. These criteria are as follows:

### *Size of Signs (Exhibit 7.667)*

- A. The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, supports and other structural members.
- B. The sign area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire sign face.
- C. The maximum size limitations shall apply to each side of a sign structure; and signs may be placed back-to-back, side-by-side, or in V-type construction with not more than two displays to each facing and such sign structure shall be considered as one sign. [Exhibit 7.667](#) shows Methods of Measurement.

### *Spacing of Signs (Exhibits 7.661 through 7.666)*

- A. Interstate and Federal-aid Primary Highways.  

Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.
- B. Interstate Highways and Freeways on the Federal-aid Primary System.
  - 1. No two structures shall be spaced less than 500 feet apart.
  - 2. Outside of incorporated cities no structure may be located adjacent to or within 500 feet of an interchange, intersection at-grade, or safety rest area. Said 500 feet to be measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.
- C. Non-freeway Federal-aid Primary Highways.
  - 1. Outside of incorporated villages and cities, including the area within unincorporated villages and cities, no two structures shall be spaced less than 300 feet apart.
  - 2. Within incorporated villages and cities no two structures shall be spaced less than 100 feet apart.

- D. The above spacing-between-structures provisions do not apply to structures separated by buildings or other obstructions situated in such a manner that only one sign located within the above spacing distance is visible from the highway at any one time. This applies along all controlled routes.
- E. Explanatory Notes.
  - 1. Official and “on-premise” signs, as defined in [Part 750.709](#) of Title 23, Code of Federal Regulations, is a sign which consists solely of the name of the establishment of which identifies the establishment’s principal or accessory products or services offered on the property is an “on-property” sign.
  - 2. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway. Examples of spacing requirements are included as Exhibits.

### *Lighting*

Signs shall not be placed with illumination that interferes with the effectiveness of, or obscures any official traffic sign, device or signal; shall not include or be illuminated by flashing, intermittent or moving lights (except that part necessary to give public service information such as time, date, temperature, weather or similar information and shall not cause beams or rays of light to be directed at the traveled way if such light is of such intensity or brilliance or is likely to be mistaken for a warning or danger signal as to cause glare or impair the vision of any driver, or to interfere with any driver’s operation of a motor vehicle.

### **7.607 Directional, Informational and Official Signs**

Directional and official signs are subject to the criteria set forth in [NAC 410.500](#) to [410.630](#), inclusive. Signs qualifying under the criteria are allowed to be erected and maintained. Upon application by the owner, permits for such signs will be issued by the Department at no cost to the owner. Signs which were legally erected and maintained but which do not meet the criteria must be modified or relocated or will be purchased by the Department. Signs which do not meet the criteria and which were not legally erected and maintained will be removed at the owner’s expense. Certain criteria apply separately to informational, directional, and official signs. The various criteria are as follows:

#### *Directional Signs*

- A. The following directional signs are prohibited:
  - 1. 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.

2. Signs, which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
  3. Obsolete signs.
  4. Signs which are structurally unsafe or in disrepair.
  5. Signs which move or have any animated or moving parts.
  6. Signs located in rest areas, parklands or scenic areas.
- B. All dimensions include border and trim, but exclude supports. No directional signs may exceed the following limits:
1. Area, 150 square feet
  2. Height, 20 feet
  3. Length, 20 feet
- C. Signs may be illuminated, subject to the following:
1. Any sign, which contains, includes or is illuminated by any flashing, intermittent or moving light or lights, is prohibited
  2. Any sign which is not effectively shielded to prevent beams of light from being directed at any portion of the traveled way of an interstate or primary highway, which is of such intensity of brilliance that it causes glare or impairs the vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle is prohibited.
  3. Any sign, which is so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal is prohibited.
  4. Any sign, which resembles or simulates an official traffic control device, is prohibited.
- D. Spacing criteria are as follows:
1. The location of each such sign must be approved by the Department.
  2. No sign may be located within 2,000 feet of an interchange or an intersection at-grade along the interstate system or other freeways. The

distance is 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 sign may be located within 2,000 feet of a rest area, parkland or scenic area.
4. No two signs facing the same direction of travel may be spaced less than 1 mile apart.
5. No more than three signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.
6. Any sign located adjacent to the interstate system must be within 75 air miles of the activity.
7. Any sign located adjacent to the national highway system, other than the interstate, or the primary system must be within 50 air miles of the activity.
8. The message on a sign must be limited to 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.
9. The use of directional signs for privately owned activities or attractions is limited to providing information on natural phenomena, scenic attractions, historic, educational, cultural, scientific and religious sites, and outdoor recreational areas. To be eligible for use of such signs, the privately owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public.
10. As used in this section, "national highway system" has the meaning ascribed to it in [23 USC, Chapter 1, Section 103\(b\)](#).

### *Information Signs*

- A. A public service sign:
  1. Must contain public service messages, which occupy 50 percent or more of the area of the sign; and
  2. May not contain any other messages; and

3. May not exceed 32 square feet in area.
- B. Not more than one sign on each shelter may face in any one direction.
  - C. A sign of a service club or religious organization must include a panel provided and attached by the Department. The holder of the permit must obtain a panel from the district traffic engineer, have the panel engraved and return it to the district traffic engineer for attachment to the assembly. The panels must be approximately 12 inches by 40 inches.
  - D. The lettering must be approximately 3/4 inch tall for the name of the holder of the permit, approximately 1/2 inch tall for the location of its meeting and approximately 1/4 inch tall for the date and time of the meeting.
  - E. Each district traffic engineer shall make further specifications available. Depending on the size of the community in which the club or church is located, an assembly may consist of 10 panels or 15 panels.
  - F. Service club and church signs may not exceed 8 square feet.
  - G. Historic markers authorized by state law and erected by agencies of the state or local governments or by non-profit historical societies may be considered official signs by the Department.

### *Official Signs*

- A. An official sign must not exceed 750 square feet in size. An official sign of a local government may be erected anywhere adjacent to an interstate and primary highway within its jurisdiction, except in a scenic area or parkland, so long as the sign does not create a safety hazard to the traveling public.
- B. An official sign will not be considered when the Department determines the spacing required between conforming outdoor advertising signs located off premises.
- C. Public officials may erect, within the limits of their jurisdictions, official signs welcoming travelers and describing the services and attractions available but may not advertise private businesses or brand names. Not more than one official sign welcoming visitors or providing information about a community is allowed on each highway entering the community.

The only time a privately owned attraction or activity will be eligible for placement of a directional sign is when the Department determines that such a sign would promote the safety of the traveling public by reducing hazardous congestion.



Directional and Informational signs may be placed within State rights-of-way of non-controlled access highways. If placed in non-controlled access areas, the sign construction will conform to breakaway requirements and will be located outside the “clear roadside” area.

All directional and informational signs must have revocable permits, including those within the rights-of-way of Secondary and State Routes (the permit is granted with no fee and is revocable in nature).

Those directional and informational signs which were in existence as of March 15, 1972, and which are not in compliance with the criteria cited herein will be granted “Grandfather” status as to their existing configuration. At such time as they are rebuilt, removed, or relocated, they will be required to comply with the herein-stated regulations.

#### **7.608 Enforcement**

Effective control over the Outdoor Advertising Control Program is maintained through periodic field inspections of all signs within the control area. This surveillance, which is performed constantly in urban areas (and other areas in which experience dictates that frequent violations occur), and at least on a quarterly basis throughout the various highway districts, involves checking every sign on the inventory to verify that it has undergone no change from that shown on the inventory. All physical characteristics such as material, illumination, number of sides, size, and location are to be verified. Any damaged structures are to be noted for further review and action. No matter how slight a change may seem, it is to be noted and reviewed in accordance with our policy to ensure that the structure is being maintained legally.

Perhaps the single most important item concerning surveillance (or any other aspect of this program) is documentation. Clear photographs, noted with the milepost, date, and initials of the photographer, are of critical importance in recording the cause and time of various violations that are found. They also provide the basis for recording sign history as physical facts are shown far more accurately through photographs than they can verbally or graphically be described.

In addition to photographic recordation, necessary documentation will include complete correspondence records. Telephone conversations may be utilized to transact much of the business involved, but anything involving any Departmental commitment will be followed with a letter affirming the conversation. All telephone conversations or personal contacts made relevant to the program are to be documented in a diary.

#### **7.609 Field Operations and Responsibilities**

The bulk of the work and responsibility for the maintenance and control of our Outdoor Advertising Control Program is vested with our District Utility Inspectors. These duties and responsibilities are as follows:

## A. Processing Permit Applications

When initially received from the Applicant, the District Utility Inspector will review the permit application to verify that all of the required information is properly and legibly indicated. The District Utility Inspector will verify that the fees accompanying the application are adequate to cover both inspection and annual permit fees. The District Utility Inspector will then fill in the time and date the application was received and initial it.

Should there be any deficiency that requires further action on the part of the applicant prior to processing the permit, the District Utility Inspector will return the entire package to the applicant for the required correction or addition without noting the time and date received. The time and date received will be noted only for applications that are in complete and correct order. A standard form "Notice of Nevada Sign Permit Deficiency" should be included (Form 738).

When the District Utility Inspector is satisfied as to the correctness of the application and fees and has noted the time and date received thereon, the District Utility Inspector will check the inventory for general information regarding the proposed sign location. This will involve checking for spacing requirements and zoning at and around the requested location.

Next, the District Utility Inspector will perform an on-site inspection of the proposed sign site (the exact location for the proposed sign must be clearly marked on the site). From this inspection, the District Utility Inspector will determine the exact distance to the nearest, existing off-premise sign on the same side of the highway and indicate that information in the space provided. Upon completion of these activities, the District Utility Inspector will forward the permit to Headquarters for further processing.

Should the District Utility Inspector determine that the sign cannot be constructed in accordance with the applicable rules and regulations, or should some deficiency surface in the application that cannot or is not resolved, the District Utility Inspector will reject the permit application and return it to the applicant. The District Utility Inspector will forward the check submitted with the application to Headquarters with instructions to refund the annual fee portion. The inspection fee will be retained.

Upon receipt of the sign permit application and fees, the Headquarters Permit Coordinator will review the information presented and check it against the current inventory data to ensure compliance with all rules and regulations. Should any deficiency be found, the permit will be returned to the District Utility Inspector for resolution.

When it is determined that everything is in proper order, a permit will be issued for the sign. District 1 permits are signed by the Supervisory Right-of-Way Agent

in the south and District 2 and District 3 permits are signed by the Supervisory Right-of-Way Agent in the north. One copy of the approved and numbered application, along with a metal permit tag having the permit number stamped thereon, will be sent to the applicant. The remaining copy of the permit will be sent to the District Utility Inspector for the records.

As noted in the "Outdoor Advertising Control Manual" (the policy guide), the permittee will have the option of either affixing the metal tag to the structure in a clearly visible location or painting the permit number in the prescribed manner.

Upon issuance of the permit, Headquarters will forward a copy of the approved application to the District Utility Inspector for the file. In the case of new sign construction or existing sign alteration (to an extent requiring new permit application), the District Utility Inspector will perform another inspection to ensure that the sign was constructed or altered to the configuration and in the location represented on the permit application. Any sign construction or alteration must be completed within 180 days of the date the permit was issued. The additional inspection will occur at or very shortly after the 180th day.

The District Utility Inspector will check to ensure that the permit tag is displayed properly or that the permit number is painted in the prescribed manner, and will take two clear, close photographs of the structure, one for the records and one to be sent to Headquarters to be affixed to the permit. The measuring rod to provide permanent record of sign size must clearly show in both photographs.

Should the District Utility Inspector discover that the sign configuration differs substantially from that represented on the permit, or that something has been done to make the structure illegal or hazardous, the District Utility Inspector will immediately post a "Stop Work" notice (Form 740) and send an Outdoor Advertising Violation Notice Wind-damage, 50% or More (Form 739), detailing the problem to the permittee. Should the violation be so severe as to warrant permit cancellation the District Utility Inspector will immediately inform Headquarters so the required action may be taken.

If the follow-up inspection shows that the sign construction is not complete as required, the District Utility Inspector will immediately post a Stop Work Notice detailing the violation and ordering a halt to further construction. The District Utility Inspector will then send the permittee a Violation Notice and inform Headquarters, who will cancel the permit.

Some extensions may be granted on the 180-day construction period, but they must be based upon extraordinary extenuating circumstances and will receive individual consideration. Materials availability or contract problems definitely will not qualify for extension. This evaluation and consideration will be made at Headquarters.

## B. Quarterly Inventory Updates

Every quarter the District Utility Inspector shall obtain an updated inventory printout named "Billboard Inventory" for the district from the Right-of-Way SharePoint site. This printout contains the following information:

1. Milepost identification
2. Permit Number
3. Land use (indicates zoned or unzoned commercial or industrial, or non-conforming, or right-of-way encroachment)
4. Height
5. Width
6. Material (concerns material frame is constructed of)
7. Illumination
8. Number of sides
9. Sign of owner's name
10. Remarks

At a minimum of quarterly intervals, the District Utility Inspector will update the inventory shown on the printout verifying every item shown on the printout that can be visually confirmed for the signs inventoried that month. Any change in status or character of a sign structure will be noted on the printout (note any structures damaged, removed sign faces, different company name indicating that the sign ownership may have changed, missing or improperly placed permit tag, sign enlargement or add-on, etc.). During or immediately after the inventory update, the District Utility Inspector will prepare and send Violation Notices to sign owners whose structures have undergone some unapproved change, which is in violation of applicable rules and/or to sign owners, whose signs have incurred damage. Here again, photographs detailing the nature of the violation is of critical importance for documentation purposes.

Should the District Utility Inspector encounter a sign being constructed for which a permit has not been issued, the District Utility Inspector will immediately post a "Stop Work" notice and inform Headquarters. As with other physical postings, the "Stop Work" notice will be clearly photographed after being posted, and a copy of the Notice, along with a copy of the photograph, will be sent to Headquarters.

After the inventory update, the District Utility Inspector will send one copy of the quarterly printout to Headquarters with the finding noted thereon. This

submission will be under a cover memorandum detailing each violation, the action the District Utility Inspector has taken (such as sending the Violation Notice) and the action that Headquarters should take (such as permit cancellation). This written explanation is very important, as Headquarters will act only at the request of the District Utility Inspector.

The comprehensive inventory update through the entire district will be performed on a quarterly basis. Urban and experienced trouble areas will be patrolled on a monthly basis.

From time-to-time, the District Utility Inspector will encounter severely damaged sign structures that, in the District Utility Inspector's opinion, are damaged to such an extent that their repair cost would be meet or exceed 50% of estimated reproduction cost of the structure.

#### **7.610 50% Rule for Wind-damaged Structures in Conforming Areas ("Grandfathered" signs only)**

In order to re-erect or rebuild a "Grandfathered" wind-damaged structure in a conforming area, the sign owner must submit a reasonably detailed estimate verifying that the sign can be repaired for 50% or less of the current reproduction cost. In the case of such signs that have blown completely down, they will have to meet all spacing, size, and lighting requirements prior to re-erection, regardless of the percentage of damage. The sign owner's estimate of repair costs will have to consider all materials used to affect the repair at "new cost" prices. This is done to provide an equal base for comparison since we are allowing use of current reproduction cost as the base value from which the 50% value is to be derived and may in fact use salvaged or used material in the actual reconstruction, but the estimate must reflect new costs for such materials.

#### **7.611 50% Rule for Wind-damaged Structures in Non-conforming Areas**

The 50% application in non-conforming areas will be exactly the same as in conforming areas, except that signs that are completely down may be re-erected and repaired if it can be done for less than 50% of the current reproduction cost. We would stress that the sign owner use all possible salvaged materials in the reconstruction in order to avoid improving the structure over the "before" condition, thereby decreasing the existing depreciation and increasing the cost we will eventually pay in our purchase of the non-conforming structure. In no instance will the repair change the "before" character of the sign, i.e., steel posts may not be used to replace existing or damaged wood posts.

In evaluating any wind-damaged or vandalized sign for purchase, the evaluator must first determine if the sign would be eligible for purchase under an upcoming purchase program or project.

When it is determined that a structure is damaged more than 50%, the District Utility Inspector will send the sign owner a Violation Notice detailing the problem and requiring the owner to

submit a detailed estimate of repairs and a detailed reproduction cost estimate, based on the State's then current compensation schedule, for the damaged structure. Should the information not be received within the 30-day time period allowed in the Violation Notice, or should the estimates show that the damage exceeds 50% of the reproduction cost, the permit will be cancelled. The District Utility Inspector will inform the sign owner to forward the requested estimates to Headquarters as all permit cancellations will emanate from that office. The sign owner will receive no compensation. The reasoning for this is that repairing a structure damaged at or more than 50% constitutes new construction, which is not allowed in a non-conforming area. A form letter for the Notification to the sign owner is called Outdoor Advertising Control Sign Owners Violation Notice 30-Day Removal letter (Form 737).

In the event a damaged sign (requiring any repair greater than normal maintenance) is repaired without written permission or despite our notice not to, the permit will be cancelled and the sign will be removed. If the removal is done by the State, the sign owner will be billed for our costs. This will be effective for "Grandfathered" signs in conforming areas and all signs in non-conforming areas.

Here again, detailed photographs are of extreme importance in documenting the extent of damage the sign has incurred. These photographs, along with a copy of the Violation Notice, will be transmitted to the Headquarters office for inclusion into the permanent record files. The photographs will have the sign milepost, permit number, date taken, and the District Utility Inspector's initials indicated thereon.

#### **7.612 Purchase of Wind-damaged or Vandalized Signs in Non-conforming Areas**

It will henceforth be our policy to attempt to purchase those extensively damaged structures that could qualify for repair under the 50% Rule or vandalized structures before repairs are made. This will be done by offering the sign owner the value of the structure (in its condition immediately prior to incurring damage as determined from the applicable schedule), minus the estimated cost of repairing and/or re-erecting the sign (this should be an estimate of actual cost to repair not necessarily based on "new" costs used to apply the 50% test). The owner shall have the option of either selling based on the damaged condition or rebuilding.

#### **7.613 Blank Sign Rule**

Effective on August 1, 1974, the Department instituted a one-year period during which a sign may remain blank, painted-out, or contain "dead" copy (i.e., advertising a defunct business, or former name of an existing business, etc.). At the end of the one-year period, which will commence when the District Utility Inspector first notes the situation in the field (all such determinations must be documented with photographs which will be forwarded to Headquarters) permits for such signs will be cancelled. Permits may be re-issued only for signs in conforming areas and such signs must meet all the criteria for new sign construction.

Permits may also be re-issued when the sign owner furnishes proof that the sign is being actively maintained, that it is being held on the inventory, and has held a valid lease or agreement, accompanied with the expenditure of the stipulated rental fee, during the term in

which the sign was blank. Furnishing of this evidence will constitute proof that the sign owner has not abandoned interest in the sign. Complete blank sign status as of August 1, 1974 will be noted in the remarks area of the inventory printout and necessary photographs will be forwarded to Headquarters. In the case of signs, which become blank subsequent to August 1, 1974, they will be noted in the remark area of the inventory printout along with the date of commencement of the one-year period.

#### **7.614 Alteration and/or Additions**

Signs may have add-ons or cutouts placed on them as is customarily done throughout the industry. However, regarding non-conforming and “Grandfathered” conforming signs, the sign owner must first grant the State written certification and will accept the State’s existing inventory data regarding sign size and material of construction and illumination. This status is necessary as the State’s compensation schedule for purchase of signs is based upon sign size, type of construction, and illumination. The State’s inventory description of the sign will be solely utilized for valuation purposes concerning signs, which have been altered.

Additions, cutouts, or illumination may be placed on conforming signs, which meet all site, spacing, and lighting requirements, without prior notification to the Department. Any change, which violates the size and/or lighting requirements, will result in permit cancellation.

No major structural change or addition will be allowed when placing approved additions or cutouts on non-conforming or “Grandfathered” conforming signs. The only structural change that will be allowed is that required to attach the add-on or cutout to the existing sign frame.

#### **7.615 Abandoned and Unmaintained signs**

The Department must remove abandoned and unmaintained signs with no compensation being paid to the owner.

#### **7.616 Sign Removals**

One of the primary responsibilities of the District Utility Inspector is to document sign removals for those structures removed by the sign or site owner by agreement with the State, or by the State’s continuing contractor. Prior to scheduling sign removals by the continuing contractor, the District Utility Inspector will receive a list of structures proposed for removal. The District Utility Inspector will review each structure and verify from the records that necessary actions have been taken (i.e., proper posting of the Violation Notice in the case of illegal signs for which no compensation can be granted the sign owner). The District Utility Inspector will inform Headquarters of any special problems that might be associated with the removal of particular structures. After obtaining the property owner’s consent to enter onto the property to achieve the removal, Headquarters will inform the District Utility Inspector who will then clearly mark each structure to be removed. The method of marking shall not be so obtrusive as to lend itself to being copied on other structures not scheduled for removal by those who may be so inclined, but shall be easily identifiable to the contractor.

After the contractor has removed the subject signs, the District Utility Inspector will verify that all required removals have been performed. The District Utility Inspector will then furnish this verification to Headquarters.

## 7.650 HEADQUARTERS OPERATIONS AND RESPONSIBILITIES

### 7.651 Records Maintenance

The Headquarters Permit Coordinator, through the extensive use of Data Processing, will maintain all permanent records accumulated relative to the State's Outdoor Advertising Control Program. The base for the record system is contained in the Master Sign inventory (maintained in the computer memory banks), which contains the following information on each sign:

- A. Milepost number
- B. Highway District
- C. Permit number
- D. Date permit issued
- E. Year permit fees paid through
- F. Sign owner's name and address
- G. Site (property) owner's name and address
- H. Land use (zoned industrial, unzoned industrial, zoned commercial, unzoned commercial, non-conforming, or encroaching)
- I. Date sign erected
- J. Sign height (exclusive of supports)
- K. Sign width
- L. Sign area in square feet (agreed date total of all facings)
- M. Post material (supports)
- N. Illumination, if any
- O. Number of sides
- P. Remarks area
- Q. Date removed (when a sign is removed, it will be suppressed in the computer memory so that it does not appear on the normal inventory printout. Special



printouts may be obtained showing all signs, both existing and removed or only those signs that have been removed.

- R. Customer number (this is for use by Accounting in the annual billing for permit fees).
- S. Identifies whether a grandfathered sign is conforming or non-conforming.

In addition to updating the data processing records, the Headquarters Permit Coordinator will maintain files containing the original sign permits, copies of correspondence, copies of Violation Notices, along with the certified mail return receipts...**VERY IMPORTANT INTERJECTION** ... ALL VIOLATION NOTICES WILL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, **or** THEY WILL BE PHYSICALLY POSTED TO THE STRUCTURE WITH A PHOTOGRAPH BEING TAKEN WHICH CLEARLY SHOWS THE NOTICE POSTED TO THE STRUCTURE. The photograph, after having the milepost, date, and photographer's initials noted thereon, will be sent to Headquarters for filing along with a copy of the Violation Notice. THIS PERTAINS TO ALL PERSONNEL.

#### 7.652 Basic Guidelines and Determinations

The Staff Specialist – Utilities is responsible for formulating basic guidelines and conducting periodic reviews and updates of existing policy and procedures. Minor procedural changes will be instituted via procedure memorandums sent to all District Inspectors.

Since no policy change is minor, any change will be submitted to the Division Engineer, FHWA, and will be initiated by circulating the proposed change or addition through our Outdoor Advertising Mailing List for public and industry input after FHWA approval is obtained. Should any substantial objection be raised, the policy change or addition will be embodied in [Nevada Administrative Code 410](#), which will be filed with the Secretary of State's Office pursuant to the Nevada Administrative Code. Then a public hearing will be scheduled and advertised to promote open debate and receive public input concerning the change.

After evaluation of the input at the public hearings, the proposed changes will be reviewed and the policy further modified if necessary. When agreement has been reached, the policy will be re-filed with the Secretary of State for the thirty day time period after which it has the effect of law.

Should any controversy arise that the District Utility Inspector cannot resolve, the matter will be referred to Headquarters for review and determination. This will generally involve rules interpretation.

#### 7.653 Permit Cancellation

All permit cancellations, whether resulting from rule violations or sign removal, will be made from the Headquarters Permit Coordinator. However, the Headquarters Permit Coordinator will generally not make any cancellation unless a request for cancellation is received from the District Utility Inspector. The District Utility Inspector's notification to the Headquarters Permit

Coordinator will include the cause for cancellation along with supporting Violation Notices, photographs, etc.

The Headquarters Permit Coordinator may issue permit cancellation notices independently of the District Utility Inspector in instances where the District Utility Inspector may not be aware of particular situations. An example would be where a permitted sign occupies land acquired by the Department for right-of-way purposes. As an additional check, the Inspector will check with the Headquarters Permit Coordinator of such situations.

Copies of all Cancellation Notices will be sent to the applicable District Utility Inspector.

ALL CANCELLATION NOTICES WILL BE SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

#### **7.654 Operational Forms**

The Staff Specialist – Utilities will prepare, revise, and may need to obtain Federal Highway Administration approval of forms to be utilized for sign applications and permits, valuations, violations, and other functions necessary to carry out the control of outdoor advertising.

#### **7.655 Sign Removal Costs**

When the State, on its own behalf or through the use of its continuing contractor, removes an illegal sign, the Headquarters Staff will bill the sign owner for the actual cost incurred in the removal. If the sign owner refuses to pay this cost, or in fact does not pay after a reasonable time, the bill will be referred to the Legal Division for collection.

#### **7.656 Joint Headquarters/Field Obligations and Responsibilities**

##### **A. Property Owner's Consent to Enter Property for Sign Removal**

Before the State or its Agent can remove a sign, be it an illegal sign or one that was purchased, the property owner's consent must be obtained to enter the property to affect the removal. A form for acquiring such consent is called "Permission for Sign Removal" (Form 736).

If the property owner refuses to allow the State to enter the property and the sign owner cannot or will not remove the sign (as will be the case with illegal signs), the Headquarters Permit Coordinator will request the Legal Division to commence proceedings that will result in a court ordered right of entry to achieve the removal.

##### **B. Surveillance**

The Headquarters Permit Coordinator, in addition to the District Utility Inspectors, will be observant for any field violations that may occur. This is particularly important in the case of access control violations where a sign is being maintained over or through a control of access fence. When this situation is

encountered, the District Utility Inspector or Headquarters Permit Coordinator will note the date, time, sign milepost and permit number, name of company or individual violating the access, the exact nature and extent of the violation, and will photograph the operation. Then the District Utility Inspector will inform the sign/property owner of the violation and request them to maintain the sign properly. Upon return to the office, the individual will fill out the Access Violation Memorandum (Form 741) to be filed in Headquarters records.

The sign owner will be sent one warning against this type of activity by the District Utility Inspector. Further violation of this nature will result in immediate permit cancellation with no further warning.

### 7.657 On-Premise Signs

On-premise advertising devices are not subject to the State's Outdoor Advertising Control Program. Therefore, it will be up to the District Utility Inspector to classify signs as being on- or off-premise during the periodic inventories. Should the District Utility Inspector, based on the following criteria, be unsure of a sign classification, the Headquarters Permit Coordinator will review the situation and assist in making a determination.

The sign must meet the following two tests to be classified as on-premise:

- A. Premises – The sign must be located on the same premises as the activity or property advertised. Physical facts rather than property lines determine the premise on which an activity is conducted. Premises include the area occupied by the building and appurtenances (i.e., parking lots, storage areas, processing areas, or other physical uses that are customarily incidental to the activity, including such open spaces arranged and designed to be used in connection with the buildings or activities). In the case of large complexes where one or more related activities occur (such as the resort hotel-golf course or restaurant-service station complex) where the entire complex is under the same ownership, any of the separate activities may be advertised independently within the developed commercial or industrial area of the complex.
- B. Purpose – The purpose of the advertising device must be (a) the identification of the establishment or activity located on the premises or its products or services, or (b) the sale or lease of the property on which the sign is located.

Certain situations will constitute prima facie evidence that a sign is not an on-premise advertising device in regard to both of the above tests. The following will not be considered to be a part of the premises on which the activity is conducted, and any signs located on such land will be considered "off-premise" advertising subject to State control:

- C. Any land which is not used as an integral part of the principal activity. This includes, but is not limited to, land that is separated from the activity by a roadway, highway or other obstruction, and not used by the activity, and

extensive undeveloped highway frontage contiguous to the land actually used by a commercial facility, even though it might be under the same ownership.

- D. Any land, which is used for or devoted to a separate purpose, unrelated to the advertised activity. For example, land adjacent to or adjoining a service station but devoted to raising of crops, residence, or farmstead uses or other commercial or industrial uses having no relationship to the service station activity would not be part of the premises of the service station, even though under the same ownership.
- E. Any land, which is,
  - 1. At some distance from the principal activity; and
  - 2. In closer proximity to the highway than the principal activity; and
  - 3. Developed or used only in the area of the sign site, or between the sign site and the principal activity; and
  - 4. Occupied solely by structures or uses which are only incidentals to the principal activity, and which serve no reasonable or integrated purpose related to the activity other than to attempt to qualify the land as a site for signs. Generally, these are inexpensive facilities, such as picnic, playground, or camping areas, dog kennels, golf-driving ranges, skeet ranges, common or private roadways or easements, walking paths, fences, and sign maintenance sheds.

D. Narrow Strips

Where the sign is located at or near the end of a narrow strip contiguous to the advertised activity, the sign site shall not be considered part of the premises on which the activity being advertised is conducted. A narrow strip includes, but is not limited to, any configuration of land, which is such that it cannot be put to any reasonable use related to the activity other than as a site for signs. In no event is the site of a sign to be considered part of the premises on which the advertised activity is conducted if it is located upon a narrow strip of land:

- 1. Land which is unsuitable for building, such as a swampland, marshlands, or other wetland; or
- 2. Which is a common or private roadway; or
- 3. Held by easement or other lesser interest than the premises where the advertised activity is located.

For the purpose of the sign, the following will constitute evidence of an off-premise sign subject to State control:

- a. When a sign (a) brings rental income to the landowner, (b) consists principally of brand name or trade name advertising, and (c) the product or service advertised is only incidental to the principal activity, it is considered the business of outdoor advertising and not an on-premise sign. An example would be a typical billboard located on top of a service station building advertising a brand of cigarettes or chewing gum, which is incidentally sold in a vending machine on the property.
- b. A sign, which advertises activities conducted on the premises, but which also advertises, in a prominent manner, activities not conducted on the premises, is not an on-premise sign. An example would be a sign advertising a motel or restaurant not located on the premises with a notation or attachment stating "Skeet Range Here", or "Dog Kennels Here". The on-premise activity would only be the skeet range or the dog kennels.

#### Exhibit 7.658 Milepost System

Below is an example of a milepost panel and an example of how the panels will be encountered in the field. Signs are inventoried to the nearest hundredth (0.01) of a mile based upon the physical location of the panels in the field. For a comprehensive review of the Milepost System, consult the State of Nevada, Department of Transportation.



#### Exhibit 7.659 Control Zone Configuration

##### *Within Urban Areas*

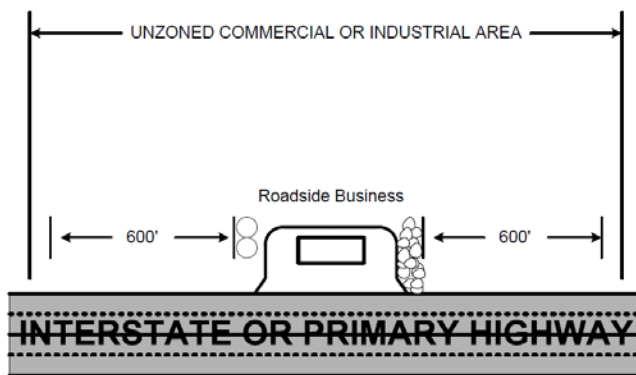
Means an urbanized area, or in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each such state, or an urban place, as designated by the Bureau of the Census of the United States Department of Commerce, having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible

state and local officials in cooperation with each other, subject to approval by the Secretary of Transportation of the United States. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

### Outside Urban Areas

Outside the limits of urban areas (as defined above) the State of Nevada requires a sign permit for all signs visible from and having reasonable advertising value to the main-traveled way of interstate and primary routes. No sign may be erected within 660 feet from the right-of-way line of interstate and primary routes, which were erected to be viewed from or which has reasonable advertising value to the main-traveled way of interstate and primary routes.

### Exhibit 7.660 Unzoned Commercial or Industrial Areas Diagram



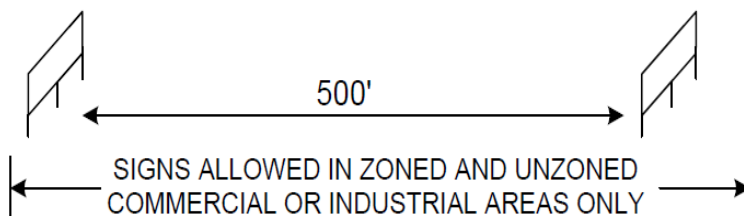
### Exhibit 7.661 Spacing Requirements

#### MINIMUM SPACING REQUIREMENTS

On Interstate and Federal-aid primary highways, signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

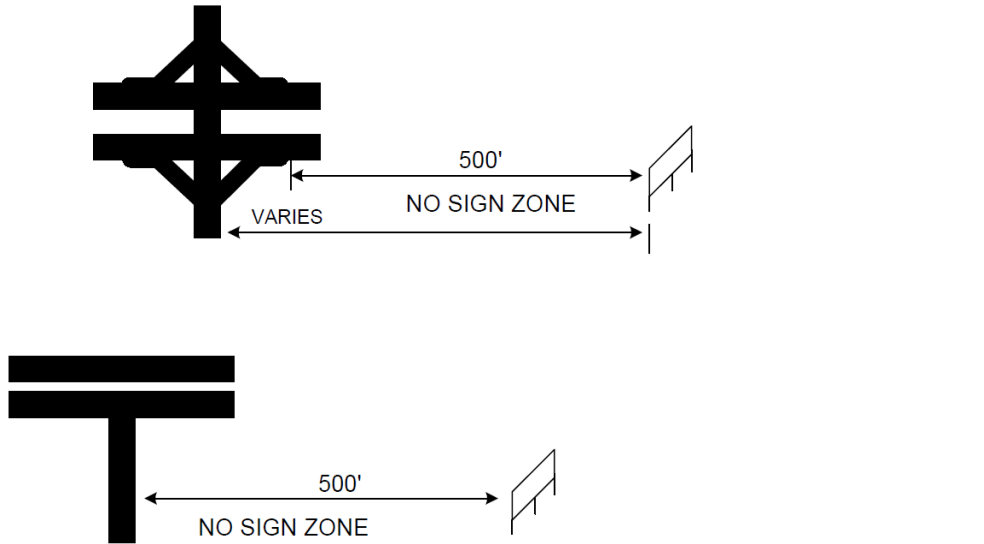
#### ALONG INTERSTATE HIGHWAYS AND CONTROLLED ACCESS FREEWAYS:

No two structures shall be spaced less than 500 feet apart.

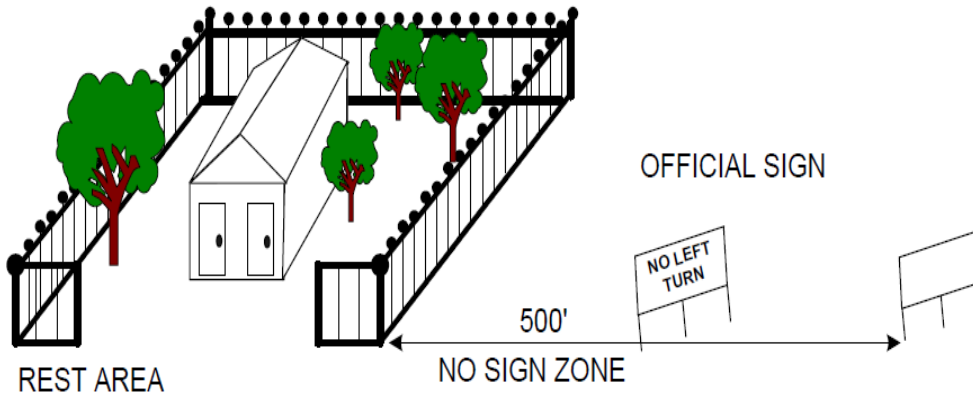


### Exhibit 7.662 Non-controlled access Primary Routes

Outside of incorporated cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet to be measured along the interstate or freeway from the beginning or ending of pavement, widening at the exit from or entrance to the main-traveled way.



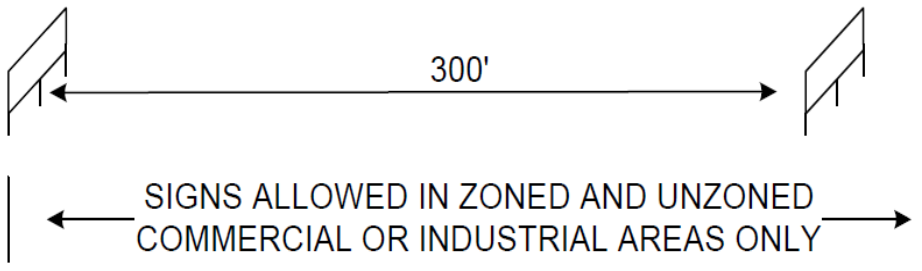
### Exhibit 7.663 Interstate and Controlled Access Primary Routes



### Exhibit 7.664 Outside Incorporated Towns and Cities

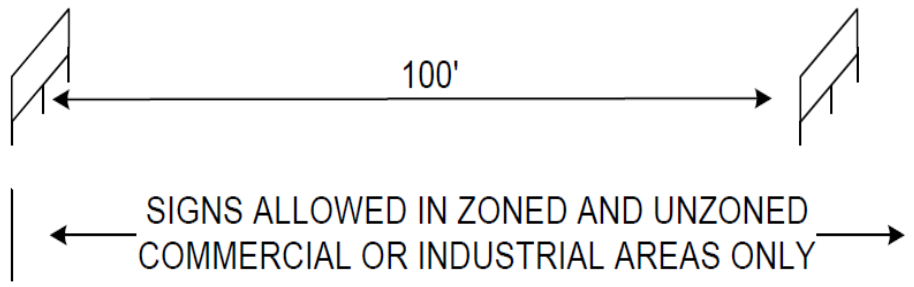
#### ALONG NON-FREEWAY PRIMARY HIGHWAYS

Outside of incorporated towns and cities, including the area within unincorporated towns and villages, no two structures shall be spaced less than 300 feet apart.



### Exhibit 7.665 Inside Incorporated Towns and Cities

Within incorporated towns and cities, no two structures shall be spaced less than 100 feet apart.



### Exhibit 7.666 Sight Interference Diagram

#### ALONG ALL CONTROLLED ROUTES

The spacing between structures provisions do not apply to structures by buildings or other obstructions situated in such a manner that only one sign located within the above spacing distances is visible from the highway at any one time, in both directions of travel.

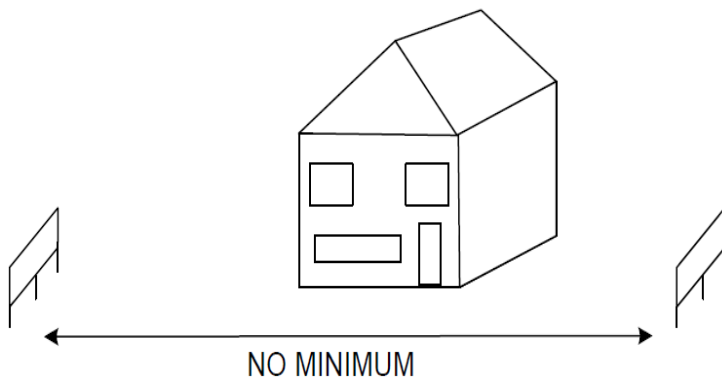
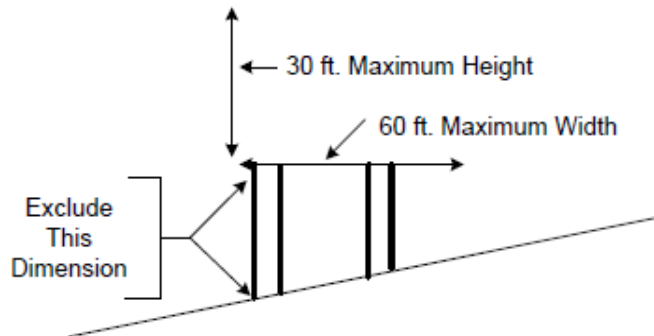




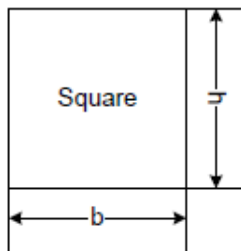
Exhibit 7.667 Methods of Measurement

**MAXIMUM SIZE LIMITATIONS**

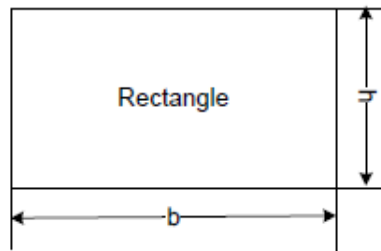
1200 sq. ft. MAXIMUM AREA



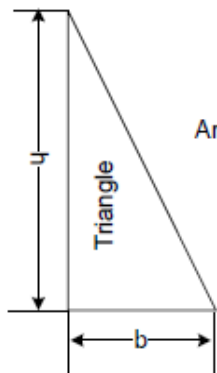
**MEASUREMENTS:**



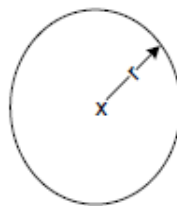
Area =  $b \times h$



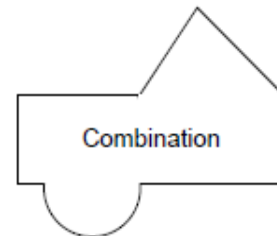
Area =  $b \times h$



Area =  $\frac{1}{2} b \times h$



Area =  $\pi r^2$



## Exhibit 7.668 Data Processing Coding Symbols

Following are explanations of some of the various items (either numbers or letters) that will be encountered under the headings on the inventories:

### *Land Use*

1	=	Zoned Industrial Areas
2	=	Zoned Commercial Areas
3	=	Unzoned Industrial Areas
4	=	Unzoned Commercial Areas
5	=	Other usage (which will automatically constitute a non-conforming area)
6	=	Right-of-Way Encroachment
7	=	Bureau of Land Management (BLM)
8	=	Tribal Land
9	=	Official/Directional

### *Post Material*

W	=	Wood
M	=	Metal
O	=	Other (such as on a building or a rock, must be defined under remarks)

### *Illuminated*

Y	=	Yes
N	=	No

## POLICY ON ACCOMMODATION AND INSTALLATION OF UTILITIES

### 7.700 POLICY ON THE ACCOMMODATION AND INSTALLATION OF UTILITIES

#### 7.701 Purpose

To establish and regulate design and installation methods for the accommodation and installation of utility facilities within the rights-of-way of State and Federally-Aided highways and in cooperation with participating cities and counties within the State of Nevada with respect to the maintenance, safety and aesthetic obligation of the State thereunder.

This policy for the accommodation and installation of utility facilities on the rights-of-way is in accordance with applicable provisions of Sections 1.23 and 1.27 of [Title 23 Code of Federal Regulations \(CFR\)](#) and [Title 23 CFR, Part 635.105](#), and Nevada Revised Statute ([NRS 408.423](#)), with revisions, additions, deletions and supplements thereto.

A legal opinion from the office of Mr. James H. Thompson, Deputy Attorney General and Chief Counsel, Department of Highways, dated January 29, 1970, established that “The State of Nevada, Department of Highways, has the responsibility for the issuance of permits, regulations and requirements for the occupancy of the state highway rights-of-way by any utility company pursuant to [NRS 408.423](#).”

The Director has the authority to remove encroachments under the provisions of [NRS 408.210](#).

Nevada’s Policy was prepared in the interest of safety and protection to the traveling public, utilization and future development of the highways with consideration given to both public and private utility installations. The Policy is intended to preserve the highway facilities by providing a regulated and controlled occupancy procedure.

#### 7.702 Policy Statement

The right of the utility to be accommodated on the rights-of-way of State and Federally-Aided highway projects has been determined by the United States Department of Transportation and State of Nevada to be in the best interest of the public when such use and occupancy of the highway right-of-way does not interfere with the free and safe flow of traffic or otherwise impair the highway or its visual quality and does not conflict with the provisions of Federal, State or local laws and regulations or provisions of this Policy.

“This policy for the accommodation and installation of utility facilities within the rights-of-way shall not amend, change or diminish any right of any utility to install its facilities within the right-of-way of the public highways of Nevada pursuant to its rights under Nevada statutes.”

#### 7.703 Application

All public roads in Nevada fall into one or more categories of systems for purposes of administration. Federal and State authorities generally share the funds and the responsibilities

## POLICY ON ACCOMMODATION AND INSTALLATION OF UTILITIES

for construction and maintenance but since these responsibilities are not entirely concurrent, it was necessary to establish two separate but overlapping systems.

The following list is the various categories of the Federal and State systems:

### Federal & Federal-Aid Systems:

- Federal-Aid Interstate Highways
- Federal-Aid Primary Highways
- Federal-Aid Secondary Highways
- Federal-Aid Urban System
- Non-Federal-Aid Routes

### State Systems:

- State Primary Highways
- State Secondary Highways
- Local Roads Under State Control
- County Roads
- City Streets

This Policy applies to the extent provided in [Title 23 Code of Federal Regulations \(CFR\), Part 645, Section 645.113](#), to all new and existing facilities, which are to cross or otherwise occupy the rights-of-way of any highways under the jurisdiction of the State of Nevada, Department of Transportation.

([Nevada Revised Statutes 408.070](#) “Highway” defined. “Highway” means roads, bridges, structures, culverts, curbs, drains, and all buildings, communication facilities, services and works incidental to highway construction, improvements and maintenance required, laid out, constructed, improved or maintained as such pursuant to constitutional or legislative authorization.)

For the purposes of this “Policy” manual, the terms “Utility”, “Utilities”, “Utility Facility” and “Utility Facilities”, shall mean:

- A. All privately, publicly or cooperatively owned lines, facilities, and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems, traffic signal control systems, and street lighting systems which directly or indirectly serve the public or any part thereof.
- B. Private lines – All privately owned facilities, which convey or transmit the commodities outlined in the preceding paragraph, but are devoted to private use.
- C. All appurtenances, installations, improvements, excavations, crossings, driveways, approach roads, ditches, flumes, facilities and work that presently, or

## POLICY ON ACCOMMODATION AND INSTALLATION OF UTILITIES

will in the future, occupy Nevada highway rights-of-way under a permit or other document pursuant to the provisions of [NRS 408.423](#).

### 7.704 Authority, Rules and Regulations

AASHTO - [A Guide for Accommodating Utilities Within Highway Right-of-Way](#)

AASHTO - A Policy on the Accommodation of Utilities Within Freeway Right-of-Way ([link](#))

Title 23, Code of Federal Regulations (CFR), [Section 1.23 and 1.27](#)

Title 23, Code of Federal Regulations (CFR), [Part 635.105](#)

Title 23, Code of Federal Regulations (CFR), [Part 645 Utilities](#), Subpart A

Title 23, Code of Federal Regulations (CFR), [Part 645 Utilities](#), Subpart B

Nevada Administrative Code (NAC), [Chapter 408](#)

Nevada Revised Statute (NRS) [408.423](#)

Terms and Conditions Relating to Right-of-Way Occupancy Permits 2006 Edition ([link](#))

### 7.705 Definitions

#### **Aesthetics:**

As applied to utility installations, would mean placing the utility facilities so as to be as inconspicuous as possible. This would involve, when economically feasible, placing the utility underground, or when exposed, so as not to interfere with the contiguity of the roadway construction and the surrounding landscape. This not only presents a pleasant appearance, but one of added safety. The utilization of streamline construction, tinted poles, non-specular conductor; the restoration and re-seeding of disturbed soil and the elimination of cutting timber are examples of how the industry is applying the aesthetic principle.

#### **Arterial Highway:**

A general term denoting a highway primarily for through traffic, usually on a continuous route.

#### **Average Daily Traffic (ADT):**

The average 24-hour volume, being the total volume during a stated period divided by the number of days of that period. Unless otherwise stated, the period is a year. The term is commonly abbreviated as ADT.

#### **Backfill:**

Material used to replace or the act of replacing material during construction; also may denote material placed or the act of replacing material adjacent to structure or around and over a pipe or conduit.

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### **Backslope:**

That portion of the roadway between the side drainage ditch and the top of cut, usually measured as a value of horizontal distance versus each foot of increase in elevation; i.e., 4 to 1 slope.

### **Base:**

The layer of material of a designated type and thickness placed on a subbase or subgrade to support a surface course.

### **Bedding:**

Organization of soil or other specified material to support a pipe.

### **Boring:**

The operation by which large carriers or casings are jacked through oversize bores. The bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe.

### **Bridge:**

A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having a length measured along the center of roadway or more than twenty (20) feet between under copings or abutments or extreme ends of openings or multiple boxes.

### **Bury:**

Depth of top of pipe below grade of roadway or ditch.

### **Cap:**

Rigid structural element surmounting a pipe.

### **Carrier:**

Pipe directly enclosing a transmitted fluid (Liquid or Gas).

### **Casing:**

A larger pipe, conduit, or duct enclosing a carrier.

### **Centerline:**

The longitudinal mid-point of all contiguous travel lanes. Surveyed stations are normally on the centerline.

### **Channelization:**

Placement of islands to direct the traffic flow in a definite path.

### **City Limit:**

The crossing of a highway of the legally defined boundary of an incorporated city.

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### **Clear Roadside Policy:**

The policy employed by a highway authority to increase safety and traffic operation and improve the appearance of highways by designing, constructing and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground such as trees, drainage structures, massive sign supports, utility poles and other ground-mounted obstructions.

### **Coating:**

Material applied to or wrapped around a pipe.

### **Compaction:**

The forcing or compressing together of soil particles by some mechanical means, which is used to obtain the required density of materials used.

### **Conduit or Duct:**

An enclosed tubular runway for protecting wires, cables or fiber optics.

### **Control of Access:**

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

### **Conventional Highway:**

An arterial highway without access control.

### **County Roads:**

The County Road system consists of all local roads, not in municipal or incorporated areas whose rights-of-way are dedicated to the county for road purposes.

### **Coring:**

The operation by which a small casing is drilled into firm soil. As the pipe advances, the core material is removed by sluicing during or after the drilling.

### **Cover:**

Depth to top of pipe, conduit, casing, cable, or similar line or utility tunnel below the earth or roadway surface.

### **Cradle:**

Rigid structural element below and supporting a pipe.

### **Crossover:**

Provision that is made in the median of divided highways for vehicular traffic to cross over to the opposing lanes of traffic; also called a turnaround.

### **Culvert:**

Any structure not classified as a bridge, which provides an opening under any roadway.

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### **Deceleration Lane:**

A speed change lane for the purpose of enabling a vehicle making an exit turn from a roadway to slow to a speed which will allow the vehicle to safely make the turn after it has left the main stream of faster moving traffic.

### **Direct Burial:**

Installing a utility facility underground without encasement.

### **Divided Highway:**

A highway with two or more lanes of traffic in opposite directions that are separated by a physical barrier.

### **Drain:**

Appurtenance to discharge liquid contaminants from casings.

### **Drainage Ditch:**

Any open watercourse, other than gutters, constructed beyond the limits of cut or fill slopes; the depressed areas within the limits of cut or fill slopes; the depressed area within the roadway given over to the collection and handling of surface drainage within the right-of-way.

### **Encasement:**

Structural element surrounding a pipe.

### **Encroachment:**

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

### **Expressway:**

A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

### **Federal-Aid Interstate:**

The Federal-Aid Interstate system was established by the Federal-Aid Highway Act of 1956. There are two Interstate routes in Nevada, Interstate 15, totaling about 124 miles, runs northeast from the California State line, along or near the present US-91 to the Arizona State line and Interstate 80, totaling about 411 miles, runs east from the California State line along or near the present US-40 to the Utah State line.

### **Federal-Aid Primary:**

The Federal-Aid Primary system was established by the Federal-Aid Highway Act of 1921 and consists of an adequate system of connected main highways designated by the State Highway Department, with the approval of the Bureau of Public Roads.



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### **Federal-Aid Secondary:**

The Federal-Aid Secondary system was established by the Federal-Aid Highway Act of 1944 and comprises farm-to-market roads, rural mail routes, public school bus routes, local rural roads, county roads, township roads, and roads of the county road class may be included so long as they are not part of the Federal-Aid Primary system or the Interstate system.

### **Federal-Aid Urban:**

The Federal-Aid-Urban system was established by the Federal-Aid Highway Act of 1970 and is included in each urbanized area with no mileage limitations within the urban system limits, and consists of all streets which have a functional classification higher than a local street and which are not connecting links to the rural arterial system or which have not been preempted into a Federal-Aid system.

### **Fill Slope:**

The portion of a roadway between the outside of the shoulder and the toe of the slope.

### **Flexible:**

Undistressed by ovalizing deformation (such as plastic, fiberglass and metallic pipe having a large ratio of diameter-to-wall thickness).

### **Flexible Pipe:**

A plastic, fiberglass, or metallic pipe having large ratio of diameter-to-wall thickness which can be deformed without undue stress.

### **Freeway:**

A divided arterial highway with full control of access and grade separations at intersections.

### **Frontage Road:**

A local street or road auxiliary to and located on the side of arterial highway for service to abutting property and adjacent areas and for control of access.

### **Full Control of Access:**

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

### **Gallery:**

An underpass for two or more pipelines.

### **Grade Separation:**

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

### **Grounded:**

Connected to earth or to some extended conducting body, which serves instead of the earth whether the connection is intentional or accidental.

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### **Grout:**

A cement mortar or slurry of fine sand or clay, as conditions govern.

### **Highway:**

Any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved.

### **Interchange:**

A system, in conjunction with a grade separation, of interconnecting highways providing for the interchange of traffic between two or more highways on different levels.

### **Intersection:**

The crossing of two highways either at grade or in conjunction with an interchange.

### **Island:**

A defined area either striped or raised median between traffic lanes for control of vehicle movement or pedestrian refuge and of relatively short length.

### **Jacket:**

Encasement by concrete poured around a pipe.

### **Junction:**

The point where, one highway intersects or ends, but does not cross another highway, either at grade or in conjunction with an interchange.

### **Major highway:**

An arterial highway with intersections at grade and direct access to abutting property on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

### **Manhole:**

An opening in an underground system which workmen or others may enter for the purpose of cleaning, making installations, inspections, repairs, connections and tests.

### **Median:**

The portion of a divided highway separating the traveled ways for traffic in opposite directions.

### **Milepost:**

A post placed at the roadside upon which is indicated a route and mileage reference (distinct and separate from the term "Post Mile").

### **Multi-Lane Highway:**

A highway having more than one traffic lane in each direction when undivided.

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### **Non-Federal-Aid Routes:**

This system consists of all State Routes that are not on a Federal-Aid system. The Legislature or the Director designates State Routes. This system may be located in both rural and urban areas.

### **Normal:**

Crossing at a right angle.

### **Oblique:**

Crossing at an acute angle.

### **Occupancy Document:**

An agreement between the Director and a utility covering the use and occupancy of highway rights-of-way in which the prior rights of the parties thereto are recognized and perpetuated.

### **Occupancy Permit:**

An agreement whereby the Director, pursuant to [NRS 408.423](#) and to any statutory franchise, authorizes and approves the use by a utility or private line of a specified portion of the highway right-of-way.

### **Overfill:**

Backfill above a pipe.

### **Overpass:**

A grade separation where the subject highway passes over an intersecting highway or railroad.

### **Parkway:**

An arterial highway for non-commercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like developments.

### **Partial Control of Access:**

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

### **Pavement Structure:**

The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

### **Permit:**

The written agreement by which a transportation agency approves the use and occupancy of highway rights-of-way by utility facilities or private lines; also called an Occupancy Permit.

### **Pipe:**

A formed hollow cylinder for the conveyance of liquids or gases. Cylinders formed from plate material in the course of the fabrication of auxiliary equipment are not pipe as defined here.

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### **Planting Easement:**

An easement for reshaping roadside areas and establishing, maintaining and controlling plant growth thereon.

### **Plowing:**

Direct burial of a line by means of a “plow” type mechanism, which breaks the ground, places the line and closes the break in the ground in a single operation.

### **Pressure:**

Relative internal pressure in p.s.i. (pounds per square inch).

### **Private Lines:**

Privately owned facilities, which convey or transmit the commodities outlined in the definition of utility facilities.

### **Railroad Grade Crossing:**

The general area where a highway and a railroad cross at the same level, within which are included the railroad, roadway and roadside facilities for traffic traversing that area.

### **Ramp:**

A turning roadway at an interchange for travel between intersection legs.

### **Reconstruction:**

The construction of a highway or of its component parts to a degree that new or substantially improved traffic service is provided and significant geometric or structural improvements are made.

### **Rest Area:**

A roadside area with parking facilities separated from the roadway provided for motorists to stop and rest for short periods. It may include drinking water, toilets, tables and benches, telephones, information, and other facilities for travelers.

### **Resurface:**

Laying on top of existing pavement a new surface material of one inch or more in thickness which in effect provides for a new riding surface but one which utilizes the former structure in whole or in part as the base of the new surface. Resurfacing may or may not result in a change in the surface type classification.

### **Rigid Pipe:**

Pipe assigned for diametric deflections of less than one percent.

### **Right-of-Way:**

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

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### **Roadbed:**

The graded portion of a highway within top and side slopes prepared as a foundation for the pavement structure and shoulders.

### **Roadside:**

A general term denoting the area adjoining the outer edge of the roadway. Extensive area between the roadways of a divided highway may also be considered roadside.

### **Roadside control:**

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

### **Roadway:**

The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

### **Route:**

A highway, which has been officially designated and is identified by an administrative number, which has an official description and length. Route numbers fall into three categories: U.S. Routes, State Routes, and Federal-Aid Routes.

### **Scenic Overlook:**

A roadside area provided for motorists to stop their vehicles beyond the shoulder, primarily for viewing the scenery in safety.

### **Semi-Rigid Pipe:**

Pipe designed to tolerate from one percent to three percent diametric deflection.

### **Shoulder:**

The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

### **Sidefill:**

Backfill alongside a pipe.

### **Sideslope:**

That portion of a roadway between the outside edge of shoulder and the adjacent drainage ditch.

### **Slab, Floating:**

Slab between but not contacting pipe and pavement.

### **Sleeve:**

Short casing through pier or abutment of highway structure.

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### **Slurry:**

A thin mixture of liquid, especially water, and any of several finely divided substances, such as cement or clay particles (also called grout).

### **Standard Specifications:**

The directions, provisions, and requirements contained in the standard specification (Standard Specifications for Road and Bridge Construction, State of Nevada, Department of Transportation).

### **State Primary:**

State Primary Highways are all roads and streets that have been designated by State law as State routes and also are on a Federal-Aid Interstate or Primary Route.

### **State Secondary:**

State Secondary Highways are all roads and streets that have been designated by State law as State Routes and are not on any Federal-Aid Interstate or Primary route. This would include State Routes that are also on the Federal-Aid Secondary system and State Routes that are not on any Federal-Aid system.

### **Street:**

A public way for purposes of vehicular travel within cities, including the entire area within the right-of-way.

### **Telecommunication Facility:**

Any telecommunication or community antenna television company cable line, fiber, wire, conduit, interduct, access manhole, handhole, tower, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, system and device, used to transmit, receive, produce, or distribute a wireless, wireline, electronic, or optical signal for communication purposes.

### **Temporary Barrier:**

A temporary device used to prevent vehicular access into construction or maintenance work zones and to redirect an impacting vehicle so as to minimize damage to the vehicle and injury to the occupants, while providing worker protection.

### **Through Highway:**

Every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop or yield before entering or crossing and where stop or yield signs are erected.

### **Topics:**

Traffic Operations Program to Increase Capacity and Safety.

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### **Traffic Barrier:**

A device used to prevent a vehicle from striking a more severe obstacle or feature located on the roadside or in the median, or to prevent crossover median accidents.

### **Traffic Control Plan:**

A plan for handling traffic through a specific highway or street work zone or project.

### **Traffic Lane:**

The portion of the traveled way for the movement of a single line of vehicles, exclusive of shoulders.

### **Transportation Agency:**

The Department, agency, commission, board, or official of any state or political subdivision thereof charged by its law with the responsibility for highway administration.

### **Traveled Way:**

The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

### **Trenched:**

Installed in a narrow open excavation.

### **Two-Lane Highway:**

An undivided highway having one lane for traffic in each of two opposing directions.

### **Underpass:**

A grade separation where the subject highway passes under an intersecting highway or railroad.

### **Unimproved:**

A route that has not been constructed with County, City, State or Federal funds.

### **Untrenched:**

Installed without breaking ground or pavement surface.

### **Use and Occupancy Agreement:**

The document by which the State or other highway authority, approves the use and occupancy of highway rights-of-way utility facilities or private lines.

### **Utility Accommodation Policy:**

A statement of the policies and procedures used by a transportation agency to regulate and accommodate utilities within the highway right-of-way.

### **Utility Facility:**

A privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable, heat, gas, oil, crude products, water, steam, waste, storm

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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.

### Utility Tunnel:

An underpass for one or more utility lines.

### Vent:

Appurtenance to discharge gaseous contaminants from casings.

### Visual Quality:

Means those desirable characteristics of the appearance of the highway and its environment, such as harmony between or blending of natural and man-made objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

### Walled:

Partially encased by concrete placed alongside carrier or casing.

## 7.706 General Requirements

### Conditions

- A. All installations of utilities on state highway rights-of-way shall be covered by some form of occupancy agreement and such document shall, as a minimum, meet requirements of [Title 23 CFR, Part 645.209 and 645.213](#).
- B. All utility installations on the rights-of-way of State, Federal and Federal-Aided freeways will meet the requirements of the AASHTO - "[A Guide for Accommodating Utilities Within the Highway Right-of-Way](#)" adopted in 1981, and "Roadside Design Guide" 1989; provided however, that nothing contained herein shall amend, change or diminish any statutory rights of any utility.
- C. Utility adjustments including relocations: Procedures and documentation for utility adjustments and/or relocation will be the same for Federal-Aid Secondary projects as required for Federal-Aid Primary projects employing procedures pursuant to [Title 23 CFR, Part 645.117](#), [Nevada Administrative Code Chapter 408](#), State's Utility Manual and approved revisions and modifications thereof.  
  
New utility installations that are to be made within the rights-of-way of Federal-Aid Secondary projects will be in accordance with the provisions of [Title 23 CFR, Part 645.209](#). The use by utilities of the highway rights-of-way will be reasonably regulated over the highway being traversed in accordance with this policy and under the terms of some form of occupancy document as prescribed in [Title 23 CFR, Part 645.209](#).
- D. The requirements for use and occupancy of highway rights-of-way by private utilities shall be the same as those for public utilities.



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- E. When a utility files a notice or makes an individual application or request to the state to use or occupy the rights-of-way of a Federal-Aid highway project, the State is not required to submit the matter to the Federal Highway Administration for prior concurrence except under the following circumstances:
  - 1. Installations on Federal-Aid highways where the State proposes to permit the use and occupancy by utilities not in accordance with the policies and procedures approved by [Title 23 CFR, Part 645.209](#).
  - 2. Installations involving unusual hardship cases pursuant [Title 23 CFR, Part 645](#).
  - 3. Installations on Federal-Aid freeways involving extreme case exceptions, as described in the AASHTO "[A Guide for Accommodating Utilities Within Highway Right-of-Way](#)," adopted 1981, and accepted under [Title 23 CFR, Part 645.211](#).

### 7.707 Locations

- A. New utility lines shall be located to minimize need for later adjustment to accommodate future highway improvements and to permit servicing such lines with minimum interference to highway traffic.
- B. New longitudinal installations shall be located on uniform alignment as near as practicable to the right-of-way line and outside the clear zone so as to provide a safe environment for traffic operation and preserve space for future highway improvements or other utility installations.
- C. To the extent feasible and practicable, all utility line crossings of the highway shall cross on a line at right angles, if possible, to the highway alignment. The crossings shall be based on safety and economic considerations of practical alternatives.
- D. In all cases full consideration shall be given to the standards, reflecting sound engineering principles and economic factors, necessary to preserve and protect the structural integrity and aesthetic quality of the highway, its maintenance efficiency, and the safety of highway traffic.
- E. The location of all utility facilities and appurtenances shall be in accordance with the [Americans with Disabilities Act](#).

### 7.708 Design

- A. The Utility shall be responsible for the design of the utility facility to be installed within the highway rights-of-way or attached to a highway structure; the District Supervisor shall review the Utility's proposal with respect to the location of the utility facilities to be installed and the manner of attachment. This includes the

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measures to be taken to preserve the safe and free flow of traffic, structural integrity of the roadway or highway structure, ease of highway maintenance, appearance of the highway, and the integrity of the utility facility.

- B. Utility installations on, over or under the rights-of-way of State highways and utility attachments to highway structures shall, as a minimum, meet the following requirements:
1. Electric Power facilities shall conform to the current applicable National Electrical Safety Code.
  2. Water lines shall conform to the current applicable specifications of the [American Water Works Association](#).
  3. Pressure pipelines shall conform to the current applicable sections of [ANSI](#) Standard Code for Pressure Piping of the American National Standards Institute and applicable industry codes.
  4. Liquid petroleum pipelines shall conform to the current applicable recommended practice of the [American Petroleum Institute](#) (API) for pipeline crossings under railroads and highways.
  5. Telephone and communication facilities shall conform to current applicable recommended practices of the [Federal Communications Commission](#) (FCC).
- C. Ground-mounted utility facilities shall be of a design compatible with the visual quality of the specific highway section being traversed.
- D. All utility installations on, over, or under highway rights-of-way and attachments to highway structures shall be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.
- E. On new installations, or adjustments to existing utility lines, provisions shall be made for known or planned expansion of the utility facilities; particularly those located underground or attached to or within bridges. They will be planned so as to minimize hazards and interference with highway traffic when additional overhead or underground lines are installed at some future date.
- F. All proposed utility designs and locations shall be reviewed by the Department to ensure that the proposed construction will not cause avoidable interference with existing or planned highway facilities or with highway operation and maintenance.

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### 7.709 Underground Facilities

#### A. General

1. All underground utility installations shall be marked with a standard utility company marker.
  - a. Crossings shall be marked outside the ditch line at locations satisfactory to the District Engineer.
  - b. Longitudinal facility markers shall be placed adjacent to the facility or offset to such a distance as may be specified and at intervals not to exceed 1,000 feet, at each angle point, or where non-concentric with the highway at least every 300 feet.

#### B. Location

1. The horizontal and vertical location of underground utility lines within the highway right-of-way shall conform to the following, applicable, clear roadside policy:

Utilities in the nature of power lines and water, gas and sewage mains, which occupy or cross the highway right-of-way, should be considered in location and design of the highway. Normally, on new construction no utility should be situated under any part of the pavement, except where it must cross the highway. Preferably underground utilities should be located outside the roadway to avoid any disturbance to traffic during utility maintenance operations. Where an underground utility crosses the highway, generally it should be placed within a conduit or pipe of sufficient size so that repairs of the utility can be made without disturbing the traveled way. The conduit should be readily accessible from the roadsides and the necessary manholes located off the pavement areas.

- a. In those cases where the above-mentioned underground utilities cross a proposed or existing Federal-Aid highway and the utility is being reimbursed for a relocation and/or adjustment under the provisions of [Title 23 CFR, Part 645.117](#).
  - b. The above stated policy in 1. above is predicated on not only perpetuating the capacity of the facility being replaced but to protect the integrity of the highway prism and roadbed.
2. Utility crossings should be avoided in deep cuts, near footings of bridges and retaining walls at highway cross drains where flow of water, drift, or streambed load may be obstructed and in wet rocky terrain where it is difficult to attain minimum cover, and through paved or unpaved berm slopes under structures.

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3. On longitudinal installations, utility locations parallel to the pavement at or adjacent to the right-of-way line are preferable so as to minimize interference with highway drainage, the structural integrity of the traveled way, shoulders and embankments and the safe operation of the highway. As a minimum, their lateral location shall be offset a minimum distance of six feet beyond the slope, ditch or curb line, or as the District Supervisor may stipulate in special circumstances, or as may be required to reestablish the aesthetic qualities of the surrounding landscape or to maintain dust control.

### C. Appurtenances

1. Vents, drains, markers, manholes, shafts, shut-offs, cross-connect boxes, pedestals, pad mounted devices and similar appurtenances shall not be located where they would interfere with the accessible facilities for the disabled.
2. Appurtenances protruding more than 4 inches above the groundline shall be located outside the clear zone and as close to the right-of-way line as practical. If no feasible alternative exists, appurtenances within the clear zone will meet breakaway criteria or be shielded by a traffic barrier.
3. Required controls for such appurtenances follow:
  - a. Vents are appurtenances by which fluids between carrier and casing may be inspected, sampled, exhausted or evacuated. These fluids may be leakage from the carrier within or the soil without, or atmospheric vapor and condensate, or decomposition products of pipes and coatings. Light gases are exhausted through risers or standpipes projecting above the ground surface. Vents shall be located at the high end of short casings and generally at both ends of casings longer than 45 meters. Vent standpipes shall be located and constructed so as not to interfere with maintenance of the highway or to be concealed by vegetation; they will be installed at or near a fence or right-of-way line.
  - b. Drains are appurtenances by which liquids or heavy gases may be evacuated or exhausted. They shall be provided for casings, tunnels or galleries enclosing carriers of liquid, liquefied gas, or heavy gas. Drains may outfall into roadside ditches or natural watercourses at locations approved by the District Engineer. Such outfall shall not be used as a wasteway for purging the carrier unless specifically authorized.

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- c. Manholes, vaults, pull boxes, etc. and all appurtenant structures shall not be located in the pavement or shoulders of major highways, including urban highways. Exception may be made on streets at those locations where manholes are essential parts of existing lines that are permitted to remain in place under existing and proposed roadways. Manholes may be retained or installed on low traffic roadways, with less than 750 ADT, within municipalities. Effort shall be made to minimize such installations and to avoid their location at street intersections, insofar as practicable. Manholes shall be designed and located in such a manner that will cause the least interference to other utilities and future highway expansion. Manholes within the control of access shall have the permission and prior approval of the Federal Highway Administration.
- d. Shut-off Valves, preferably automatic, shall be installed in lines at or near ends of structures and near unusual hazards, unless hazardous segments can be isolated by other sectionalizing devices within a reasonable distance.

### D. Installations

Installation or replacement of utilities along or crossing existing highways for the most part will be controlled by end-product specifications. However, safety of traffic and preservation of the earth structure supporting the pavement requires some restriction of methods used in the operation. Several acceptable methods of installation are discussed below:

### E. Bury

The critical controls for depth on a utility crossing are the low points in the highway cross-section. Usually these are the bottoms of the longitudinal ditches. In establishing the depth of the installation below an unpaved ditch, consideration shall be given to potential increases in ditch depth resulting from erosion, ditch maintenance operations, or the need to increase the capacity of the ditch. On longitudinal installations, the critical controls for the depth of the installation are the depths of lateral drainage facilities, landscaping, buried utility lines, bridge structures, and likely highway maintenance operations. In cold climates the depth of frost penetration should be taken into consideration. The depth of the installation should be sufficient to prevent the freezing of liquids carried. Also, the depth shall be sufficient to withstand the greatly increased impact loads transmitted through the frozen soil. Controls for underground utilities:

1. The minimum depth of the top of the pipe within the right-of-way shall be 3 feet unless extraordinary conditions render this minimum unfeasible. Should this occur, special review and/or consideration may be granted.

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2. For flexible pipe under pavement, minimum depth is 3 feet or the outside diameter of pipe, whichever is greater. Additional overfill may be required to prevent freezing of liquids carried.
3. Minimum cover in urban areas may be reduced if necessary to conform to local ordinances regulating the ditch grade line of utilities and will be limited to small size and low-pressure lines such as distribution and service lines.
4. Where less than minimum depth is essential to avoid rock excavation or the laying of pipelines below the permanent water table, the top of pipe must not project into the pavement sub-base and will be protected with a casing or capping acceptable to the Department.

### F. Trenched Construction and Backfill

From the highway viewpoint, the essential features for trench and backfill construction are: (a) restoration of the structural integrity of entrenched roadbed; (b) security of the pipe against deformation likely to cause leakage; (c) assurance against the trench becoming a drainage channel; (d) assurance against drainage being blocked by the backfill. The integrity of the pavement structure, shoulders, and embankment slopes are of primary concern. Details of specifications will recognize differences in climate and soil. Trenched construction, bedding and backfill normally will be adequately controlled if the utility company is required to conform to the Department of Transportation's standard specifications for earthwork and culverts.

However, if it is desired that the use and occupancy agreement be complete in itself without reference to other regulations, it shall include the following controls:

1. At highway crossings, care must be taken to prevent the trench from becoming a drainage channel.
2. On longitudinal lines, care must be taken to prevent the trench from interfering with surface or subsurface drainage.
3. The Department agency's standard specifications for trenching and backfilling shall be applied.
  - a. When the existing highway pavement must be cut to accommodate a utility installation, the opening should be saw cut to the full depth.
  - b. The width of pavement cut should be determined by the width of the required trench plus 18 inches on each side of the trench. In the event the distance of any adjacent longitudinal or transverse joint or crack is less than 3.94 feet (or 1.2 m) from the

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recommended width of cut, the pavement should be removed and replaced to the joint or crack.

- c. Trenches should be cut to have vertical faces, where soil and depth conditions permit, with a maximum width of outside diameter of casing or carrier, plus 1.64 feet (or 0.5 m). They should be shored where necessary and lateral and vertical support shall be provided for all existing facilities and structures. Short tunnel sections should be used near adjacent utilities or facilities.
- d. Bedding shall be provided to a depth of 6 inches or half the diameter of the casing or carrier, whichever is the least. Bedding shall consist of granular material, free of lumps, clods, stones and frozen materials and shall be graded to a firm but yielding surface without abrupt change in bearing value. Unstable soils and rock ledges should be sub-excavated from the bedding zone and replaced by suitable material. The bottom of the trench shall be prepared to provide uniform bedding throughout the length of the installation.
- e. Backfill under the roadway shall be placed in two stages: first, fill to the level of the top of carrier or casing, and second, fill to former surface grade. Fill shall consist of Class A excavatable slurry. For backfill of trenched pavement, materials and methods of compaction should be adapted to achieve prompt restoration of traffic service. There should be additional cutback of base and surfacing and transitioning of trench to minimize later development of sag in the grade of pavement over the trench.
- f. The Department may require that backfill and/or repaving be performed by its forces or under its direction at the expense of the utility owner. Where a utility owner can demonstrate that it is capable of acceptable and adequate repair, it may be authorized to perform its own restoration utilizing specifications acceptable to the Department.
- g. During construction, open trenches or other excavations within the clear zone should not be permitted to remain beyond the workday unless backfilled, covered, delineated, or shielded in accordance with the Department's Utility Accommodation Policy.

### G. Untrenched Construction and Grouting

- 1. A few techniques for installing utilities under a highway without disturbing the surface are discussed below:

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- a. Driving – A small pipe with a pilot shoe can be driven through compressible soils by a steady thrust, hammering or vibrating. A casing or corrosion resistant carrier must be used. Long drives may wander far from the desired line and grade.
  - b. Coring – A small casing without pilot shoe can be drilled into more difficult soil, which enters the pipe as it advances. The core is removed by sluicing during or after the drilling. Line and grade are fairly easy to control.
2. Suggested controls for untrenched construction and grouting follow:
- a. Where there are few existing underground utility lines or for crossings of major highways, expressways or freeways, untrenched construction should be considered to minimize disturbing the pavement surface. Methods may include driving, coring, boring, or mechanical compaction.
  - b. The oversize of the untrenched construction should be restricted and the conditions specified under which the void outside the carrier or casing must be backfilled with grout. Where soils are favorable and the carrier is 3.94 feet (or 1.2 m) or more deep, the untrenched construction hole may be five percent oversize in diameter. Grout backfill shall be required for carrier or casing more than 12 inches in diameter and for overbreaks, unused holes, or abandoned carrier or casing. Untrenched excavations 4 inches or less in diameter may be exempt from void filling requirements in accordance with the Department's Utility Accommodation Policy.
3. Portal limits of pipeline crossings should be established beyond the surfaced areas of the highway so as to avoid impairing the roadway during the installation of the pipeline. Where bulkheaded, the portal shall be suitably offset from the surfaced area of the highway; where not bulkheaded, the portal should be not less than the vertical difference in elevation between the surfaced area of the highway and the pipeline.

### H. Adjustment

Suggested controls for adjusting existing utilities that fall in the path of highway construction projects follow:

1. An existing or relocated utility shall be protected in such a manner, as normally would be required for a new pipeline at the site. See Features for Utility Crossings, [Figure 7.721](#).



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2. In cases where an existing utility is too close to the highway grade or its bedding is being depressed by highway loads, provisions shall be made to relocate the utility to a grade suitable to alleviate the undesirable condition(s).
3. An existing utility which lacks adequate cover for protection against, or is too weak to support, vehicular line loads or highway construction operations, shall be replaced by a stronger pipe, protected by a floating slab in lieu of encasements or facilitated in a manner acceptable to both the Chief Right-of-Way Agent and the Utility.
4. Notwithstanding reinforcement or protection otherwise provided, the highway construction contractor shall be warned and made responsible for the security of each existing pipeline within the construction zone. Where there are unusual utility hazards and where heavy construction equipment will be needed it shall be arranged that the contractor provide a temporary cover of earth or bridge the utility.

### 7.710 Pipelines

#### A. Location and Alignment

The following are the controls for the location and alignment of pipeline installations:

1. Care must be exercised to avoid area and conditions, which are unsuitable and undesirable for pipeline crossings. These include, but are not restricted to: (a) deep cuts; (b) adjacent to or near piers and footings of structures; (c) retaining walls; (d) at-grade intersections and ramp termini; (e) conflict with irrigation ditches, streams and other natural channels of water flow; (f) in wet or rocky terrain where costs to obtain minimum depth would be prohibitive; and (g) depressed underpass basins which are drained by a pump or other mechanical means if the proposed pipeline carries liquid gas or other volatile and/or poisonous substances.
2. Vertical and horizontal clearance between a pipeline and a structure or other highway or utility facilities shall be sufficient to permit maintenance and protect the integrity of the pipeline and other facilities.
3. The general controls previously outline for underground facilities as related to markers, locations, appurtenances, installation, bury, trenched, untrenched construction and adjustment shall be followed as applicable, on pipeline installations.

#### B. Encasement

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The following controls are provided for encasement or pipeline crossings of the highway:

1. Casings shall be provided for the following conditions:
  - a. As an expediency in the intersection, removal, replacement or maintenance of carrier pipe crossings of freeways, expressways, primaries, secondary and other controlled access highways and at other locations where necessary to avoid open trenched construction.
  - b. As protection for carrier pipe from external loads or shock, either during or after construction of the highway.
  - c. As a means of conveying leaking fluids or gases away from the area directly beneath the traveled way to a point of venting at or near the right-of-way line or to a point of drainage in the highway ditch or a natural drainage way.
  - d. Casings longer than 150 ft. (45 m) should have vents located generally at both ends. Vents should also be located at the high end of short casings.
2. The District Supervisor will establish the need for casing of (a) pressurized carrier pipes crossing under major highways, and (b) carriers of transmittants which are flammable, corrosive, expansive, energized, or unstable particularly if carried at high pressure or potential which cross under any road.
3. Jacked or bored installations of coated carrier pipes shall be encased. Exceptions may be made where assurance can be provided against damage to the protective coating.
4. Provision shall be made for the encasement or other suitable protection for any pipeline (a) with less than minimum depth, (b) near footings of bridges or other highway structures or across unstable or subsiding ground, or (c) near other locations where there may be a hazard.
5. Rigid encasement or suitable bridging shall be used where support of pavement would be impaired by depression of flexible carrier pipe.
6. Casings shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, should equal the structural requirements for highway drainage facilities. Casing shall be composed of materials of satisfactory durability under conditions to which they may be exposed.

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7. Where pipelines are encased, the encasement shall extend a suitable distance beyond the slope or ditch lines. On curbed sections, encasement shall extend outside the outer curbs. Where appropriate, the encasement shall extend to the access control lines, to the outside of frontage roads, or to an indicated line that allows for future widening of the highway.
8. Casing pipe shall be sealed at the ends with a flexible material to prevent flowing water and debris from entering the annular space between the casing and the carrier. The installations shall include necessary appurtenances, such as vents and markers.

### C. Allied Mechanical Protection

For some conditions, pipeline crossings of the highway may be installed without encasement. Normally, such installations shall be limited to open trenched construction. The following controls are established for providing allied mechanical protection to uncased pipeline crossings of the highway:

1. On uncased construction, the carrier pipe shall conform to the material and design requirements of utility industry and governmental codes and specifications. In addition, the carrier pipe should be designed to support the load of the highway plus superimposed loads thereon when the pipe is operated under all ranges of pressure from maximum internal to zero pressure. Such installations shall employ a higher factor of safety in the design, construction and testing than would normally be required for cased construction.
2. Suitable bridging, concrete slabs or other appropriate measures shall be used to protect existing uncased pipelines, which by reason of shallow depth or location, make them vulnerable to damage from highway construction or maintenance operations. See Features for Utility Crossings, [Figure 7.721](#). Such existing lines may remain in place without further protective measures if they are of adequate depth and do not conflict with the highway construction or maintenance operations, provided both the highway and the utility officials are satisfied that the lines are, and will remain, structurally sound and operationally safe.
3. Uncased crossings of welded steel pipelines carrying transmittants which are flammable, corrosive, expansive, - energized or unstable, particularly if carried at high pressure or potential, may be permitted, provided additional protective measures are taken in lieu of encasement. Such measures shall employ a higher factor of safety in the design, construction and testing of the uncased carrier pipe, including such features as thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping and cathodic protection. Substantial

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justification must be submitted before allowing uncased installation of this nature.

### D. Restriction Against Varied Use

The following precautionary measures are required for pipeline installations:

1. Pipeline installation permits shall specify the class of transmittant, the maximum working, test, or design pressures, and the design standards for the carrier.
2. When it is anticipated that there will be a change in the class of transmittant or an increase in the maximum design pressure specified in the permit, the utility shall be required to give, the Department of Transportation advance notice and obtain approval for such changes. The notice shall specify the applicable codes to be used.

### 7.711 Installations on Highway Structures

In many cases, attachment of utility facilities to highway structures, such as bridges, is a practical arrangement and may be authorized. Where it is feasible and reasonable to locate utility lines elsewhere, attachments to bridge structures should be avoided.

Where other locations for a utility line to span an obstruction prove to be difficult and the cost unreasonable, consideration shall be given for attaching the utility line to a bridge structure by a method acceptable to the Department.

Generally, acceptable utility installations are those, which will occupy a position beneath the structure's floor, between the outer girders or beams or within a cell. The utility should always be located above the low superstructure steel or masonry. When attached to a structure in such a manner, the future inspection and maintenance of the structure should not be hindered to the point where this necessary work cannot be reasonably accomplished.

In areas subject to seismic concern, special attention is needed in the design, installation, and maintenance of utilities attached to highway structures. This is necessary in order to minimize the effects of seismic activity and is especially true when the utility line carries hazardous or high-pressure substances.

### 7.712 Utility Tunnels and Bridges

- A. A utility tunnel or a bridge occasionally is provided for a carrier or casing crossing a major highway at a strategic location. Where it can be foreseen that several utility crossings will be needed, the cost of the tunnel (either a large casing or a box culvert) or of the bridge may be less than that for the alternate of several untrenched or separate carriers or casings. Where these conditions exist, the highway authority should take steps as necessary to ensure that adequate

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coordination is performed with and among the utilities to anticipate their needs for future crossings and to converge their facilities to a single joint-use crossing.

- B. In a tunnel or on a bridge, provision shall be made to isolate mutually hazardous transmittants, such as fuels and electric energy, by compartmentalizing or by auxiliary encasement of incompatible carriers.
- C. The utility-tunnel or utility-bridge structure shall conform in appearance, location, bury, earthwork and markers to the culvert and bridge practice of the Department of Transportation.

### 7.713 Overhead Power and Communication Lines

#### A. General

The safety, maintenance efficiency and aesthetics of highways are the critical requirements for locating poles. Type of construction, vertical clearances, location of poles, guys and related ground mounted appurtenances upon and along the roadside are important factors to preserve a safe traffic environment, and the efficiency and economy of highway maintenance. Keeping the space between the edge of shoulder or curb line and the right-of-way line as free as practical from obstacles above the ground enhances the safe maintenance efficiency and aesthetics of highways. Ground-mounted utility appurtenances shall be kept to an absolute minimum and in any event they shall be placed as far as practical from the traveled way meeting the minimum clearance from the shoulders of highways. The ruggedness of the terrain being traversed is controlling factors for utility locations.

#### B. Type of Construction

Where feasible, any longitudinal installations of overhead lines on the highway rights-of-way shall be limited to single pole type of construction. Joint-use single pole construction should be encouraged, as indicated by Rule 22 of Part 2 of the National Electrical Safety Code, at locations where more than one utility or type of facility is involved. This is of particular significance at locations where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements.

#### C. Vertical Clearance

The minimum vertical clearance for overhead power and communications lines above the highway and the lateral and vertical clearance from bridges shall conform to the National Electrical Safety Code.

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### D. Location

On and along conventional highways in urban and rural areas, poles and related facilities shall be located at or as near as practical to the right-of-way line. As a minimum, the poles shall be located outside the clear roadside area for the highway section involved. There is no single minimum dimension for the width of a clear roadside area but, where there is sufficient border space, 30 feet shall be used as a design safety concept guide as required by the Department. Where there are curbed sections, the utilities shall be located as far as practical behind the face of outer curbs and, where feasible, behind the sidewalks at such locations that will not interfere with adjacent property use. Where practical, they shall be located no closer than 6 feet from the face of curb.

Locations of overhead utility installations on highways with narrow rights-of-way or on urban streets with closely abutting improvements require special consideration. Such cases must be resolved in a manner consistent with the prevailing limitations and conditions. Before locating the utility at other than the right-of-way line, consideration should be given to designs employing self-supporting, armless single-pole construction, with vertical alignment of wires or cables, or other techniques permitted by governmental or industry codes that are conducive to a safe traffic environment. Exception to these clearances may be made where poles and guys can be placed at locations behind existing guardrail, beyond drainage ditches, the toe or top of slopes, retaining walls, or in other similar protected locations.

New above ground facilities should be located outside the clear zone. Where there are no feasible alternatives, new facilities, which project more than 4 inches above the ground line, should be of a breakaway design or protected by a traffic barrier.

Where irregular shaped portions of the right-of-way extend beyond or do not reach the normal right-of-way limits, variances in the location of utilities should be allowed to maintain a reasonably uniform alignment for longitudinal installations. Such installations will reduce the need for guys and anchors between poles and roadways.

Longitudinal installations of poles, guys or other related facilities shall not be located in a highway median. For crossings of a highway, poles should not be located in a highway median. However, if no feasible alternative exists to placing a crossing pole in the highway median and it is located within the clear zone, it shall be a breakaway design or protected by a traffic barrier.

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### 7.714 Telecommunications

#### A. General

It is the policy of the Department in managing its rights-of-way to accommodate telecommunications facilities along highway rights-of-way in accordance with the [Telecommunications Act of 1996](#), Public Law 104-104, 110 Stat. 56-161, when such use and occupancy of the state highway or highway right-of-way do not adversely impact highway or traffic safety, or otherwise impair unreasonably the state highway, or its aesthetic quality, and do not conflict with Federal, State and Local laws and regulations, including any rights of underlying property owners that granted easements to the Department.

#### B. Installations

A telecommunications facility must be installed underground on a state highway or right-of-way unless the Department determines that an overhead installation is appropriate. In determining whether to authorize an overhead installation, the Department will consider public health and safety and the factors set forth in [NAC 408.467](#).

#### C. Trenching, Plowing or Boring

1. To minimize adverse impacts to the state highway or highway rights-of-way, and related highway facilities and pavement structures, and to avoid a significant compromise of the safe, efficient and convenient use of the state highway system for the traveling public, the Department may limit the number of trenches, plowings or borings in a section of a state highway or right-of-way for the installation of telecommunications facility to once every 5 years.
2. At least once every 18 months, the Department shall grant an exception to the limitation set forth in Subsection 1 if trenching, plowing or boring is:
  - a. The only practicable method of installing or constructing the telecommunications facility.
  - b. Required to carry out the obligations of the provider of telecommunications or community antenna television company to serve its customers pursuant to Federal, State or Local law or a franchise agreement with a local government.
3. In determining whether to grant an exception, the Department will consider:
  - a. The feasibility of alternatives to using the right-of-way.

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- b. The type of highway upon which the trenching, plowing or boring will be performed.
  - c. The effect of the proposed trenching, plowing or boring will have on the state highway or right-of-way and members of the traveling public.
- D. Depth Requirements
- 1. The minimum depth for the installation of a new direct telecommunications line or conduit is 36 inches, except that the minimum depth may be 42 inches if necessary to comply with the design requirements of the Department. The Department may require a minimum depth of more than 42 inches if it determines it is necessary for the installation of telecommunications line.
  - 2. The Department may allow a minimum depth of less than 36 inches if the Director determines that the installation is desirable but achieving a depth of 36 inches is not practicable.

### 7.715 Irrigation and Drainage Pipes, Ditches and Canals

Irrigation and drainage facilities installed across highway rights-of-way shall be designed and constructed in accordance with the Department's specifications for highway culverts and bridges. Ditches and canals not required for highway drainage, which closely parallel the highway, should not be, constructed within the highway right-of-way. Where ditch maintenance roads are adjacent to ditches or canals that cross the highway, consideration shall be given to safety, traffic operations and economic features when providing for the continuity of such roads.

### 7.716 Miscellaneous

- A. Preservation, Restoration and Cleanup
- 1. Disturbed Areas

The size of the disturbed area will be kept to a minimum. Restoration methods shall be in accordance with the Department's specifications and/or special provisions of the permit. Unsatisfactory restoration work shall be promptly redone by the Utility. If necessary, unsatisfactory restoration work may be redone by the Department, or its contractor, and billed to the utility company.
  - 2. Drainage

Care shall be taken in utility installations to avoid disturbing existing highway or private drainage facilities. Underground utility facilities shall be backfilled with pervious material and outlets provided for entrapped



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water. Underdrains shall be provided where necessary. No jetting or puddling will be permitted under the roadway.

### 3. Spraying, Cutting and Trimming of Trees

The Utility shall be prohibited from such activities unless written permission is given by the Department of Transportation. In general, where permission is given, only light trimming will be permitted. When the removal of a tree is permitted, the stump will either be cut to the ground or be removed and the hole properly backfilled, as determined by the Department. All debris, refuse and waste shall be removed from the site.

### B. Servicing, Maintenance and Repairs

All utility facilities shall be kept in good state of repair both structurally and from standpoint of appearance. The utility use and occupancy agreement will identify the maintenance operations, which are permitted and indicate situations where prior notification to the Department is required.

### 7.717 Scenic Enhancement

In areas of scenic enhancement, as specified below, particular emphasis will be placed on the aesthetics of the utility installation. This means locating and constructing the utility installation in a manner that will make it as inconspicuous as possible. This would involve, unless economically unfeasible, placing the utility underground. Areas disturbed by such underground installation are to be restored to as near their former condition as is possible. Where undergrounding is not technically feasible or unreasonably costly, aerial installation may be permitted. Such aerial installations shall be of streamlined, single pole vertical construction with tinted poles, if deemed necessary and non-spectral conductor. The facility shall be routed to minimize timber cutting and to present as low a profile as possible to the highway user. As with underground construction, the area disturbed will be kept to a minimum with virtually total restoration to be performed immediately after construction. A general guide is provided in [Title 23 CFR, Part 645, Subpart B, § 645.209, Paragraph \(h\)](#), as follows:

“h. New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-Aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public parks and recreational lands, wildlife and waterfowl refuges, historic sites as described in [23 USC 138](#), scenic strips, overlooks, rest areas and landscaped areas. The State highway agency may permit exceptions provided the following conditions are met:

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- (1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.
- (2) Aerial installations may be permitted only when:
  - (a) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality, and
  - (b) Placement underground is not technically feasible or is unreasonably costly, and
  - (c) The proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.
- (3) For new utility installations within freeways, the provisions of paragraph (c) of this section must also be satisfied.”

### 7.718 Accommodations for Public Traffic

Traffic controls for utility construction and maintenance operations shall conform to the “Manual on Uniform Traffic Control Devices for Streets and Highways” ([Traffic Manual](#)). All construction and maintenance operations shall be planned with full regard to safety and to keep traffic interference to an absolute minimum. On heavily traveled highways, construction operations interfering with traffic will not be allowed during periods of peak traffic flow. Any such work shall be planned so that closure of intersecting streets, road approaches, or other access points is held to a minimum. Part VI of the above cited Traffic Manual, sets forth the specific measures to be followed during any work on the highway rights-of-way.

The Director of the Department will establish whether the work provided to protect the traveling public is adequate and will reserve the right at any time to direct that additional work be done or additional precautions be taken.

If, in the opinion of the Director, there are any violations of the permit or if the required precautions to protect the traveling public are not being taken, the permit may be subject to revocation. The Director may order such work to be accomplished with the necessary precautions taken and the permittee billed for the same.

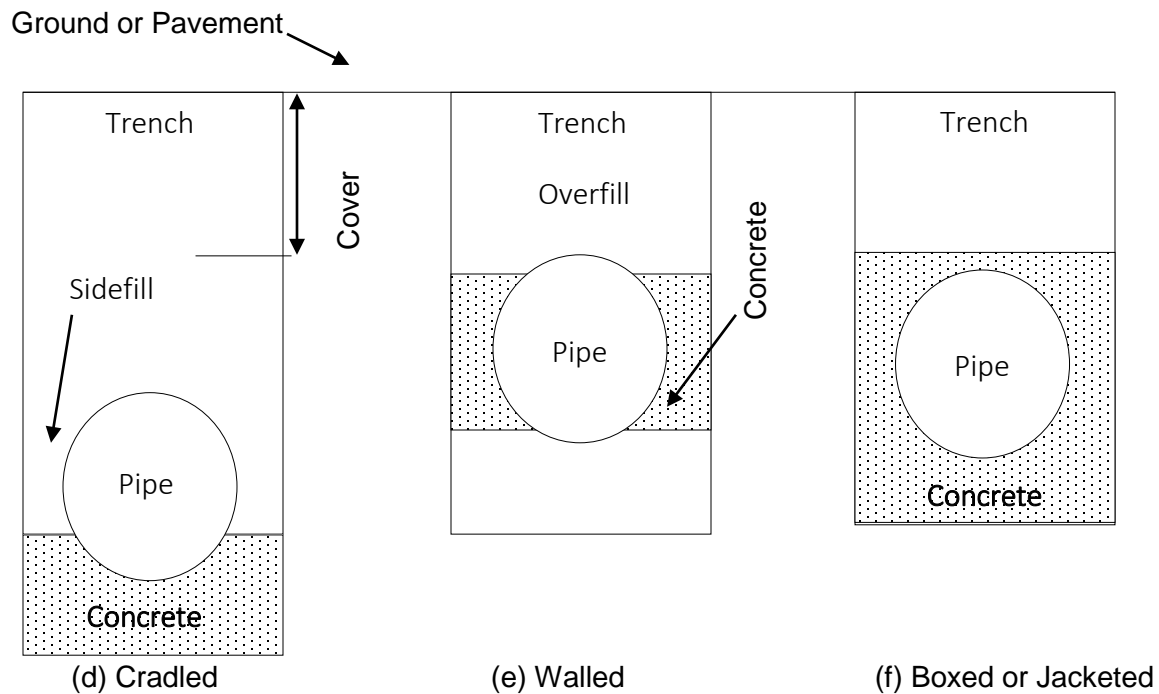
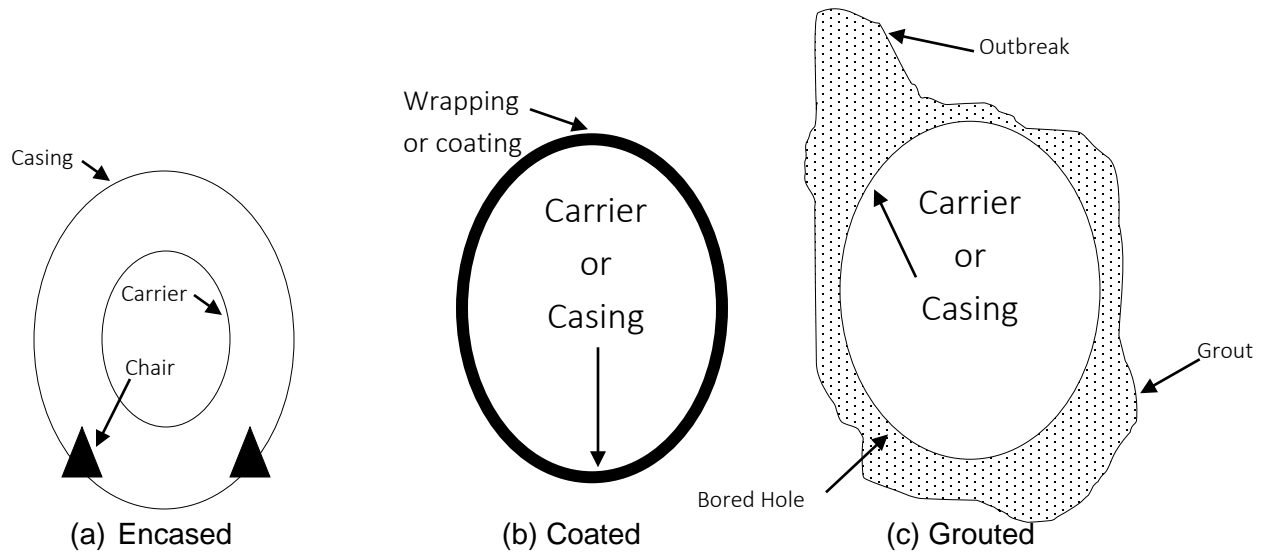
### 7.719 Safety

Where it is determined that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the Chief Right-of-Way Agent will initiate appropriate corrective measures to provide a safe traffic environment in accordance with [Title 23 CFR, Part 645.209](#).

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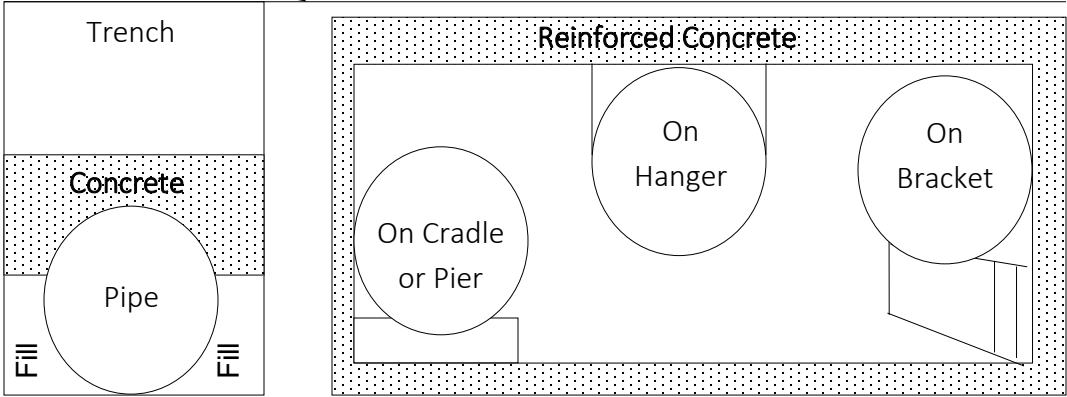
All utility installations, shall as a minimum, meet the requirements set forth in the book titled "Highway Design and Operational Practices Related to Highway Safety" approved by the Executive Committee of AASHTO, November 1966.

## 7.720 Mechanical Protection for Underground Utility Crossings



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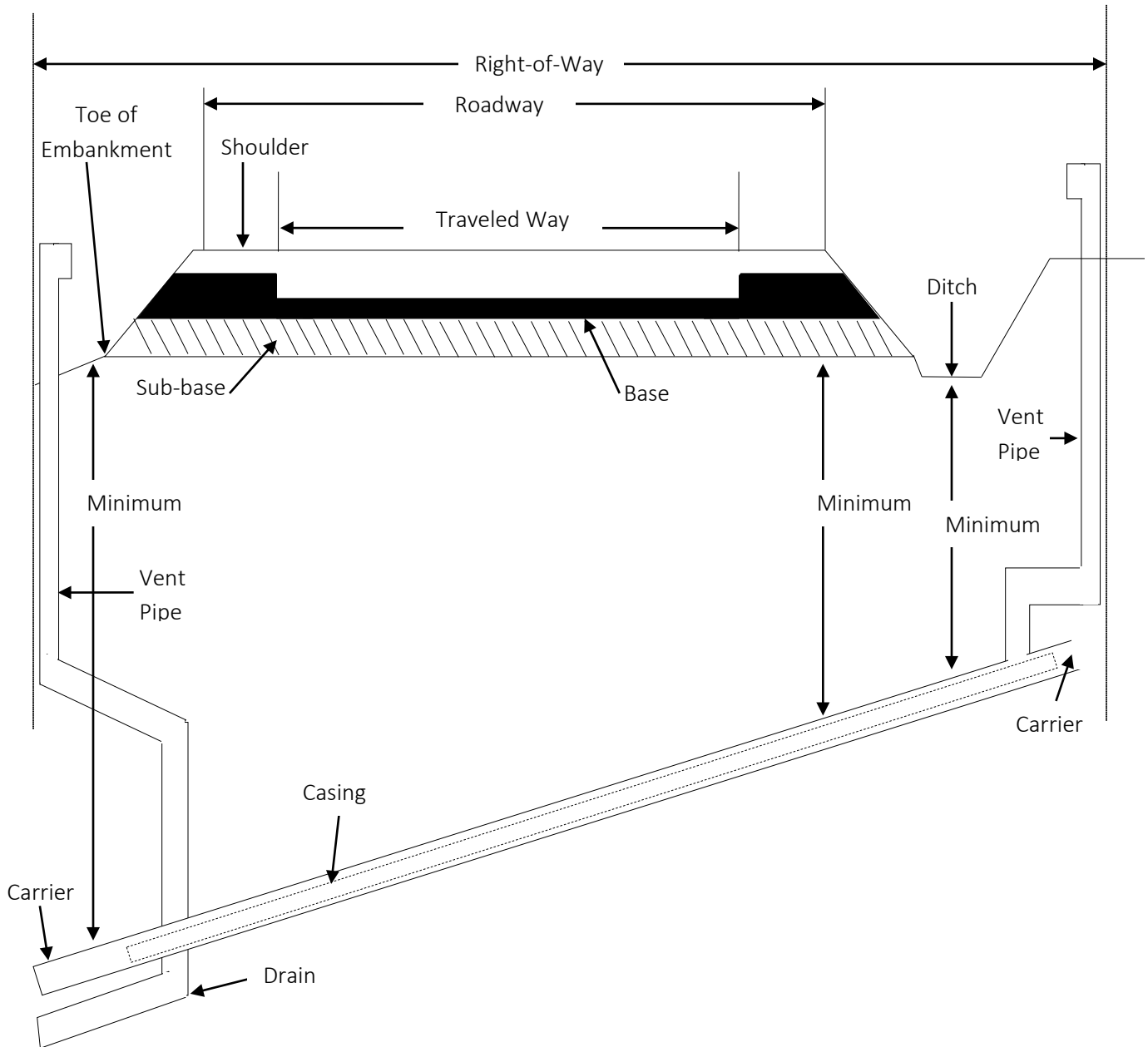
Ground or Pavement



(g) Capped

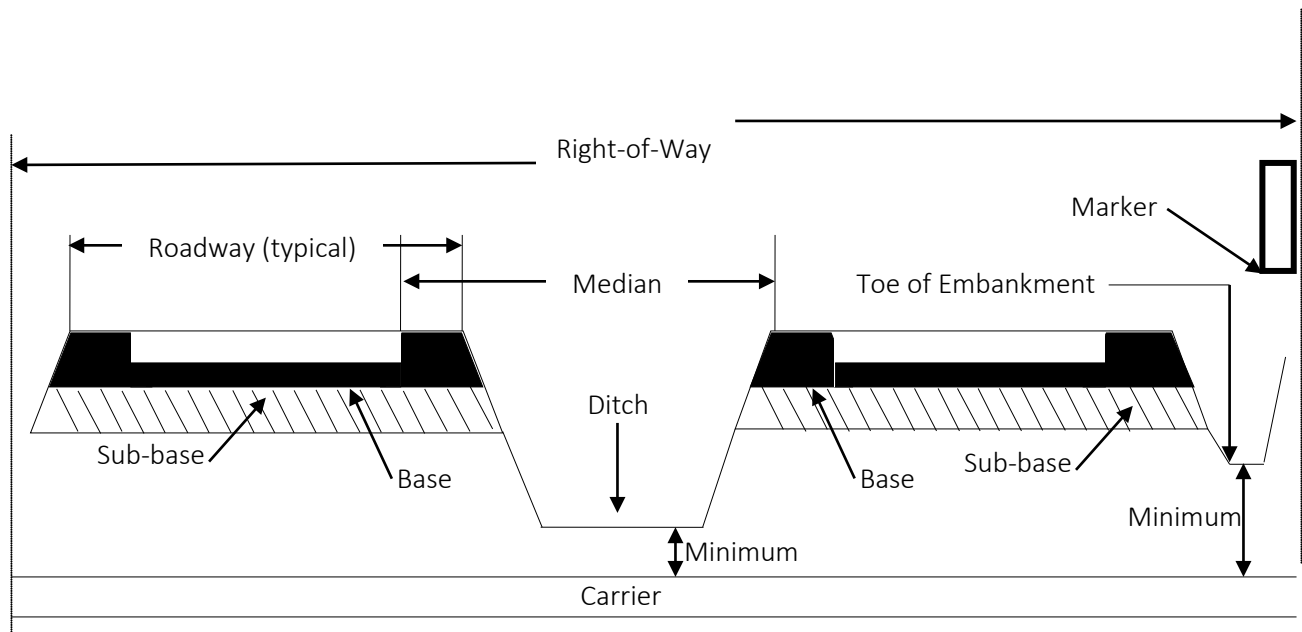
(h) Allied Mechanical Protection by use of Tunnel

7.721 Features for Utility Crossings



(a) Encased Crossing

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(b) Uncased Crossing

### 7.750 FORMS

700	30-day Notice By Personal Service
702	Affidavit of Compensable Interests
705	Agreement for the Adjustment of Utility Facilities
705NVE	Agreement for the Adjustment of Nevada Energy Utility Facilities
706	Amendment to Agreement for the Adjustment of Utility Facilities
707	Authorization for Minor Utility Adjustments Agreement (Not to Exceed \$100,000.00)
708	Adjustment or Relocation of Utilities Facilities (Letter) (AIC)
709	Consent to Common-Use Agreement
711	Preliminary Engineering Agreement
713	Joint Use Quitclaim Easement
714	Manhole & Valve Cover Agreement (Letter) (including Exhibit A)
715	Notice to Proceed
716	General Information (Letter)

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717	Occupancy Agreement
718	Right-of-Way Occupancy Permit Performance Bond
721	Utility Agreement Checklist
722	Valve Cover Construction (Memo)
723	Agent Assignment (Memo)
724	Relocation Approval Permit (Memo)
725	Revocable Application and Permit for Occupancy of NDOT R/W & Signature Page
725Record	Revocable Application and Permit for Occupancy of NDOT R/W & Signature Page - Record
726	3-R Projects Unpermitted Approaches (Letter)
729	Daily Diary and Report of Time
731	Monthly Status of Utility and Railroad Agreements
733	Salvage Inspection Report
734	Sign Permit Application
735	Sign and Site Valuation
736	Permission for Sign Removal
737	Outdoor Advertising Control – Sign Owners Violation Notice – 30-day Removal (Letter)
738	Notice of Nevada Sign Permit Deficiency (Letter)
739	Outdoor Advertising Violation Notice - Wind damage 50% or more (Letter)
740	Stop Work Notice (Letter)
741	Access Violation (Memo)
743	Agreement for the Acquisition of Utility Poles
744	Pre-Authorization to Incur Costs for RR Flagmen
745	Application and Annual Permit for Telecommunications Occupancy of NDOT R/W
746	Telecom 45-Day Status Report on Permit Application

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747	Telecom Approval (Letter)
748	Telecom Substantially Completed Application (Letter)
749	Letter of Authorization for the installation/modification of Telecommunications Facilities
750	Telecom Temporary Hold on Permit Application
751	Telecom Denial (Letter)
752	Public Notice required on Permit Application
753	Indemnification Agreement
754	Junkyard Permit / Application
755	Owner's Underlying Consent to place Natural Gas Pipeline Facilities within maintained highway right-of-way
756	Acknowledgement (Telecommunications)
757	Notice of Utility Relocation Conference & Pre-Contract Award (Letter)
758	Notice of Utility Relocation Conference & After Contract Award (Letter)
760	Notice to Proceed for Task Order
762	Application and Permit for Temporary Occupancy of NDOT R/W & Signature Page
763	Sign Permit Supplemental Application Changeable Message Board
764	Sign Permit Ownership Transfer Form
765	Non-Revocable Permit for Occupancy of NDOT R/W
765NVE	<b>Interstate</b> – Non-Revocable Permit for Occupancy of NDOT R/W
765NVE	<b>Non-Interstate</b> - Non-Revocable Permit for Occupancy of NDOT R/W
766	UPRR Auth to Incur Cost
768	UPRR Flagging Agreement
769	Line Extension Agreement
770	Notification (Manhole & Valve) (Letter)
771	SUE Cost Estimate (in-house)

### **Administrative Services Agreements:**



## POLICY ON ACCOMMODATION AND INSTALLATION OF UTILITIES

1. Service Agreement
2. Amendment

Go to: <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>

## 8.000 PROPERTY MANAGEMENT

### 8.100 INTRODUCTION

- A. Property management is the control and administration of lands and improvements acquired for right-of-way purposes from the time title vests in the State until the actual physical construction of the highway begins and the management of those properties not required for the construction and subsequently leased or disposed of. This involves the maintenance and protection of the right-of-way acquired, including improvements, the responsibility for occupancy and rental of improved and unimproved lands and the disposition of improvements or land by sale or demolition.
- B. Orderly and businesslike property management practices can be achieved by following sound business principles and actions. Adoption of these principles will result in improved public relations and reduced overall highway costs without undue delay in construction activities.
- C. The Property Management function entails the principles and procedures that will provide an economically sound process whereby the following can be achieved:
  - 1. Improved properties will yield the most money possible until such time as the property must be cleared for construction.
  - 2. The most economically sound method to dispose of improvements whose productive period has been terminated because of the imminence of construction.
  - 3. The most economically sound method to dispose of improvements, which are incapable of producing income.
  - 4. The most economically sound method to clear obstructions, other than improvements, prior to construction.
  - 5. The most profitable method to dispose of excess property to derive the maximum return.
  - 6. Preventing loss through vandalism, theft, fire and deterioration.
  - 7. Preventing and/or correcting unauthorized uses such as vehicle parking, trash dumping, vehicle abandonment, encroachments, etc.
  - 8. Correcting hazards to safety and health such as attractive nuisances (swimming pools, open ditches, gutted buildings, cisterns, cesspools,

## PROPERTY MANAGEMENT

etc.), noxious plant growth (halogeton, dry weeds, dead shrubs and trees), trash, stagnant water, abandoned refrigerators, rodent control, etc.

- D. Public inquiries regarding encroachment permits shall be directed to the appropriate District Engineer's office. A Right-of-Way Occupancy Permit may be issued for any underground or overhead utility encroachment, ingress or egress of a state highway, sidewalks, curbs and gutters, and strips for landscaping.
- E. Excess property is all property and property rights acquired by the Department for the purposes listed in [NRS 408.487](#), which are outside of the limits of the existing right-of-way and not needed for a current or future highway purpose.
- F. Surplus property is all property and property rights approved for disposal by the Transportation Board of Directors.

### 8.150 RESPONSIBILITIES

#### 8.151 Chief Right-of-Way Agent

By delegation of authority from the Assistant Director-Engineering, the Chief Right-of-Way Agent has the overall responsibility for the property management program and administration of all property management policies and procedures.

#### 8.152 Deputy Chief Right-of-Way Agent

By delegation of authority from the Chief Right-of-Way Agent, the Deputy Chief Right-of-Way Agent has the responsibility for the property management program and administration of all property management policies and procedures.

#### 8.153 Staff Specialist-Property Management

- A. By delegation of authority from the Chief Right-of-Way Agent and Deputy Chief Right-of-Way Agent, the Staff Specialist provides procedural guidance for the Property Management personnel in the Right-of-Way District offices.
- B. Basic training in Property Management is provided by continued in house instruction because of the nature of the rather complex paper work required. The Staff Specialist prepares and distributes to all personnel an instructional job manual shown as Procedures, [Section 8.300](#) of this Chapter and provides any updates/changes as necessary.
- C. The Staff Specialist is responsible for the administration of the surplus property pre-disposal program.

## PROPERTY MANAGEMENT

### 8.154 Supervisory Right-of-Way Agents

- A. The Supervisory Right-of-Way Agents by delegation of authority from the Assistant Chief Right-of-Way Agent are responsible for administering the property management program in their respective districts and provide the supervisory guidance for all Property Management Agents in the district.
- B. The Supervisory Right-of-Way Agent of the Southern Right-of-Way District is responsible to assist, as necessary, in all phases of the property management program including maintenance thereto and the rental, lease and license programs for the Southern Right-of-Way District.
- C. The Supervisory Right-of-Way Agent of the Northern Right-of-Way District is responsible to assist, as necessary, in all phases of the property management program including maintenance thereto and the rental, lease and license programs for the Northern Right-of-Way District.

### 8.155 Property Management Agents

- A. Property Management personnel are classified as Right-of-Way Agents in the classified service of the State and are pre-qualified for the position.
- B. Property Management Agents are under the direct supervision of the District Supervisory Right-of-Way Agents and provide property management duties in accordance with the procedures outlined in this manual.

## 8.200 POLICY

### 8.201 General

- A. It is the general policy of the Nevada Department of Transportation to conduct all property management activities in a manner consistent with transportation interests and designed to reflect the maximum long-range public benefit.
- B. Adequate records will be maintained on all property management activities including but not limited to: inventory of improvements acquired, records of rental income and expenses, and inventories of property disposals and credits.
- C. Acquired right-of-way will be managed in such a manner so as to keep it cleared of debris, garbage, hazardous conditions, and illegal occupancy until needed for construction. Every effort will be made to maintain highway rights-of-way in urban areas free of any pests or rodents by means of field inspections and necessary exterminations.
- D. Land and improvements acquired as part of the right-of-way in advance of the actual construction date will be rented or leased to maximize project credits. In

## PROPERTY MANAGEMENT

addition, excess right-of-way will be leased or disposed of in a timely manner to maximize credits.

- E. In accordance with the Department's Relocation Assistance program, all displaced persons shall be relocated in a timely manner after the acquisition or legal possession. The Property Management rental and leasing program shall commence upon completion of the relocation process and verification of vacated property, unless arrangements have been made for the displaced person(s) continued occupancy. (See Activation, [Section 8.301](#), Paragraph B).
- F. Acquired improvements that cannot be rented because of the construction scheduling or lack of utility due to poor building conditions, will be demolished or sold either by public auction or sealed bid to the highest bidder.
- G. Acquired improvements will be cleared from the right-of-way in accordance with applicable contracting laws, regulations and procedures.
- H. Land that has been declared excess to highway needs, will also be sold either by public auction/sealed bid or direct sale at the current fair market value and approved by the Transportation Board. All disposals will be made in accordance with the applicable laws as contained in [Chapter 408.533](#) of the Nevada Revised Statutes.
- I. When any portion of state highway has been superseded by relocation, the superseded right-of-way may be retained or summarily vacated and abandoned in accordance with [NRS 408.523](#).
- J. When any portion of state highway has been deleted from the State highway system or superseded by relocation, that portion no longer needed for highway purposes may be relinquished to any county or city in accordance with [NRS 408.527](#).

### 8.202 Federal and State Policy

- A. Federal Highway Administration regulations for the Property Management Function are contained in the Code of Federal Regulations, Title 23 under [Part 710, Subpart D](#).
- B. The State laws governing the management, lease, and disposal of property are contained in the [Nevada Revised Statutes, Chapter 408](#), Highways and Roads.
- C. The Right of Way Division has the responsibility that all Right of Way functions and the results of those activities are executed in accordance with Title VI. Title VI of the Civil Rights Act of 1964 prohibits discrimination in Federal and Federally-assisted projects and programs based upon race, color, and national origin. Since 1964, additional Title VI-like statutes have prohibited discrimination based upon sex (Federal-aid Highway Act of 1973), age (The Age Discrimination

## PROPERTY MANAGEMENT

Act of 1975), and disability (Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990). Taken together, FHWA has defined a Title VI/Nondiscrimination Program to prohibit discrimination based upon race, color, national origin, sex, age, or disability.

<http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm>.

Complaint procedures:

Refer Title VI complaints to the Civil Rights Officer and assist with the investigation of any complaints: All complaints received will be forwarded to the appropriate Supervisory R/W Agent Northern or Southern Districts. The Supervisor will forward any complaints to the R/W Title VI Staff Specialist overseeing Title VI compliance. The Staff Specialist will catalog the complaint and forward to the Chief R/W Agent and then the Civil Rights Officer.

### 8.250 DEFINITIONS

#### **Abandon:**

The intent to give up a right of ownership or another interest (such as an easement) by failure to use the property.

#### **Abut:**

To touch, border on or be contiguous.

#### **Agreement:**

A general term usually describing a common view of two or more people regarding the rights and obligations of each with regard to a given subject. Not necessarily a contract, although all contracts are agreements.

#### **Air Rights:**

Real property interest defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

#### **Air Space:**

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

#### **Appraisal:**

An opinion of value based upon factual analysis. Legally, an estimation of value by two disinterested persons of suitable qualifications.

#### **Assign:**

To transfer property, or an interest in property to another.

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### **Deed:**

A legal document that conveys title to real property upon delivery and acceptance by the grantee.

### **Disposal:**

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.

### **Document:**

Any writing having legal form and significance, such as a deed, mortgage, will, lease, etc.

### **Excess Property:**

All property and property rights acquired by the Department of Transportation for the purposes listed in [NRS 408.487](#), which are outside of the limits of the existing right-of-way and not needed for a current or future highway purpose.

### **Parcel:**

A general term meaning any part or portion of land.

### **Property, Personal:**

Any property which is not designated by law as real property.

### **Property, Real:**

Land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the right to control use, leasehold and leased fee interests.

### **Quitclaim:**

A deed operating as a release; intended to pass any title, interest, or claim which the grantor may have in the property, but not containing any warranty of a valid interest or title in the grantor.

### **Relinquishment:**

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.

### **Right-of-Way:**

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.

### **Surplus Property:**

All property and property rights approved for disposal by the Transportation Board of Directors.

## PROPERTY MANAGEMENT

### 8.300 PROCEDURES

- A. The Property Management guidelines have been broken down into six subsections due to the various segments of management along with the complexity of the program.
- B. The procedures as outlined in [Section, 8.301](#)-Activation through [8.350](#)-Forms shall be used as the work manual for all Property Management Agents. These procedures have been approved by the Department and Federal Highway Administration and shall be adhered to in all phases of property management. Any deviations, change or clarification shall be directed to the Staff Specialist Property Management, for additional review, explanation, or approval.

#### 8.301 Activation

- A. The Property Management function commences shortly after one of the following occurs:
  - 1. A property has been successfully negotiated and title is vested in the State or a right of entry has been obtained. The acquisition Agent/negotiator is responsible to notify the Property Management Agent of this action.
  - 2. An order for immediate occupancy has been obtained by legal action. The Condemnation Coordinator will be responsible to notify the District Supervisory Right-of-Way Agent when possession is acquired.
- B. The Property Management Agent is informed of the accomplishment of either of these two occurrences by receipt from the acquisition Agent/negotiator of a notice with the Acquisition, Ownership, and Occupancy Data, (Form 547) and the Inventory of Improvements (Form 522) attached, or by the necessary legal document from the Legal Division. If the property is improved and occupied, the Property Management Agent will not physically take over the property until informed by the Relocation Agent with a Property Management Notice B (Form 635) that the occupants have moved or that arrangements have been approved for the present occupants to rent back from the State.
- C. Upon receipt of the Acquisition, Ownership and Occupancy Data form, the assigned Property Management Agent shall set up a project parcel file, with Property Management Diary, (Form 873) and perform an analysis to determine the following:
  - 1. The right-of-way required date.
  - 2. If a property can be rented or leased economically. (See Initial Inspections, [Section 8.302](#), paragraph A.4)



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3. If an improvement, which cannot be rented because of lack of utility or impending construction, should be sold, or be demolished.
  4. The existence of obstructions to construction (shrubs, abandoned vehicles, trees, trash, etc.), and the removal thereof.
  5. Need for pest and rodent control or other precautionary measures.
- D. The Property Management Checklist (Form 880) must be completed for each parcel and sent to Headquarters when the file is closed. This checklist should be placed in the Property Management Agent's project parcel file and information regarding the items in paragraph C. above, entered as those events occur.
- E. Each Supervisory Right-of-Way Agent will maintain an inventory of all properties under their jurisdiction (See Property Management Spreadsheet). This will include recent acquisitions, commercial leaseholds, residential rentals, excess or surplus lands, airspace and multi-use leaseholds and multi-use licenses. From this inventory, an inspection schedule will be developed whereby every property under their jurisdiction, improved or unimproved, will be visually inspected at regular intervals to verify the following: lease or rental violations, unauthorized uses such as trash dumping, vehicle parking or abandonment, encroachments, utility emplacements, physical deterioration, noxious plant growth, hazards to health or safety, vandalism or theft, need for rodent control and need for disposal.

**Note:** The Property Management Spreadsheet will be updated accordingly on a monthly basis by the Property Management Agents. This will ensure that all applicable requirements are consistently in compliance.

- F. Weed abatement in urban areas will be required when it becomes a health or safety hazard. Arrangements may be made with the District Engineer's Office when weed abatement help is available or if the District cannot provide the service, it must be taken care of by Property Management. Further, a close liaison must be established with the concerned fire department office so that weed citations will not be issued against the Department. Each Supervisory Right-of-Way Agent must establish and maintain control of the situation in his/her jurisdiction.
- G. If a property is occupied by an initial occupant, the property management Agent will be notified, in writing, by the Relocation Agent to prepare a rental agreement for the occupant. A rental agreement shall be prepared in accordance with Preparing Rental Agreements, under [Section 8.307](#)-Rental Agreements and Leases.

**Note:** When project scheduling permits, in order to facilitate relocation, the displaced person(s) may be allowed to remain in occupancy for a period not to

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exceed 60 days after the close of escrow, without paying rent. Occupancy after 60 days must be under a rental agreement.

- H. Payment of real estate taxes will be required on all properties acquired by the Department when such properties are leased and revenue income is collected. When a determination has been made that residences will be rented after acquisition, the County Assessor will be notified, in writing, by the acquisition Agent, at the time of close of escrow to transfer the property tax liability to the Department. If the house is to be removed, property taxes will cease at the close of escrow. Payment of the taxes will be made on a purchase voucher upon receipt of a tax bill. At such time when the residence is vacated due to impending construction, repairs and/or maintenance, the Assessor's Office shall be notified, in writing, by the property management Agent, to delete from the tax rolls.
- I. Payment of real estate taxes on all leases, licenses and occupied improved properties are the responsibility of the Right-of-Way Division and become effective when the leases and licenses are recorded or when the rental agreement has been fully executed.

### 8.302 Initial Inspections

- A. Initial inspections shall consist of the following:
  - 1. Bare land, rural areas.
    - a. Physically inspect for hazards, flammable or noxious plant growth, adverse affect on abutting or adjacent properties, etc.
    - b. Set up regular, periodic inspection. (At a minimum, should be conducted annually)
  - 2. Bare land, urban areas.
    - a. Initially inspect for unauthorized uses such as vehicle parking or abandonment, trash, encroachments, fencing, noxious or flammable plant growth, hazards to health or safety, rodent control, etc.
    - b. Set up for regular, periodic inspection. (At a minimum, should be conducted semi-annually)
  - 3. Improved properties, vacant, to be sold or cleared.
    - a. Physically inspect improvements and verify inventory.
    - b. Initially inspect to determine the need for protection against vandalism, theft, fire hazard, possible attractive nuisance factors,

## PROPERTY MANAGEMENT

- physical deterioration, unauthorized uses, and hazards to health and/or their affect on utility networks.
- c. Set up for regular periodic inspection. (At a minimum, should be conducted quarterly)
4. Improved properties to be leased or rented.
- a. Physically inspect improvements, using the Exterior Inspection Checklist (Form 875A) and verify inventory. To determine if an improvement is economical to rent, the Agent shall make a cost analysis on the improvement taking into consideration the age, condition, and maintenance costs versus the projected income, with the file documented of any action taken.
  - b. Initially inspect to determine the items needing correction, repair, or maintenance such as utilities, heating or air-conditioning, major appliances, if any, carpeting, painting, cleanliness, rodent control, and arrange for the repair and maintenance thereof prior to occupancy by a tenant. Arrangements shall also be made for exterior maintenance and to landscaping, if necessary.
  - c. Notify Staff Specialist by memo to set up insurance. Attach a copy of the Acquisition, Ownership and Occupancy Data form (547) and Inventory of Improvements to memo. The memo shall include project and parcel data and date of actual acquisition or occupancy by State.
  - d. Notify the County Assessor of our intention to rent the improvement and request addition to the tax rolls. The initial notification will occur through the recording of the acquisition deed. A list by address and APN number of the rented properties shall be forwarded to the County Assessor by June 1st of each year confirming the rentals and noting those cases where occupancy by tenants was less than 11 months out of the previous year in order to receive pro-rated credits to taxes.
  - e. Upon lease or rental, set up for regular periodic inspection to ascertain lease or rental violations, physical deterioration and neglect, etc. (See recommendations above)
- B. After the initial inspection has been made, an important property management function is surveillance:
1. The Supervisory Right-of-Way Agent shall designate a Right-of-Way Agent who must visually inspect vacant, rented or leased properties at regular intervals for the purpose of detecting damage, vandalism, weed

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growth, vehicle abandonment, trash dumping, unauthorized uses or change of use. If any of the above conditions are found, the Supervisory Right-of-Way Agent should be notified. A primary concern in advance acquisition projects will be the preservation of the integrity of the affected neighborhoods.

2. The Supervisory Right-of-Way Agent may contract with a service provider for daily surveillance of vacant improvements to detect and discourage security breaches, vandalism and any unauthorized uses. The Staff Specialist Property Management, should be consulted for guidance.
- C. After an improved property has been vacated, the Right-of-Way Districts must determine the most cost-effective method of disposition of the property. Due to winter weather conditions in certain areas of the State, the Property Management Agent must have the pipes drained of any water that may freeze including sprinkler systems or cooling systems such as swamp coolers. The local district office may be contacted for this service and used when available. Also, the Property Management Agent is responsible for notifying local utility companies, i.e., power, telephone, and gas, to disconnect and remove their service lines from the improvements before disposal. A letter format to utility companies has been prepared and may be used for this purpose.

When appropriate, local law enforcement agencies should be notified to police areas containing vacant improvements to detect any vandalism. When necessary, a private licensed security company should be retained under the service provider process.

### 8.303 Inventory Verification

- A. Inventories should be established prior to physically taking over a property, and in any event must be verified at the time of possession. Both the acquisition Agent/negotiator and the property management Agent should sign inventories. A copy should be submitted to the relocation Agent when pertinent.
- B. Inventories that do not agree with the appraisal report should be brought to the attention of the Supervisory Right-of-Way Agent to resolve disputes arising over ownership, or what is to be considered realty and what is to be personal property.
- C. If the inventory used in the land purchase agreement is inadequate, then it will be the responsibility of the Property Management Agent, upon taking physical possession of the property, to prepare one on Inventory of Improvements form (Form 522) with an explanation of any additions or omissions.
- D. Whenever, a tenant vacates a property, the inventory must be confirmed by the use of the Move In/Move Out Checklist (Form 875). If an item is found to be missing, a claim must be filed against the tenant for the estimated value of the

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item. The item may be replaced in accordance with Maintenance and Repair Bills, [Section 8.305](#), if it is a necessary item and the dwelling cannot be rented without its existence.

### 8.304 Salvage Value for Owner Retention and Public Auction

- A. Although the Property Management physical activities do not commence until the State has possession of the property, it is the responsibility of Right-of-Way Agent to determine and set realistic retention values for improvements to be acquired by the Department.
- B. The Supervisory Right-of-Way Agent will prepare or assign an Agent to prepare the values. These values will be available to the acquisition Agent/negotiator for presentation to the property owner. If this salvage value is not requested, they shall be made just prior to the Public Auction Sale. The Property Survey Report Improvements Salvage Data (Form 886) shall be used to list the improvement retention values. After completion of the form a copy will be delivered to the acquisition Agent/negotiator for reference and a copy sent to the project parcel file. A report shall be prepared for each improved parcel.
- C. If the owner chooses to retain the improvements, the conditions for removal will be the same as those contained in the public auction brochure in Public Auction, under [Section 8.310](#)-Disposal Guidelines.
- D. If the improvements are not retained by the owner and are subsequently placed for public auction, the minimum bid shall be no lower than the retention value unless circumstances warrant; i.e., depreciation, vandalism, etc. The file must be documented if there is a difference in the retention value and minimum bid.
- E. Salvage or retention values will be determined by comparing the subject improvements to previous sales of similar improvements, taking into consideration the condition of the improvements, the time available for removal, and the estimated moving costs.

**Note: If a salvage value is available in the appraisal, it shall be used unless the improvement condition has changed since the date of appraisal.**

- F. In acquisition projects where the improvements are to be rented for a period of time, the salvage value need not be prepared until such time as the improvements are vacated and will be auctioned.

### 8.305 Maintenance and Repair Bills

- A. Except for emergency repairs, a Service Agreement (see Agreement Services SharePoint Site) will be used by the Districts for hiring licensed contractors for the repair and maintenance of State owned property. On all non-emergency Contracts, exceeding \$2,500.00, three (3) written quotes shall be

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obtained for the required scope of service with the successful quote attached to the Service Agreement. A detailed description shall be included on page 1, Article I, SCOPE OF SERVICES, 1. to include the type of service, where required, and any applicable specifications, i.e.: Liability Insurance Coverage and Rating, etc. Clearance and demolition contracts will be made in accordance with Clearance and Demolition, [Section 8.311](#).

- B. The required SCOPE OF SERVICES shall be prepared by the Property Management Agent, describing in detail, the needs required to fulfill the assignment. The scope draft shall be submitted to the Staff Specialist Property Management for review, approval and further processing through the Administrative Services Division.

Upon receipt of the approved scope, the Right-of-Way Agent shall prepare the Solicitation for Bid letters containing the SCOPE OF SERVICES and the referenced items listed in paragraph A., and any other applicable requirements or restrictions. It shall also contain the work location and the date and time when all proposals are due back to the Department.

The completed letter should be mailed to as many applicable, licensed vendors in the local area, where the work is to be completed. A list may be obtained by checking the local yellow pages or local newspaper.

**Note: Prior to letter mailing, please confirm that the vendors have an active business license and/or contractor's license, in good standing. This will save time and prevent any surprises prior to awarding the contract.**

All bid proposals, as received, shall be date and time stamped by the Administrative Assistant and then delivered to the appropriate Supervisory Right-of-Way Agent. The Property Management Agent, upon receipt of the bid proposals, will review each proposal to ensure that all aspects of the scope have been addresses correctly. All proposals should compare equally (apples to apples) in order to choose fairly. If this is completed, the lowest bidder will be awarded the contract as long as all the other requirements have been fulfilled.

**Note:** If only one bid was received and requirements fulfilled, that bidder will be awarded the contract.

The Agent will immediately notify the successful bidder and the non-successful bidders, if applicable, in writing. The Agent shall prepare the draft Service Agreement for review, approval and further processing by the Staff Specialist, Property Management.

**Note:** Please see staff specialist, pm for assistance with all service agreements to ensure the most current process and/or regulations are being followed.

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- C. Any emergency repair work required on state owned property does not require the process described above. It still requires confirmation that the vendor being used has an active business and/or contractor's license to perform the specified required emergency work.
- D. Payment for utility service bills when required by the State shall be made monthly. When the utility service bill is received in the mail, the Right-of-Way Management Analyst will log the bill and then forward the bill to the appropriate Supervisory Right-of-Way Agent. The Supervisory Right-of-Way will forward the bill to the Property Management Agent for review. The Property Management Agent shall review the bill and ensure that charges are reasonable for the property. Any discrepancies with the bill shall be reported to the Supervisory Right-of-Way Agent. After the Agent has reviewed the bill, the Agent will write O.K. to pay, date, and initial the bill and forward the bill to the Right-of-Way Management Analyst. Once the approved bill has been received, the Right-of-Way Management Analyst will prepare the payment voucher and forward the bill and payment voucher to the Staff Specialist – Property Management for review and approval. Upon review and approval, the Staff Specialist – Property Management will initial the payment voucher and return the bill and payment voucher to the Right-of-Way Management Analyst for further processing.
- E. Additionally all Service Agreements shall be forwarded to the Staff Specialist, Property Management for draft review and approval prior to submittal to Administrative Services for further processing and execution.

### 8.306 Insurance Claims

- A. In the event, theft, vandalism or a fire occurs in one of the improvements the State has purchased, the Property Management Agent must file an insurance claim.
- B. The Insurance – Notice of Loss, (Form 896) will be used to file the insurance claim. This form must be completed with all the information requested. If the claim is for theft or vandalism, a copy of the police report must be attached to the form. If the claim is for fire damage, the fire report must be attached to the form. In addition, two estimates of the damage repairs must be obtained and attached to the claim.
- C. The insurance form with attachments must be forwarded to the Staff Specialist Property Management, who will then notify the Architecture Division of the loss. Reimbursement will be made through the Architecture Division for those losses in excess of \$1,000.00, and will be credited back against the appropriate project or parcel.

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### 8.307 Rental Agreements and Leases

#### Rental and Lease General Procedures

After the State has received title to the property by a Grant, Bargain and Sale Deed or court order, and the Property Management Agent has physically taken over the property, and a determination has been made that the property will be rented or leased, the Property Management Agent will take the following steps to rent the property:

- A. Activate the insurance coverage. When it is determined that an improvement will be rented or leased for any length of time, it will be the Supervisory Right-of-Way Agent's responsibility to notify the Staff Specialist Property Management, by memo of any required insurance to be placed on the improvements. The request should be made upon the purchase of the property or no later than the time when the improvement is rented.
- B. Install a smoke detector in the improvements to be rented. The following shall be used as a guide for installation of smoke detectors:
  1. It is the policy of the State to install a smoke detection device in all residences and commercial buildings purchased as part of the right-of-way or last resort housing, when it is determined that such dwellings will be rented or leased.
  2. One detection device shall be placed in each single-family dwelling unit and commercial building in a central location that will best serve the occupants of the dwelling. If the dwelling or building is unusually large a second detection device may be installed. The local building code should be consulted for further requirements.
  3. Tenants or occupants of the dwellings and buildings will be responsible for the replacement of weak batteries.
- C. Establish an economic rent for the property to be rented or leased. The original appraisal of the property shall be checked to determine if an economic rental value was made. If a rental value was not previously made or is outdated, the Agent shall request an economic rent determination from the Supervisory Right-of-Way Agent, who may assign a senior Agent to perform this task. Any increase or reduction in the economic rent must be documented in the property management diary, in the file and a copy submitted to the Staff Specialist Property Management. When a rental agreement requires the yearly reevaluation of the rental amount, the Supervisory Right-of-Way Agent may assign a senior Agent to update the rental amount. When a lease requires a reevaluation of rent, in accordance with the terms of the lease, the new lease rent will be calculated using the guidelines on the Multi-Use Lease Determination form (Form 878).



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- D. Establish amount of security deposit. On all residences the minimum-security deposit to be obtained prior to occupancy will be equal to 1 month's rent. Security deposits will be refunded when the tenant has satisfactorily cleaned the residences and the property is undamaged. If any rent is unpaid and the property is undamaged when the tenant vacates, this deposit may be applied to the unpaid rent. All or any unused part of the security deposit must be refunded within 30 calendar days from the tenant's vacation of the premises, along with an itemization of any deductions.
- E. Establish responsibilities for tenant or lessee in accordance with the following general principles:
1. Tenants and lessees will be responsible for payment of their gas, electricity, heating fuel and phone service. Water, sewer, garbage collection and lawn service may be paid by the tenant or State as determined feasible on a project basis. These exceptions may be applied in such cases as mobile home parks, apartment houses, multiple residences or office buildings.
  2. Tenants and lessees in occupancy will be responsible for payment of minor repairs to the improvements such as damaged walls, broken doors, windows or screens, or for any willful damage of any nature caused by the negligent acts of the tenant. Tenants and lessees will also be responsible for any betterment made to the property required by their needs and will obtain written permission from the Department for any betterments.
  3. Lessees under Multi-Use leases will be responsible for obtaining and keeping in force public liability and property damage insurance that will adequately indemnify the State and naming the Nevada Department of Transportation as "Additional Insured", with a single limit of \$1,000,000.00 minimum. An insurance binder must be submitted with the Multi-Use Lease if the insurance certificate is not available. The lessee will not be allowed to move onto the State property until an insurance binder is received with the insurance certificate to be submitted within 10-days of signing the lease. The Agent will be responsible for obtaining a copy of the insurance certificate, which names the State as "Additional Insured" and the Declaration Page. Tenants will be advised to obtain personal property insurance if they so desire.
  4. The State will be responsible for carrying fire insurance on any improvements being rented only to the extent of its interest. Therefore, tenants and lessees must be informed that the fire insurance coverage is only for the State's interest.

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5. The State will be responsible for payment of any major repairs to the improvements such as repairs to plumbing, electrical, heating and air conditioning units, and fireplaces and wood stoves if they are the primary heat source excepting damages caused by willful or negligent acts of tenant.
  6. Since all Multi-Use Leases are required to be recorded, LESSOR will be responsible for any tax imposed on their leasehold interest.
  7. The State will be responsible for payment of any sewer fees attributable to leased buildings and rented improvements.
- F. Solicits and obtains tenants or lessees by advertising or other means. It will be the responsibility of the Right-of-Way District to obtain responsible tenants who fully understand all of the conditions of the Rental or Lease Agreement. Therefore, it is important that the Agent review all the terms and conditions of the agreement with the prospective tenant or lessee. All prospective tenants are required to complete a Rental Application (Form 876) that will be attached to the rental agreement and become part of the agreement. The Agent will submit the rental application to the Right-of-Way Management Analyst for processing, credit check and the decision of denial or approval. If there are multiple applications submitted for a rental/lease property, the applications will be processed on a first come first serve basis.
- G. When a prospective tenant or lessee is obtained, the Agent shall prepare a Rental Agreement (Form 882) or a Multi-Use Lease (Form 884) and Signature Page (Form 800). The Rental Agreement or Multi-Use Lease draft with the Draft Agreement Cover Sheet (Form 918) shall be submitted to the Staff Specialist, Property Management, for approval and review by the Legal Division, prior to execution by the tenant or lessee. Any change in the agreement or lease after it has been executed must be done by an amendment thereto and also submitted to the Staff Specialist for review and approval. The Agent shall present and explain the Title VI Compliance Questionnaire (Form 929A or 929B) and NDOT's Division of Civil Rights Fact Sheet Brochure to the prospective tenant or lessee.
- H. Agent prepares cover transmittal memo and submits Rental Agreement or Multi-Use Lease with necessary documentation signed by Tenant or Lessee to the Staff Specialist, Property Management, for execution. When the Rental Agreement or Multi-Use Lease is finalized and/or recorded, two fully executed signed copies will be returned to the Property Management Agent, through the designated Right-of-Way District Supervisor. One copy will remain in the Agents working file and one copy will be mailed to the Tenant or Lessee.
- I. When any rental or lease payments and security deposits are made in the Right-of-Way District Offices, the Property Management Agent shall complete the Receipt, with the blue copy delivered to the tenant or lessee. The Agent will

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immediately forward the payment along with the white and yellow copies of the Receipt to the Right-of-Way Management Analyst in Headquarters. Any checks returned for any reason shall be replaced with cash, cashier's check or money order.

- J. When a tenant or lessee wishes to terminate the Rental Agreement or Multi-Use Lease or has moved, the Agent shall forward a termination memo to the Staff Specialist, Property Management, containing the necessary information regarding the vacation, such as the name, address, agreement number and effective date of termination, which will be forwarded to the Right-of-Way Management Analyst for termination of billing and agreement. If there is any rent owing, the Agent shall request, via termination memo that the prorated rental amount due is reduced from the security deposit and applied to the outstanding rent. If applicable, a Purchase Order will be prepared by the Right-of-Way Management Analyst within 30 days of tenant's termination to refund any pre-paid rent or security deposit. This Purchase Order must have a justification attached showing the amount of refund and reason for any adjustments made. The Agent must notify the County Assessor's offices by letter of Multi-Use Lease terminations in order that Lessee be taken off the tax rolls. If the Multi-Use Lease was recorded, the Agent shall prepare a Notice of Termination of Lease (Form 879). Once the Notice of Termination has been signed by the Lessee and the Department, the Agent shall have the Notice of Termination of Lease recorded in order to clear the title to the property. If the Multi-Use Lease was not recorded, the Agent shall prepare and sign the Affidavit of Lease Termination (Form 811) to terminate the Multi-Lease internally. The Agent shall keep a copy of the Affidavit of Lease Termination in the file and forward the original to Staff Specialist – Property Management.
- K. When the State requires the termination of a Rental Agreement or Multi-Use Lease, the Property Management Agent shall write a Termination Notice Letter (Form 887) to the tenant or lessee when the property is needed for a construction project, stating the conditions of the notice and giving the tenant the applicable notice to vacate. Although a termination notice may be initiated by either the tenant or the State, it is important to work with the Relocation Agent if the tenant is eligible for relocation benefits. Care should be taken that notices to eligible relocation displaced persons must conform to the 90-day and 30-day notice requirements.
- L. Eviction of tenants shall be done in accordance with the Nevada Revised Statutes.

### Preparing Rental Agreements

- A. Rental Agreement (Form 882) shall be used for month-to-month rentals of residential and vacant properties, which are not a part of any business or

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commercial enterprise. The approved Rental Application (Form 876) completed by the tenant and Property Management Agent must be attached to the Rental Agreement. Also, the Move In / Out Checklist (Form 875) must be completed and attached to the package.

- B. A Rental Agreement shall be drawn up when the residential property has been rented. If an initial occupant occupies the property, the Property Management Agent shall work with the Relocation Agent in setting up the Rental Agreement. If the initial occupant has moved, the Property Management Agent shall solicit a tenant by advertising or other means.
- C. Prepares Rental Agreement
  - 1. The date will be the day the agreement is fully executed by the Departments Director.
  - 2. Tenants names will include his, her or their full legal names and address.
  - 3. Paragraph (a) of page 1, County will be the name of the County where property is located.
  - 4. Paragraph (a) of page 1, "Designated as" will be the project and parcel identifying numbers.
  - 5. Description will be the address with a map attached to depict the property, labeled Exhibit "A".
  - 6. Under paragraph 1(a), the term shall be the date when the tenant takes occupancy and rental commences. The Agent is requested to start all rentals on the first of the month, if possible. If it is necessary for the physical occupancy to commence at another time, the date will be indicated in this space, and the rental amount will be prorated through the end of the month.
  - 7. Paragraph 2(a) states the amount of the monthly rent agreed upon by both parties, which is determined in accordance with [Section 8.307](#) paragraph D. If there is a proration of rent in accordance with paragraph 6 above this will be shown as follows: "The TENANT agrees to pay OWNER as rent for the said premises the sum of FOUR HUNDRED DOLLARS, (\$200.00 for January 15-30, 1978), (\$400.00) per month," etc.
  - 8. Paragraph 2(b) is the re-evaluation clause which states that the rent will be re-evaluated at the end of a certain period. Although, the number of years has been left out, it is recommended that all improved properties be reviewed at one (1) year intervals to ensure the Department is receiving fair market rent in accordance with NRS. If an increase or decrease is required it shall be documented in the property management file.

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9. Paragraph 5, "Notices", shall be completed showing the owner's address and the tenant's address to which any notices may be made.
  10. Paragraph 7(a) the amount of security deposit shall be entered in accordance with the amount stated in Rental and Multi-Use Lease General Procedures, paragraph E, under [Section 8.307](#)-Rental Agreements and Leases.
  11. Paragraph 7(d), spaces shall be filled in with water, sewer, and trash collection where the responsibility lies.
  12. Page 5 of the Rental Agreement is the signature page. When the agreement is complete, the Agent will obtain the tenant's signature first, prior to any of the remaining signatures.
  13. After completion of the agreement, all pages shall be numbered. The completed Rental Application (Form 876) and Move In / Out Checklist (Form 875) shall be attached to the agreement after the signature page.
  14. The draft agreement must be submitted to the Staff Specialist, Property Management, for review and approval, prior to obtaining the tenants signature.
- D. After the Rental Agreement has been signed by the tenant the Agent shall prepare a rental agreement package to be forwarded to Headquarters. This package will consist of the following:
1. Original completed Rental Agreement signed by tenant. A duplicate original may be signed if requested.
  2. Tenant's Rental Application attached to rental agreement.
  3. Move In/Move Out checklist completed with Move In status and signed.
  4. Transmittal memo to outline actions being taken with rental determination or justification attached.
- E. This Rental Agreement package shall be forwarded to the Staff Specialist, Property Management, for final review, approval, execution and distribution. Final distribution is completed by the Right-of-Way Mgmt. Analyst and consists of the following:
1. Original – Right-of-Way Agreement File (Central Files) via Administrative Services Division
  2. 2 Copies – Agent (one for working file and one for delivery to Tenant)
  3. Copy to Supervisory Right-of-Way Agent

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4. Copy – Accounting
  5. Copy – Right-of-Way Management Analyst
  6. Copy – District Engineer
- F. If there is a change required of any portion of the Rental Agreement such as adding or deleting clauses, the rental agreement draft shall be submitted to the Staff Specialist for review and approval prior to tenant signature.
- G. If any change is required to any paragraph of the Rental Agreement after the initial execution, an Amendment to the Rental Agreement (Form 804) must be prepared and shall contain the same agreement number as the original Rental Agreement.
- H. If there is a change in the names of an agreement an amendment to the Rental Agreement shall be prepared. If one party, in a two party agreement, moves and the second party retains occupancy, an amendment to of the Rental Agreement will be necessary to remove the vacated party, giving sole responsibility to the remaining occupant.
- I. If a new Rental Agreement is prepared, the current agreement must be terminated, by memo to the Staff Specialist, Property Management, Rental and Multi-Use Lease General Procedures, paragraph J. under [Section 8.307](#)-Rental Agreements and Leases, providing pertinent information, i.e. security deposit status, transferring to new agreement, prorated rent status, etc.

### 8.308 Delinquent Rental Payments

- A. The Right-of-Way Management Analyst will provide, monthly, to the, Northern and Southern District Supervisors, Property Management Agent and Staff Specialist, Property Management, a payment status of all tenants and lessees on Department property within the various Right-of-Way Districts.
- B. The Property Management Agent, with the assistance of the Right-of-Way Management Analyst, is responsible for determining whether or not all rents are paid current. If a tenant has not paid the rent by the 5th of the month or by the date specified on Agreement, the Property Management Agent will contact the tenant by telephone to request immediate payment in cash. A late charge will be assessed on all rents not paid on or before the 5th of the month by the Right-of-Way Management Analyst.
- C. If payment has not been made on or before the 12th of the month, an additional late charge will be assessed. The Property Management Agent will send a letter advising the tenant of the amount due, referencing the applicable paragraphs in the rental or lease agreement which pertain to payment of rent and remedies,

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advising the tenant that if the rent is not paid by the 20th of the month, or becomes 30 days delinquent, the eviction procedures will be instituted.

- D. If the delinquent rent is not paid by the 20th of the month, or becomes 30 days delinquent, the Property Management Agent is required to send to the tenant a letter canceling the agreement or lease. This notice will be sent Certified Mail, Return Receipt Requested, with copies to the Management Analyst for Right-of-Way Control, Staff Specialist, Legal Division and Assistant Chief Right-of-Way Agent.
- E. The tenant may, after receiving a notice canceling his tenancy, contact the Right-of-Way District Supervisor or Property Management Agent to make arrangements for payment of rent and continued occupancy. Rent due at this point includes all rent in arrears as well as any assessed late charges. If the tenant initiates such a request, the Agent will provide management with a memo, with a copy to the Staff Specialist-PM, summarizing efforts made to obtain payment, a summary of rental payment history, obtained from the Right-of-Way Management Analyst and explanation of why eviction procedures should be initiated or why an exception should be made. Unless the Chief Right-of-Way Agent approves an exception, or the rent is paid in full, the Agent shall proceed with eviction notice. If any exception is made the Agent is responsible for documenting the file and the property management diary.
- F. If a tenant is evicted or vacates the property owing rent, and attempts have been made to collect the past due rent, the Property Management Agent will submit a request for collection to the Right-of-Way Management Analyst, with a copy to the Staff Specialist for handling through the Accounting Division. The Property Management Agent will include in the request a short summary of what steps have been taken to collect the rent and for what reasons it is not collectable, along with the amount due and current address of the tenant.
- G. Initiation of the eviction process for nonpayment of rent does not automatically result in eviction. Within five (5) days after the eviction notice is served, the tenant may make all required rental payments and remain in occupancy. In these cases, particularly where a tenant has a poor delinquency record or where more than one eviction proceeding to compel rent payments is necessary, the rental agreement will be terminated upon 30, 60 or 90-days notice, whichever applicable, for breach of the rental due date provision.
- H. The above procedures are minimum guidelines to carry out an effective rental program. Modification of these procedures may be made by request and approval on a project basis. In all cases our primary concern will be the protection of the public investment in the rented property and the fair, equitable and consistent treatment of all tenants.

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- I. See Rental and Multi-Use Lease General Procedures, Paragraph L. under [Section 8.307](#)-Rental Agreements and Leases for Legal proceedings for eviction of tenants.
- J. Late charges may not be deducted from security deposits.
- K. A charge for processing a bad check will be assessed, in accordance with the individual agreement, and a tenant who issues a bad check will be required to pay that month's rent plus the charge for the bad check in cash, cashier's check or money order.

### 8.309 Licenses and Leases

#### Beautification Licenses (Right-of-Way Occupancy Permit)

When a request is received for the use of highway right-of-way and the proposed use consists of only landscaping or beautification, this use will be placed on a Right-of-Way Occupancy Permit. Requests shall be referred to the Permit Coordinator in the respective district office in Reno, Elko or Las Vegas.

#### Multi-Use Licenses

- A. Multi-Use Licenses shall be used for the joint uses of property within the right-of-way, when the State holds an easement interest only. These licenses will generally occur on highways where the State had acquired the right-of-way through Bureau of Land Management withdrawal or acquired the right-of-way prior to March 1953, by easement and is being held for future road expansion.
- B. Multi-Use Licenses will be used for those areas of right-of-way between the curb and gutter or edge of asphalt and the owner's property line. Right-of-Way Engineering shall be requested to verify the actual right-of-way.
- C. Multi-Use Licenses will be granted to the underlying fee title holder and/or abutting owner by request. If a tenant occupant requests a license, the underlying Multi-Use License/Lease Underlying Fee Owner Agreement (Form 899), must be signed by the fee owner of the property.
- D. Since this License is revocable in nature, the use will be limited to non-building purposes with the primary use being parking with landscaping. Any buildings such as offices, stands, etc., must be placed on the owner's property.
- E. In order to preserve the integrity and safety of the highway facility, the license area must include a clear zone as approved by the Department's Traffic and Design Divisions and incorporated in the License plans.
- F. The legal document to be used for these joint uses is the Multi-Use License (Form 895) based on the following conditions:



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1. The term will be continuous until revoked or terminated by either the State or the Licensee.
2. The fee for the license will be \$1,000.00.
3. The proposed use must be approved by the local planning agency.
4. The licensee shall take out a minimum of \$1,000,000.00 public liability insurance naming the State as additional insured, with Declaration Page and an Endorsement.
5. The license shall be recorded at State's expense.

### Multi-Use and Airspace Leases

- A. Although the Federal Highway Administration includes Multi-Use Leases in their definition of airspace, the Department makes a distinction between multi-use and airspace. Airspace is the joint use of that space above and below the established grade line within the right-of-way limits. Multi-use is all other joint uses of property at grade within the right-of-way limits. All Airspace and Multi-Use Leases, or revisions thereto, must be approved by the Federal Highway Administration, if applicable, with the Lessee so advised of the approvals. If the air rights are on the interstate system, FHWA must review and approve the lease.
- B. At a minimum, an annual inspection shall be made by the Districts on all Multi-Use and Airspace Leases within their district boundaries. The purpose of the inspection is to note the condition of the leased area, determine whether the lessee's activities conform to those outlined in the lease provisions and to identify any non-conforming features. The Property Management Agent shall be responsible for recording inspector's observations on the lease inventory and for bringing any lease violations to the Supervisor's attention so that corrective action can be taken. Upon completion a copy of the lease inventory shall be submitted to the Staff Specialist, Property Management.
- C. Multi-Use Leases are prepared by the Right-of-Way Districts using the standard Multi-Use Lease Agreement (Form 884).
- D. All proposed Airspace Leases must be published in a local newspaper prior to final selection of the prospective lessee. The Department's Board of Directors must approve final selection of the prospective lessee, after pre-approval by the Chief Right-of-Way Agent. [NRS 408.507](#) procedures on advertising read as follows: "Whenever the department receives a proposal of intention to negotiate such space, which it considers feasible and acceptable in principle, it shall publish a notice in a newspaper of general circulation at least once a week for a period of 2 weeks, that it has received such proposal, and that it will receive other proposals for use of such space for a period of 60 days after completion of such

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publication. A copy of such notice must be mailed to each local governmental unit in the affected area.” An exception to this publication is when the proposal is received from an owner who controls property on both sides of the highway.

- E. At the time a valuation or reevaluation of a multi-use or airspace lease is required, the Supervisory Right-of-Way Agent will assign an Agent to review the lease. If it is evident that the lease would generate an annual income of less than \$1,000.00, the lease is determined to be nominal and an appropriate nominal rent will be assigned. The appropriate Supervisory Right-of-Way Agent will prepare for inclusion in the property management, working file, with supporting justification for the nominal value.

Where the multi-use area is a strip of right-of-way located between the traveled way and the abutting owner, the rental amount will be based on the value of the land for its use to the abutting owner (similar to the Larger Parcel concept in a partial acquisition) i.e., the value as if the subject were a part of the adjoining ownership.

Valuation is to be based on the Assessor’s unit value of the adjacent land and a current rate of return, established annually by the Supervisory Right-of-Way Agent or the Staff Specialist for Property Management, utilizing the approved procedure dated 2/14/08, which uses the prime interest rate chart. The Multi-Use Lease Determination (Form 878) shall be used as the basis for the calculation of lease rent.

The area to be valued includes:

1. The area behind the curb and gutter or 10 feet from the edge of the traveled way if there is no curb and gutter.
2. The area located outside the clear zone and the area outside the area designated for landscaping. In addition to typical items, such as lawn areas, trees, shrubs, etc., landscaping includes approaches, curbs, gutters and sidewalks, including bike paths. Paved parking is not considered to be landscaping.

Deviation from these procedures shall be justified by memo, approved by the Chief Right-of-Way Agent. The memo should include considerations such as consistency and the benefits of the lease to the Department.

**Note:** All stand alone parcels and airspace lease areas will be appraised by the Right-of-Way Appraisal Section. The rental determination will be based on a completed appraisal, utilizing an appraisal format, sufficient to adequately support the land value estimate and rental determination.

- F. The term on Multi-Use leases are generally made for five years with reevaluations made at five-year intervals, 120 days prior to the expiration of each

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term. The term for Airspace leases will be governed by its use and may be five, ten or twenty year terms with re-evaluations at five-year increments.

- G. Assignments of airspace and multi-use leases are allowed when it is determined to be in the best interest of the State. Assignments of Lease / License (Form 812) are generally made to successors in interest to the original lease. The Legal Division and Director shall approve all assignments with their signatures to the Consent of State (Form 813). Prior approval must be obtained from the Federal Highway Administration, if applicable. Request for assignment of leases shall be referred to the Staff Specialist, Property Management with appropriate documents submitted for draft review and approval.
- H. Information to be submitted to Right-of-Way Headquarters, Staff Specialist, Property Management, for all Multi-Use Leases is as follows:
1. Correspondence, sketch maps, etc., outlining proposed use of lease area including information on type of improvements that may be erected on the premises.  
  
**Note:** Before approval to construct proposed improvements is granted, the Lessee must submit final construction and landscape plans for review by the Department's Design, Traffic, Bridge, Hydraulics and Landscape Divisions and the Federal Highway Administration, if applicable.
  2. Maps or plans depicting area to be leased and, if applicable a metes and bounds description. The maps or plans should show the highway right-of-way line and the adjacent highway facility in relation to the leased area.
  3. Letter from the City, County or Regional Planning Commission stating that they concur with the proposed use of the area to be leased and that the usage is in accordance with present and foreseeable future planning and zoning.
- I. The following is a list of procedures to be used in the preparation of Multi-Use Leases:
1. Although most of the multi-use leases are made for rights-of-way being held for future road expansion, there may be instances where the multi-use lease is for an area of surplus property that has been designated for joint development. In these instances where the joint development indicates that multiple use is practical, Federal Highway Administration conceptual approval, if applicable, of such use will be obtained. The District Supervisory Right-of-Way Agent coordinates and guides these lease proposals for multiple use in a project corridor in accordance with Federal Highway Administration procedures and Nevada Revised Statutes.

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2. Upon request for a Multi-use lease/license applicants shall be furnished a copy of the Application Requirements (Form 802) that outlines the information required to be submitted. Upon receipt of this information, the Agent shall proceed with Department approvals and preparation of lease as follows:

- a. Request a legal description through their appropriate Supervisory Right-of-Way Agent.
- b. Prepare the lease or license agreement in draft, with appropriate archiving and submit to Staff Specialist, Property Management with Draft Agreement Cover Sheet (Form 918) for review and approval.

**Note:** If Applicable, please check with the appropriate District Permit Office to confirm that a permit application has been submitted by the lessee/licensee and is being processed. The approved permit must be in place prior to execution of the lease or license.

A copy of the approved permit is available through the District Permit Office, AX-5, IRWIN or Central Records, filed under Permit number. A copy of the approved permit should be included with the completed package if applicable.

- c. Upon receipt of the approved draft agreement, finalize and obtain the appropriate Lessee/Licensee signature(s) on the lease or license document.
- d. Submit completed package (lease or license and permit copy (if applicable) including cover memo to Staff Specialist, Right-of-Way Package Review (Form 922), the certificate of insurance, naming the State as an additional insured; an Underlying Fee Owners Agreement, if applicable, to the Supervisor Right-of-Way Agent for review and approval.
- e. The Supervisory Right-of-Agent will submit to the Staff Specialist, Property Management for final compliance and procedure review and approval. The approved package will be forwarded to the Right-of-Way Management Analyst for further processing.
- f. The Right-of-Way Management Analyst will obtain the signatures of Chief Right-of-Way Agent, District Engineer, Legal and the Director's office and process through the Agreement Services Division for an Agreement Number.



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- l. Negotiates lease and obtains final plans.
- m. Send package to Staff Specialist, Property Management, for Design, Landscape, Structures, and Traffic review, if pertinent.
- n. Staff Specialist sends lease final plans, maps and regional planning approval to Federal Highway Administration for approval.
- o. Upon approval proceeds with final lease.
- p. Has lease executed by Department officials and distributes copies.
- q. Give approval to Lessee to proceed.

### 8.310 Disposal Guidelines

#### Pre-Disposal Procedures

- A. At such time as rented and leased properties must be cleared of the improvements in order to permit construction, or when improvements cannot be rented or leased economically, the Property Management Agent shall confer with their Supervisor and/or the Staff Specialist, Property Management to determine the most cost effect method for clearance or disposal. Improvements may be disposed of by one of the following methods:
  - 1. Public auction
  - 2. Sealed bid
  - 3. Sale to public agency
- B. Generally all the improvements are sold only by public auction. The Federal Highway Administration approval for clearance of the improvements or other growth and debris will be contained in the Federal Highway Administration Letter of Approval and/or Authorization for the project or parcel.
- C. The terms for the sale of improvements will generally be that full payment is required on the day of sale for items selling for less than \$1,000.00 and \$1,000.00 down payment or 10% of minimum bid, whichever is greater, on items selling for over \$1,000.00, with the appropriate days allowed for the lump sum payment of the balance due.
- D. The standard terms and conditions for the sale of improvements or land are contained in Forms, [Section 8.350](#) and have been approved by the Legal Division.
- E. Disposal of surplus property will be made by one of the following methods:

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1. Public Auction
  2. Sealed Bid
  3. Sale to public agency
  4. Direct Sale
  5. Exchange
  6. Relinquishment
  7. Abandonment
  8. Quitclaim of Donated Property
- F. Prior to the disposal of any surplus property, the required approvals will be obtained by the Staff Specialist, Property Management, in accordance with those guidelines contained in Surplus Property Disposal Summary sections, under [Section 8.312](#)-Surplus Property Disposal. Any questions regarding the legality of any property disposal will be referred to the Legal Division, through the Staff Specialist, for their recommendation and approval.
- G. The terms for the sale of surplus property by public auction or sealed bid requires a down payment in the amount of 10% of the minimum bid or \$1,000.00 whichever is greater, with the balance due in a lump sum. Successful bidders may make a lump sum payment in accordance with the approved Intent to Purchase Agreements (Form 894A) or Public Auction Intent to Purchase Agreement (Form 894B), whichever is applicable, of any balance due without interest. The Department will not provide any financing terms.

### STATE'S INTENT TO PURCHASE AGREEMENT SCHEDULE

#### Forms 894A and 894B

\$1,001.00 to \$10,000.00 (Due in 30 calendar days)

\$10,001.00 to \$25,000.00 (Due in 60 calendar days)

\$25,001.00 and above (Due in 90 calendar days)

- H. The terms of the sale of surplus property by Direct Sale requires a signed acceptance Form 894C attached to the Letter of Offer to Sell.

### STATE'S DIRECT SALE INTENT TO PURCHASE AGREEMENT

#### LUMP SUM SCHEDULE

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Form 894C

\$1.00 to \$10,000.00 (Due in 30 calendar days)

\$10,001.00 to \$25,000.00 (Due in 60 calendar days)

\$25,001.00 and above (Due in 90 calendar days)

- I. Specific procedures for public auction, sealed bid, sale to public agency, direct sale, and exchange are contained in Public Auction, Sealed Bid, Sale to Public Agency, Direct Sale, and Exchanges, under [Section 8.310](#)-Disposal Guidelines.
- J. Notification of interested parties is made through the Public Auction mailing lists. Two mailing lists, one for the North and one for the South have been set up in the Right-of-Way Administrative Services Section. Names shall be submitted to the Staff Specialist on the name request form for submittal to the AAI for inclusion into the mailing list.
- K. Notification shall be made to utility companies by the Utilities Section in the area of disposal to give them the opportunity to remove utilities and/or to perfect their rights prior to disposal.
- L. When right-of-way which has been acquired with Federal-aid participation is disposed of without requiring a credit to Federal funds, the instrument of conveyance shall contain appropriate provisions of "Appendix C" of the State's Title VI civil rights assurances with respect to the Civil Rights Act of 1964, and the Department of Transportation Regulations ([49 CFR 21](#)).
- M. A Land Sale Agreement (Form 892), with appropriate signature page) shall be prepared for all surplus property sales.
- N. Quitclaim Deed (Form 890) will be prepared upon payment in full. See Public Auction, paragraph E., under [Section 8.310](#)-Disposal Guidelines for procedures on the preparation of forms for land sales.

### Public Auction

- A. After the determination has been made that a property or improvement is to be disposed of by public auction and an auction minimum bid has been obtained; the Property Management Agent will prepare the Notice of Public Auction Sale Brochure. The Agent shall have the brochure typed on plain paper, and submit it to the Staff Specialist, Property Management, for review and reproduction on Public Auction letterhead. The following outlines the procedures the Agent should follow to prepare for auction:
  - 1. Obtain Public Auction Sale number from the Staff Specialist. Since all sales are numbered consecutively throughout the State, the Agent must obtain this number from Headquarters.



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2. Arrange for auction date, time and place to hold auction. In setting this date, it is important to take into consideration the time required for the preparation of the auction brochure, notification of interested parties and advertising. Reference should be made to [NRS 408.533](#) for publication time frames.
3. Prepare “Improvement Data” or “Land Data”, which is the description of items to be sold with minimum bids appropriately set forth. In preparing this information for improvements, the Agent must refer to the Property Survey Report Improvement Salvage Data (Form 886) for both the description and minimum bid. The minimum bid will be the salvage value. The description information for the land will be obtained from the appraisal report and the minimum bid may be the approved low range of value from the Appraisal Review Estimate of Value unless set otherwise by Right-of-Way Management. A memo approved by Right-of-Way Management must document any lower minimum bid value. Right-of-Way Engineering will provide maps and legal descriptions for land auctions. The Agent should make the request to them early in the process so they will have sufficient time to schedule and complete the work.
  - a. The improvement description shall include the following items:
    - i. Parcel identification number
    - ii. Type of improvement
    - iii. Type of construction with any added features
    - iv. Square footage/metric (preceded by the word “approximately”)
    - v. Location
    - vi. Minimum bid
  - b. The land description shall include the following items:
    - i. Parcel identification number
    - ii. Size (square footage/metric or acres preceded by word “approximately”)
    - iii. Shape
    - iv. Type of terrain
    - v. Location

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- vi. Access
  - vii. Current Zoning
  - viii. Minimum bid
  - ix. Payment term
4. Prepare “Terms and Conditions of Sale”. The Department will not provide financing terms on any auction sale item. The Agent will complete and attach the applicable terms and conditions for land or improvements. If an auction includes both land and improvements, all of the improvements should be listed first followed by the terms and conditions for improvements; the land should be listed last, followed by the terms and conditions for land. Dates and times improvements will be open for inspection, in addition to dates when payment or removal is required, must be added to the terms and conditions for improvement auctions.
  5. If the public auction sale includes land, an 8 1/2” x 11” map depicting the land, along with the legal description, must be attached to the brochure. Right-of-Way Engineering will furnish this map and legal description upon request by the Agent.
  6. Prepare advertising copy and deliver to area newspapers for public notice, with Payment Voucher/Purchase Order obtained from the Management Analyst, see numbers 9, 10 & 11, for further instructions. Reference should be made to [NRS 408.533](#) for publication time frames. The advertising copy will contain the following:
    - a. Agency name. (This will be the Nevada Department of Transportation, except when we are performing a courtesy auction for another State agency.)
    - b. Public auction number
    - c. Date and time of sale
    - d. Place where auction is being held.
    - e. “Improvement Data” or “Land Data”, which will include project and parcel numbers, the description of the items to be sold, the location and the minimum bid.
    - f. Only certain terms and conditions will be included in the advertising copy. For improvement sales, term numbers 1 through 4, and 12 will be included. For land sales, term numbers 1, 2, and 15 will be included. Current approved terms and



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10. Upon approval of the auction brochure and advertising copy by the Staff Specialist, the Agent shall deliver the advertising copy to the public newspapers along with the Payment Voucher/Purchase Order number, previously provided by the Right-of-Way Management Analyst. This Payment Voucher/Purchase Order will include the following information:
  - a. Order date.
  - b. Vendor's name and address.
  - c. Instructions to invoice Right-of-Way Control.
  - d. Description of style of advertisement.
  - e. Size of advertisement including dates to be run.
  - f. Project and parcel numbers.
  - g. Billing instructions requesting billing in triplicate with tear sheet and Affidavit of Publication.
  - h. Expense allocation will be prepared by the Right-of-Way Management Analyst.
11. After delivery of the advertising copy to the newspapers, the original Payment Voucher/Purchase Order with a copy of the advertising copy attached will be submitted to the Staff Specialist. This package will be forwarded to the Right-of-Way Management Analyst for review and sent to the Administrative Services Division for further processing. The Agent will also retain the newspaper ads as they are run and submit them to the Staff Specialist.
12. Request someone from Right-of-Way Control to attend the auction to collect the money and issue receipts. If this is not possible, the Supervisory Right-of-Way Agent shall assign another Agent the task.
13. The Agent conducting the public auction sale must assure that, prior to bidding; each bidder obtains a bidding number and signs the registration form. The registration form shall include a statement by each signature line that the person has read and accepts the terms and conditions.
14. The Agent must read and explain (as necessary) the terms and conditions prior to beginning the auction. Any questions must be answered at this time. It is suggested that emphasis be placed on the required methods of payment. On land auctions any sealed bid that has been submitted will be opened at this time. The highest sealed bid (if in excess of the minimum bid) will then establish the minimum bid for that

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- item for the auction. The Agent will return deposits of any unsuccessful bidder promptly after the auction.
15. The successful bidder shall submit the required payment at the time of the bid award. Payment will be by cash, cashier's check or money order. The Agent shall delay the auction until it has been determined the successful bidder can meet this requirement. If the successful bidder cannot meet this requirement, the Agent shall disqualify the bid. The item may be auctioned again at the end of the auction or at another time at the discretion of the Department.
  16. The Right-of-Way Management Analyst and staff will complete all receipts and billing requests. If a bidder pays the bid amount in full, the receipt shall specify, "Paid in Full".
  17. Prepare Intent to Purchase Agreement (Form 894A or B, whichever is applicable) for all sales for purchaser's signature. If this Purchase Agreement Form is not completed at the auction, purchaser must complete and return it within ten (10) calendar days of the auction. Purchaser shall be advised that if the Purchase Agreement Form is not signed, the sale will be forfeited.
  18. Prepare a closing memo of auction addressed to Deputy Chief Right-of-Way Agent. This memo should include the date, time and location of the auction, number of people in attendance, number of bidders and a list of the items sold with their total amount. A copy of this memo will be sent to the Staff Specialist, Property Management with a copy of the brochure on which the items sold will be identified with the amounts.
  19. In land sales when the purchaser has chosen the lump sum payment without interest, the Agent shall prepare the Land Sale Agreement and Quitclaim Deed in accordance with paragraphs E.2., E.7. and E.8 of this subsection. After obtaining purchaser's signatures, packages shall be forwarded to the Staff Specialist, Property Management for further processing.
- B. After a Public Auction Sale of improvements, the Agent will be responsible for surveillance of the removal in accordance with the terms and conditions of the sale. Any irregularities must be brought to the attention of the District Supervisory Right-of-Way Agent for corrective action.
- C. If a successful bidder fails to pay the balance due or fails to remove the improvement, the sale will be canceled and the deposit forfeited. In the event time does not allow a re-auction of the improvement, the Agent may, with prior

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approval of the Chief Right-of-Way Agent, offer the item to the second highest bidder for the amount of the successful bid less the deposit.

- D. Accounting procedures for public auctions of improvements are:
1. Receipts for money received will be issued at the time of the auction by the Right-of-Way Management Analyst or representative. As each item is sold the receipt is to be completed with the name and address of the buyer; the amount received, the balance due, manner of payment, received by and date. Under description: the auction number, item number and a very brief identifying description.
  2. The Revenue Distribution Section of the receipt is also to be completed by the Right-of-Way Management Analyst. Agents can contact the Right-of-Way Management Analyst prior to the auction for verification of the applicable fund numbers and coding for time sheet use.
  3. Both yellow copies of the receipts with the receipt book will be retained by the Right-of-Way Management Analyst the day of the auction. In Carson City monies received are delivered to the Accounting Division via Right-of-Way Control the day of the auction. In other areas monies received are deposited in the appropriate bank. In all instances the amounts received and deposited must be verified by at least two people.
  4. The next working day following the auction the Agent must request the Right-of-Way Management Analyst, by memo, to complete the Billing Invoices for all items that have not been paid for in full. Billing Invoices include the following information which can be obtained from the auction brochure and the yellow copy of the receipt retained by the Right-of-Way Management Analyst at the auction: project number, E.A. number, parcel number, auction sale number, date, item number, description, amount of sale deposit, balance due, special instructions showing date when balance is due and requesting Right-of-Way be notified when balance is paid, receipt allocation, and name and address of buyer. The Right-of-Way Management Analyst signs the form next to "Requested by".
  5. The Billing Invoice must be prepared no later than 2 working days after the auction.
  6. Upon notification of payment in full for improvements, the Right-of-Way Management Analyst will issue a Bill of Sale (Form 891) to the successful bidder. A Bill of Sale shall be made for each improvement item with the original sent to the successful bidder, a copy retained by the Right-of-Way Division and a copy sent to the parcel file.

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- E. For Surplus Land Auctions, the accounting procedures are generally the same except that Purchase Agreement Form, Land Sale Agreement and Deeds are utilized rather than a Bill of Sale.
1. The Intent to Purchase Agreement (Form 894A or 894B) must be completed before other documents can be prepared. The Agent shall fill out this form, preferably at the auction if all the information is available. The Purchaser must sign this form. If this form cannot be completed at the auction, the successful bidder shall complete it and return it within ten (10) calendar days from the date of auction. Completion of this form is important since it contains the successful bidder's applicable pay schedule and the title vesting information.
  2. When the Purchase Agreement Form is received, the Agent shall prepare the Land Sale Agreement (Form 892). On page 1 of this agreement, identification numbers will be placed in the upper right-hand corner, the title vesting information entered in the first paragraph, and the legal description in paragraph 1(a). Paragraph 2(a) will be completed with the total purchase price. The standard agreement signature page will be used as page 3.
  3. Upon completion of the Land Sale Agreement and checking of legal description by Right-of-Way Engineering, the Agent will obtain the purchaser's signature on the document before forwarding it to the Staff Specialist, Property Management in Headquarters.
  4. The Right-of-Way Management Analyst shall prepare a Billing Invoice (RERE) for the sale which will include parcel identification numbers, auction number, item number, total purchase price, down payment and balance due.
  5. The sale package containing the signed Land Sale Agreement, billing invoice and original Purchase Agreement Form will be forwarded to the Staff Specialist who will have the documents executed and distributed. All original documents are to be sent to the Staff Specialist for transmittal to Central Files after recordation.
  6. When a property has been paid for in full, the Right-of-Way Management Analyst will notify the Staff Specialist, who will ask the District Supervisory Right-of-Way Agent to have the Quitclaim Deed prepared. The Quitclaim Deed (Forms 890) will be prepared using the information from the Land Sale Agreement. In order for a document to be accepted for recording, all names of parties signing the deed must be typed below their signatures and the proper recording requirements must be met.

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7. After the District Engineer has signed the Quitclaim Deed it will then be forwarded to the Staff Specialist for execution. After the necessary signatures have been obtained, the Staff Specialist will return it to the District Supervisory Right-of-Way Agent to be recorded with the applicable County Recorder. A copy of the Quitclaim Deed will be conformed with the recording information and returned to the Staff Specialist for reference until the original is returned from the County Recorder's Office. The appropriate Property Management Agent will send the conformed copy to the Grantee.
8. Because the county requires payment for the recording fees on the Quitclaim Deed, the Agent is to arrange to have the Purchaser pay the fees prior to or at the time of recordation.
9. In the event the Purchaser sets up an escrow with a third party, the Agent may forward the respective documents to the escrow company with instructions. The State will not pay for the escrow.

### Sealed Bid

- A. Sale by sealed bid is an alternative to public auction. It is generally recommended only for land or for land and improvements to be sold together as one item. In deciding which type of sale should be utilized, consideration should be given to the appraised value and minimum bid of the item, the potential market, and the expected number of bidders. If there are a number of bidders who can be expected to bid competitively, a public auction may bring the highest return to the Department. In a limited market with few interested parties, or perhaps only one interested party, a sealed bid may result in the best return.
- B. In addition to the Surplus Property Committee, Environmental Division, FHWA, and Transportation Board approvals to dispose of a property, specific approval must be obtained from the Chief Right-of-Way Agent prior to planning a sale by sealed bid.
- C. Procedures for preparing the Notice of Sealed Bid are very similar to Public Auction procedures with the following exceptions:
  1. A date, time and place for the bid opening will be arranged through the Staff Specialist, Property Management or the Right-of-Way Management Analyst.
  2. The Notice of Sealed Bid brochure will be prepared by the Agent. In addition to the information required for an auction brochure, this brochure must contain a bid form entitled "Sealed Bid Proposal" (Form 889), on which bidders should submit their bid. This form is to be pre-addressed to the Right-of-Way Management Analyst, Right-of-Way Headquarters



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Division in Carson City and identified as a Sealed Bid with the Sealed Bid Sale No. on it. A bid log will be kept by the Management Analyst to record the receipt of the sealed bids. A cashier's check or money order in the amount of the required down payment must accompany the bid or the bid will be disqualified. If the Agent conducting the sale is unable to attend the bid opening, the Staff Specialist will promptly notify the Agent of the identity of the successful bidder so the Agent may inform him and complete the necessary sale documents as described in Public Auction, under [Section 8.310](#)-Disposal Guidelines. The Right-of-Way Management Analyst will attend the bid opening to accept the down payment and prepare a receipt. The Right-of-Way Management Analyst will also be responsible for promptly returning the deposits to unsuccessful bidders.

### Sale to Public Agency

- A. Disposals of land and improvements for public purposes by sale may be made to other public agencies in accordance with [NRS 408.533](#), 1(e). This would include all Federal, State, City and County agencies. Sales will be made using the fair market value of the property or salvage value if improvement only.
- B. Sales of surplus property will be originated by the public agency, in writing. After the Surplus Property Committee and Transportation Board have approved the sale, the appropriate District will complete the transaction. At the close of a sale, the Right-of-Way District will be requested to record the deed with the conformed duplicate copy being returned to the Staff Specialist, Property Management in Headquarters.
- C. Sales of improvements may originate in the Right-of-Way Districts or by Headquarters personnel. Upon notification of a public agency's interest in an improvement, the Property Management Agent shall write a memo, which will be submitted along with the agency's request to the Chief Right-of-Way Agent requesting approval of the sale with a copy of the memo sent to the Staff Specialist.
- D. Upon notification of the approvals, the Property Management Agent will request the Right-of-Way Management Analyst, by memo, to issue a billing invoice for full payment. A copy of the billing invoice will be returned to the Agent. Upon receipt of this billing, the Agent will enclose it with a letter to the public agency requesting payment. If this is an interdepartmental transfer there will be no billing invoice, but the Agent will request the Right-of-Way Management Analyst to prepare the necessary document. Upon receipt of the payment in full by an outside agency, the Right-of-Way Management Analyst will issue a Bill of Sale (Form 891) for improvements only.

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### Direct Sale

- A. In accordance with [NRS 408.533](#), paragraph 1(c), a direct sale to private parties may be made when at least one of the following conditions occur:

When the title to real property has been acquired in fee under [NRS 408.487](#) and 408.489, and, in the opinion of the Board, a sale by means of public auction or sealed bids is uneconomical or impractical because:

1. There is no access to the property;
  2. The property has value or an increased value only to a single adjoining property owner; or
  3. Such sale would work an undue hardship upon a property owner either as a result of a severance of the property of that owner or denial of access to a public highway, the Board may enter into a direct sale of the property with such an owner or someone else for its fair market value.
- B. Requests for a direct sale may originate from an abutting property owner or the District Supervisory Right-of-Way Agent and must contain a complete justification for the sale. The District Supervisory Right-of-Way Agent's recommendation along with the District Engineer's recommendation will be submitted to the Surplus Property Committee for review.
- C. Upon review and recommendation by the Surplus Property Committee, the Deputy Chief Right-of-Way Agent will request the District Supervisory Right-of-Way Agent to inform the requestor of a direct sale (whether the request is for land, access rights, or other rights). If required it will be the requestor's responsibility to obtain a survey, mapping and legal description in compliance with the Department's existing standards.

The Department shall have the property appraised. The appraisal will be subject to review and the reviewing appraiser will determine the fair market value.

Disposal of the surplus property will be based on the following:

1. If the direct sale falls under [NRS 408.533](#), paragraph 1(c)(1), an appraisal will be requested to estimate the value of the parcel on the basis of its fair market value as part of the single adjacent property.
2. If the direct sale falls under [NRS 408.533](#), paragraph 1(c)(2), an appraisal will be requested to estimate the value of the parcel to a single adjoining property or its increased value to a single adjoining property. In addition, a value must be estimated for public auction purposes. To be eligible for a direct sale in this case two estimates of value are necessary. The one

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for direct sale must indicate that its value to the adjoining property is higher than its estimated auction value if sold separately.

3. If the direct sale falls under [NRS 408.533](#), paragraph 1(c)(3), an appraisal will be requested to estimate the value of the parcel and to determine if a sale to anyone other than the requesting property owner would create an undue hardship upon this owner as a result of a severance of the owner's property or a denial of the owner's access to a public highway.
- D. Upon assignment of a direct sale appraisal under NRS 408.533, paragraph 1(c)(2), the appraiser shall be requested to prepare a report estimating the increased value to the adjoining owner. The appraiser will use an acceptable method and format as outlined in the Appraisal Manual.
- E. After review and approval of the appraisal, an Agent shall make an "offer to sell" to the abutting property owner and request the owner's acceptance by signing the letter of intent and the Direct Sale Intent to Purchase Agreement form (Form 894C). The abutting property owner shall be allowed 10 calendar days from the date of the letter to accept the sales price and return the signed form with the signed letter of intent. The purchaser will be offered the standard terms for payments as allowed. See Pre-Disposal Procedures, paragraph H., under [Section 8.310](#)-Disposal Guidelines.
- F. No direct sale disposal request shall be presented to the Board for consideration until the abutter has agreed to the sales price in writing on Direct Sale Intent to Purchase Agreement form (Form 894C).
- G. When there is more than one abutting property owner, a direct sale may be made to one owner only if the remaining owner or owners have rejected any interest in the property in writing. If more than one abutting owner shows interest, the property shall be sold at public auction.
- H. Unlike an eminent domain acquisition, the offer is not negotiable since it has been determined to be the fair market value to the adjoining property and therefore legally eligible for direct sale. If an "offer to sell" is rejected by the property owner, the property will be retained in its previous status and no further sale will be made unless circumstances warrant a sale.
- I. Documentation relative to the acceptance by the owner of the State's offer shall be submitted to the Staff Specialist to obtain final approvals from the Federal Highway Administration, if applicable, and the Board of Directors.
- J. Upon approval by the Board, the Staff Specialist will request the District Supervisory Right-of-Way Agent to proceed with the legal documents to complete the sale. For document preparation, see Public Auction, paragraph E.2. through E.10, under [Section 8.310](#)-Disposal Guidelines.

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- K. Direct sales to another public agency will be made in accordance with NRS 408.533, paragraph 1(e) that states, "When the property is sought by another public agency for a reasonable public use, the Department may offer the property to the public agency at its fair market value." Please refer to Sale to a Public Agency, under [Section 8.310](#)-Disposal Guidelines for instructions.
- L. A direct sale may also be made under [NRS 408.533](#), paragraph (d):
- When the property has been acquired and:
1. The proposed purpose for which it was acquired is later abandoned by the Department; or
  2. Part of the property is no longer needed for highway purposes, and the Department determines that the property was acquired for less than its fair market value, the Department shall give notice of its intention to dispose of the property by publication in a newspaper of general circulation in the county where the property is situated. The notice must include the Department's appraisal of the fair market value of the property. Any person from whom the property was purchased or his heir or grantee may purchase the property at its fair market value by direct sale from the Department within sixty (60) days after the notice is published. If more than one person qualified to purchase the property by direct sale pursuant to this paragraph so requests, the person with the superior claim, as determined by the Department in its sole discretion, is entitled to purchase the property by direct sale. If no person, requests to purchase the property by direct sale within sixty (60) days after the notice is published, pursuant to this paragraph, the Department shall sell the property in the manner provided in the Public Auction subsection above.

### Exchanges

- A. Land exchanges are allowed pursuant to [NRS 408.487](#) and [408.489](#) in the Right-of-Way acquisition process, and may involve excess property in the exchange. The excess property part of the exchange will not require the Board of Directors approval in accordance with Surplus Property Disposal Summary, under [Section 8.312](#)-Surplus Property Disposal.
- B. Land exchanges generally are made only within project limits. Upon recommendation and justification by the Right-of-Way Districts, proposed land trades must be submitted to Headquarters for approval. It is important to remember that the values of both parcels of land must be reasonably equal in appraised values. Since land exchanges generally occur in the acquisition process, it is important for the negotiator to work with the District Supervisor to affect the exchange.

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- C. If a land exchange is requested between two different projects, documentation recommending the exchange must be submitted to the Chief Right-of-Way Agent, with final approval to be obtained from the Federal Highway Administration.

### 8.311 Clearance and Demolition

#### Types of Clearance

- A. Clearance Contracts (Service Agreement) will be used for the demolition of improvements and clearance of any obstructions situated within the acquired right-of-way, which would include buildings, foundations, trash, debris, trees and any plant or weed growth.
- B. In most cases, the clearance of the obstructions will be accomplished by Property Management as a Right-of-Way item, but if necessary due to scheduling or unforeseen problems, may be included in the construction contract as a construction item.
- C. Clearance should be considered when the following occurs:
  - 1. A public auction has been held and the property is to be cleared of any remaining improvements, debris, and obstructions.
  - 2. Due to imminent construction, the property must be cleared of obstructions without a Public Auction.
  - 3. An unimproved property has a considerable growth of grass, shrubs or other noxious weeds that present a hazard.
  - 4. There is no reasonable probability of improvement disposition through public sale, salvage or other means.
  - 5. It is in the public interest to clear because of health, safety, aesthetics, neighborhood preservation and environmental factors. This would include the possible presence of any type of hazardous material.

#### Demolition Procedures

- A. The Property Management Agent will check for Federal Highway Administration approval to clear the right-of-way prior to proceeding. This approval will be contained in the Federal Highway Administration negotiation/relocation approval notice.
- B. If utilities have not previously been disconnected, the Property Management Agent will request the specific utility companies by letter to disconnect and remove any wires or equipment from the property.

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- C. On all improved or previously improved properties, the Property Management Agent shall notify the Staff Specialist, Property Management of its impending clearance and request an environmental inspection of the premises to determine if there are any hazardous materials on the property or any underground storage tanks on the property. The Agent shall furnish the Staff Specialist with any improvement plans or plat plans from the appraisal. The Staff Specialist will request this inspection through the Environmental Services Division. Upon receipt of the inspection report, the Staff Specialist will forward the report to the Agent for use in preparing the bid proposal.
- D. The Property Management Agent will proceed to prepare the Bid Proposal for Demolition as follows:
1. Arranges for date and time of bid opening. The Northern Right-of-Way District shall coordinate this with the Staff Specialist and the Southern Right-of-Way District shall coordinate it with the Supervisory Right-of-Way Agent.
  2. Prepares Bid Proposal for Demolition and Clearance (Form 881) listing the work to be performed and time allowed. Each parcel will be listed with the address and the various descriptions of work with a bid amount for each item and a total amount bid for the parcel. If a parcel contains any hazardous material, it shall be so noted with and (X) preceding the address, which refers to the confirmation clause following the description of work. A copy of the inspection report will be attached to the Bid Proposal. It will be the Contractor's responsibility to notify the Environmental Protection Agency prior to removal. The last page of the Bid Proposal will be the Acknowledgement page that will be signed by the contractor submitting the bid.
  3. A letter of invitation to bid, Demolition Bid Letter (Form 898) will be prepared with the applicable information and sent with the bid proposal and sealed bid envelope to the names on the list of pre-qualified demolition contractors for your area. A copy of the letter and bid proposal shall also be forwarded to the Staff Specialist, Property Management in Headquarters. In the Right-of-Way Districts, a Notice to Contractors will be published in local newspapers within the district, requesting interested qualified, licensed contractors, in good standing with the Contractors Board, to submit their name and address, if interested in bidding, to be included on the demolition contractor's list.

The Agent will verify that each contractor has a demolition license and is in good standing with the State Contractors Board. Right-of-Way District Property Management personnel should update this list yearly. The Headquarters Contract Compliance Division should be consulted to verify licenses.

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4. The Property Management Agent will arrange a review of the demolition items with the interested contractors prior to their submitting a bid proposal. The bid proposal must be submitted to the Right-of-Way District Office in the return envelope marked “SEALED BID – DO NOT OPEN”.
5. A log sheet shall be prepared with the sealed bids listed as received by date. On the specified date and time, the District Supervisor or Staff Specialist will open the bids, check for accuracy and enter amounts on bid log sheet. The Agent shall check bid amounts and totals.
6. Upon opening of the bids the Staff Specialist or District Supervisor will notify the Property Management Agent of the successful bidder and to proceed with the preparation of the contract.
7. A contractor is required to have workman’s compensation coverage prior to commencement of work.
8. Prepares Clearance Contract using the Service Agreement located on the Administrative Services SharePoint site at <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>. Include the following information:
  - a. Enter project and parcel designations in upper right corner of first page.
  - b. Date of contract will be the day contractor signs.
  - c. Full licensed name and address of contractor.
  - d. Brief description of work to be performed according to bid proposal.
  - e. Paragraph 1 will state amount of Bid Proposal.
  - f. Paragraph 7 gives number of days in which work will be completed.
  - g. Paragraph 8 is the penalty clause. Generally \$500.00 per day is the penalty for non-completion.
9. Additional documentation to be assembled and attached to the contract is as follows:
  - a. The certificate of industrial insurance coverage will be attached to the contract.
  - b. The prevailing wage scale to be attached to the agreement must be obtained from the Staff Specialist, Property Management, in

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Headquarters. These wage rates are obtained from Contract Compliance for the specific location of the contract.

- c. The bid proposal and any attachments of the successful contractor must be attached to the clearance contract (Service Agreement) and referred to for work to be performed.
  - d. A copy of [NRS 338.090](#) shall also be attached to the Clearance Contract (Service Agreement). District Supervisors will have a copy of this in the Laws Relating to Highways and Roads Manual.
10. After the Clearance Contract (Service Agreement) has been prepared, in draft, the Agent will submit the contract and attachments to the Staff Specialist for draft review and approval process.
  11. Upon draft approval the Agent will obtain contractors signature and submit completed package to the Staff Specialist, Property Management for final processing. Upon execution of the contract, the Property Management Agent will notify the contractor in writing to proceed (Notice to Proceed). The Agent shall inform the Contractor that he is responsible to obtain all necessary permits and approvals, including notification of the Environmental Protection Agency of the clearance. The Agent shall make periodic inspections of the clearance area to identify any problems that may arise.
  12. Upon completion of the contract and final inspection, the Property Management Agent will request the Contractor to submit an invoice along with a Labor Release form, completed and signed. The Agent shall then prepare the Demolition Contract Checklist (Form 888) and the payment request. The Payment Voucher/Purchase Order with the invoice attached shall be sent to the Staff Specialist, Property Management in Headquarters, for payment along with the Demolition Contract Check List and Labor Release.
  13. When the clearance has been completed on a project, the Property Management Agent shall make a final report to the District Supervisor, with copies of this report forwarded to the Staff Specialist in Headquarters.
  14. The [Amendment to Agreement](#) shell shall be used in emergency situations when additional demolition work is required on an item or project that was not included in the original Bid Proposal and Clearance Contract (Service Agreement). It shall **not** be used for work outside the scope of the original project to circumvent the bidding process. When the use of an amendment is required, the Agent must obtain a letter from the contractor, giving an estimate on the additional work to be done. The



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Agent will then prepare the amendment by filling in the blank spaces with the date, name of contractor and date, and agreement number of original Clearance Contract (Service Agreement).

In the space provided, the Agent will describe the additional work to be done, additional time and state the compensation as agreed on by the letter of estimate.

15. After the draft amendment has been reviewed and approved by the Staff Specialist, Property Management, the Agent will obtain the contractors signature, together with the estimate, and forward to the Staff Specialist, Property Management for review and execution. Upon complete execution of the agreement, the Agent shall notify the contractor, in writing, the authorization to proceed in order that work may be accomplished in a timely manner.
- E. During the performance of the agreement or any amendment, the Agent is responsible to provide inspection and monitoring of the clearance and to assure that performance is in conformance with all federal, state and local laws. Assistance may be requested through our Environmental Services Division or through the State Environmental Protection Division.

### 8.312 Surplus Property Disposal

Pursuant to [NRS 408.533](#) after approval by the Transportation Board, the Director may dispose of property if no longer needed for highway purposes. This disposal is handled by the Surplus Property Committee.

#### Surplus Property Committee

- A. Members of the Surplus Property committee are:
- Deputy Chief Right-of-Way Agent, Chairman
  - Manager, Right-of-Way Engineering, Vice-Chairman
  - Staff Specialist-Property Management or representative
  - Supervisory Right-of-Way Agent, Utilities
  - Chief, Environmental Services
  - Chief, Road Design Engineer
  - Project Manager (as required)
  - Roadway Systems Representative

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- Principal Design Engineer-Landscape (as required)
  - Deputy Attorney General (as required)
  - FHWA Right-of-Way Program Manager - non-voting member (as required)
1. Other members may be asked to sit in on the Committee by virtue of the special interests that their respective Divisions may have.
  2. Requests for disposal of surplus property, abandonments and relinquishments are made to the Chairman. The appropriate District Engineer and Chief Hydraulics Engineer are contacted for an opinion as to the property disposal or retention of the surplus property. NDOT does not maintain a book of properties considered surplus, but makes determinations, as requested, on a parcel by parcel basis. If approved for disposal, properties are generally disposed of by direct sale, public auction, abandonment or relinquishment.
- B. The Committee will meet at 9:00 a.m. on the last Tuesday of every month. Other special meetings may be called if necessary to fulfill the Department's objectives.
- C. The Committee's duties and responsibilities will be the following:
1. Answer all requests sent to the Department for disposal, relinquishment, or abandonment of State-owned surplus property or excess right-of-way.
  2. Review and act upon all surplus property disposal required to gain Federal-aid participation.
  3. To review all requests by considering retention for future needs of the Department, public needs, interim use, etc., and recommend the disposal of said surplus property and excess right-of-way to Management.
  4. To ascertain from various local municipalities and government agencies what interest they may have in the State's surplus property and excess right-of-way.
  5. To contact the District Engineers and request their opinion as to the proper disposal or retention of the surplus property in their district.
  6. To provide for the appraisal of surplus property, when applicable, and have such appraisals reviewed by the Reviewing Appraisal Section.
  7. To obtain environmental clearance on the surplus property to be disposed.

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8. To obtain Federal Highway Administration approval, when applicable, on disposal of surplus property.
  9. To notify the District Engineers and other parties involved of the final action of the Committee regarding disposal or retention of surplus properties and excess right-of-way.
  10. To obtain the Board of Directors approval on the disposal of property recommended by the Committee.
  11. To forward approved surplus property packages to the respective District Supervisors for final disposal action.
- D. To obtain Federal Highway Administration approval, the Committee must review the proposal and determine the following:
1. The subject property will not be needed for Federal-aid highway purposes in the foreseeable future;
  2. The right-of-way being retained is adequate under present day standards for the facility involved;
  3. The release will not adversely affect the Federal-aid highway facility or the traffic thereon;
  4. The lands to be disposed of are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of [23 USC 319](#) and PL 89-285, Title 23, Chapter 3, Sections 302-305 (Highway Beautification Act of 1965).
- E. All requests for disposal of surplus property, abandonments and relinquishments shall be made to the Chairman of the Surplus Property Committee. The requests will then be forwarded to Right-of-Way Engineering, who will prepare a disposal package and distribute to the members of the Surplus Property Committee and to the District Engineers for review prior to their scheduled meeting.
- F. All properties that have been approved for disposal shall have the title confirmed along with a legal description before proceeding to disposal. Right-of-Way Engineering shall be requested to do so before final disposal is made.
- G. Prior to the sale of any surplus property, the Agent shall confirm that all approvals have been received including the Board of Director's approval.

### General Disposal Activities

- A. The Supervisor of the Right-of-Way Engineering Section will provide maps and title searches, if necessary, for all lands to be reviewed by the Surplus Property

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Committee. The supervisor will also distribute said maps and title searches pertaining to a specific request to the Committee members.

- B. The Supervisor of Right-of-Way Engineering shall make lands check consisting of the following:
  - 1. Original vesting documents
  - 2. Original payment request
  - 3. Original maps
  - 4. Checking right-of-way plans vs. contract plans
  - 5. Assessors check of abutting lands
  - 6. Bureau of Land Management check
  - 7. Description of surplus area
  - 8. Sketch map of surplus area
  - 9. Make recommendations regarding disposal
- C. Files of all original documents and other data pertaining to surplus property will be maintained in the headquarters file room. Copies of these files will be maintained in Right-of-Way Engineering under files labeled, "Surplus Property".
- D. All requests to the Department for disposal of surplus lands must be in writing and received by the Surplus Property Committee at least two weeks prior to the meeting. Any requests not received within this length of time will be taken up at the next regularly scheduled meeting. Exceptions to this rule will be if it is necessary for the scheduling of projects or a special request from Management.
- E. All maps and title searches or other information will be supplied by the Supervisor of the Right-of-Way Engineering Section prior to the meeting of the Surplus Property Committee. This will enable the respective divisions to review the surplus property and provide for any necessary field reviews.
- F. The Surplus Property Committee may establish field reviews of surplus lands whenever it is felt necessary or justified to do so. The Committee may also delegate this authority.
- G. The Committee will place the necessary priorities for the disposal of excess lands primarily on a "first come first serve basis" unless instructed by Management to do so otherwise. The Committee will determine with Management's approval the priorities for disposal of all remnants or land acquisition or surplus highway rights-of-way with the best interests of the State being considered in all cases.

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- H. The Legal Division will be responsible for providing legal opinions on methods of disposal of surplus lands, the reversionary rights of property owners or any other legal opinion required by the Committee.
- I. The Staff Specialist, Property Management is responsible for obtaining all the approvals for disposal after the Surplus Property Committee has made their recommendation to dispose of a property and for the preparation of a package to be submitted to the Director for Board of Directors' approval.

### Remainders of Land Acquisition and Excess Right-of-Way

- A. All surplus lands that are remainders of land acquisition or excess right-of-way wherein the State owns fee interest will be processed through the Staff Specialist, after the Surplus Property Committee has recommended disposal.
- B. After the Surplus Property Committee has recommended disposal, the Staff Specialist will have the responsibility to obtain the necessary documentation for disposal in addition to a review by all municipalities and governmental agencies affected by the disposal of the surplus property. This refers specifically to cities and counties in the affected area.
- C. The Deputy Chief Right-of-Way Agent will request a range in value appraisal, when applicable, and have the appraisal reviewed by the Reviewing Appraisal Section prior to disposal of surplus lands.
- D. The Staff Specialist will obtain the proper approvals from the Chief Right-of-Way Agent, Legal Division, Federal Highway Administration, if applicable, and the Board of Directors before any sale of the surplus lands can be consummated.
- E. Upon approval by the Board of Directors, the Staff Specialist will request the specific district to conduct the public auction or sealed bid, of the property in accordance with Public Auction, under [Section 8.310](#)-Disposal Guidelines of this manual.
- F. An uneconomic remnant, which is incorporated within the right-of-way limits, loses its identity and becomes part of the right-of-way. Should it no longer be needed for highway purposes, disposal of the area would be in the same manner as any other portion of highway right-of-way.
- G. Where the uneconomic remnant is not incorporated within the approved right-of-way limits, disposal may be by any means recommended by the Chief Right-of-Way Agent and approved by the Board of Directors.

### Abandonments and Relinquishments

- A. Abandonments are the vacations of portions of State highways, which have been superseded by relocation or have been determined to be in excess of the needs

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of the Department. On roads to be abandoned, the State holds only an easement interest in the roadway. If the State holds a fee interest, the disposal must be made in accordance with [NRS 408.533](#). (Public auction, sealed bid, etc.).

- B. Relinquishments are the transfers of portions of State highways or other public lands to the cities, counties, and other State agencies when such highways have been deleted from the State highway system by legislative enactment, superseded by relocation, or are in excess of the Departments needs. Before a relinquishment can be prepared, the State must enter into an agreement with the city, county or State agency for their consent to acceptance. The State may relinquish easement or fee title interest in highways.
- C. All abandonments, relinquishments and acceptances will be prepared by the Supervisor of Right-of-Way Engineering after the Surplus Property Committee has recommended disposal.
- D. The Supervisor of Right-of-Way Engineering will be responsible to check with the District Engineer to ascertain whether the relinquishment or abandonment of roadways will affect the District's operations, paying particular attention to the location and/or access to material deposits.
- E. The Staff Specialist will be responsible for seeing that the cities or counties are contacted prior to any relinquishment of highways and obtaining the required signatures on the consenting resolution. This may be coordinated with the District Engineer.
- F. With the assistance of the Supervisor of the Right-of-Way Engineering Section, the Staff Specialist will obtain the proper approvals from the Environmental Services Division, the Federal Highway Administration (if applicable) and the Board of Directors for relinquishment or abandonment of highway lands.
- G. After approval by the Board of Directors, the Staff Specialist will be responsible to have the abandonments and relinquishments recorded in the appropriate county and distributed to the interested parties.

### Transportation Board Packages

Transportation Board meetings will be held each month as the governing board for the Nevada Department of Transportation. The meeting dates are established by the Director's office and may be found on the Share Point site. It will be the responsibility of the Staff Specialist to prepare the formal agenda and Transportation Board memos for each surplus disposal item or condemnation resolution.

The Staff Specialist will be required to attend monthly pre-surplus meetings in order to monitor progress for the finalization of surplus actions items [Section 1.455](#). As provided in [Section 8.310](#), surplus items will be disposed of by Direct Sale, Public Auction, Resolution of

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Relinquishment or Resolution of Abandonment. The Surplus Property Committee members will unanimously approve all surplus items that are to be submitted to the Transportation Board Section 8.312.

The R/W Engineering package will be requested by the Staff Specialist which will include a location map, sketch map, legal description, vesting document and Transportation Board Information Sheet Section 3.286. The information will be to provide information for the summary, background, analysis and recommendation of the memo.

The Staff Specialist will prepare the agenda which will be forwarded to the Director's Office. The agenda will itemize all submittals and provide a brief location description of the surplus action or condemnation resolution.

Environmental approval must be obtained In advance of preparing the Transportation Board memo. Memo packages will be reviewed by the Legal Department and approved by the Chief R/W Agent and Legal Department before formal submission to the Transportation Board for approval.

Each package should include the following:

- a. Board Memorandum
- b. Location Map
- c. Legal Document, i.e. Quitclaim Deed, Easement Deed, Resolution of Relinquishment, Resolution of Abandonment, etc.
- d. Location Map and Sketch Map, depicted as Exhibit "A"
- e. Direct Sale Intent to Purchase (if applicable)
- f. Environmental Approval
- g. NRS 408.533 (Disposal); NRS 408.527 (Relinquishment; NRS 408.523 Abandonment

Coincidental with submitting surplus packages to the Transportation Board, the Staff Specialist will confirm with the Condemnation Coordinator within the Legal Department to determine if any condemnation resolution items will be submitted to a Transportation Board meeting. The Transportation Board memo will be prepared by the Condemnation Coordinator and approved by the Chief R/W Agent. The Staff Specialist will be responsible for obtaining the location maps, sketch maps and R/W Plan maps from R/W Engineering for the memo with final package submittal to the Director's Office.

### Surplus Property Disposal Summary-Outside Right-of-Way

#### Excess Property Located Outside the Right-of-Way

- A. Excess located outside of the right-of-way, acquired by negotiation with Federal Highway Administration participation, to be disposed of by public auction or sealed bid. Refer to NRS 408.533 Section 1 for disposal procedures.
  1. Check District Engineer for possible use and approval of disposal.

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2. Obtain Surplus Property Committee approval.
  3. Obtain Federal Highway Administration approval. (if applicable)
  4. Obtain fair market value appraisal.
  5. Obtain Board of Directors approval.
  6. Advertise a minimum of sixty (60) days prior to proposed auction/direct sale and wait for response from previous owner for first right of refusal option.
  7. Prepare Intent to Purchase Agreement (Form 894A or 894B) for each auction item.
  8. Conduct public auction or sealed bid.
  9. Prepare and execute Land Sale Agreement and Quitclaim Deed, have recorded and close file.
- B. Excess located outside of the right-of-way, acquired by negotiation with Federal Highway Administration participation, to be disposed of by a direct sale to a governmental agency in accordance with [NRS 408.533](#), 1.3.
1. Check District Engineer for possible use and approval of disposal.
  2. Obtain Surplus Property Committee approval.
  3. Obtain fair market value appraisal.
  4. Obtain Federal Highway Administration approval. (if applicable)
  5. Obtain Board of Directors approval.
  6. Prepare and make the offer to sell. Letter of Intent and Direct Sale Intent to Purchase Agreement (Form 894C).
  7. If offer is accepted, prepare and execute Land Sale Agreement and prepare Quitclaim Deed, have recorded and close file.
  8. If offer is refused, determine alternate method of disposal and proceed under the applicable steps.
- C. Excess located outside of the right-of-way limits, acquired by condemnation with Federal Highway Administration participation, to be disposed of by a direct sale to an abutting owner in accordance with [NRS 408.533](#), 1.(c).
1. Check District Engineer for possible use and approval of disposal.
  2. Obtain Surplus Property Committee approval.



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3. Obtain fair market value appraisal for direct sale.
  4. Obtain Federal Highway Administration approval. (if applicable)
  5. Obtain Board of Directors approval.
  6. Make offer to sell to owner, with Letter of Intent and Direct Sale Intent to Purchase Agreement (Form 894C).
  7. If offer is accepted, prepare and execute Land Sale Agreement and prepare Quitclaim Deed, have recorded and close file.
  8. If offer is refused, determine alternate method of disposal and proceed under the applicable steps.
- D. Excess located outside of the right-of-way, acquired by negotiation with Federal Highway Administration participation, to be disposed of by exchange for an acquisition within the right-of-way.
1. Check District Engineer for possible use and approval of disposal.
  2. Obtain Chief Right-of-Way Agent's approval.
  3. Obtain fair market value appraisal and review of both the Surplus Property exchange parcel and right-of-way taking.
  4. Obtain Federal Highway Administration approval if exchange is between projects. (if applicable)
  5. Request negotiator to make offer of exchange.
  6. If the offer is accepted, prepare and process the Public Highway Agreement and Quitclaim Deed.
  7. If the offer is refused, determine alternate method of disposal and proceed under the applicable paragraph above.
- E. Excess located outside of the right-of-way acquired by donation or dedication, without Federal Highway Administration participation, to revert to owner because of requirements of [NRS 408.533, 1\(a\)](#).
1. Obtain Board of Directors approval.
  2. Make offer to return to owner.
  3. If offer is accepted, process Quitclaim Deed and close file.
  4. If offer is refused determine alternate method of disposal and proceed under the applicable paragraph above.

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### Surplus Property Disposal Summary-formerly included in the Right-of-Way

#### Excess Lands Formerly Included In the Right-of-Way

- A. Excess located inside of the right-of-way, acquired by negotiation-with Federal Highway Administration participation, to be disposed of by a no charge relinquishment to a local public agency for highway use.
  - 1. Check District Engineer for possible use and approval of disposal.
  - 2. Obtain Surplus Property Committee approval.
  - 3. Obtain copy of agency's consent to relinquishment.
  - 4. Request Federal Highway Administration approval. (if applicable)
  - 5. Prepare Resolution of Relinquishment.
  - 6. Obtain Board of Directors approval.
  - 7. Record Resolution of Relinquishment and close file.
  
- B. Excess located inside of right-of-way, acquired by negotiation with Federal Highway Administration participation, to be disposed of by direct sale to a local public agency for other public use.
  - 1. Check District Engineer for possible use and approval of disposal.
  - 2. Obtain Surplus Property Committee approval.
  - 3. Obtain fair market value appraisal.
  - 4. Obtain Federal Highway Administration approval. (if applicable)
  - 5. Obtain Board of Directors approval.
  - 6. Prepare and make offer to sell. Prepare Letter of Intent to Purchase and Direct Sale Intent to Purchase Agreement (Form 894C).
  - 7. If offer is accepted, prepare and process Land Sale Agreement and Quitclaim Deed, have recorded and close file.
  - 8. If offer is refused, determine alternate method of disposal and proceed under the applicable steps.
  
- C. Excess located inside of right-of-way, acquired by normal negotiations with Federal Highway Administration participation, to be disposed of by public auction or sealed bid.
  - 1. Check with District Engineer for possible use and approval of disposal.

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2. Obtain Surplus Property Committee approval.
  3. Obtain Federal Highway Administration concurrence. (if applicable)
  4. Obtain Board of Directors approval.
  5. Obtain fair market value appraisal.
  6. Advertise a minimum of sixty (60) days prior to proposed auction/direct sale and wait for response from previous owner.
  7. Prepare Intent to Purchase Agreement (Form 894A or 894B) for each auction item.
  8. Conduct public auction or sealed bid.
  9. Prepare and process Land Sale Agreement and Quitclaim Deed and close file.
- D. Excess, located inside of the right-of-way, acquired by donation or dedication, with no Federal Highway Administration participation, to revert to the owner in accordance with [NRS 408.533](#) 1(a).
1. Obtain Board of Directors approval.
  2. Make offer to return to owner.
  3. If offer is accepted, process Quitclaim Deed and close file.
  4. If offer is refused, determine method of disposal and proceed under the applicable paragraph above, except Federal Highway Administration approval will not be required.
- E. Excess, easement interest only, located inside of the right-of-way, acquired by normal negotiation with or without Federal Highway Administration participation, to be abandoned.
1. Check District Engineer for possible use and approval of disposal.
  2. Obtain Surplus Property Committee approval.
  3. Obtain Federal Highway Administration concurrence. (if applicable)
  4. Prepare Resolution of Abandonment.
  5. Obtain Board of Directors approval.
  6. Record Resolution of Abandonment.

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### 8.350 FORMS

- 800 Signature Page - Property Management
- 801 Amendment to Multi-use Lease
- 802 Application Requirements for Multi-use Lease / Multi-use License
- 803 Auction Mailing List Form
- 804 Amendment to Rental Agreement
- 805 Review and Recommendation Sheet
- 807 Public Auction Sale - Terms and Conditions for Sale of Improvements
- 808 Public Auction Sale - Sealed Bid Terms and Conditions for Sale of Improvements
- 809 Public Auction Sale - Terms and Conditions of Land Sales
- 810 Public Auction Sale - Sealed Bid Terms and Conditions of Land Sales
- 811 Affidavit of Lease Termination
- 812 Assignment of Lease / License
- 813 Consent of State
- 814 Request for Airspace Lease Proposals, Terms and Conditions & Property Data
- 815 Minimum Specifications for Airspace On-site Improvements and Buildings
- 816 Minimum Specifications for Airspace Parking and Landscaping Improvements
- 817 Airspace Lease
- 818 Affidavit of Airspace Lease Termination
- 819 Sealed Bid Proposal
- 820 Assignment of Right to Apply for Federal Oil and Gas Lease
- 821 Affidavit of Surviving Tenant
- 822 Notice of Intent to Dispose of Real Property
- 823 Notice of Intent to Dispose of Real Property by Public Auction

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- 824 Letter to Public Entity regarding Resolution of Relinquishment
- 824L Notice of Termination and Road Transfer letter (to Lessee/Licensee)
- 825 Demolition Closing Checklist
- 826 Notice of Public Auction Sale Brochure
- 873 Property Management Diary
- 874 Direct Sale (Letter)
- 875 Move In/Out Checklist
- 875A Exterior Inspection Checklist
- 876 Rental Application
- 878 Multi-use Lease Determination
- 879 Notice of Termination of Lease / License
- 880 Property Management Checklist
- 881 Bid Proposal for Demolition and Clearance
- 882 Rental Agreement
- 884 Multi-Use Lease
- 884A Multi-Use Lease Rentable Space (Letter)
- 884R Multi-Use Lease Recorder (Letter)
- 884Sub Multi-Use Lease w/ Sub-lessee
- 885 Right-of-Way Insurance Summary
- 886 Property Survey Report Improvement Salvage Value
- 887 Termination Notice
- 888 Demolition Contract Checklist
- 889 Sealed Bid Proposal
- 890 Quitclaim Deed
- 891 Bill of Sale

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- 892 Land Sale Agreement
- 893 Easement Abandonment Sale Agreement
- 894A Intent to Purchase Agreement for Improvements or Personal Property
- 894B Intent to Purchase Agreement for Real Property
- 894C Direct Sale Intent to Purchase
- 895 Multi-Use License
- 896 Insurance Notice of Loss
- 897 Rental Agreement (Mobile Home Park)
- 898 Bid on Demolition (Letter)
- 899 Multi-use License/Lease Underlying Fee Owner Agreement

### **Administrative Services Agreements:**

1. Service Agreement
2. Amendment

Go to: <http://shptsrv1/070/agree/Shared%20Documents/Forms/AllItems.aspx>

## 9.000 FORMS

- 900 Letter of Approval and/or Authorization
- 901 Road Agreement
- 902 Quitclaim Deed for Water Rights
- 903 Release
- 904 Exhibit "B" Bid Proposal for Escrow Services
- 905 Temporary Right-of-Way Occupancy Agreement (Contractor)
- 907 Agreement for Aerial Easement
- 910 Acquisition Checklist
- 911 Bill of Sale
- 912 Multi-Use Lease Appraisal Instructions
- 913 Affidavit of Termination of Contract of Sale
- 915 Sublease
- 916 Consent to Sublease Multi-Use Lease
- 917 Synopsis of Negotiator's Report to Legal Division (Confidential)
- 918 Draft Agreement Cover Sheet
- 920 Public Agency FHWA Compliance Letter
- 921 Negotiated Right of Entry Agreement
- 922 R/W Package Review
- 923 Review of Utility Coordination per Utility Company Checklist (LPA)
- 924 Review of Acquisition per Ownership Checklist (LPA)
- 925 Project Review Checklist (LPA)