**Right-of-way Acquisition Checklist**

**Local Public Authority (LPA) Federal Aid Project**Revised4-29-2020

**Note:** This checklist is intended to expedite LPA (county or city) federal aid projects right-of-way acquisition. This checklist is only applicable to projects with no relocation assistance and tenants limited to ag use-crops & pasture

Project Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ KDOT Project No. assigned: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

KDOT BLP Project Manager: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Project Description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Design Consultant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Consultant Project Manager: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Appraiser: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contact Info: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Review Appraiser: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contact Info: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Negotiator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contact Info: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

KDOT Assigned Letting Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| **TASKS TO BE COMPLETED****Bold - KDOT Rupis Milestones****Brown – Project related items not related to land acquisition****Blue -Usually engineering consultant provided.**All tasks are completed by LPA unless otherwise noted. See Notes & Explanations following this table for details on a particular task. | **DATE STARTED** | **DATE COMPLETED** |
| 1. Program Packet received from KDOT
 |  |  |
| 1. Set up project folders
 |  |  |
| 1. **KDOT Rupis Milestone:** Consultant Design Contract to be Executed Design Consultant selected, scope of services finalized and agreement signed at 22 months before letting
 |  |  |
| 1. Obtain copy of KDOT’s LPA Project Development Manual and obtain R/W Checklists in Apprenix A and Forms in Appendix B
 |  |  |
| 1. Locate land corners & road records
 |  |  |
| 1. Determine property ownerships
 |  |  |
| 1. Set up file for each owner/parcel (may need to add tenants later)
 |  |  |
| 1. Obtain permission to survey & ask about tenants.
 |  |  |
| 1. Notify engineering consultant when permission to survey and land corners available
 |  |  |
| 1. Determine if acquisition consultant will be needed-See Checklist B
 |  |  |
| 1. Start inquiries about acquisition consultants and appraisers.
 |  |  |
| 1. LPA Right-of-way Agent to be certified (ROWCP)
 |  |  |
| 1. **KDOT Rupis Milestone:** Pre-Design Field Check (preliminary scoping) at 20 months before letting.
 |  |  |
| 1. Submit field check plans to KDOT
 |  |  |
| 1. Discuss field check plans with land owners
 |  |  |
| 1. If determined necessary hire right-of-way acquisition consultant (negotiator), appraiser and review appraiser.
 |  |  |
| 1. **KDOT Rupis Milestone:** Field Check Completed at 15 months before letting.
 |  |   |
| 1. Obtain legal descriptions from consultant.
 |  |  |
| 1. Arrange for staking needed right-of-way.
 |  |  |
| 1. Determine acreage for any cultivated land or pasture in permanent and temporary easements. If tenant is affected set up another folder for tenant
 |  |  |
| 1. LPA to hire appraiser for official appraisals and/or Estimate of Just Compensation. If appraised, then a reviewal appraisal must be performed
 |  |  |
| 1. Determine if any complex parcels (Checklist A). Determine which tracts are not complex and under $10,000 for waiver of appraisal. List owners and tenants which will require appraisals and which will utilize Estimate of Just Compensation.
 |  |  |
| 1. Environmental Clearance and R/W material received from KDOT
 |  |  |
| 1. . LPA to begin right-of-way acquisition
 |  |  |
| 1. LPA mail owners (& tenants if applicable) initial contact letter stating name of appraiser and opportunity to accompany. (Form A)
 |  |  |
| 1. Optional Step: Request to donate with or without appraisal
 |  |  |
| 1. Appraiser to mail letters offering opportunity to meet (Form B) and enclosing R/W brochure if not included in initial contact letter.
 |  |  |
| 1. Appraiser meets with owners & affected tenants
 |  |  |
| 1. Appraiser furnishes to LPA appraisals (Form H or I and J) and/or Estimate of Just Compensation (Form G)
 |  |  |
| 1. Review appraisal required for any appraisals.
 |  |  |
| 1. LPA reviews Estimates of Just Compensation, appraisals and review appraisals.
 |  |  |
| 1. LPA establishes Just Compensation
 |  |  |
| 1. Prepare written Offer Letter to purchase by Negotiator (Form C)
 |  |  |
| 1. Negotiator meets with owners and negotiates in good faith. Negotiator reaches agreement with owner or reaches impasse.
 |  |  |
| 1. Administrative settlement if negotiated amount exceeds original written offer as authorized by LPA
 |  |  |
| 1. Negotiator prepares purchase agreement and ownership documents (Deeds, Easements) which are signed by land owner and LPA
 |  |  |
| 1. Payment made to land owner
 |  |  |
| 1. Right-of-way documents recorded at register of deeds.
 |  |  |
| 1. Negotiator turns in paper work including contact log for each owner and affected tenants.
 |  |  |
| 1. Acquisition paperwork needs to be separated by owner.
 |  |  |
| 1. **KDOT Rupis Milestone:** R/W Clearances (1306 Form) to BLP 4 months prior to letting.
 |  |   |
| 1. Retain records a minimum of three years.
 |  |   |

**Notes or Explanation of each Task :**

1. After project is awarded and Form 1302 is submitted, then KDOT mails a Program Packet usually includes the following items:- a letter specifying the project numbers, any special funding requirements, and the BLP Project Manager to contact; Form 883 Project Authorization, and the (Rupis) Project Schedule with milestones. The KDOT/LPA Agreement will be mailed later.
2. Set up electronic or paper folder for project. Have separate folders for KDOT, design consultant, utilities, right-of-way acquisition, environmental permits and construction.
3. **KDOT Rupis Milestone:** Consultant Design Contract to be executed a minimum of 22 months prior to the contract Select a consultant engineer and execute an agreement as soon as possible after the notice of award. If design services are to be federal reimbursable Qualification Based Selection is required, contact your BLP Project Manager for guidance. A sample lump sum agreement and a list of discussion items to be used in finalizing the scope of services is available in the Resources section of the KCHA website. The agreement should detail responsibility for research of land corners, road records, ownerships, utility locates, and legal descriptions for right-of-way needed. Send KDOT a copy of the agreement after the Project Agreement is signed.
4. KDOT’s LPA Project Development Manual can be downloaded from the KDOT website. Go to the Local Projects webpage and click on the link: KDOT’s Authentication and Resource Tracking (KART) Then scroll down and download the manual. Section 7 has detailed information on acquiring right-of-way and Appendix A and B are checklist and forms. Read Section 7 and refer to the appropriate location as the project develops. Note: The Project Development Manual available on KART as of May 2020 was an older version and right-of-way is covered in Section 6. 
*Figure 1 From Appendix A of KDOT's LPA Project Development Manual (2020 Version)* *Figure 2 From Appendix B of KDOT's LPA Project Development Manual (2020 Version)*
5. Land corners and road records. Locate land corners for use as control on the project. Any section or quarter section corners within the project area and the corner each way from the project should be located and referenced for use by the consultant. Road records should be located for use by the consultant to show existing right-of-way and write legal descriptions. A local surveyor can do this work or the work can be included in the consultant’s contract.
6. Ownerships: Based on project scope in Form 1302 determine which properties will be affected. Obtain name and address of land owners from county clerk or county appraiser. When you are certain which properties are affected order title commitments from a title company. Federal regulations require title info from the last 5 years, which could include written leases, judgements and mortgages.
7. Set up file folder for each owner. Info specific to each owner will be filed in the folder.
8. By telephone or letter notify land owners of the upcoming project, and approximate time line, ask permission to survey and name of tenant, if any. Put copy of letter or phone log in file by owner.
9. Notify the consultant when permission has been obtained to survey project and furnish consultant land ownerships, land corners and road records.
10. Time to evaluate staff and resources available in house to determine if an outside acquisition consultant (Negotiator)is needed. Checklist B may be helpful.
11. Inquire around about acquisition consultants and appraisers experienced and qualified. Sometimes it takes so effort to find people to do this work. KDOT Bureau of ROW maintains a list of consulting firms that may be used by the LPA for ROW activities. These services should be contracted in compliance with the applicable requirements for contracting with private contractors, fee appraisers or other specialists. KDOT provides the list of consultants for informational purposes only, and does not warrant the services supplied by consultants.
12. County person in charge of right-of-way acquisition and the project manager or supervisor must be certified (ROWCP) which is on line training through LTAP. Certification of a county person is required even if an outside firm is contracted to do the acquisition. The outside firm’s right-of-way acquisition agent must also have the certification.
13. .**KDOT Rupis Milestone: Pre-Design field check:** The BLP Project Manager may want to review the preliminary plan to ensure proposed design matches the approved scope. Check with your Project Manager to see if this step is necessary. KDOT Schedule 22 months prior to letting.
14. Field Check plan submitted to KDOT. Consultant will submit field check plans to KDOT.
15. Optional: Discuss field check plans with land owners. When preliminary plans are available it is good public relations to discuss proposed plans with land owners. Land owners may have concerns that can be discussed with KDOT and the consultant at field check.
16. Determine who will acquire right-of-way and who will perform appraisals**.** Acquisition of right-of-way must be acquired in accordance with federal regulations. Acquisition is time consuming and detailed. Many counties are hiring firms to handle the acquisitions. Right-of-way process can begin after field check, there is some risk if plans are changed, but that is rare. If needed contract with Appraiser, Review Appraiser and Negotiator (right-of-way agent).
17. **KDOT Milestone: Field Check Completed** Conduct field check on site with KDOT and the consultant. Field check date and time is set by KDOT and should be least 15 months prior to letting.
18. Obtain legal descriptions for permanent and temporary easements from consultant. Consultant should furnish a paper copy of each tract stamped and sealed by a professional surveyor, and a Word document so the description can easily be inserted in the easement forms.
19. Staking right-of-way may have been included in engineering consultant agreement.
20. Determine acreage for any cultivated land or pasture in permanent and temporary easements. If crop lines are shown on plan sheets acreage can be computed from plans, if not make note of physical measurements. If tenant is involved a separate folder should be set up for tenant as he is eligible for crop damage or loss of pasture.
21. LPA normally has to hire a state licensed Appraiser. If any tracts are appraised a Review Appraiser is also hired. The Review Appraiser cannot be financially connected to the Appraiser
22. To determine complexity proposed taking needs to be examined for personal property, buildings and other real property. Use Checklist A to evaluate complexity of each taking. Determine which tracts are either complex or more than $10,000 which will require an appraisal. Non-complex under $10,000 are eligible for a waiver of the appraisal. Ag tenant if affected will need Estimate of Just Compensation. List which parcels will require an appraisal and which will qualify for a waiver. This listing may be performed by LPA staff or included in the Appraisers scope of services.
23. . Environmental section at KDOT submits field check plans to various state and federal agencies for comments and prepares memo with concerns and issues. BLP prepares a Design Summary Document that is submitted to FHWA. When FHWA approves the Design Summary Document that provides the environmental clearance. KDOT then mails county a letter listing stipulations and includes right-of-way acquisition information.
24. If receiving federal funds for right-of-way do not proceed to the next step until receiving the notice from KDOT. If federal aid is not paying for right-of-way the county can begin acquisition at any time. There is a risk of starting acquisition before receiving environmental clearance from KDOT as plan details may need to be changed. If changes affect right-of-way descriptions the right-of-way process for that tract may need to start over. Right-of-way is time consuming, and on most projects starting right-of-way acquisition as soon as field check is complete and property descriptions are developed will reduce the likelihood of delays.
25. Initial contact letter. Use format indicated in Form A. This letter may be mailed first class. However, if the R/W Brochure is included with request to donate use registered or certified mail with return receipt requested. Put receipt in owner’s folder. The letter can be hand delivered, but make note of the delivery in the contact log. Letter shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.
26. Optional Donation Request: Some agencies request the land owner donate the right-of-way. Before the request is made the land owner has to be furnished the R/W Brochure so he is aware of his rights. The request to donate can be in the initial contact letter as long as the R/W Brochure is included with the letter. If the land owner agrees to donate use Form K or L as applicable.
27. Appraiser prepares and mails letters to all owners and affected tenants. Form B provides format. Registered or certified mail with return receipt requested, Appraiser to place receipt in owner’s folder. Letter shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.
28. Appraiser views taking and meets with owners and affected tenants if desired by them.
29. Appraiser furnishes to LPA appraisals or Estimate of Just Compensation for all parcels.
30. LPA provides appraisals to Review Appraiser.
31. LPA reviews Appraisals, Review Appraisals and Estimate of Just Compensation.
32. LPA to determine Just Compensation for each parcel based on Estimate of Just Compensation, or Appraisal and Review Appraisal. There is no standard form furnished, but the determination should show the Appraised amount, Review Appraised amount, any adjustments and the amount determined as Just Compensation, and signed by the LPA. The amount of just compensation has to be approved by the governing board unless the board has authorized staff to make the determination. Include board action in the folder for each tract. Furnish amount of Just Compensation to the Negotiator.
33. Negotiator prepares and mails offer to purchase letter based on template Form C. Registered or certified mail with return receipt requested, Negotiator to place receipt in owner’s folder. Letter shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.
34. Negotiator meets with owner and negotiates in good faith. Usually first meeting is at least 10 days after offer to purchase letter. Negotiator is to maintain a contact log. Contact log includes date, name of person(s) what was discussed and any decisions for all contacts, including email and phone calls. Use Form F or similar for contact log. Negotiator and owner reach agreement on amount of just compensation. If negotiated amount is different than the written offer, the basis of change is submitted to LPA.
35. LPA utilizes an “Administrative Settlement” if the negotiated amount exceeds the original amount of just compensation. Use Form M or similar form. Reason for adjustments can include potential exposure and costs of condemnation. The settlement must be approved by an officer of the LPA acquiring the ROW and not by the negotiator. If negotiations fail then the LPA initiates eminent domain proceedings. Negotiator’s role is finished and turns in documentation listed in step 38
36. Negotiator prepares purchase documents that are executed by owner and LPA. These signed documents allow LPA to cut a check for the agreed amount.
37. Payment to Owner: Check is usually given to negotiator who will arrange a closing where the check is exchanged for the signed easement forms that will be recorded at the register of deeds. If negotiator had the easement forms signed by owner when the agreement was signed they should not be recorded until the owner is paid. A copy of the check needs to be placed in tract file.
38. Recording: LPA is responsible to record right-of-way documents including any drainage easements, temporary easements, etc. Recording fees are paid for by LPA.
39. At completion of acquisition the Negotiator turns in all paperwork related to the negotiation. This will include the contact log and executed agreement with owner.
40. LPA organizes file for each owner, it is help to use Checklist D.
41. **KDOT Milestone:** County to submit R/W Clearances (1306 Form) to BLP at least 4 months prior to letting.
42. Retention of Records: Federal regulations require the LPA to maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled.

**Miscellaneous Information**

**LPA Project Development Manual General Notes:**

Section 7 of the before mentioned LPA Project Development Manual(2020 Version) has detailed explanation of many of the more confusing steps in the acquisition process. It is always helpful to review the manual for guidance before starting each step in the acquisition process. Note: The Project Development Manual available on KART as of May 2020 was an older version and right-of-way is covered in Section 6.

**Personal Property**

Quite often personal property is located on land being acquired. The owner of the personal property is entitled to relocation assistance and payment for the actual and reasonable costs to move the personal property. The owners of personal property may or may not be the owners of the real estate. The move may be reimbursed through itemized bills and receipts paid to a contractor for the move, or a self-move based upon an agreed to amount considered to be fair and reasonable. Owner is allowed up to 90 days to move their personal property from the time of a written offer being presented and 30 days after payment is made.

**Examples of Personal Property:**

Hay bales, farm equipment, vehicles & inoperable vehicles

**Examples of Cost to Cure:**

Crop damage, ag fence, decorative fence, landscape planters, residential irrigation systems, abandoned or dilapidate buildings.

**Ag Tenants:**

Ag tenants with a year-to-year leases for either cash or crop share have a minimal financial interest. In these cases, the acquisition may be accomplished by having the tenant sign a separate tenant

contract. Many times acquisition and construction is scheduled to avoid crop damage and pasture season so no separate contract is required.

**Appendix-Selected Federal Regulations**

Basic acquisition policies.

(a) Expeditious acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

 (c) Appraisal, waiver thereof, and invitation to owner. (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at $10,000 or less, based on a review of available data.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

(C) The Federal Agency funding the project may approve exceeding the $10,000 threshold, up to a maximum of $25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, § 24.102(c)(2).)

(d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (See appendix A, § 24.102(d).)

(e) Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) Basic negotiation procedures. The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (See appendix A, § 24.102(f).)

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

(h) Coercive action. The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A, § 24.102(i).)

(j) Payment before taking possession. Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, § 24.102(j

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is $10,000, or less. (*See* appendix A, § 24.102(n).)

**24.103Criteria for appraisals.**(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). **1** (*See* appendix A, § 24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). **2**

1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in § 24.2(a)(3) and the five following requirements: (See appendix A, §§ 24.103 and 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, § 24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, § 24.103(a).)

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

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

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) Influence of the project on just compensation. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A, § 24.103(b).)

(c) Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(a)(24)) of the retained improvement.

(d) Qualifications of appraisers and review appraisers. (1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, § 24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.).

 24.104Review of appraisals.

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

(a) A qualified review appraiser (see § 24.103(d)(1) and appendix A, § 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 and other applicable requirements, including, to the extent appropriate, the 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, § 24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an 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 § 24.103 to support a recommended (or approved) value. (See appendix A, § 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). 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 certification that states the parameters of the review. The certification shall state 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, § 24.104(c)

24.106Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**24.108Donations.**An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

After an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations, it would be entirely appropriate for Agencies to apply the administrative settlement concept and procedures in § 24.102(i) to negotiate amounts that exceed the original estimate of market value. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner. The purpose of the appraisal waiver provision is to provide Agencies a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more sophisticated work.

The Agency employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and these regulations; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this rule. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

The definition of “appraisal” in the Uniform Act and appraisal waiver provisions of the Uniform Act and these regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action (section 301(7) of the Uniform Act).

If the owner expresses intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.104(c). Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

Section 24.106(b). Expenses incidental to transfer of title to the agency. Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.