This page was intentionally left blank.
# TABLE OF CONTENTS

## CHAPTER ONE: REAL ESTATE DIVISION MANUAL

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>MISSION STATEMENT</td>
<td>11</td>
</tr>
<tr>
<td>CORE 4 VALUES</td>
<td>11</td>
</tr>
<tr>
<td>REAL ESTATE DIVISION CONTACTS</td>
<td>13</td>
</tr>
<tr>
<td>DISTRICT REAL ESTATE CONTACTS</td>
<td>14</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>15</td>
</tr>
<tr>
<td>Purpose</td>
<td>15</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>15</td>
</tr>
<tr>
<td>An Overview of the Process</td>
<td>16</td>
</tr>
<tr>
<td>Pre-approved Buying Relocation &amp; Appraising Agents</td>
<td>18</td>
</tr>
<tr>
<td>Coordination of Efforts</td>
<td>18</td>
</tr>
<tr>
<td>RIGHT OF WAY TOOLS</td>
<td>19</td>
</tr>
<tr>
<td>Uniform Act and the FHWA</td>
<td>19</td>
</tr>
<tr>
<td>Land Records System (LRS)</td>
<td>20</td>
</tr>
<tr>
<td>Uniform Standards of Professional Appraisal Practice (USPAP)</td>
<td>21</td>
</tr>
<tr>
<td>Relocation Assembly Manual</td>
<td>21</td>
</tr>
<tr>
<td>Approved Forms and Deeds</td>
<td>22</td>
</tr>
<tr>
<td>ITAP – Real Estate Resources</td>
<td>23</td>
</tr>
<tr>
<td>Quality Assurance</td>
<td>23</td>
</tr>
<tr>
<td>File Management</td>
<td>24</td>
</tr>
<tr>
<td>Local Field Offices</td>
<td>25</td>
</tr>
<tr>
<td>POLICY, PROCEDURES AND REGULATIONS</td>
<td>27</td>
</tr>
<tr>
<td>Authorities Granted INDOT Under the Indiana Code</td>
<td>27</td>
</tr>
<tr>
<td>At Risk / Early Acquisitions</td>
<td>29</td>
</tr>
<tr>
<td>Functional Replacement</td>
<td>33</td>
</tr>
<tr>
<td>Crop Damage Claims</td>
<td>36</td>
</tr>
<tr>
<td>Hardship Acquisition - INDOT Policy</td>
<td>38</td>
</tr>
<tr>
<td>Protective Buying</td>
<td>39</td>
</tr>
<tr>
<td>INDOT Incentive Program</td>
<td>39</td>
</tr>
<tr>
<td>MAP-21 Early Acquisition</td>
<td>44</td>
</tr>
<tr>
<td>Real Estate Guidance for Transportation Alternative Program (TAP)</td>
<td>47</td>
</tr>
<tr>
<td>Real Estate Guidance for Transportation Enhancement Projects</td>
<td>48</td>
</tr>
</tbody>
</table>

## CHAPTER TWO: APPRAISING PROCEDURES

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPRAISAL REPORTS</td>
<td>55</td>
</tr>
<tr>
<td>Purpose</td>
<td>55</td>
</tr>
<tr>
<td>Appraisal Report Formats</td>
<td>56</td>
</tr>
<tr>
<td>Appraisal Assignments</td>
<td>57</td>
</tr>
<tr>
<td>Staff Weekly Reports</td>
<td>58</td>
</tr>
<tr>
<td>Appraisal Problem Analysis &amp; Fee Estimate</td>
<td>58</td>
</tr>
<tr>
<td>Certificate of Review Appraiser and Conclusion of Fair Market Value</td>
<td>132</td>
</tr>
<tr>
<td>Excess Land Break-Out</td>
<td>133</td>
</tr>
<tr>
<td>Statement of the Basis for Just Compensation</td>
<td>133</td>
</tr>
<tr>
<td>Review of Two or More Appraisals</td>
<td>134</td>
</tr>
<tr>
<td>Review of Specialty Reports</td>
<td>135</td>
</tr>
<tr>
<td>Minimum Compensation</td>
<td>135</td>
</tr>
<tr>
<td>Value of Dwelling/Home Site for Relocation Purposes</td>
<td>135</td>
</tr>
<tr>
<td>Re-Reviews</td>
<td>136</td>
</tr>
<tr>
<td>Parcel Processing</td>
<td>137</td>
</tr>
<tr>
<td>Operations Procedure</td>
<td>138</td>
</tr>
<tr>
<td>Weekly Reports</td>
<td>138</td>
</tr>
<tr>
<td>Performance Evaluations</td>
<td>138</td>
</tr>
<tr>
<td>Desk Review Policy</td>
<td>139</td>
</tr>
<tr>
<td>CONDEMNATION AND LEGAL INFORMATION</td>
<td>141</td>
</tr>
<tr>
<td>Purpose</td>
<td>141</td>
</tr>
<tr>
<td>Date of Take</td>
<td>141</td>
</tr>
<tr>
<td>Expert Witness</td>
<td>142</td>
</tr>
<tr>
<td>Valuation Witness Report</td>
<td>142</td>
</tr>
<tr>
<td>Determination of Damages</td>
<td>143</td>
</tr>
<tr>
<td>Items Affecting Value</td>
<td>144</td>
</tr>
<tr>
<td>Non Compensable Damage Items</td>
<td>146</td>
</tr>
<tr>
<td>Fixtures: Personal or Real Property</td>
<td>147</td>
</tr>
<tr>
<td>Access Rights</td>
<td>149</td>
</tr>
<tr>
<td>Title or Interest Acquired</td>
<td>150</td>
</tr>
<tr>
<td>FEE APPRAISER GUIDELINES</td>
<td>153</td>
</tr>
<tr>
<td>Federally Regulated Requirements</td>
<td>153</td>
</tr>
<tr>
<td>Appraiser Certification</td>
<td>153</td>
</tr>
<tr>
<td>Conflicts of Interests</td>
<td>154</td>
</tr>
<tr>
<td>Prequalification Policy</td>
<td>154</td>
</tr>
<tr>
<td>Appraiser Qualifications</td>
<td>154</td>
</tr>
<tr>
<td>Appraisal Types Which May be Performed</td>
<td>155</td>
</tr>
<tr>
<td>Review Appraiser Qualifications</td>
<td>156</td>
</tr>
<tr>
<td>Appraisal Problem &amp; Fee Estimate</td>
<td>156</td>
</tr>
<tr>
<td>Selection of Appraisers</td>
<td>156</td>
</tr>
<tr>
<td>Establishing Fees</td>
<td>157</td>
</tr>
<tr>
<td>Processing the Appraisal Agreement</td>
<td>157</td>
</tr>
<tr>
<td>Amendments to the Agreement</td>
<td>158</td>
</tr>
<tr>
<td>Submittal of Appraisals to INDOT</td>
<td>158</td>
</tr>
<tr>
<td>Evaluations</td>
<td>159</td>
</tr>
<tr>
<td>Valuation Witness</td>
<td>159</td>
</tr>
<tr>
<td>APPRAISING APPENDIX</td>
<td>161</td>
</tr>
</tbody>
</table>

| CHAPTER THREE: BUYING PROCEDURES | 187 |

| PROFILE OF A RIGHT OF WAY AGENT BUYER | 189 |
| Introduction | 191 |
| Negotiation Skills | 192 |
## SPECIAL PROCESSING OF CHECKS

292

## WAIVERS AND MEMOS

292

### CHAPTER FOUR: RELOCATION PROCEDURES

295

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROFILE OF A RELOCATION RIGHT OF WAY AGENT</strong></td>
<td>297</td>
</tr>
<tr>
<td>Understanding Relocation</td>
<td>299</td>
</tr>
<tr>
<td>Right of Way Agent Major Activities</td>
<td>299</td>
</tr>
<tr>
<td>Important Right of Way Agent Traits</td>
<td>302</td>
</tr>
<tr>
<td>Interview Skills</td>
<td>303</td>
</tr>
<tr>
<td><strong>ADVISORY SERVICES</strong></td>
<td>309</td>
</tr>
<tr>
<td>Advisory Services Defined</td>
<td>309</td>
</tr>
<tr>
<td>Providing Relocation Assistance</td>
<td>311</td>
</tr>
<tr>
<td><strong>RELOCATION PLANNING</strong></td>
<td>321</td>
</tr>
<tr>
<td>About Relocation Planning</td>
<td>321</td>
</tr>
<tr>
<td>Relocation Planning Procedures</td>
<td>325</td>
</tr>
<tr>
<td><strong>RELOCATION PROCESS</strong></td>
<td>331</td>
</tr>
<tr>
<td>Eligibility Requirements</td>
<td>331</td>
</tr>
<tr>
<td>Displacee Types</td>
<td>332</td>
</tr>
<tr>
<td>Relocation Parcel Assignment</td>
<td>336</td>
</tr>
<tr>
<td>Contacting the Displacee</td>
<td>336</td>
</tr>
<tr>
<td>Appraisal / Inventory Meeting</td>
<td>338</td>
</tr>
<tr>
<td>Research Phase – Determination of Entitlements</td>
<td>340</td>
</tr>
<tr>
<td>Initial Meeting</td>
<td>343</td>
</tr>
<tr>
<td>Moving Phase</td>
<td>349</td>
</tr>
<tr>
<td>Issuing Entitlements</td>
<td>352</td>
</tr>
<tr>
<td>Closing File</td>
<td>353</td>
</tr>
<tr>
<td>Special Processes</td>
<td>354</td>
</tr>
<tr>
<td><strong>MOVING ENTITLEMENTS</strong></td>
<td>357</td>
</tr>
<tr>
<td>Moving Policy and Requirements</td>
<td>357</td>
</tr>
<tr>
<td>Move Payment Determination Methods</td>
<td>361</td>
</tr>
<tr>
<td><strong>REPLACEMENT HOUSING ENTITLEMENTS</strong></td>
<td>377</td>
</tr>
<tr>
<td>Replacement Housing Standards</td>
<td>377</td>
</tr>
<tr>
<td>General Eligibility Guidelines</td>
<td>377</td>
</tr>
<tr>
<td>Important RHP Terms</td>
<td>380</td>
</tr>
<tr>
<td>Searching for Comparable Replacement Housing</td>
<td>387</td>
</tr>
<tr>
<td>Replacement Housing Payment (RHP)</td>
<td>375</td>
</tr>
<tr>
<td>Rental Assistance Payment (RAP) Determination</td>
<td>404</td>
</tr>
<tr>
<td>Downpayment Assistance</td>
<td>414</td>
</tr>
<tr>
<td><strong>SPECIAL TOPICS IN HOUSING ENTITLEMENTS</strong></td>
<td>417</td>
</tr>
<tr>
<td>Land Contract for Replacement Housing</td>
<td>417</td>
</tr>
<tr>
<td>Last Resort Housing</td>
<td>417</td>
</tr>
<tr>
<td>Mobile Homes</td>
<td>425</td>
</tr>
<tr>
<td>Multiple Occupancy</td>
<td>438</td>
</tr>
<tr>
<td>Multiple Ownership</td>
<td>439</td>
</tr>
<tr>
<td>Seasonal Homes</td>
<td>440</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>NON-RESIDENTIAL OCCUPANT ENTITLEMENTS</td>
<td>441</td>
</tr>
<tr>
<td>EARLY PLANNING FOR SUCCESS</td>
<td>442</td>
</tr>
<tr>
<td>BUSINESS REESTABLISHMENT REIMBURSEMENTS</td>
<td>444</td>
</tr>
<tr>
<td>PROCEDURES FOR ADVERTISING SIGNS</td>
<td>449</td>
</tr>
<tr>
<td>DEFINITIONS AND GENERAL PROVISIONS</td>
<td>451</td>
</tr>
<tr>
<td>CHAPTER FIVE: PROPERTY MANAGEMENT PROCEDURES</td>
<td>467</td>
</tr>
<tr>
<td>ADMINISTRATIVE PRACTICES</td>
<td>469</td>
</tr>
<tr>
<td>PURPOSE</td>
<td>471</td>
</tr>
<tr>
<td>FINANCIAL TRANSACTIONS</td>
<td>471</td>
</tr>
<tr>
<td>ADVANCE PROGRAMMING</td>
<td>471</td>
</tr>
<tr>
<td>PROPERTY INVENTORY</td>
<td>472</td>
</tr>
<tr>
<td>PARCELS PAYMENTS AND NOTICES</td>
<td>473</td>
</tr>
<tr>
<td>PARCEL FILES, SECURED AND CONDEMNED</td>
<td>473</td>
</tr>
<tr>
<td>DELIVERY OF PAYMENTS</td>
<td>474</td>
</tr>
<tr>
<td>NOTICES AND CLOSING ISSUES</td>
<td>475</td>
</tr>
<tr>
<td>CLEARING THE RIGHT OF WAY</td>
<td>477</td>
</tr>
<tr>
<td>OWNER RETENTION OF IMPROVEMENTS</td>
<td>477</td>
</tr>
<tr>
<td>COST TO CURE IMPROVEMENTS</td>
<td>478</td>
</tr>
<tr>
<td>CLEARING COST TO CURE ITEMS FROM THE RIGHT OF WAY</td>
<td>479</td>
</tr>
<tr>
<td>IMPROVEMENTS RETAINED BY INDOT OR OTHER STATE AGENCIES</td>
<td>479</td>
</tr>
<tr>
<td>CERTIFYING THE RIGHT OF WAY CLEAR</td>
<td>480</td>
</tr>
<tr>
<td>CERTIFICATIONS WITH EXCEPTIONS</td>
<td>480</td>
</tr>
<tr>
<td>BILLBOARD INVENTORY</td>
<td>481</td>
</tr>
<tr>
<td>ACQUISITIONS WITH BUILDINGS</td>
<td>483</td>
</tr>
<tr>
<td>EVICTION</td>
<td>483</td>
</tr>
<tr>
<td>PROPERTY INSPECTION</td>
<td>484</td>
</tr>
<tr>
<td>DISTRICT RESPONSIBILITIES</td>
<td>485</td>
</tr>
<tr>
<td>RENTALS LEASES &amp; USE AGREEMENTS</td>
<td>487</td>
</tr>
<tr>
<td>LEASING PROCESS</td>
<td>487</td>
</tr>
<tr>
<td>INSURANCE Furnished By Lessee</td>
<td>489</td>
</tr>
<tr>
<td>TERMINATION/EVICTION</td>
<td>489</td>
</tr>
<tr>
<td>REFUND OF SECURITY DEPOSIT OF LEASED PROPERTY</td>
<td>490</td>
</tr>
<tr>
<td>LEASE OF AIRSPACE RIGHTS</td>
<td>490</td>
</tr>
<tr>
<td>VEGETATION FOR ENERGY PRODUCTION LEASES</td>
<td>497</td>
</tr>
<tr>
<td>LEASING PROCESSES</td>
<td>498</td>
</tr>
<tr>
<td>OIL &amp; GAS UNIT AGREEMENTS ON INDOT RIGHT OF WAY</td>
<td>499</td>
</tr>
<tr>
<td>UNDERGROUND FIBER OPTIC LINES</td>
<td>499</td>
</tr>
<tr>
<td>EXCESS LAND/EXCESS RIGHT OF WAY</td>
<td>501</td>
</tr>
<tr>
<td>EXCESS LAND INVENTORY</td>
<td>501</td>
</tr>
<tr>
<td>EXCESS LAND</td>
<td>501</td>
</tr>
<tr>
<td>EXCESS RIGHT OF WAY</td>
<td>502</td>
</tr>
<tr>
<td>DISPOSAL OF EXCESS LAND</td>
<td>506</td>
</tr>
<tr>
<td>RELINQUISHMENTS</td>
<td>512</td>
</tr>
<tr>
<td>EXCHANGE OF LAND AND PROPERTY RIGHTS</td>
<td>512</td>
</tr>
</tbody>
</table>
MISSION STATEMENT

INDOT will plan, build, maintain and operate a superior transportation system enhancing safety, mobility and economic growth.

CORE 4 VALUES

Respect
Treat others fairly. Value the individual skills, experience, diversity and contributions of fellow employees.

Teamwork
Share information and seek input from co-workers and agency partners to achieve goals.

Accountability
Take personal responsibility for actions and decisions.

Excellence
Provide exceptional customer service through individual initiative, innovation and delivery of quality results.
REAL ESTATE DIVISION CONTACTS

Kathy Heistand  
Real Estate Director  
317-232-5004  
kheistand@indot.in.gov

Todd Clift  
Real Estate Acquisitions Manager  
317-232-5060  
wclift@indot.in.gov

Mike Jett  
Real Estate Operations Manager  
317-232-5081  
mjett@indot.in.gov

Nicky Mendenhall  
Real Estate Evaluation Manager  
317-234-7597  
nmendenhall@indot.in.gov

Don West  
Right of Way Services Manager  
317-232-5005  
dwest2@indot.in.gov
DISTRICT REAL ESTATE CONTACTS

LAPORTE DISTRICT (NORTHWEST)

Jeff Gustke
(219) 325-7572
jgustke@indot.in.gov

FORT WAYNE DISTRICT (NORHEAST)

Matthew Witt
(260) 399-7320
mwitt@indot.in.gov

CRAWFORDSVILLE DISTRICT (CENTRAL WEST)

Bert Herron
(765) 361-5243
bherron@indot.in.gov

GREENFIELD DISTRICT (CENTRAL EAST)

Michael Widing
(317) 467-3941
miwiding@indot.in.gov

VINCENNES DISTRICT (SOUTHWEST)

Kevin Rowland
(812) 895-7384
krowland@indot.in.gov

SEYMOUR DISTRICT (SOUTHEAST)

Nicole Curry
(812) 524-3970
ncurry@indot.in.gov
INTRODUCTION

PURPOSE

The purpose of this manual is to ensure that the program is administered in an equitable and uniform manner to all owners and displaced persons. This is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended (Uniform Act), the regulation titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24), and Indiana Code Title 8 Article 23. The following fundamental principles must be applied:

1. To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

2. To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

3. To ensure that Agencies implement these regulations in a manner that is cost effective.

This manual will explain the required procedures and use of the forms, however, a basic knowledge of real estate law, title, appraisal methodology and plan reading skills are prerequisite skills expected of the Appraiser and Right of Way Agent. This manual is intended to act as both a training manual to be used in conjunction with an intensive training program and as a technical reference guide for the working Appraiser and Right of Way Agent. It is NOT to be considered an encyclopedia to the Right of Way process that will provide all the necessary skills simply by reading it. The format is arranged to address issues in the same order in which they occur throughout the Right of Way process. The Table of Contents and Index can be used to locate specific milestones and topics in the acquisition process. Many forms are now available online; those that are shown in that section’s Appendix will be noted. A Glossary is also included to assist with terms used throughout the manual.

CONFLICT OF INTEREST

Accountability to the public is focused upon by many people outside the department. The Right of Way Agent and Appraiser must constantly be alert to the smallest perception that his or her activities could be questioned by the general public. Accountability starts with the individual Right of Way Agent or Appraiser and how they perform their job. When dealing with the public, honest and appropriate business practices are very important. Although the department is not
operating for a profit, it is responsible for a very large amount of tax payers’ dollars. Any time there is money involved, there is the possibility of fraud, waste, abuse, or mismanagement of those funds. The Right of Way Agent must be constantly aware of the penalties of conflict of interest laws and procedures. The policy of the department follows the laws of the State and the regulations of the Federal Highway Administration. Indiana Code (IC) 35-44-1-3 states:

A public servant who knowingly or intentionally (1) has pecuniary interest in; or (2) derives profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

Federal Highway Administration Regulations, 23 CFR Sec. 1.33 states:

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or government instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for, or on behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

AN OVERVIEW OF THE PROCESS

INDOT acquires properties under the authority granted in Indiana Code (IC) 8-23-2-6 which provides for the department to "Acquire by purchase, gift, or condemnation. . ." IC 8-23-18-1 also extends INDOT's authority to acquire other governmental entities' properties. IC 8-23-7-2 authorizes INDOT to acquire properties for more specific purposes relating to highway construction. IC 8-23-8-3 authorizes INDOT to acquire land and rights for limited access highways. IC 8-23-20-20 provides for the acquisition of junkyards which cannot be adequately screened from highways.
IC 8-23-2-6 Powers of department
(a) The department, through the commissioner or the commissioner's designee, may do the following:
(1) Acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or encumber property to carry out its responsibilities.
(6) Perform all functions pertaining to the acquisition of property for transportation purposes, including the compromise of any claims for compensation.

The basic steps involved in an eminent domain acquisition by an Agency (INDOT or a Local Public Agency) include:

1. An Appraisal Problem Analysis, Appraisal, Review Appraisal, and possible Desk Review of the area to be acquired.

2. If applicable, the Relocation process begins at the Appraisal stage.

3. A written offer with description of the area to be acquired within 15 days. The required verbiage of the offer letter is prescribed in IC 32-24-1-5.

4. The Right of Way Agent attempts to resolve any valid problems or concerns the owner may have.

5. The owner accepts or rejects the offer within a 30-day period.

6. If accepted, the Right of Way Agent prepares the necessary instruments, obtains the signatures, clears all liens and submits the parcel for review and approval.

7. Payment is made within 90 days of obtaining clear title; the deed is subsequently recorded and the Agency takes possession.

8. If rejected, the parcel is forwarded to the Office of the Attorney General (or Local Public Agency) who files suit in the county of the project. The court will hear objections and issue an order of appropriation which authorizes the Agency to acquire the property through eminent domain. The court appoints appraisers who will return a report of value. The Agency posts the court appraisers award with the county clerk and has rights of possession. The owner or the Agency can file an exception to the court's appraisal and proceed to a jury trial which will establish the final value of the acquisition. The owner must return the amount withdrawn which is in excess of the jury's award (if any).

IC 32-24-1-5 states that a suit cannot be filed before 30 days after the offer is made. An exception to this rule is if the owner signs documentation that they are rejecting the offer prior to the 30 days. The Agency will pay up to $25,000 of the owner’s attorney
fees if the final award exceeds the Agency’s final offer. The Agency pays the court costs which include court appraisal fees.

**PRE-APPROVED BUYING RELOCATION & APPRAISING AGENTS**

All procedures and policies stated within this Federal Highway Administration-approved Real Estate Division Manual and within Federal and State guidelines must be followed by:

1. **Personnel of the Indiana Department of Transportation** (INDOT) and fee contractors hired by INDOT or hired by private firms hired by INDOT that will be providing Right of Way services. Contractors providing services under series 12 work-types must be **pre-approved** and on INDOT’s list of pre-approved Right of Way Agents.

2. **Any political subdivision** (Local Public Agency -LPA) must comply with INDOT’s policy and procedures for Right of Way services where the project has any Federal and/or State participation in any phase of the project costs including design, acquisition, relocation and/or construction.
   a. **LPA staff** providing Right of Way services must be **pre-approved** by INDOT prior to performing any Right of Way services when the project has any Federal and/or State participation in any phase of the project costs including design, acquisition, relocation and/or construction.
   b. The LPA may only utilize **fee contractors** who are **pre-approved** by INDOT to provide Right of Way services when the project has any Federal and/or State participation in any phase of the project costs including design, acquisition, relocation and/or construction.
   c. Attorneys performing buying services are exempt from the pre-approval requirements stated in (a) and (b) above, but are still required to follow the procedures and policies stated within this manual and within Federal and State guidelines.

**COORDINATION OF EFFORTS**

Right of Way activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, owners and displacees receive consistent treatment and the duplication of functions is minimized.
RIGHT OF WAY TOOLS

UNIFORM ACT AND THE FHWA

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended (Uniform Act) and the regulation titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24) contain the benefits and protections for persons displaced by highway projects which are funded with Federal funds at any phase of the project. These documents should be a first resource for determining policy and procedure.

The Federal Highway Administration (FHWA) is responsible for development, issuance, and maintenance of the Uniform Act, providing assistance to other Federal agencies, and reporting to Congress. In addition, the FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways, bridges and tunnels. FHWA also conducts research and provides technical assistance to state and local agencies in an effort to improve safety, mobility, and livability, and to encourage innovation.

The main purpose of the regulation includes the following objectives:

1. To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

2. To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

3. To ensure that Agencies implement these regulations in a manner that is cost effective.

FHWA RESOURCES

The FHWA is an educational resource with copious amounts of reading material and tutorials. The National Highway Institute (NHI) is a division of FHWA. The National Highway Institute works to improve the performance of the transportation industry through training. To achieve this mission, NHI provides transportation-related training in several formats including both classroom-based and online learning as well as free Web-based seminars and asynchronous training materials. This valuable tool can be found at www.nhi.fhwa.dot.gov
The following resources can be accessed through the FHWA website:

www.fhwa.dot.gov/real_estate

The FHWA Program Development Guide (PDG) is a practical approach to developing a Right of Way project. The PDG explains the federally-regulated requirements for Federal-aid projects in an easy-to-read, common-sense format with mini case studies to demonstrate how others have handled a variety of Right of Way problems.

The FHWA Uniform Act Frequently Asked Questions is invaluable for understanding key procedures, how to apply the regulations in specific situations, and how to calculate entitlements with unique variables, among other issues and questions that complicate the Right of Way process.

**HISTORY AND REFERENCE**

Concern for fair and equitable treatment in acquiring private property for public purposes goes back to the founding of the United States. The United States Constitution places a high value on the protection of private property. The United States Constitution expresses this philosophy in the Fifth Amendment, where “due process” and “just compensation” are required for taking private property for a “public use.” The 14th Amendment to the Constitution extends to States the requirement of following due process when they acquire privately owned property.

The Uniform Act is contained in Title 42 U.S.C. 4601-4655. The regulations implementing the law are contained in Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24) On January 4, 2005, an update of 49 CFR Part 24 was issued to clarify and more effectively implement the Uniform Act requirements based on experience gained by the 18 Federal Agencies operation subject to the rule. The new rule became effective on February 3, 2005.

MAP-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141), was signed into law on July 6, 2012. By transforming the policy and programmatic framework for investments to guide the system’s growth and development, MAP-21 aims to create a streamlined and performance-based surface transportation program and builds on many of the highway, transit, bike, and pedestrian programs and policies established in 1991.

**LAND RECORDS SYSTEM (LRS)**

The Land Records System, more commonly referred to as LRS, is a web-based parcel tracking application that is integral to INDOT’s Right of Way acquisitions. LRS is used by Right of Way Engineering, Appraising, Buying, Relocation, Property Management and LPA projects for data input, workflow management, timeline tracking, logging owner contact information, and reporting. It is the responsibility of every person that uses LRS to ensure that all information is entered accurately and on a timely basis.
In addition to completely filling all information fields in LRS, Right of Way Agents are required to add notes to the remarks section on a regular basis. During an active phase, remarks must be entered weekly at minimum. During a less active period such as waiting for a business displacee to be ready to claim Reestablishment, remarks must be entered monthly at minimum.

Remarks can be used to document information with a digital timestamp. For example:

1. Contacts with owner – dates, letters sent, phone conversation topics, documents provided
2. Workflow milestones
3. Documenting unusual information or exceptions for future reference

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

Uniform Standards of Professional Appraisal Practice (USPAP) can be considered the quality control standards applicable for real property, personal property, intangibles, and business valuation appraisal analysis and reports in the United States. Since 2006, USPAP has been updated in a 2 year cycle, which begins on January 1 of even number years. The current version of USPAP is available at www.appraisalfoundation.org.

RELOCATION ASSEMBLY MANUAL

The Relocation Assembly Manual, formerly titled the Voucher Assembly Manual, began as a guideline for submitting voucher documentation in order to generate a payment. It has since grown to also include requirements for submitting documentation for milestone meetings and pre-approvals. Each page lists all the documents that must be submitted, in order, and gives important reminders about the requirements that go with them. The checklist is to be attached to the front of every submission.

The Relocation Assembly Manual is a useful resource for preparing for milestone meetings and for submission of pre-approvals and vouchers for payments. For instance, the Residential Initial Meeting page lists every document that must be used for an Initial Meeting with a resident displacee. The Residential 90-Day Notice Pre-Approval page lists all the documents that should be prepared and pre-approved by INDOT Central Office before issuing a 90-Day Notice, and shows important requirements that must be met. The Business Professional Mover page shows everything that must be submitted along with the signed voucher that will generate a payment for the move, and lists specific requirements that must be met in order to have the voucher approved.

Right of Way Agents that are in the probation period of their pre-qualification process should submit all assemblies for pre-approval prior to meeting with the displacee to ensure that they
have complied with Federal and INDOT requirements. Once a Right of Way Agent is notified that he or she is out of the probation period, pre-approval is required only for certain situations as specified in the Residential, Commercial, Landlord, and PPMO Relocation chapters.

The Relocation Assembly Manual is available online at the Real Estate Resources page, which can be reached through ITAP (INDOT Technical Applications Pathway).

APPROVED FORMS AND DEEDS

All Right of Way projects that involve even one dollar of Federal funding at any phase of the project, whether they are sponsored by INDOT directly or by a Local Public Agency, require the use of approved forms and deeds. The most current version of the Relocation and Buying forms and deeds are available online at the Real Estate Resources page, which can be reached through ITAP (INDOT Technical Applications Pathway). As these forms are legal in nature, no changes should be made without approval via an INDOT Central Office Manager, who may need to consult with the Deputy Attorney General’s office.

Local Public Agencies (LPAs) and their Agents should take care to modify the deeds and forms only to remove all references to “State of Indiana” and “INDOT” and replace them with the responsible Agency’s identifying information.

USING UPDATED FORMS

Most forms have been updated to include form fields for ease of use and to protect the verbiage of the form. Once all the grey form fields are completed, the form can be printed for use. Each form field that holds information found elsewhere in the paperwork will update all subsequent locations for that information. For instance, updating the grey fields on the Uniform Offer on the first page will change those references on that page and the next 3 pages:

The State of Indiana, acting by and through the Indiana Department of Transportation, is authorized by Indiana law to obtain your property or an easement across your property, for certain public purposes.

The Indiana Department of Transportation needs YOUR PROPERTY or AN EASEMENT for a public highway improvement known as ROAD and needs to take the PROPERTY or EASEMENT as described on the attached legal description.

It is our opinion that the fair market value of the PROPERTY or EASEMENT we want to acquire from you is $0.00, and, therefore, the Indiana Department of Transportation offers you $0.00 for the above described PROPERTY or EASEMENT. You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the deed, grant or easement, and provided there are no difficulties in clearing liens or other problems with title to the land. Possession will be required thirty (30) days after you have received your payment in full.

If an LPA requests that the forms be branded differently in the header and/or footers, please complete all the form fields, then follow the instructions available at www.in.gov/indot/3260, entitled “Modifying State Forms for LPA Use” to remove INDOT/State of Indiana branding.
Please be sure to “lock” the form again after modifying the branding so that all form fields will continue to function properly.

**ITAP – REAL ESTATE RESOURCES**

ITAP is the INDOT Technical Applications Pathway. This is a password-protected portal to a variety of online tools such as Capital Project Funding System, (CapWise), Land Record System, (LRS), Scheduling Project Management System, (SPMS), Professional Services Contracting System, (PSCS), Electronic Records Management System, (ERMS), ProjectWise, and the Real Estate Resources page. ITAP can be found at itap.indot.in.gov and requires application and approval to gain access. The applications available through ITAP require further application and approval once access to ITAP is obtained.

**QUALITY ASSURANCE**

49 CFR 24.4 (a) (2),

*If a Federal Agency or State Agency provides Federal financial assistance to a “person” causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person’s contractual obligation to the grantee to comply.*

While INDOT is ultimately responsible for ensuring that all Federal and State requirements are met for State and Local projects if even one dollar is used at any phase of the project, it is also the responsibility of every individual that is involved in Right of Way. All Right of Way agents, whether they are INDOT employees, Local Public Agency employees or consultants, must make an effort to assure the highest quality possible in every step of the process. This can be achieved through peer review, researching the Uniform Relocation Act, State laws and the INDOT Real Estate Manual for proper procedure, and consulting with INDOT Central Office Supervisors and/or Managers.

While problems with compliance can be caused by not following the regulations that are designed to ensure fair and consistent treatment, some problems actually occur through simple mistakes. A mathematical or typographical error can lead to major problems. Agents are expected to take steps to prevent clerical AND procedural errors, and will be evaluated as such.
FILE MANAGEMENT

The Federal Highway Administration requires the following regarding Right of Way acquisition, property management and relocation records:

23 CFR 710.201(f) and (h)

(f) Recordkeeping. The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:

(i) The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or

(ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(h) Use of other public land acquisition organizations or private consultants. The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

INDOT, Local Public Agencies, and Consultants are required to maintain parcel files with records of all documents, activities, contacts with displacees and/or their representatives, and invoices of all services and expenses for the length of time according to the Indiana Commission on Public Records. Agents should be able to provide documentation within a reasonable timeframe upon request by INDOT, a Local Public Agency, Federal agents, or their representatives.

All files must be maintained in a manner that protects the confidentiality of all parties involved. Precaution should be taken when transferring information, whether in printed form or by electronic means such as a file transfer site, email or fax. Furthermore, when the retention period has ended, documents that contain personal or sensitive information must be treated with utmost care in their disposal. This applies to printed documentation as well as electronic records.
LOCAL FIELD OFFICES

The decision to establish a local field office is the responsibility of the acquiring agency and is an integral part of the relocation planning process. The decision should be made prior to the acquisition stage of the project and should be based on the anticipated volume of work and the needs and characteristics of the persons to be displaced. Early opening of an on-site office usually encourages communication by the project occupants. This is valuable from a public relations standpoint and facilitates relocation activities on a project.

A local field office should be located at a convenient site that is readily accessible, preferably near the project and to the persons displaced by the project. If possible, it should be located within walking distance or be convenient to public transportation. The office hours should be convenient for project residents and include evening hours if necessary. It is also good policy to employ persons in the local field office who are intimately familiar with the project area and the problems of its residents. Local personnel can be a tremendous asset to any relocation program.

The following information should be made available in a local relocation office:

1. Copies of Acquisition and Relocation Brochures.
2. Project plan sheets illustrating the project and the surrounding area.
3. Current lists of comparable replacement housing that are for sale and for rent, which are available without regard to race, color, religion, sex, age or national origin. The listings must be suitable in price and size to fulfill the needs of the individuals and families being displaced.
4. Current lists of available business and farm properties for rent or for sale when such properties are being acquired by the project.
5. Current information regarding security deposits, typical down payment requirements, mortgage interest rates and terms, and average closing costs for residential property in the area.
6. Multiple listing services, apartment directory services, neighborhood and metropolitan newspaper advertisements where available, and various other sources of information regarding residential dwelling units.
7. Maps indicating the location of schools, parks, playgrounds, shopping areas, places of major employment, health facilities, public transportation routes and other amenities in the area.
8. Schedules and cost of public transportation.
9. Copies of local housing codes, ordinances, and local building codes

10. Consumer education literature on housing, shelter costs, family budgeting, and other pertinent information useful to displacement

The local field office can be beneficial to the acquiring agency as well as to displaced persons if it is supplied with qualified personnel. The local office can be a valuable tool in building confidence in the acquiring agency.

If a local field office is not established, it is still very important that the information listed above be made available to displaced persons.
POLICY, PROCEDURES AND REGULATIONS

There are laws, regulations and policies too numerous to mention which govern INDOT's actions. Federal Regulations, Title 23 CFR Part 710 (Federal Highway Administration Right of Way and Real Estate); and Title 49 CFR Part 24 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs) govern INDOT’s acquisitions. This chapter will cite some of the more common authorities and procedures which may be questioned or challenged by property owners. The Acquisition Section's policies have been established in the previous chapters. Other questions regarding design standards and construction practices will require the Agent seek advice from the appropriate source; i.e. the Project Management Section, the design consultant, the District construction engineer, the Project Manager or the INDOT Standard Specification manual.

AUTHORITIES GRANTED INDOT UNDER THE INDIANA CODE

IC 8-23-7-26; the authority to enter upon private property for the purposes of surveying, investigating, boring, archeological digging, etc. with a 5 day advance written notice.

IC 8-23-7-28; provides for compensation for damages caused by entry onto the property under IC 8-23-7-26. If an owner complains of damage caused by survey crews, which will not be compensated in the offer to purchase, the Agent should refer the owner to the district development engineer. If a damage claim is not satisfactorily resolved, the owner has the right to sue for damages in the county circuit court.

IC 8-23-7-13,14,15 & 16; sale of excess property. These sections establish the procedures for disposing of excess land. 1. The land must be declared excess, which will not occur until the project is completed. 2. INDOT will offer the land to the owner of the property from which the land was separated at the appraised fair market value. If the acquisition was a total taking and thus no residual owner, the land may be sold to the public at fair market value of less than $4,000. 3. If the land is valued at more than $4,000 it must be offered to the public through advertisement and sold to the highest bidder.

Land improvements which are not retained by the owner may be auctioned by INDOT. If they do not merit an auction, or time will not allow for an auction, the improvement will become the property of the demolition contractor who may sell, salvage or demolish it.

IC 8-23-5-1; authority to remove encroachments. Encroachments may be removed by INDOT after giving a 30 day written notice to the owner. The cost of removal will be billed to the owner. An exception to this is an aerial overhang which existed prior to August 12, 1963. This encroachment may be allowed to remain if INDOT determines that it poses no safety hazard.

IC 8-23-6-6; authorizes INDOT to require and issue permits for improvements to be constructed within the public Right of Way: i.e. driveway approaches, sewer pipe connections, etc. Failure to obtain a permit prior to construction is a Class C infraction. Please note that the development of a
property, including the construction of a drive access, is the owner’s responsibility. INDOT will reconnect an existing drive, or construct a new drive to replace an eliminated drive or to provide access to a residue which is landlocked due to the taking. If an owner asks for a new drive, the Agent should explain that the owner must submit a drive permit application to the district permit engineer.

IC 8-23-7-5 & 6; an owner may not subdivide a property or erect any improvements after receiving a notice of intent to acquire (an offer letter) without first notifying INDOT of the intended use. INDOT has 90 days after receiving notice of the intended improvements in which to acquire the property or commence condemnation proceedings.

IC 8-23-7-10; INDOT will publish a list of the owners names, areas acquired and the price paid. INDOT chooses to publish the entire list of owners on a project at the completion of the acquisition phase.

**INDOT STANDARD SPECIFICATIONS**

The following Standards and Specifications can be referenced via

www.in.gov/dot/div/contracts/standards

107.08(e) & 611.05; the contractor will reconstruct private roads and mailboxes as soon as possible to minimize inconvenience to property owners. During construction the contractor will remove the mailbox and its stand, offering the owner the opportunity to store it. A temporary mailbox assembly secured on top of a 55 gallon drum will be installed outside of the construction area. The contractor is responsible for installing a permanent mailbox assembly, approved by the U.S. Postal Service and meeting FHWA crash test standards, of comparable size to the mailbox which was removed.

107.13; the contractor is responsible for damage or injury to property resulting from defective work or materials...

107.14; the contractor is not allowed to enter upon private property without the permission of the owner. The contractor shall erect a temporary fence in temporary easement areas which contain livestock. The offer to purchase will compensate the owner for erecting permanent fence once the work is completed. The owner should coordinate the timing of the fence construction with the project engineer in order to assure that the area is continuously fenced.

107.16; any damage caused by the contractor outside of the Right of Way is a basis for a damage claim by the owner. The owner should contact the project engineer to file the claim.

104.04; "Temporary approaches to businesses, parking lots, residences, garages, farms, and crossings and intersections with trails, roads, and streets shall be provided in a safe condition." The Right of Way Agent should inform the owner that while the temporary access may not be
desirable (i.e. muddy or rutted), INDOT will provide reasonable access at all times, except during periods of actual drive construction and associated improvements such as drainage pipes.

**GENERAL STANDARDS & POLICIES**

INDOT will seed the Right of Way in areas considered to be rural or agricultural. Sod will be laid in areas considered to be residential or commercial.

Temporary easements will be restored to their original condition. If improvements in the temporary easement must be moved or replaced the owner will be compensated under the land acquisition offer.

While it is common knowledge that the sale of property is subject to capital gains income tax, the Right of Way Agent shall not give any advice or explanation of how the sale will affect the owners' tax status. Explain that tax status is a complicated field and the owner should review the issue with the IRS or their accountant.

Indiana Code (IC 25-39-4-6) requires that all abandoned wells be capped. If the project requires a property with a water well which is not shown on the plans the Right of Way Agent will locate the well and notify Design to reflect it on the plans. The Agent will note all wells on the Status Report as a land improvement purchased in order to notify Property Management of the need for capping.

When purchasing any building or mobile home the Right of Way Agent should explain to the owner that the transaction is not final until payment is received. Therefore, the owner should maintain insurance until payment is received AND the building is vacated. Any fire or accident which would occur prior to payment would cause the property to be reappraised and the owner would need to seek reimbursement from the insurance company. Losses or liabilities which occur after payment is made but while the owner still occupies the building must be covered by the owner’s insurance.

The owner should also be advised to continue to make payments on the mortgage and real estate taxes during the interim period while a closing is pending.

**AT RISK / EARLY ACQUISITIONS**

Recent MAP-21 changes allow for a new method of early acquisition. Please see Map21 Early Acquisition on p. 44 for more information.
(a) Real property acquisition. The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.
(b) Eligible costs. Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State’s share of a Federal-aid project if the following conditions are met:
   (1) The property was lawfully obtained by the State;
   (2) The property was not land described in 23 U.S.C. 138;
   (3) The property was acquired in accordance with the provisions of 49 CFR part 24;
   (4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
   (5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
      (i) The decision on need to construct the project;
      (ii) The consideration of alternatives; and
      (iii) The selection of the design or location; and
   (6) The property will be incorporated into a Federal-aid project.
   (7) The original project agreement covering the project was executed on or after June 9, 1998.
(c) Reimbursement. In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:
   (1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and
   (2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

23 CFR 710.501 sets out requirements pertaining to property or lands an agency acquires early, defined as an acquisition prior to receiving a Federal-aid authorization to proceed to acquire property with Federal-aid funds. Federal authorization to proceed with full Federal funding cannot be given prior to completion of the environmental document. 23 CFR 710.501(c) contains the additional rules to be followed in order for these acquisition costs to be eligible for Federal-aid reimbursement under 23 U.S.C. 108(c)(2)(C) and (D).

Title 23 U.S.C. 323 allows state Departments of Transportation (DOTs) to credit the non-federal share of project costs with the fair market value (FMV) of lands donated or lawfully obtained, and/or donated materials, and services that are incorporated into a specific transportation project.
Only the funds spent for the value of the land used for the project can be credited – costs for excess land, appraising and relocation, for example will not be credited.

23 U.S.C. 323(b)(3) states that donations made by a Federal agency are not eligible for credit toward the project matching share. In addition, 23 CFR 710.507(c) provides that credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

To be accepted for credit, the property, materials, and services must meet specific criteria. If the Federal Highway Administration (FHWA) determines that the agency has not complied with the appropriate criteria, the value of the property, material, or service will not be accepted for credit. If FHWA determines that the agency failed to comply with required laws or regulations in obtaining property for a future federal-aid project, all Federal-aid participation in the entire project will be in jeopardy.

**ENVIRONMENTAL REVIEW**

Early acquisitions of real property without contemporaneous Federal-aid participation and prior to completion of environmental review under NEPA, commonly referred to as “at risk” acquisitions, must comply with the Uniform Act and must not influence the decision of the environmental review process of the project required under NEPA. These requirements apply to all projects that receive or are expected to receive Federal-aid funding for any part of the project[1]. These requirements are applicable even if the INDOT does not intend to apply acquisition costs against the State share under 23 CFR 710.501(b) or to seek reimbursement under 23 CFR 710.501(c).

This guidance affirms the longstanding Federal Highway Administration (FHWA) interpretation of NEPA and Uniform Act requirements where INDOT wishes to acquire property prior to the completion of NEPA and still maintain Federal-aid eligibility for the project.

---

23 CFR Part 771

(4) The FHWA regulations at 23 CFR 710.501 address early acquisition of Right of Way by a State prior to the execution of a project agreement with the FHWA or completion on NEPA. In 710.501(b) and (c), the regulation establishes conditions governing subsequent requests for Federal-aid credit or reimbursement for the acquisition. Any State-funded early acquisition for a Federal-aid highway project where there will not be Federal-aid highway credit or reimbursement for the early acquisition is subject to the limitations described in the CEQ regulations at 40 CFR 1506.1 and other applicable Federal requirements.

When INDOT proceeds with early acquisition using its own money and with no intention of seeking Federal-aid credit or reimbursement, the FHWA nonetheless must make certain that the INDOT’s acquisition actions do not affect the environmental analysis or review of the project, or bias the FHWA’s decisions on the project. A State undertaking State-funded early acquisitions is doing so subject to the risk that the State may purchase Right of Way that is subsequently not used in a federally-assisted project either because the NEPA process yields a different decision than that which motivated the State to engage in early acquisition in the first place, or because the FHWA determines the standards for avoiding bias were not satisfied.

**INDOT PROCEDURE**

The Early Acquisition process begins when an INDOT Project Manager requests approval of funds through INDOT Project Financing. If the funding can be approved, Project Financing, in turn, coordinates the approval process with FHWA. If the acquisition is approved for early acquisition, the Project Manager notes the parcels as At-Risk in SPMS (Scheduling Project Management System) and coordinates early acquisition efforts with the Real Estate Division.

**LOCAL PUBLIC AGENCY PROCEDURE**

Unless otherwise noted, the provisions for state DOTs apply to Local Public Agencies (LPAs). Federal regulations consider the LPA to be a state agency and, as such, the Federal requirements for state agencies apply to LPAs that wish to use Federal funds in its transportation project. FHWA provides guidance at fhwa.dot.gov/federal-aidessentials. To assure compliance with Federal regulations, Local Public Agencies should consult with the appropriate INDOT District Office for clarification, when necessary, or for additional information.

Local Public Agencies should develop and consistently follow procedures similar to INDOT’s for identifying and obtaining approval for early acquisitions. Please note that this acquisition method does not allow for parcels to be acquired early in order to avoid following the protections required by the Uniform Act. Failure to demonstrate compliance with Federal Uniform Act regulations at all stages of the project will result in loss of all federal participation.
FUNCTIONAL REPLACEMENT

The transportation needs for the public must be balanced with the other peace, safety, and well-being needs for the public for whom Indiana’s government is instituted. When the Department of Transportation has determined that a publicly owned property, essential to the peace, safety, and well-being needs of the public, must be acquired for a transportation project, fair market valuation is not the appropriate method for valuing such property, but rather, a replacement property must be provided to the public to ensure that the needs of the public does not suffer as a result of the highway project. To this end, the Department will functionally replace publicly owned properties that provide needed public services. Examples may include schools, police and fire stations, parks, recreational areas, municipal garages or maintenance facilities, libraries and city or county government buildings and other public-owned areas. For parks and recreational areas, Sec. 4(f) provisions of the US Department of Transportation (DOT) Act of 1966 may apply. The real property cannot be owned by a utility or railroad.

The functional replacement concept permits federal participation in costs of acquiring an adequate replacement site if one is required and the construction costs of the replacement improvements that duplicate the function of the acquired improvement. This concept requires that the facility must be needed by the public, must be actually replaced and the costs to presently replace the facility or cure damage to it be actually incurred by the public agency. Indiana Code Section 8-23-17-30 empowers the Indiana Department of Transportation (INDOT) to take actions as necessary in order to put into effect policies that comply with federal law and regulations, and pursuant to this, INDOT has the authority to create and implement provisions that assist INDOT with consistent application and administration of functional replacement benefits. The functional replacement concept may also be applied to state-funded projects.

The intention of functional replacement is to consider providing additional assistance when it is recognized that the Fair Market Value compensation for the acquisition of the public facility may be insufficient to restore it to the level needed to provide the same services which were being provided at the subject site. Costs of increases in capacity and other betterments or enhancements are not eligible for federal or state participation except where necessary to replace the facility’s utility, unless required by existing codes, laws or zoning regulations, or related to reasonable prevailing standards for the facility being replaced. Because of the added review, oversight and approval associated with the functional replacement process, the importance of early coordination cannot be over emphasized. If you anticipate functional replacement will apply to a project, contact the Real Estate Division as soon as possible to discuss specifics. The agency owning the public facility, at its option, may choose to accept conventional Fair Market Value compensation provided through INDOT’s standard acquisition process, in lieu of functional replacement.

When the department determines that functional replacement of real property in public ownership and public use may be necessary and in the public interest, state funds may participate in the payment to the public agency for:
• Functional replacement costs of improvements required to be replaced exclusive of increases in capacity or betterments; and

• Market value of land owned by the public agency when that public agency has land upon which to relocate facility; or

• Reasonable cost of acquiring a comparable, substitute site where lands owned by the public agency are not available for use in relocating the facility.

For federal participation in functional replacement, FHWA must provide prior approval for the acquisition. The provisions of 23 CFR Section 710.509 should be reviewed to assure compliance with federal regulations pertaining to functional replacement of real property in public ownership. The acquiring agency will prepare an early costs estimate of functional replacement to include all eligible costs.

Prior to the initiation of real estate services, the Project Manager should identify any parcel acquisitions that may meet the definition of functional replacement. If such a parcel is identified, the following approvals and steps must be followed:

1. The INDOT or LPA Project Manager must contact INDOT’s central office acquisition section manager regarding the possibility of functional replacement when publicly owned real property, including land/or facilities, is to be acquired for a federal aid or a state funded project.

2. INDOT and FHWA, if applicable, will agree on scope of required oversight prior to initiation of functional replacement. INDOT’s Real Estate Division Director will seek and provide all necessary approvals prior to initiation of functional replacement.

3. The acquiring agency should meet early in process with the public agency and inform the agency in writing of their right to just compensation based on appraisal of fair market value and of the option to choose either just compensation or functional replacement. Amount of functional replacement shall be limited to difference between approved offering price based on an appraisal of market value and actual cost to replace facility with an equivalent facility as defined in 23 CFR 710.509 provided below in this chapter.

4. Parcels approved for functional replacement, shall have a mutually acceptable course of action developed with owner via a Memorandum of Understanding (MOU) agreement. Action may include discussion on functional equivalency of facility and need to obtain bid estimates for necessary construction.

5. INDOT’s Real Estate Division management will have responsibility to review and approve final costs estimates for state funded projects. If federal funds are involved, estimates must be processed through INDOT’s Real Estate Division who will obtain necessary review and approval from FHWA.
6. Functional replacement funds over the approved acquisition amount will be processed through the established MOU agreement.

7. A portion of replacement funds will be held until construction is complete to ensure replacement actually takes place and costs have actually been incurred. The terms of the distribution of the function replacement funds will be outlined within the MOU agreement.

8. Total cost of functional replacement will be based on a written estimate of construction (approved by INDOT) and either market value or reasonable, actual cost of acquiring a comparable substitute site.

9. All other Real Estate service functions to include but not limited to; appraising, buying, relocation, finance, and property management services will be provided as needed and established within the INDOT Real Estate Division manual.

23 CFR 710.509 Functional replacement of real property in public ownership.

(a) General. When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) Federal participation. Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

   (1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

   (2) The property in question is in public ownership and use;

   (3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

   (4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

   (5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

   (6) The real property is not owned by a utility or railroad.

(c) Federal land transfers. Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.
(d) **Limits upon participation.** Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are -

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) **Procedures.** When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

**CROP DAMAGE CLAIMS**

** These instructions assume the damage is due to a State project. For LPA projects, the contacts, tort claim process and the voucher will differ, but the basic process should be the same. Please contact the LPA for specifics. **

**DETERMINING IF CROP DAMAGE PROCEDURES APPLY**

The following procedure applies only to claims that fit in one of the following categories:

1. **Crops acquired upon acquisition of a parcel:** Sometimes we will acquire crops when we take title to a parcel. We pay for these crops in the same manner as we acquire any interest real estate.

2. **Survey and Inspection:** INDOT has a Right of Entry onto property to conduct surveys and inspections before a parcel is acquired during the condemnation process. IC 8-23-7-28 provides for the process for paying people that have crops damaged when we undertake those activities. This category may only be used for damage caused during planning phases of a project and only when INDOT or a contractor/consultant enters onto property in order to conduct a survey or other investigation. It shall not be used for damage caused after construction begins.

3. **Breach of Contract:** Sometimes, a right-of-entry, easement, Right of Way grant or other document will provide that INDOT will pay crop damages in certain cases. In this case, the claim should be processed as a breach of contract claim and INDOT will pay the claim.

If the damaged property does not fit the categories described above, the claim must be resolved through the tort claim process. Common tort claims may include damages suffered from chemical spraying by INDOT or flooding caused by INDOT design or construction errors. The required Tort Claim Notice can be found at [www.in.gov/indot/2351](http://www.in.gov/indot/2351). The claimant should submit
the completed form to the Office of the Attorney General at the address shown on the form. **INDOT is not authorized to pay any crop damages when a tort claim should be filed.**

**CROP DAMAGE CHECKLIST**

1. Determine if INDOT may handle the crop damage or if the claimant must file a Tort Claim.

2. If a Notice of Tort Claim must be filed, provide claimant with a link to the claim form and proceed no further. If no Notice of Tort Claim must be filed, proceed with the following steps.

3. Use the Crop Damage Workbook ([Online Forms](#)) to find instructions and all the forms necessary to calculate and submit a Crop Damage claim.

4. Obtain a completed Vendor Information (W-9) from the claimant and complete Report of Crop Damage. The report will need to be printed to add a sketch of the damaged area and sign the form.

5. Scan and e-mail the W-9 to INDOT Real Estate Finance. It is important this is submitted as soon as possible so that payment will not be delayed. The Auditor will accept a scanned copy.

6. Obtain 3 estimates from co-ops or verifiable buyers (ex.: Grain Elevators or early contract-out price for Bio Fuel / Ethanol Plants).

7. Submit Report of Crop Damage, estimates and Compensation Calculation to the Buying Supervisor to obtain Legal approval of the claim.

8. Once the claim is approved, e-mail INDOT Real Estate Finance with the DES, Code and Parcel numbers, and the dollar amount of the claim so that State funds can be set up in advance.

9. District personnel will be responsible for creating the Claim Voucher in LRS under the Project tab, not the specific Parcel tab. This will be a Property Damage voucher type.

10. Send Cover Letter, Claim Voucher, appropriate Crop Damage Agreement (Statutory Right of Entry or Breach of Contract), and self-addressed envelope to claimant for signatures. If an owner and a tenant are involved, obtain signatures from all parties, even if there is only one claimant.

11. Obtain District Deputy Commissioner’s (DDC) approval signature on Agreement and Claim Voucher after the claimant signs. **Do not** send the Agreement signed by the DDC to the claimant.
12. Send original Claim Voucher, marked “CROP DAMAGE” and copies of all executed documents to INDOT Real Estate Finance for payment processing. INDOT Real Estate will send payment and copies of all executed documents to claimant.

13. Obtain proof of payment from Property Management and retain with all original documentation for recording and audit purposes.

HARDSHIP ACQUISITION - INDOT POLICY

The Federal Highway Administration authorizes state highway departments to advance the acquisition of individual parcels as hardship acquisitions under the provisions of 23 CFR 710.503, provided the following conditions are met:

1. The project is included in the currently approved State Transportation Improvement Program,

2. The State has complied with applicable public involvement requirements, in 23 CFR parts 450 and 771,

3. A determination has been completed for any property subject to the provisions of 23 U.S.C. 138


5. Written submission by the property owner documents the hardship.

Information and documentation supporting the property owner's request for hardship acquisition is based on one of the following categories:

1. Health
   a. Debilitating illness or injury, ambulatory or other major disability or handicap of a long-term nature, where present housing facilities are inadequate or cannot be maintained by the owner, causing an undue hardship compared to others awaiting project development.
   b. Other extraordinary conditions posing a significant threat to the health, safety, and/or welfare of the owner-occupant or a member of his/her household for whom he/she is responsible.
   c. Acceptable documentation for either health category includes a doctor's statement clearly stating the medical reason the patient should relocate.

2. Financial
   a. Job transfer verified by employer or other source.
b. Pending bankruptcy, mortgage foreclosure, tax sales, etc., including copies of actual documents.

c. Any documented situation similar in impact to those stated above.

and, documents the inability to sell the property because of impending project, at fair market value, within a time period typical for similar properties not impacted by the project (a minimum of 3 months). Acceptable documentation includes the real estate listing agreement with broker's statement indicating the property is not marketable due to the impending highway project. Also accepted would be proof of the owner’s attempt to market the property themselves through local newspaper advertising (minimum of 3 advertisements).

PROTECTIVE BUYING

The Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance (HMA) acquisition programs including the Hazard Mitigation Grant Program may be available to acquire properties which have been impacted by flooding. The requirements for FEMA’s acquisition are found in 44 CFR Part 80. Protective buying can be considered if parcels within the affected flooded corridor are subject to imminent purchase under the HMPG and HMA programs when purchase deed restrictions would impede future transportation choices [23 CFR 710.503]

1. Early acquisition shall be in accordance with National Historic Preservation Act and Section 4(f) of the Department of Transportation Act of 1966.

2. Project must be included in the approved Statewide Transportation Improvement Plan (STIP).

INDOT INCENTIVE PROGRAM

When deemed necessary for a specific project, INDOT will institute an incentive program. At that time, updated guidelines and procedures will be defined. The option of an Incentive Program is rarely used, and with recent strides in streamlining the acquisition and relocation processes, is becoming less necessary.

The most recent guidelines and procedures used are outlined here for demonstration purposes only - this project was completed and the guidelines are now defunct. Any future guidelines and procedures will supersede what follows.

RIGHT OF WAY INCENTIVE PROGRAM

(Effective of January 1, 2011)

INDIANA DEPARTMENT OF TRANSPORTATION - REAL ESTATE DIVISION MANUAL
JANUARY 2016
WHEREAS, the Indiana Department of Transportation (hereafter, INDOT) has determined that it is in the best interests of the State of Indiana to expedite the acquisition of Right of Way and subsequent relocation of persons and (personal) property by and through the use of a Right of Way Incentive Program, and

WHEREAS, Indiana law does not prohibit the use of a Right of Way Incentive Program, and

WHEREAS, the United States Department of Transportation by and through the Federal Highway Administration (FHWA) has endorsed the use of Right of Way Incentive Programs as an accepted practice, and has reviewed and approved of INDOT’s Right of Way Incentive Program for use in acquiring Right of Way and/or relocating persons and (personal) property to facilitate the construction of select INDOT Projects, and

COMES NOW, INDOT by and through this Right of Way Incentive Program, effective January 1, 2011, the plan and program details of which are as follows:

PROGRAM GUIDELINES:

PURPOSE

To support, facilitate, and expedite INDOT’s overall mission to “plan, build, maintain, and operate a superior transportation system, enhancing safety, mobility and economic growth”, by and through the cost-effective acquisition of Right of Way and subsequent relocation of persons and/or (personal) property.

GUIDELINES

3. The Right of Way Incentive Program shall be consistently applied to all property owners on all INDOT projects throughout the State, following a determination by INDOT as to the propriety of use for incentives on each project. Thus, INDOT shall assess the cost/benefit of using incentives on a project-by-project basis.

4. Upon determination of the incentive program’s propriety for a specific project, INDOT will prepare an incentive plan for said project. The records and details of the project-specific incentive plan shall be maintained in INDOT’s central office, and available for review by FHWA upon request.

5. The project-specific incentive plan will analyze the following items to estimate the cost-effectiveness of the incentive payments by way of a reduced Right of Way acquisition time-frame, and other benefits to the traveling public over standard Right of Way acquisitiondevelopment processes.
   a. Market trends to identify the annual rate of increase in property values;
   b. Identify adequate available comparable replacement housing supply;
   c. The rate of inflation of construction costs (based on a 5 year average of PPI);
d. The safety benefits to the traveling public resulting from the project’s early completion;

e. An otherwise eligible project may be eliminated from the program if circumstances warrant, as documented in a Cost Effectiveness Estimate.

6. INDOT may consider requests from property owners for advanced acquisition of property for at-risk, protective buy, and/or hardship acquisitions on a selected project regardless if incentive payments will be used for that project. However, under no circumstances will advanced acquisitions be eligible for incentive payments since the property owner’s request for advanced acquisition reduced the time needed to acquire the Right of Way, and said acquisition was not initiated by INDOT. The advanced acquisition will accomplish the program goal of an expedited time-frame. Thus, the expenditure of public funds for incentives on advanced acquisitions is not justified nor in the best interest of the State.

7. Upon completion of Right of Way acquisitions, INDOT will tabulate the cost of the incentives paid and compare them to the estimated costs associated with standard Right of Way acquisition/development processes. The final cost comparison will be maintained in the Right of Way Incentive Program File, to be reviewed by FHWA annually or upon request.

**PROJECT ELIGIBILITY CRITERIA**

The minimum project eligibility criteria shall include, but not be limited to the following:

- The estimated project construction cost shall be equal to or greater than $25,000,000, OR
- The project is considered critical to public safety, OR
- The project involves emergency repairs to an INDOT facility, property, or other infrastructure. (Emergency repairs being defined as an emergency declaration by the Governor’s office.), OR
- Other project related criteria, evidence, or circumstances deemed integral to the State’s interest.

Upon review of the criteria, INDOT will determine whether the use of incentive payments will expedite the project delivery schedule, resulting in significant cost savings and/or improved public safety. The plan will be reviewed for effectiveness each year for the first two years following authorization and as warranted thereafter.

Individual projects that are subparts of a larger project, such as bridges within a major road project, will be included in the program and the cost review despite having separate project numbers assigned.
ACQUISITION INCENTIVE PLAN

30-day Acceptance Period:

The Acquisition Incentive is designed and intended to provide motivation to the property owner to sign and accept the offer to purchase, and all conveyance documents, within 30 calendar days of receiving the offer. The property owner must sign the Acquisition Incentive Agreement within the 30-day acceptance period for the offer to purchase to be eligible for the incentive payment. Upon expiration of the 30-day acceptance period, the acquisition incentive shall be withdrawn and no longer payable to the property owner. Properties with multiple owners may receive offers to purchase on different dates; they shall be afforded the benefit of having the 30-day period begin as of the last date that all owners receive the offer to purchase (see Multiple Signature Procedure, p. 283).

The 30-day Acceptance Period shall commence the same day of receipt by the property owner of the offer to purchase, and conclude at 11:59PM on the 30th calendar day thereafter. If the 30-day acceptance period expires on a weekend (Saturday-Sunday) or legally recognized holiday, the next business day (Monday-Friday), shall be considered the 30th and final day of the acceptance period.

Extension of 30-day Acceptance Period – Extraordinary Circumstances:

Only in cases involving extraordinary circumstances, may INDOT’s Director of Real Estate, in his/her sole and absolute discretion, grant a maximum of one, 15-day extension to the 30-day acceptance period. A property owner’s failure to sign and accept or respond to the offer to purchase, within the 30-day acceptance period, shall not be considered extraordinary circumstances without regard for other factors beyond the control of the property owner (i.e., death, injury, illness, military duty, etc.).

Modification of 30-day Acceptance Period – Errors or Delays by INDOT:

A property owner may be entitled to a re-start or other modification of the 30-day acceptance period where: (1) documents, provided by INDOT, contain errors or omissions of material facts, or (2) delays by INDOT in responding to a property owner during the 30-day acceptance period. Such a decision to re-start or otherwise modify the 30-day acceptance period shall be at the sole and absolute discretion of INDOT’s Director of Real Estate.

Administrative Settlement:

The incentive payment is separate from the offer to purchase and the Administrative Settlement, and does not preclude the use of an Administrative Settlement. However, if an Administrative Settlement is used, the settlement offer must be signed and accepted by the property owner within the 30-day acceptance period. If the 30-day acceptance period expires while INDOT is reviewing the merits of an owner’s counter-offer/Administrative Settlement proposal, the
property owner will be afforded the same number of additional days to review and respond to any Administrative Settlement proposal by INDOT as were used by INDOT in reviewing and preparing the Administrative Settlement, and still remain eligible for the acquisition incentive payment. Failure to accept the terms of the Administrative Settlement upon expiration of the additional days granted will result in the acquisition incentive being withdrawn and no longer payable to the property owner.

**Right of Entry Agreement:**

The property owner must sign a Right of Entry Agreement after signing the Uniform Offer Acceptance and conveyance documents in cases involving bare land that are encumbered by a mortgage or other lien. The purpose of the incentive payment is to reduce the time needed in which to acquire/possess the property. Thus, the incentive payment has no value to INDOT if acquisition/possession is delayed awaiting a mortgage/lien release for the property to be vacated. Right of Entry Agreements are not applicable to owners that are eligible for relocation services.

**Relocation Incentive Agreement:**

If applicable, the property owner must sign and accept the Relocation Incentive Agreement and comply with the terms thereof in order to receive the acquisition incentive payment. Receipt of an acquisition incentive payment does not affect a property owner’s entitlement to relocation benefits. Incentive payments related to the acquisition of tenant-owned improvements or cost to cure items of tenant-owned improvements will be shared in proportion to the amount of the offer to purchase between the property owner and the tenant.

**Presentation and Receipt of Documents:**

INDOT will present the Acquisition Incentive Agreement to the property owner simultaneous with the offer to purchase. All conveyance documents, payment vouchers, and other necessary forms must be signed within the 30-day acceptance period. If these documents are returned to INDOT by U.S. mail or other postal delivery service, the envelope must be post marked within the same 30-day period.

**Content of Acquisition Incentive Agreement:**

The Acceptance section of the Acquisition Incentive Agreement shall include an “assurance of no coercive action” clause, above the signature block, which states that the owner recognizes the right to review the offer for 30 days and waives this right, that the offer was accepted of the owner’s free will and that no coercive actions were taken by INDOT or its representatives. Any revision or amendments to the appraisal and/or statement of just compensation amounts shall be reflected in the calculation of the acquisition incentive payment.
Acquisition Incentive Payment Amounts:

The Acquisition Incentive Payment for fee acquisitions shall be an amount equal to ten percent (10%) of the offer to purchase. The minimum payment shall be $500.00, and the maximum payment shall be $50,000.00.

The Acquisition Incentive Payment for temporary acquisitions (i.e., easements) shall be an amount equal to ten percent (10%) of the offer to purchase said interest. The minimum payment shall be $500.00, and the maximum payment shall be $5,000.00.

The use of an Administrative Settlement will have no influence in the calculation of the amount of the acquisition incentive payment.

Timing of Payment to Property Owners:

The Acquisition Incentive Payment will be made after all terms of the Acquisition Incentive Agreement are satisfied, including compliance with the Relocation Incentive Agreement, if applicable, AND in no case sooner than receipt of payment for the offer to purchase, but not later than sixty (60) days thereafter.

RELOCATION INCENTIVE PLAN

The Relocation Incentive is designed and intended to provide motivation to the property owner to sign and accept the offer to purchase, and all conveyance documents within 30 calendar days of receiving the offer, AND vacate and remove personal property items from the property prior to expiration of the 90-day Notice to Vacate. The property owner must sign the Relocation Incentive Agreement within the 30-day acceptance period and meet its requirements to be eligible for the maximum relocation incentive payment. The Relocation Incentive will be explained by the Right of Way Agent assigned to provide relocation assistance.

MAP-21 EARLY ACQUISITION

Section 1302 of MAP-21, or the Moving Ahead for Progress in the 21st Century Act, modified 23 USC 108 clarifies and expands the types of property interests that may be federally funded. It also revises the conditions under which property may be acquired prior to the completion of the NEPA review of the project. Proposed early acquisitions must meet the criteria listed below:
23 USC 108(d)(3)
(B) the acquisition of the real property interest—
(i) is for a transportation purpose;
(ii) will not cause any significant adverse environmental impact;
(iii) will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;
(iv) does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;
(v) is consistent with the State transportation planning process under section 135;
(vi) complies with other applicable Federal laws (including regulations);
(vii) will be acquired through negotiation, without the threat of condemnation; and
(viii) will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

MAP-21 provides that federally-funded early acquisitions may include acquisition of any interest in land, a contractual right to acquire any interest in land, and any other similar action to acquire or preserve rights-of-way for a transportation facility.

Property owners who sell their property and are displaced as a result of the acquisition are displaced persons under the Uniform Act. Tenants who will be displaced as a result of the acquisition are also displaced persons under the Uniform Act.
The early approval process outlined below is designed to increase efficiency and communication between involved parties in the interest of reducing processing time and unnecessary costs:

**HOW IS MAP-21 EARLY ACQUISITION DIFFERENT?**

MAP-21 includes several amendments that affect real estate acquisition and relocation that receives Federal funding. MAP-21 Early Acquisition clarifies and expands the types of property interests that may be federally-funded under 23 U.S.C 108. Section 1302 also revises the conditions under which property may be acquired prior to the completion of the National Environmental Policy Act (NEPA) review of the project that could use the property.

**How do these changes affect the Uniform Offer?**

When a parcel is identified for early acquisition under MAP-21 rules, it must be acquired through negotiation, without the threat of condemnation. If the early acquisition offer is not accepted within the negotiation period, it will not be processed for condemnation. Instead, it will be rescinded in writing.

The Owner may receive another offer in the future that will not be considered “early acquisition.” It is also possible that after the early acquisition offer is rescinded, there will be no other future offer. If this other future offer is not accepted and an agreement cannot be made on
the acquisition within the negotiation period, INDOT will have the right to file suit to condemn and appropriate the required acquisition.

Relocation Assistance

MAP-21 rules dictate that early acquisition “will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and title VI of the Civil Rights Act of 1964.”

If the offer is accepted, the Uniform Act states that persons displaced by voluntary acquisitions are not entitled to Relocation Assistance. However, MAP-21 Early Acquisition overrides this rule if the offer is accepted.

If the offer is not accepted, any Relocation Assistance that displaced persons would be entitled to will be rescinded as there will be no displacement. This applies to owner-occupant as well as tenants.

If a new offer is made later, a new determination may be made for Relocation Assistance eligibility that will not be affected by acceptance or rejection of the new offer under normal Uniform Act rules as this new offer will be subject to possible condemnation.

REAL ESTATE GUIDANCE FOR TRANSPORTATION ALTERNATIVE PROGRAM (TAP)

The Transportation Alternatives Program (TAP) provides funding for programs and projects defined as transportation alternatives, including:

- on- and off-road pedestrian and bicycle facilities
- infrastructure projects for improving non-driver access to public transportation and enhanced mobility
- community improvement activities and environmental mitigation
- recreational trail projects
- safe routes to school projects
- projects for planning, designing, or constructing boulevards and other roadways largely in the Right of Way of former divided highways

The TAP replaced the funding from pre-MAP-21 programs including the Transportation Enhancement Activities, Recreational Trails Program, Safe Routes to School Program. The Federal Highway Administration (FHWA) provides more guidance for this program on their website.
REAL ESTATE GUIDANCE FOR TRANSPORTATION ENHANCEMENT PROJECTS

The Transportation Enhancement program is in the process of being phased out and replaced with the Transportation Alternative Program (TAP) through the MAP-21 updates effective October 2012. The following section is for reference purposes only; please refer to the section entitled Transportation Alternative Program for updated procedures.

Real estate and property management issues must be addressed in many of the proposed Transportation Enhancement activities. Transportation Enhancement activities may involve property acquisition, restoration and rehabilitation of structures, and lease agreements. The purpose and the need for the acquisition shall be clearly documented as part of the project development process.

Acquisition of real property for Transportation Enhancement activities is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 regarding the acquisition procedures and relocation assistance. An agency or qualified organization without the power of eminent domain is subject to the limited requirements set forth in 49 CFR 24.101(b).

23 CFR 710.201(e), provides that:

*The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public." Consequently, when acquiring property interests for Transportation Enhancement projects, project sponsors should exercise caution and obtain fee title or a permanent easement unless there are compelling reasons in obtaining some other interest.*

In rare or unusual instances, it may be reasonable to acquire less than fee title or a less than permanent easement. In cases where the Right of Way interest is not in perpetuity, there should be a careful evaluation to guarantee control of the property for the expected life of the facility or to ensure, at a minimum, that the facility can be expected to function as intended. Adequate legal instruments could be a license agreement, lease, covenant, or other document to allow the facility to operate or function for a specified period of time based on its typical useful life or other reasonable prescribed time based upon on the investment.

There may be some projects, such as shared use paths, where land is owned or controlled by another governmental agency other than the project sponsor. In these cases, an interagency agreement to allow construction, operation, and maintenance of the facility may be acceptable. Another example would be a utility or other entity that would be willing to grant a license to construct a facility, provided the utility would retain the right to use the land if needed for its operations. In those situations, provisions should be included to have the facility reconstructed or
relocated to continue serving the same need, or alternatively to repay the federal funds. In some instances, it may be appropriate to provide for the partial recovery of federal funds if the facility does not fulfill its full useful life. An example would be a 20 year preservation agreement that would no longer be functional after 15 years due to unforeseen circumstances. The agreement between INDOT and the project sponsor will provide for the project sponsor to return a pro-rata portion of the federal funds based on the time elapsed; in this case the project sponsor would need to return 25% of the federal funds spent on the project.

Property management issues to consider for Transportation Enhancement projects include:

1. If a Local Public Agency (LPA) will be acquiring less than fee simple title or a permanent easement for a project, the INDOT-LPA contract will state the purpose of the project and outline how the property will be used and maintained in the future. The contract will include any conditions and requirements for the repayment of federal funds. The useful life of the project will be included in the contract.

2. It is important that the applicant discuss how and for what purpose the property will be used following the rehabilitation. When properties are to be leased with the income going to the applicant, a portion of the proceeds should go toward the future maintenance of the structure, and should account for reserve funds for replacements.

3. Where the primary purpose of the project is to enhance a historic transportation facility, coordination with the appropriate historic agencies can help to ensure that protective language is included in any agreement before federal funds are obligated (authorized) for the project.

4. The LPA shall ensure the continuance and maintenance of the public investment over time and should include plans and measures the LPA will use to finance any needed repair, renewal and/or rehabilitation of the public investment. The LPA should include these plans and measure in the project application. Under no circumstance can Federal funds be used for maintenance of the private portion of the facility/project.

5. Generally, for significant federal-aid investments, public interest in and access to the activity should be in perpetuity. However, the extent of real property interest needed for the protection of the public interest in the expenditure of Transportation Enhancement funds is somewhat dependent on the nature and magnitude of the expenditure. For example, if the project were simply to provide a gravel parking lot to be used to enhance a transportation use on lands under State ownership, a limited property use agreement would be sufficient. An expenditure of $5,000 for a gravel parking lot with an agreement that the lot would be retained in that use for 5 to 7 years might be reasonable.

6. The expenditure of $1,000,000 to rehabilitate a historic train station will require a much longer time period to amortize the public investment. The INDOT-LPA contract will require a commitment to preserve the building, maintain the historic integrity, and
sustain the planned use for which the Transportation Enhancement award was granted. The LPA shall provide to INDOT plans and measures the LPA will use to finance any needed repair, renewal and/or rehabilitation of the public investment and these plans and measures will be incorporated into the INDOT-LPA contract. The INDOT-LPA contract will also provide for the recapture of the federal investment if the property is converted to another use or purpose. Whenever buildings are involved, they shall be insured and a provision made to reimburse the amount of federal funds from the proceeds if the building is sold or destroyed. (See 23 CFR 710.201(e), 23 CFR 710.511(c) and 49 CFR 18.31(c)).

7. Protection of property rights for the continued use of a facility, or for use over a specified period of time shall be captured in the form of a legal document which must be recorded in the land records. These types of property reservations could be leases or other evidence of a property interest.

8. Reversionary clauses may be appropriate in some instances where the property is originally obtained at no cost from a federal agency through a federal land transfer. These clauses would assure that where the property is no longer needed for the purpose for which it was transferred it would be offered for return to the original owner.

9. Transportation Enhancement projects can involve real property, funds, materials, or services provided by units of local government and private entities. A donation of this type may be eligible for a credit to the matching share. To be eligible for a credit, the real property may not be part of a current transportation facility (23 CFR 710.507(c)). The fair market value of the real property, materials, or services may be credited against the non-federal share of the project.

10. The LPA must include the Title VI provisions of 49 CFR 21 in any leases or agreements.

At the time of application, the Local Public Agency (LPA) shall follow the procedure below if in the unusual and compelling circumstance the LPA desires to obtain less than fee simple title or a permanent easement for a project:

1. The LPA must notify, in writing, INDOT that it is proposing to acquire less than fee simple title or a permanent easement. The LPA shall indicate what interest and how long the LPA will have the interest it is proposing to acquire for the project. The LPA shall document the compelling reason for its proposal and include the anticipated cost savings and time savings.

2. INDOT will evaluate the LPA’s proposal.

3. If INDOT approves the proposal, it will request FHWA concurrence.

4. After INDOT approves and FHWA concurs in writing, the purchase of less than fee simple title or a permanent easement for a project, INDOT will draft a contract (or
supplement if an INDOT-LPA contract has already been signed by the parties) which establishes the useful life (asphalt trails—no less than 25 years; concrete trails—no less than 30 years; roof for building—no less than 25 years; others—case-by-case basis) of the project, the plans and measures the LPA will use to finance any needed repair, renewal and/or rehabilitation of the public investment, and pro-rata repayment terms if the public investment ceases to be used for its approved-use.

5. After the LPA and INDOT sign the contract or supplement containing the useful life and repayment terms, the LPA can proceed in accordance with the approved acquisition plan. INDOT will provide the LPA with a copy of the approvals.

6. The INDOT Transportation Enhancement coordinator will keep a list of all projects wherein less than fee simple title or a permanent easement is obtained after the effective date of this policy. The inventory will include the following data:
   b. Date construction contract was awarded
   c. Date construction of project was completed and opened to the public
   d. Useful life
   e. The amount of federal funds spent on the project
   f. The interest the LPA has acquired and the length of time covered; and
   g. Date and County in which the LPA’s interest was recorded (including Book and Page Numbers)

7. Each May 1st the Transportation Enhancement Coordinator will have the appropriate district determine whether the project is being used for its approved purpose. The results of the survey will be reported to FHWA on or before August 1st each year.

8. In the event a project is no longer being used for its approved purpose and the useful life of the project has not been reached, the Local Program Assistance Office will bill the LPA for a pro-rata portion of the federal funds. INDOT will report to FHWA when the repayment occurred

Note: INDOT will repay FHWA once the matter is identified. INDOT and the LPA can work out repayment terms at any time, irrespective of reimbursement to FHWA.