

**Arizona Department of Transportation
Project Delivery and Operations Division
Right of Way
Procedures Manual**



**ACQUISITION SECTION
UNIT 4949**

FHWA Certified: July 16, 2018

ADOT Updated: January 2024



Infrastructure Delivery and Operations

MEMORANDUM

TO: Interested Individuals and Each Holder of the Right Way Group Procedures Manual

FROM: Paula Gibson

CC:

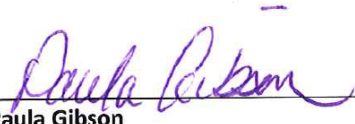
DATE: July 30, 2018

RE: Manual Update

Attached is the most recent Procedures Manual for the Arizona Department of Transportation, Right of Way Group. As you are viewing the electronic (PDF) version of the manual, hyperlinks have been added allowing you to quickly navigate to the various Sections. At the end of each Section and exhibit, you will be given further directions.

This Procedures Manual complies with Title VI of the Civil Rights Act of 1964.

Should you have any questions please contact our office directly at (602)712-7316.



Paula Gibson
Right of Way Administrator



U.S. Department
of Transportation
**Federal Highway
Administration**

ARIZONA DIVISION

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<http://www.fhwa.dot.gov/azdiv/index.htm>

December 13, 2018

In Reply Refer To:
ROWR 03
ROW Manual Approval

Paula I. Gibson
Right Of Way Administrator
Right of Way Group
Arizona Department of Transportation
205 South 17th Avenue, MD 612E
Phoenix, Arizona 85007-3212

Dear Ms. Gibson:

The Federal Highway Administration (FHWA) has received the update to the Arizona Department of Transportation's (ADOT) Right of Way (ROW) Manual. This update was required due to amended provisions published in a Final Rule on August 23, 2016. We have reviewed the updated manual and have determined that it meets the requirements of 23 CFR 710.201(c).

We appreciate the efforts of ADOT to update the manual, incorporate our comments and to consider the amended provisions in the Final Rule. With the completion of this review and update, FHWA is certifying that the Arizona Department of Transportation's 2018 Right of Way Manual is in compliance with federal regulations as of July 16, 2018. If you have any questions, please feel free to contact Alan Hansen at 602-382-8964 or alan.hansen@dot.gov.

Sincerely,

Karla S. Petty
Division Administrator

ecc:

John Eckhardt III, ADOT ROW
Alan Hansen, FHWA AZ Division Team Leader



Infrastructure Delivery and Operations

An Arizona Management System Agency

Douglas A. Ducey, Governor
John S. Halikowski, Director
Dallas Hammit, State Engineer
Steve Boschen, Division Director

July 6, 2018

Karla Petty
Arizona Division Administrator
Federal Highway Administration
Attn: Alan Hansen, Team Lead – PEARC
400 North Central Avenue, Suite 1500
Phoenix, AZ 85007-3212

Dear Ms. Petty:

As the Right of Way Administrator of the Arizona Department of Transportation, Right of Way Group, I hereby certify to the Federal Highway Administration in accordance with CFR 710.201(C), that the current Right of Way Manual submitted is in conformance with Federal and State real estate law and regulations.

There have been no changes to State law that would cause the manual to be in conflict with the Uniform Act requirements. The manual conforms to existing ADOT practices and contains the necessary procedures that comply with the Uniform Act and federal and State real estate laws and regulations. The ROW Manual reflects the amended provisions of the 23 CFR 710 Final Rule published August 23, 2016.

Sincerely,

Paula I. Gibson
Right of Way Administrator
Right of Way Group
205 South 17th Avenue, MD 612E
Phoenix, AZ 85007-3212
602-712-8758

*Title VI of the Civil Rights Act of 1964,
and the Americans with Disabilities Act (ADA)*

Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, age, sex or disability. Persons that require a reasonable accommodation based on language or disability should contact ADOT's ROW office at (602) 712-7316. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

De acuerdo con el título VI de la Ley de Derechos Civiles de 1964 y la Ley de Estadounidenses con Discapacidades (ADA por sus siglas en inglés), el Departamento de Transporte de Arizona (ADOT por sus siglas en inglés) no discrimina por raza, color, nacionalidad, edad, género o discapacidad. Personas que requieren asistencia (dentro de lo razonable) ya sea por el idioma o por discapacidad deben ponerse en contacto con 602.712.7316. Las solicitudes deben hacerse lo más pronto posible para asegurar que el equipo encargado del proyecto tenga la oportunidad de hacer los arreglos necesarios.

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Chapter 1 Organization and Responsibilities

1.01 Purpose

The purpose of this chapter is to describe the responsibilities and organization of the Acquisition Section of the Right of Way Group.

1.02 Responsibilities

The Acquisition Section consists of two teams. These teams are responsible for all property acquisition and relocation assistance functions of the Acquisition Section.

The property acquisition function is responsible for, but not necessarily limited to:

- a. Obtaining land and/or property rights from private and public sources by fee, easement, license, entry, or permit.
- b. Contacting the property owner or legal designee for the purpose of presenting a full explanation of the pertinent highway project and the State's offer.
- c. Developing and processing special conditions, stipulations and documents necessary to consummate the transaction.
- d. Performing a complete review of the acquisition package and the transaction it represents.
- e. Presenting the completed package to Right of Way Administration for approval and forwarding to the Director, Arizona Department of Transportation or his/her designee for final action.

- f. Furnishing assistance and documentation relevant to acquisition to all services as required.
- g. Maintaining comprehensive records of acquisition transactions in progress and completed¹.
- h. Providing in-service training for the staff of Acquisition Section.

The relocation function is responsible for, but not necessarily limited to:

- a. Administer the relocation program as mandated by A.R.S. §11-961 through §11-981; A.R.S. §28-7141 through §28-7156; and Title 49 of the Code of Federal Regulations, Part 24 (Uniform Act). This is not required for non-federally funded projects.
 - b. Preparing and reviewing a complete determination package and the benefits it represents to the displacee.
 - c. Contacting displaced persons and businesses for the purpose of presenting a full explanation of the pertinent highway project and the benefits available to them as displacees.
 - d. Furnishing assistance and advisory services throughout the relocation process, including but not limited to, providing notices, performing price differential determinations, obtaining moving bids, performing replacement housing DS&S inspections, and vacancy inspections.
 - e. Preparation and processing of all relocation claims.
 - f. Maintain comprehensive records of relocation activities.
-

¹ Per 49 CFR PART §24.9 and 23 CFR §710.201(f)

- g. Providing in-service training for Relocation staff.

1.03 Organization

The current Table of Organization is located in the main table of contents [Unit 4949](#). It should be noted that the Acquisition Section consists of two right of way functions: Acquisition and Relocation. The Acquisition Agents may be called upon to perform duties of any of the above noted two fields. This portion of the manual addresses only those activities related to acquisition. Please refer to the Relocation portion (Chapter 10) for procedural guidelines or other functions of that field.

1.04 Supervisory Personnel

The Acquisition Section Manager, under the direction of the Deputy Right of Way Administrator for Real Estate, is responsible for the management, operation and production of the Acquisition Section.

The Agents, under the direction of the Manager, are responsible for the accuracy and quality of the production of the Section.

Chapter 2 General Policies and Procedures

2.01 Purpose

The purpose of this chapter is to describe the general policies and procedures of the Acquisition Section. When circumstances require deviation from these procedures, the Manager will determine the course of action to be taken.

2.02 Acquisition of Public and Private Land

The general procedures for acquiring public or private land will be considered in this chapter. Detailed procedures for each type of acquisition are set forth in the following chapters.

2.03 Acquisition Package Assignment

The acquisition package, representing a single parcel of property, is given to the Manager who assigns it to an Agent and said parcel is recorded in the acquisition database. If the acquisition package has not been reviewed by Property Management, Agent shall have Property Management review the acquisition package for any holdbacks and/or Extended Occupancy Agreements ("EOA") necessary to complete the transaction.

2.04 Policies Observance

The Agent will observe the rules and regulations governing the specific transaction in accordance with:

- a. The appropriate requirements of the Arizona Department of Transportation as set forth in the Acquisition Standards, Chapter 6.
- b. The requirements of any public agency from which property or property rights are to be acquired, recognizing that the most stringent regulations take precedence.
- c. Applicable parts of Section 28-7091 through 28-7103 of the ARS (ARS), and subsequent revisions thereto.
- d. Requirements of the 23 CFR 710.307, 710.309, 710.501, 710.503, 710.505 & 49 CFR Part 24.
- e. Relevant parts of the Uniform Act of 1970, as amended.
- f. 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (Uniform Act of 1970, as amended).

2.05 Acquisition

The Agent will:

- a. Accompany the Appraiser on the initial inspection of the property to be acquired, for the purpose of inspecting the property and the impacts to the property.
- b. Become thoroughly familiar with the project by reviewing the acquisition package, obtaining all necessary documents and plans pertinent to the project, and by physically inspecting the property.
- c. Initiate the Contact Report (Exhibit 9.01) and thereafter chronologically enter all actions taken with respect to the subject parcel, including, but not limited to,

conversations, documentation, and correspondence¹. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

d. Prepare the Purchase Agreement stipulating holdbacks (Exhibit 9.02) and a Summary Statement of Offer to Purchase and Improvement Report² (Exhibit 9.06).

e. Present the owner with all pertinent documents for the owner's information including the State's Written Offer, Summary Statement of Offer to Purchase and Improvement Report³, Purchase Agreement stipulating any holdbacks, EOA, maps, the federal booklet entitled "Acquisition"⁴, the Title VI brochure, appraisal, title report provided and any other pertinent documents necessary to transfer property rights. If Federal Funds are involved in any aspect of the project, the property owner has a minimum of 30 days⁵ to consider the State's offer to purchase.

f. If the Agent learns that an owner is a minor, or is otherwise incompetent, or other cloud in title that will affect the ability to close in a timely manner, they shall immediately notify the Condemnation Team of the Titles Section in writing of this fact.

g. Post notices (Exhibit 9.36) on all properties to be acquired under the threat of eminent domain.⁶

¹ 49 CFR PART §24.9(a); 23 CFR §710.201(f)(1); NOTE 49 CFR PART §24.9(b) references confidentiality of records.

² 49 CFR §24.102(d-f)

³ 49 CFR PART §24.102(d-f); ARS §12-1116(A)(1)&(2), (B), & (C)

⁴ 23 CFR §710.201(k)

⁵ 49 CFR PART §24.102(f); NOTE per ARS §12-1116(A) and ARS §28-7098(C) State's requirement is 20 days

⁶ ARS §12-1116(A)(1)&(2), (B), & (C); ARS §28-7098(C)

2.06 Acceptance, Counteroffer, or Refusal

- a. Upon the owner's unconditional acceptance of the offer, the Agent will obtain signatures on all transaction documents, prepare the Payment Transmittal (Exhibit 9.03), establish escrow if required, and assemble the completed acquisition package.
- b. Upon receipt of a counteroffer or conditions of sale from the owner, the Agent will refer the same to the Section Manager for merit consideration; negotiations with the owner will follow on the basis of that determination.
- c. When the Acquisition Section Manager directs the package to Condemnation, the Agent will prepare the Condemnation letter and Condemnation Transmittal Record (Exhibit 9.10), prepare a briefing Statement indicating what problems have been encountered in the negotiations and what efforts have been made to resolve any impasse, and provide litigation support as needed. Note: All documents and email correspondences in the acquisition file shall be included in the Condemnation file. Avoid duplicates.
- d. All transactions to purchase a real property right must be reviewed by an Agent III or higher, and all Condemnation actions are forwarded to the Acquisition Section Manager. After the Manager has approved the package, it is recorded in the Acquisition database.

2.07 Final Review

An Agent III or higher reviews the acquisition package after closing in its final form, signs and forwards to Payment Processor.

Chapter 3 Acquisition of Public Lands

3.01 Purpose

The purpose of this chapter is to describe the procedures for the acquisition of public lands.

3.02 Bureau of Land Management Lands (Memo of Understanding (MOU) Process)

Acquisition of public domain lands required for transportation rights of way are managed and controlled by the Bureau of Land Management (BLM) and will be accomplished in accordance with 23 U.S.C., Sections 107(d) and 317, 23 CFR 710.601, Section 28-7092 of the ARS, and subsequent revisions, and the procedures provided in the Interagency Agreement AA851-IA2-40 between the Bureau of Land Management and the Federal Highway Administration, which became effective on October 28, 1982 and the Memo of Understanding between ADOT, FHWA and BLM, No. AZ-910-0309 dated April 23, 2003 and subsequent updates. Authority for the Agreement is contained in the Federal Land Policy and Management Act of 1976, 90 Statutes 2766, 43 U.S.C. 737 and the Act of August 27, 1958, as amended.

a. The ADOT Agent will inspect the subject parcel and review the title report requirements to determine the involvement of utilities, mining claims or other interests.

1. When utilities are involved, the Agent will obtain such clearance from the Utilities and Railroad Engineering Section of the Project Delivery and Operations Division; however, sometimes the utility clearance will be obtained by the Agent or the BLM.
2. Clearance or release of mining claim interests, or other similar interests, will be obtained by the Agent, as required, through investigation of available public records. A waiver, release or consent regarding such interests or rights, will be prepared by the Delineation Section of the Right of Way Plans Section. The Agent will negotiate with other interest holders, or they will be condemned to clear title.

b. When the Agent has completed the preliminary activities outlined in Chapter 2, and the steps outlined in 3.02 (a), above, the following procedure will be followed to complete the appropriation.

1. After completion of the National Environmental Policy Act (NEPA) and prior to sending the formal Request for Appropriation to BLM, ADOT will send notification, via email, to the FHWA Realty Officer requesting concurrence that the BLM-managed lands are needed for the project. The request should be identified as an MOU Process or a non-MOU Process. (Exhibit 9.22)
2. The FHWA Realty Officer will reply to ADOT's request, via email, concurring (or not concurring) to the determination of public necessity for the project (Exhibit 9.23)
3. ADOT will submit directly to the appropriate BLM Field Office, with a copy to FHWA, the formal Request for Appropriation consistent with 23 C.F.R. Section 710, Subpart F. ADOT will use the standard letter (Exhibit 9.24) for requesting appropriation of rights-of-way. The Request for Appropriation will identify both the permanent easement, identified on the Right of Way Plans and any temporary construction easements identified on the Construction Plans.
4. A complete Request for Appropriation will consist of the letter (Exhibit 9.24) accompanied by the following:
 - (a) Right of way Plans
 - (b) Highway Easement Deed (HED) (Exhibit 22.28, found with Plans Section Org 9340 exhibits) with aliquot legal description of the requested permanent right of way
 - (c) Construction Plans (if there are temporary construction easements)

- (d) HED, Temporary Construction Easement HED (Exhibit 22.30 found with Plans Section Org 9340 exhibits), with aliquot legal description of the requested temporary easement areas, if applicable
 - (e) A copy of the email from FHWA to ADOT (Exhibit 9.23) concurring that the lands are necessary for the project.
5. The BLM Project Manager will acknowledge receipt of the formal Request for Appropriation within 30 days, as follows:
- (a) If the package is incomplete, the BLM Realty Specialist will send notification, via email, to ADOT, with copy to FHWA, to State the package is incomplete and identify what is missing.
 - (b) If the package is complete, BLM will issue a standard Letter of Consent (LOC) signed by the BLM Authorized Officer. The LOC will be addressed to FHWA but will be sent directly from BLM to ADOT, with a copy to FHWA, Realty Officer. The LOC will cover both the permanent easement and any identified TCEs. (Exhibit 9.25)
 - (c) After receipt of the LOC, ADOT will submit the HED and/or the HED Temporary Construction, if applicable, to FHWA for signature. The form deeds specified have been certified as legally sufficient by legal counsel for ADOT and FHWA and such certifications are on file at ADOT and the FHWA Arizona Division Office. These deeds may be augmented only by insertion of ADOT project and parcel information, for the linear HED and project and parcel information and purpose of need for the HED, Temporary Construction, BLM reference number, execution dates, 23 U.S.C. appropriation section reference, legal description, signatures and notarization information. Any other additions or modifications to these deeds will require separate certifications of legal sufficiency by legal counsel for ADOT and FHWA in accordance with 23 U.S.C. §§ 107 (d) and 317 and implementing regulations at 23 C.F.R. § 710.601.
 - (d) After signature by FHWA, ADOT will have the easement deed recorded in the appropriate county or counties, and submit a copy of the recorded deed to the BLM Project Manager and to FHWA Realty Officer.
6. Should it become necessary during construction to appropriate additional lands for the project, the following shall apply:
- (a) ADOT will send notification, via email, to the FHWA Realty Officer explaining the need for the additional right of way and will provide maps to identify the affected area. The e-mail will express the urgency of the situation and request concurrence of public necessity. This will allow ADOT to proceed with a request to BLM for the immediate right to enter and notice to proceed. It will also act as a request for concurrence to appropriation and allow ADOT to proceed with the formal application once all documents are prepared. (Exhibit 9.26)

(b) The FHWA Realty Officer will reply to ADOT's request, via email, concurring (or not concurring) with the action to proceed. (Exhibit 9.27)

(c) ADOT will submit directly to the appropriate BLM Field Office, with a copy to FHWA, an e-mail request to enter lands for the purpose of construction activities. (Exhibit 9.28)

(d) BLM will respond to ADOT, via e-mail, with authorization to enter and proceed with construction activities within the amended right of way. (Exhibit 9.29)

(e) Upon completion of the appropriate documentation, ADOT will submit directly to the appropriate BLM Field Office, with a copy to FHWA, the formal amended request for appropriation consistent with 23 C.F.R. Section 710, Subpart F. (Exhibit 9.30)

(f) The Amended Application for Right of Way will consist of the letter accompanied by the following:

- (1) Updated right of way plans
- (2) Updated Highway Easement Deed (HED) with aliquot legal Description of the requested permanent right of way.
- (3) Updated Construction Plans (if there are temporary construction easements).
- (4) Updated Highway Easement Deed, Temporary Construction Easement, with aliquot legal description of the requested temporary easement areas, if applicable.
- (5) A copy of the e-mail from FHWA to ADOT concurring that the lands are necessary for the project.

(g) The BLM Realty Specialist will acknowledge receipt of the formal Amended Request for Appropriation within 30 days, as follows:

- (1) If the package is incomplete, the BLM Project Manager will send notification, preferably via an email, to ADOT, with a copy to FHWA, to State the package is incomplete and identify what is missing.
- (2) If the package is complete, BLM will proceed with an amended Letter of Consent addressed to FHWA and sent directly from BLM to ADOT, with a copy to FHWA. (Exhibit 9.31)

(h) After receipt of the LOC, ADOT will

- (1) Present the HED to FHWA for execution.

- (2) Record the amended HED using the Re-recording Face Sheet. (Exhibit 9.32)

Please note: The procedure for acquiring additional right of way during construction (Section 6a – 6H) is not a part of the referenced MOU, AZ-910-0309.

7. ADOT will notify BLM in writing, with a copy to FHWA, when TCEs lying outside the permanent right of way are no longer needed and request a joint inspection with BLM to coordinate rehabilitation of the TCEs. Upon determination that the TCEs have been rehabilitated to the satisfaction of the BLM, a letter acknowledging that the TCEs are no longer part of the appropriation will be signed by the BLM Authorized Officer. The letter will be addressed to FHWA but will be sent directly to ADOT, with a copy to FHWA.

Non-MOU Process

- 1) Prepare letter, addressed to the Arizona Division Administrator, but send it to the Right of Way Officer, requesting a LOC. Add in agency specific requests (BLM additional item). Attach seven items as listed in 3.03 (b) above.
- 2) The Right of Way Officer will review the request and will then send a letter to BLM requesting the LOC. He will include the seven items.
- 3) BLM has four months (120 days) to review. If they need something, they will ask the Right of Way Officer. Once they approve, they will send to the LOC with Stipulations to the Right of Way Officer.
- 4) The Right of Way Officer will forward the LOC to the ADOT Agent assigned to this file. An indemnification clause is required by the federal government. The Agent will submit a delineation request, attaching the LOC, to the Delineation Team Supervisor. ADOT prepares HED with stipulations. Be careful not to include references to MOU in the bottom section of the HED.
- 5) HED is signed by the AG's office and then sent to the Right of Way Officer, who will take the HED package to the federal attorneys who may provide comments, make changes, and then sign. Once that is done, the Right of Way officer will give it to us for recordation. The Right of Way Officer and the BLM get copies of the recorded document.

3.03 U.S. Forest Service Lands

Acquisition of public lands held by the U. S. Forest Service, which are required for highway rights of way, will be accomplished in accordance with the procedures set forth in 23 CFR 710.601; Title 2700, Chapter 2730, dated August 1994, of the U.S. Forest Service Manual; Section 28-1865 of the ARS, and any pertinent revisions.

- a. When the acquisition package is assigned to an Agent by the Acquisition Section Manager, the Agent will initiate a Contact Report.

1. The Agent will examine and review each document contained in the file and become thoroughly familiar with the requirements of the acquisition.
 2. The information on the title report will be compared to the legal description and information contained in the right of way plans.
- b. Application for Highway Easement Deed and Right of Entry on Federal Aid Highways (new construction):

Prior to the construction phase, authorization to enter the affected lands is by right of entry granted by the Forest Service through the Federal Highway Administration. The letter requesting the Letter of Consent must contain the purpose of the application and the following seven items.

- a. Reference numbers for existing BLM rights of way, land status (i.e. Reclamation withdrawn, etc).
- b. Legal descriptions with maps (maps should identify federal land, have section lines, north arrow)
- c. Type of action; title 23 (FHWA process) or non-Title 23 or FLPMA BLM Right of Way; maintenance or new construction
- d. If the project is outside or inside of existing rights of way; how many acres of federal lands will be affected
 - e. Purpose and lead description
- f. NEPA status and opportunities for BLM staff to comment on draft document especially for new disturbance
 - g. ADOT Title report, if available

1. The Agent will prepare and sign a letter of application for letter of consent, right of entry, and highway easement deed to the Federal Highway Administration and, as an fyi, copy the appropriate U. S. Forest Service Supervisor.
2. The application should include:

Letter of Application
 Right of way plans
 Mitigation items from Environmental
 Cover Sheet of Environmental document

3. Letter of Consent with request for immediate right of entry from Forest Service to FHWA.
4. Upon receipt of the FSLOC and stipulations, from the Federal Highway Administration, the Agent will prepare a Letter of Transmittal to the Federal Highway Administration and include the following:

Letter of Transmittal requesting Arizona Division Administrator's signature
 Finalized right of way plans
 Forest Service letter of approval
 Original easement deed prepared by ADOT and one copy

5. When the original highway easement deed is received from the Federal Highway Administration, the Agent will assemble the following documents, review each one for accuracy and completeness, and include them in the acquisition package:

Transmittal Sheet
Contact Report
Highway Easement Deed - one copy
Title Report
All Correspondence

The acquisition package will be processed in accordance with Chapter 5. The package will be forwarded to the appropriate Section to have the deed signed and recorded.

3.04 Bureau of Indian Affairs Lands

Ownership of tribal lands is vested in a particular tribe, community or individual (allottee), but is typically held in trust by the United States, acting by and through the Bureau of Indian Affairs (B.I.A.). The approval of Indian land usage requires consent of the tribal council of the tribe whose lands we are affecting and the authorizing document from B.I.A. i.e., Grant of Easement (Right of Way).

All such acquisitions are to be in accordance with the Code of Federal Regulations (25 CFR 169) and amended 25 CFR 169, November 19, 2015, effective March 21, 2016

Tribal Agencies and Tribes are involved early in the development stages. Depending on the impact to the tribal nation lands, an intergovernmental agreement may be required in addition to the Grant of Easement or other pertinent right to be issued.

These acquisitions constitute four types as follows:

- a. Rights of Way for Highway Purposes.
 1. The assigned Agent will review the contents of the acquisition package along with other information or maps in order to become thoroughly familiar with the project.
 2. Obtain a Consent Resolution from the Tribal Community/District/Chapter impacted prior to submitting the following application package. Contact the assigned BIA Agency to work with the Tribal Nation.
 3. An application is submitted to the BIA Tribal Agency office. Each Tribal Nation has different processes and timelines.

Included with the application are the following:

- (a) ROW Application (prepared by and signed by the Agent).
- (b) Offer letter (tribal offer letter format).
- (c) Appraisal (land value).

- (d) Legal description of land required (no conveyance document, BIA provides the Grant).
- (e) Right of way plans (paper copies and reproducible copies).
- (f) Design/Construction plans.
- (g) State Authority/Corporate Document.
- (h) Tribal Community/District/Chapter Consent Resolution or Statement of Owner of Allotted Lands (whichever is applicable).
- (i) Archaeological survey report.
- (j) Environmental clearance report or determination, including all supporting documentation, geotech, cultural, historical preservation, etc.

4. BIA Tribal Agency Office will assist with obtaining the Tribal Council Resolution, typically upon receipt of the application package. The Tribal Nations have multiple departments to review and approve the application package prior to being submitted to the Tribal Council Legislative Branch to obtain the Tribal Council Resolution. Departments may include; environmental, natural resources, leasing, transportation, planning and development, etc.
5. Following acceptance by the Tribal Council by resolution, the tribe will submit the application package to appropriate BIA agency.
6. Following acceptance by BIA a "Grant of Easement" or other pertinent document will be issued and sent to the Tribe who will give to the Right of Way Agent. BIA agency has 60 days to issue a decision and provide the Grant or inform the applicant in writing the need for additional review time. The original "Grant of Easement" will be recorded in the BIA, Division of Land Titles and Records. It can take up to 6 months to receive a recorded copy.
7. Payment for the land is the final item. ADOT signs first upon request for payment. Payment is sent directly to the Tribal Nation.

b. Temporary Construction Easements for Highway Purposes

* Typically follow the requirements as outlined in (a) above. However contact tribe for tribal requirements.

c. Permits (Temporary Encroachment Permits) There are two basic types of permits - those where there is disturbance of the surface of the land and those where there is no disturbance of the surface, even if no new Right of Way is required.

1. Encroachment Permits – required when impacting or doing improvements on Tribal/BIA roads or Tribal/BIA improvements outside existing Right of Way, i.e., Intersection project on State Highway and a Tribal/BIA Road – the limits of the project goes beyond the existing right of way, i.e. pavement preservation onto the Tribal/BIA Road. The requirements to obtain encroachment permits are similar to requirements outlined in (a) above, except subsection (3) (b, c, d & g). Please refer to the requirements outline on the encroachment permit application.

2. Encroachment Permits – required where there is disturbance of the surface of land within existing right of way, when impacting or doing improvements over, under and through Tribal/BIA improvement facility located within existing right of way, even if no new right of way is needed, i.e. boring under the San Carlos Irrigation Canals owned by Tribal/BIA. The requirements to obtain encroachment permits are similar to requirements outlined in (a) above, except subsection (3) (b, c, d & g). Please refer to the requirements outline on the encroachment permit application.
- d. Notifications of construction project within existing Right of Way (no new right of way needed) (NOTE: Each Tribal Nation has its own notification process.) See amended 25 CFR 169.
1. No Disturbance, No new Right of Way and Same Scope of work - A letter or email, as determined by tribal preference, is sent to tribal administration and local tribal community/district/chapter (a copy is sent to the appropriate BIA agency office) outlining the area we need, how long we need to use the land and for what purpose. No other requirements needed unless requested by the tribal nation.
 2. Disturbance, No new Right of Way and same Scope of work - Notifications are sent as outlined in (1) above. In addition, an archaeological survey report and an environmental report or determination is required. Examples are geotechnical investigation, foundation investigation, land use, and prospecting. No other requirements needed unless requested by the tribal nation.
 3. Disturbance, No new Right of Way but NEW Scope of work (differs from original Grant of Easement tied to original project and plans) – Notifications are sent as outlined in (1 & 2) above. Under the amended 25 CFR 169 the tribal nations will determine if an Amended Grant of Easement will be required.

Project Completion

30 days after project is completed – An affidavit of Completion must be completed by the Project Engineer and sent to BIA Region and Local BIA Agency to be filed with the Grant of Record.

3.05 State Lands

Acquisition of State-owned public lands required for highway rights of way or perpetual easements will be accomplished in accordance with the requirements of Section 28-7092 of the ARS, all applicable regulations of the State Land Department, and all relevant revisions, in addition to the Uniform Act of 1970, as amended.

- a. New acquisitions will require an individual Right of Way Application.
- b. Acquisition of State lands for rest areas and other related right of way purposes will generally be determined by the nature of the original highway right of way acquisition and will, whenever possible, be accomplished as a single transaction.

- c. The State Land Department will issue to the Arizona Department of Transportation a Perpetual Easement for each right of way application along with a reversionary clause.
- d. The following procedures relative to acquisition of State lands are arranged according to the legal instrument of conveyance generally used for State lands rights of entry/perpetual and temporary easements. Problems which necessitate deviation from these procedures will be resolved jointly by the State Land Department and the Arizona Department of Transportation.
- e. When the acquisition package is assigned to the Agent by the Acquisition Section Manager, the Agent will initiate a Contact Report. The Agent will examine and review each document contained in the acquisition package and will become thoroughly familiar with the requirements of the assignment. An appraisal will be provided as completed.
- f. The Agent will prepare the appropriate Right of Way Application, Addendum, and Supplements to the State Land Department, setting forth the purpose for which the land is requested.
1. The Agent will contact the ASLD Rights of Way section to determine who the ASLD assigned agent will be. A copy of the completed application shall be emailed to the appropriate agent along with any exhibits, legal description and maps that outline the proposed project.
 2. The Agent shall request application fee payment. Application to be filed with ASLD along with a signed copy of the application fee transfer. ASLD will assign a number to the application (i.e. 16-00000). ADOT will receive a receipt for application fee.
 3. Application to be delivered to the State Land Department. State Land Department will assign a number to the application (i.e., 16-00000). Application fee will be transferred to State Land from an established suspense account. The Arizona Department of Transportation (ADOT) to receive a receipt for Application fee.
 4. In five (5) to six (6) months, the State Land Department will issue Notice of Appraisal and Waiver to Appeal. Agent to request acquisition payment be transferred to ASLD.
 5. When the State Land Department imposes any special condition in the transaction with which the State must comply, approval of such conditions will be obtained in the same manner as set forth in section 3.02 of this chapter.
- g. Per ASLD policy, when a highway construction project requires excavation of dirt or natural products from ASLD lands, and when any portion of the dirt/products cannot be relocated to a location on the ASLD lands located within the limits of the same project, the ASLD form "Application and Permit to Remove Natural Products from State Land Incidental to Original Purpose of an Authorized Use" (see Exhibit XX.XX) must be submitted to the ASLD. Additionally, ADOT will be required to pay the ASLD for that portion of the dirt/products. (Note: The cost of the land required from the ASLD does not

include the cost of that portion of the dirt/products.) As such, ADOT and its designers should make every effort to relocate any/all excavated dirt/products back onto the appropriate ASLD parcel within the limits of the project. Reimbursement is not for both.

3.06 Bureau of Reclamation Lands

Acquisition of public domain lands required for highway rights of way which are managed by the Bureau of Reclamation (U.S.B.R.) will be accomplished in accordance with the requirements of the 23 CFR 710 and 601; Section 28-7092 of the ARS; and subsequent relevant revisions.

a. Upon receipt of the assigned acquisition package from the Acquisition Section Manager, the Agent will examine and review each document contained in the package and will become thoroughly familiar with the requirements of the assignment. Any significant present or potential conditions not considered in the preparation of the right of way plans and/or construction plans will be referred to the appropriate office within ADOT.

b. Lands managed by the Bureau of Reclamation can be obtained for right of way purposes in the following manners and will require an application fee at the time the application is presented:

1. Acquired lands: Lands which are owned by the U.S.B.R. through patents may be obtained by the State through a sale or grant from the U.S.B.R.
2. Withdrawn lands: Lands which have been transferred from one agency to another, in accordance with federal regulations, may be obtained by the State through a highway easement deed from the Federal Highway Administration.

c. Acquired lands of U.S.B.R. - Purchase required: The Agent will prepare a letter of application (original and 5 copies) to the Regional Director of the U.S.B.R.

1. The Agent will assemble the following documents, which will be transmitted with the application:
 - (a) Right of way plans
 - (b) Construction plans
2. All copies of the letter of application will be placed with the above documents and then be submitted to the Acquisition Section Manager for signature and distribution.
3. Distribution of the signed letter of application and the accompanying documents will be made by Right of Way Administration in accordance with the following:
 - (a) Letter of Application - original and five copies to U.S.B.R
 - (b) Appraisal - six copies
 - (c) Right of way plans - six copies
 - (d) Construction plans - six copies

d. The Regional Office of the U.S.B.R. will prepare and furnish a conditional sales agreement to the Agent.

Upon receipt of the agreement from the U.S.B.R., the Agent will forward the agreement original and one copy, and all copies of the above memos, through the Acquisition Section Manager to the Right of Way Administrator for signature and forwarding for further processing in accordance with the accompanying memos.

e. The Agent then will review all the documents for accuracy and completeness.

1. Documents to be included in the acquisition package:

- (a) Conditional Sales Agreement
- (b) Letter of Application
- (c) Appraisal
- (d) Right of way plans
- (e) Construction plans
- (f) Contact Report
- (g) Correspondence as requested

2. The Agent will prepare a Transmittal Sheet identifying each document contained in the acquisition package. The Transmittal Sheet will be included in the file. The file will then be submitted for processing in accordance with Chapter 5.09.

f. After payment for the parcel has been received from ADOT, the U.S.B.R. will furnish to a Quitclaim Deed (Exhibit 9.11) for the property. The Agent will prepare a memo in triplicate to Right of Way Operations Section requesting that the quitclaim deed be recorded in the office of the appropriate county recorder. One copy of the memo and a copy of the deed will be retained by the Agent in a suspense file.

g. Easement Grants of U.S.B.R. - as per Section 429 CFR Title 43: The Agent will follow the same procedures set forth in parts c. and d. of this paragraph, except that no appraisal will be required and the instrument of conveyance furnished to the Highways Division will be a "Contract and Grant of Right of Way" instead of the conditional sales agreement. The Agent will submit the final transaction in accordance with part e. of this paragraph.

h. Withdrawn Lands of the U.S.B.R. - The Agent will prepare a letter of application to the Federal Highway Administration (the same as acquiring land from the Bureau of Land Management).

- 1. When the transmittal is received by the Bureau of Land Management, a serial number will be affixed to the application receipt notice, which will then be returned to the ADOT.
- 2. Upon receipt of the application receipt notice from the BLM, the Agent will prepare an advice of right of way application letter to the appropriate division office of the Federal Highway Administration. One set of right of way plans will be assembled by the Agent.

3. All copies of the letter of advice and the above documents will be signed by Agent.
 4. The Agent then will perform an on-site inspection of the property. If any conditions are found to exist which will require consideration by any other office of the Highways Division, the Agent will submit to that office a memo setting forth the information pertinent to such conditions.
- i. Upon receipt of the stipulations (original and four copies) from the U. S. Bureau of Reclamation and/or the Bureau of Land Management, transmittal letters will be prepared to appropriate departments, requesting approval of the stipulations.

When the approved stipulations are received from the appropriate departments, a transmittal letter will be prepared in quintuplicate to the Bureau of Land Management, setting forth the return of the approved stipulations. The Agent will retain the original copy of the stipulations in the acquisition package. Three copies of the stipulations and all copies of the transmittal letter will be distributed to the Bureau of Land Management.

j. When the State's application for acquiring withdrawn lands of the U. S. Bureau of Reclamation has been approved, a highway easement deed will be furnished to the Highways Division. When the deed is received in the Acquisition Section, the Agent will review each document for completeness and accuracy. Each document will be placed in the acquisition package, among which are the following:

1. Contact Report
2. Highway Easement Deed - one copy
3. Title Report
4. Letter of Application
5. Stipulations
6. Right of way plans
7. Pertinent correspondence

The Agent will prepare a Transmittal Sheet and submit the acquisition package for further processing in accordance with Chapter 5.

3.07 Other Public Agency Lands

a. Processing applications for obtaining easement deeds, or other types of use permits, and right of interest on lands held as, or withdrawn for, public domain land by public agencies, other than those previously mentioned in this chapter, will be accomplished in accordance with the requirements of the particular public agency, and in accordance with the requirements of the Arizona Department of Transportation, as outlined in this manual part.

b. Processing the easement deed or other type of use permit, when received from a particular public agency, will be accomplished generally in the same manner as set forth in this chapter.

c. Final processing of the file will generally be accomplished in the same manner as previously outlined in this chapter.

Chapter 4 Private Lands Acquisition

4.01 Purpose

The purpose of this chapter is to describe procedures to acquire private lands.

When the Agent has completed the preliminary activities described in Chapter 2, acquisition will proceed in accordance with the applicable procedures set forth in the following parts of this chapter.

4.02 Contacting the Owner¹

The owner is contacted within five days of receipt of the assignment, in order to present the State's offer². Consultants shall contact the owner within 10 days in order to present the offer.

The contents of the offer package presented to the property owner shall include the following:

1. Offer letter with Appraisal or Offer letter with Comparable Sales (2 copies)
 2. Summary Statement of Offer to Purchase and Improvement Report (2 copies)
 3. Purchase Agreement with legal description
 4. Warranty Deed (or other conveying document) with legal description
 5. ProcureAZ Registration Information
 6. Mortgage 3rd Party Authorization Release (In-House Closings only)
 7. Title Report
 8. Plans sheet
 9. Acquisition Brochure
-

¹ 49 CFR PART §24.102

² 49 CFR PART §24.102(b)

- 10. Title VI Brochure with notification disclosure
- 11. EOA on all fee acquisitions

a. The acquisition offer of required property rights from an out-of-state owner or authorized representative will generally be accomplished by electronic means and/or by certified mail, return receipt requested.

b. The acquisition offer of required property rights from an in-state owner or authorized representative will be accomplished preferably through personal contact by the Agent. By electronic means and/or by Certified mail, return receipt requested, will be used to expedite processing when required.

- 1. When the Agent is required to conduct the transaction with the property owner's attorney or other authorized representative¹, a letter of authorization will be placed in the acquisition file.
- 2. When possible, the Agent will arrange an appointment with the property owner or other authorized representative, at which time the Agent will present the entire transaction and a complete and detailed explanation of the owner's legal rights². The Agent will review the ownership data on the title report with the owner. If the ownership data is incorrect, the Agent will ascertain who the proper owner is and proceed with the acquisition accordingly.

(a) If the parcel to be acquired represents a partial acquisition of the owner's property, the Agent must thoroughly review with the owner the right of way plans and the construction plans, if available, and will carefully explain how the remaining property will be affected by the highway project.

¹ 49 CFR PART §24.5

² 49 CFR PART §24.102(f)

(b) The Agent shall post notices on all partial and full acquisitions to be acquired under the threat of eminent domain.

(c) A copy of the Owner's Written Offer and a copy of the appraisal shall be delivered to tenant/lessee and the lease is recorded in the County Records. Further, Agent shall provide a copy of Owner's Written Offer and a copy of the appraisal, if requested by lessee not of record, after lessee provides documentation of leasehold interest in said property and/or improvements¹.

(d) When the transaction has been satisfactorily explained to the owner, the Agent will provide the owner the original Written Offer package as referenced in section 4.02.

(e) The owner shall be afforded a reasonable opportunity to consider the offer² and present material which the owner believes is relevant to determining the value of the property and to suggest modification of the proposed terms and conditions of the purchase. This should include reference to the Acquisition of Uneconomic Remnants in accordance with 49 CFR part 24 102⁴ and Appendix A, if applicable.

3. If the property owner accepts the State's offer, the Agent will immediately obtain the signature of the accepting legal party at the appropriate place on the proper instrument of conveyance and on other documents pertinent to the transaction. Agent shall notify property owner of owner's first right of refusal to repurchase the property should the property be deemed not necessary and/or excess land at a future date³. The Agent must at this point advise the

¹ ARS §12-1116 and ARS §28-7098

² 49 CFR PART 24.102(f) speaks to "reasonable time." Fed's determination of reasonable time is 30 days. NOTE: ARS §12-1116 and ARS §28-7098(B) is 20 days.

³ ARS §28-7099

accepting party that the transaction is not final until accepted by ADOT on the Transaction Report.

4. When the property owner makes a counteroffer to the State's offer, and can furnish valid justification for reconsideration of the State's appraised value of the property, the Agent will present such justification to the Acquisition Section Manager, who determines whether a new appraisal should be requested. This action may also be taken at the discretion of the Agent when the Agent determines that some item of significant value is not included in the appraisal. The valid counteroffer will be processed by the Agent in accordance with paragraph 2.06.
5. Where appropriate, the Summary Statement¹ of Offer to Purchase and Improvement Report shall identify any separately held ownership interest in the property, such as tenant-owned improvement² or leasehold interest. The written Summary Statement of Offer to Purchase and Improvement Report shall include:
 - (a) A statement of the amount offered as just compensation. In the case of partial compensation for damages, if any, to the remaining real property, the compensation for the real property to be acquired and the amount offered for damages and/or cost-to-cure items should be stated separately³. When the State is paying the cost-to-cure damages for removal and relocation of improvements, the Agent will also enter the amount of time allowed clause for the completion of this agreement and list the site clearance deposit required by Property Management Section.

¹ 49 CFR PART §24.102(e)

² 49 CFR PART §24.105(a-e); ARS §12-1116(A-D); ARS §28-7098; ARS §28-7154(C)

³ 49 CFR PART §24.102(e); ARS §28-7092(C)

(b) A description and location identification of the real property and the interest in the real property to be acquired¹.

(c) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made².

Also, a copy of the owner's written offer provided to the tenant for such interest shall be separately made and shall be accompanied by a Summary Statement indicating the interest and the amount offered³. Agent shall provide owner and tenant a disclaimer of interest and a distribution of proceeds, which states owner is disclaiming all rights and interest in any tenant owned improvements, agreement to the distribution amounts.⁴ (Exhibit 9.37).

4.03 Signing the Acquisition Documents

When the property owner accepts the State's offer for the acquisition, and when no grantor retention of improvements is involved, the Agent will obtain the signature of the accepting party on the acquisition documents in accordance with the following paragraphs.

a. Instrument of Conveyance: The Agent will obtain notarized signatures of authorized party or parties on the pertinent conveyance documents.

¹ 49 CFR PART §24.102(e); ARS §12-1116; ARS §28-7098

² 49 CFR PART §24-105(b); ARS §28-7154

³ 49 CFR PART §24.105(c)&(d); ARS §12-1116; ARS §28-7154

⁴ 49 CFR PART §24-105(d)(1-3); 49 CFR PART §24-105(a-e); ARS §28-7098(B); ARS §28-7154(C)

b. Purchase Agreement: All acquisition purchases will contain a Purchase Agreement form. The Agent will review the Purchase Agreement to ascertain all figures and amounts on the agreement correctly reflect the final settlement amounts. The Agent will obtain the signature of the owner and the original Purchase Agreement will be maintained in the acquisition file. One copy will be submitted to the property owner.

c. Summary Statement of Offer to Purchase and Improvement Report: The Agent will obtain the signature of the owner and complete the required questionnaire, if not already signed at time of offer made. Note: No changes are to be done to this statement. Purchase Agreement will reflect the final settlement amounts. One copy of the Report will be retained by owner. The original Report will be retained in the acquisition file.

d. Right of Way Contract (if applicable): A Right of Way Contract (Exhibit 9.07) will be prepared only when there are special conditions required by the grantor that affect the parcel to be acquired. The original will be retained in the file for future action and a copy will be given to the grantor for his files. The grantor should be informed that the conditions of the contract are not binding until approved by the Arizona Department of Transportation.

1. The following information will be entered on the Right of Way Contract:

- (a) Date of conveyance
- (b) Project number
- (c) Parcel number
- (d) Conditions for which the State will be responsible
- (e) Conditions for which the grantor will be responsible

2. When the signature of the property owner is obtained, it shall be reviewed and notarized by the Agent and when the Right of Way Contract contains special construction conditions, the Agent will promptly submit the original copy of the contract to the Acquisition Section Manager. If the Manager concurs with the

special conditions, the contract will be forwarded to the appropriate ADOT engineering district and Project Manager for subsequent approvals.

The Agent must advise the owner that the acquisition transaction will not be final until approved and accepted by the Director of the Arizona Department of Transportation., or his designee.

From this point, the Agent will proceed in accordance with the procedures set forth in paragraph 4.06 through 4.08.

4.04 Owner Retention of Improvements¹

If the owner desires to retain the improvement(s) located on the subject parcel, the Agent will send an email to the Property Management Section requesting that a salvage² memo be furnished for the improvement(s).

- a. Property Management Section Manager will send the salvage memo by electronic means or hard copy to the agent and the agent will retain a copy in the acquisition file.
- b. When the salvage letter is received from the Property Management Section, the Agent will enter the receipt information on the Contact Report. The salvage value of the improvements, the amount of site clearance deposit, if applicable, and an itemized list of the improvements to be retained will be entered on the Report form. The grantor will sign the agreement indicating acceptance. The Purchase Agreement will be adjusted to reflect the salvage retention.
- c. The salvage value memo will be attached to the Purchase Agreement and placed in the acquisition file. There are no holdback amounts in this situation.

¹ 49 CFR PART §24.103(c); Additional ADOT procedural information can be located in Property Management Manual, Chapter 7, page 54-56.

² 49 CFR PART §24.2(a)(23)

When the Agent has made the revisions to the aforementioned documents reflecting any salvage value and required site clearance deposit for improvements being retained by the grantor, and any other monetary factor applicable to the transaction, the Agent will contact the owner to make a final presentation of the new and/or the revised acquisition documents.

4.05 The Counteroffer

When a counteroffer has been received from the property owner in reply to the State's offer, with valid justification supporting the counteroffer, the Agent and Manager will determine whether a new appraisal will be requested for the parcel, or whether it is in the best interest of the Department and the property owner to request acquisition by an administrative settlement, as outlined in Paragraph 7.03; or whether to acquire the property through Condemnation proceedings, as outlined in paragraph 4.09.

1. If a new appraisal is to be requested, the Agent will prepare a memo to Project Management Section requesting the accompanying justification be reviewed and that a new appraisal and/or reviewer sheet be prepared, if necessary. The original and one copy of the memo and the accompanying justification will be submitted. One copy of the memo will be retained in the acquisition file.
2. Upon receipt of concurrence or rejection of the request for a new appraisal and/or reviewer sheet from the Right of Way Project Management Section, the Agent will advise the property owner accordingly.
3. If the request for a new appraisal is denied by the Project Management Section, the Agent will continue negotiations for the subject parcel.
4. If the request for a new appraisal and/or reviewer sheet is approved, the Project Management Section will prepare and furnish the new appraisal and/or reviewer sheet for the subject parcel to the Acquisition Section. The Agent will place the new appraisal and/or reviewer sheet in the acquisition file. A revised offer letter and Summary Statement of Offer to Purchase and Summary Statement for the amount of the new appraisal and/or reviewer sheet will be prepared in duplicate by the Agent. Agent will contact the owner to make a final presentation of the new and/or the revised acquisition documents.
5. When the property owner accepts the revised offer and concurs with the amounts set forth in the acquisition documents, the Agent will obtain the authorized signature of such accepting party or parties on the following documents:
 - (a) Instrument of Conveyance - one
 - (b) Improvement Report - one
 - (c) Purchase Agreement - one
 - (d) Right of Way Contract (if applicable and not previously signed) - one
6. One copy of each of the above documents will be given to the owner, if not given previously, and one set of the appropriate right of way plans sheets.

7. The Agent must advise the owner that the acquisition transaction will not be final until approved and accepted by the Director of the Arizona Department of Transportation., or his designee.
4. From this point, the Agent will proceed in accordance with the procedures set forth in paragraph 4.06 through 4.08. If the property owner rejects the State's new offer the Agent will proceed with acquisition in accordance with paragraph 4.09.

4.06 Establishing Escrow

If the acquisition transaction is to be processed by a title company, the Agent will contact the appropriate title company.

- a. Once the appropriate signatures have been obtained by the Agent the Purchase Agreement shall be sent to escrow Agent by electronic means, along with a copy of the most recent internal title report. The escrow Agent input the escrow number, sign and date the Purchase Agreement at the appropriate place provided. The escrow Agent will send the Purchase Agreement back to the Agent by electronic means.
- b. The title company will be requested to furnish to the Agent the amount of any additional charges for mortgage prepayment penalty, pro rata payment of taxes, HOA assessments, etc¹. Upon receipt of such notice of additional charges, the Agent will enter the amount of the charges at the appropriate place on the Purchase Agreement, and on any other documents required, all of which will be retained in the acquisition file. At close of escrow, Escrow Agent shall provide an electronic copy of the fully executed Purchase Agreement to the owner.

¹ 49 CFR PART §24-106; ARS §11-965; ARS §28-7145

- c. The Agent will notify the appropriate Right of Way Group personnel that the transaction has closed at that time, providing each of the Sections a copy of the recorded instrument(s) and recording number(s).

4.07 Clearance of Title Report Requirements

Clearance of requirements of an acquisition transaction as set forth in Schedule B and the requirements section of the title report will usually be obtained in accordance with the following paragraphs. However, when a transaction requires special consideration not included below, the Acquisition Section Manager will determine the appropriate action required.

Agent will examine the title report and title commitment for any requirements or encumbrances which would require further processing by the Agent. Agent will initial and identify how each requirement will be processed. Agent will initial all exceptions listed in Schedule B to ensure no additional requirements or encumbrances would require further processing by Agent.

- a. Required clearance on partial acquisition parcels, other than utilities, will be obtained by the title company, as required, with assistance from the Agent.
- b. Required clearance on total acquisition parcels, other than utilities, will be obtained by the title company, as required, with assistance from the Agent.
- c. Clearance of utilities requirement(s) of the title report will be obtained by the Utility and Railroad Engineering Services of the Project Delivery and Operations Division.
- d. Clearance for railroad requirements of the title report will be obtained by the Utilities and Railroad Engineering Services of the Project Delivery and Operations Division, with assistance, as required, from the Agent.
- e. All partial releases of lease will be processed by the Agent by use of the appropriate recorded or unrecorded Partial Release of Lease form, which usually will be originated and placed in the acquisition file during preliminary preparation by the Delineation Section of Right of Way Plans Section.
- f. Waivers of requirements, when determined to be necessary, will be requested by memo from the Agent to Right of Way Titles Section, stating both the request for the waiver, and an explanation of the reasons for the waiver.
- g. Without exception, delinquent taxes, or in cases where a Certificate of Purchase has been issued, shall be satisfied in escrow

4.08 Submittal for Payment

The Agent will review each document in the acquisition file for completeness and accuracy. The documents to be assembled and placed in the acquisition file according to the Acquisition Contents Checklist (see Exhibit 9.38).

- a. Payment Transmittal: A Payment Transmittal will be prepared indicating each document contained in the acquisition file, and other information pertinent information to the acquisition transaction, i.e, wells and water rights, excess lands, administrative settlement, etc. The Payment Transmittal will be placed in the acquisition file.
- b. Acquisition review: The acquisition file will be reviewed by an Agent III or higher, in accordance with Chapter 5.
- c. Payment Processor will send electronic copy of Payment Transmittal, Purchase Agreement, and Summary Statement to the appropriate Right of Way Group personnel.

4.09 Condemnation

When the property owner has rejected the State's written offer and the Acquisition Section Manager has determined that the property must be acquired by Condemnation proceedings, the Agent will, upon instructions from the Acquisition Manager, proceed in accordance with the following procedures:

- a. If the property is to be condemned for immediate possession, the Agent will prepare a briefing Statement (summary of negotiations) and submit the green Condemnation file to the Acquisition Section Manager. The Acquisition Section Manager will determine whether the request will be processed further or denied.
 - 1. If the request is denied, the Manager will so indicate the denial and will return the acquisition file to the Agent.
 - 2. The Agent will prepare a Letter of Condemnation (Exhibit 9.08/9.09), addressed to the owner, setting forth whether the acquisition of the parcel is required due to a right of way schedule or a construction schedule, and other pertinent facts of the acquisition by condemnation.

The original of the condemnation letter will be signed and distributed by the Agent. The condemnation letter shall be mailed via certified mail, return receipt requested¹, to the property owner. A copy of the condemnation letter shall be retained in the acquisition file. The Agent will place the acquisition file documents into a green file folder.

The Payment Processor will send a copy of the Condemnation Transmittal, Summary Statement and EOA (if applicable) to the appropriate Right of Way Group personnel by electronic means.

Acquisition file will be transmitted to the Titles Section's Condemnation Team for further processing of the file. The Condemnation Team shall review the file, make a copy for delivery to the Attorney General's Office. The original acquisition file in the green file folder shall be retained in the Condemnation Team until condemnation proceedings have been completed. All documents and emails are to be retained in the condemnation folder in the electronic folder on the G drive in their original format.

All documents are to be assembled and placed in the condemnation folder according to the Condemnation File Contents Checklist (see Exhibit 9.39). This includes the following:

- (a) Condemnation Transmittal - Original
- (b) Briefing Statement – Original and one copy
- (c) Photographs documents and the required public notice posting
- (d) Condemnation Letter – Notice of Eminent Domain Proceedings
- (e) Condemnation Revised letter, if applicable
- (f) Relocation Determination – One copy

¹ 49 CFR PART §24.5

Chapter 5 Acquisition Review

5.01 Purpose

This chapter describes the acquisition review procedures. The purpose of the acquisition review is to maintain quality control in all right of way acquisition transactions, as well as to determine that each transaction conveys proper and clear interest to the State, in accordance with the applicable requirements of federal, State and the Arizona Department of Transportation regulations. The acquisition review is performed under the direct jurisdiction of the Acquisition Section Manager.

5.02 Establishing Transaction Report Cut-Off Date

The Payment Processor will establish a cut-off date for receiving and processing completed acquisition transactions for consideration by the Right of Way Administrator. The cut-off date must be established to allow adequate time for final processing of transactions through the involved Sections of the Right of Way Group and for preparation of the "Transaction Report" for presentation to the Right of Way Administrator at the scheduled time.

5.03 Performing the Review for payment

When a completed transaction package is ready for payment transaction report submittal, an Agent III or higher, will carefully review and analyze each document contained in the package. The Agent III or higher will ascertain that each document required for the particular transaction has been accurately prepared and dated, and that all required and authorized signatures are correctly affixed in the appropriate places. All computations or tabulations in the appropriate documents in the package will be reviewed for accuracy. The Agent III or higher will ascertain that the required documents for a particular transaction are contained in the package.

5.04 Correcting the Documents

The Agent III or higher may, at their discretion, and in the interest of expediting the transaction, make only minor revisions to ADOT documents when it is not practical or timely to obtain a new document containing the needed revisions. No revisions are to be made to recordable documents. If revisions are needed to the recordable documents, property owner will need to sign a new conveyance document or Agent shall get owners written permission to make the necessary changes to the conveyance document.

5.05 Uneconomic Remnants

When a parcel acquisition involves the purchase of property in excess of the actual requirements of the highway project, the uneconomic remnant will be identified on the Payment Transmittal contained in the acquisition file.

5.06 Waiver of Escrow and Title Insurance

When escrow and title insurance are not required, the Agent will prepare a memo to Right of Way Titles Section requesting a waiver of escrow and title insurance.

a. The following information will be entered at the appropriate places in the memo:

1. Project number
2. Federal Number
3. Parcel number and name of grantor
4. Statement requesting waiver
5. Amount of acquisition
6. Last Title Report date

b. The memo and the acquisition file will be submitted through the Acquisition Section Manager to Right of Way Titles Section.

c. If an updated title report has been furnished with the waiver of escrow by Right of Way Titles Section, the Agent will examine the updated title report for any additional requirements or encumbrances, which would require further processing by the Agent. If further processing is required, the Agent will prepare a memo setting forth the following information:

1. Parcel, Tracs, and other identifying numbers
2. Type of additional action required

d. The memo and the acquisition file will then be submitted to the appropriate Agent. When the completed file is resubmitted by the Agent for acquisition review, the Agent will proceed in accordance with the appropriate procedure set forth within this chapter. If the updated title report indicates no further processing is required by the Agent, the Agent will proceed in accordance with the appropriate procedures in the following parts of this manual.

5.07 Acquisition Review Approval

When the acquisition review procedures have been completed and all the pertinent documents meet the requirements of the review, the Agent III or higher will initial and date the Payment Transmittal Form (Exhibit 9.03) indicating approval. The Agent III or higher will forward the acquisition file to the Payment Processor for further processing.

5.08 Transaction Report

At this point, the Payment Processor will prepare the Transaction Report form.

The following information will be entered on the form:

1. Project (Tracs #)
2. Federal Number
3. Highway
4. Section
5. Parcel
6. Payee

7. Instrument of Conveyance
8. Funding Source
9. Date of Report

5.09 Final Processing of Parcel File

Once file has been processed for payment by the Operations Section, the acquisition file will be returned to the Agent. Agent will retain the file until all closing documents are received from the title company, to include: final closing Statement (HUD), original recorded instruments, title policy, and any other documents pertaining to the transaction. Once all documents are received, Agent will initial and date title policy as confirmation they have verified the title policy is accurate and all requirements listed on the original title commitment were met and not showing on the title policy as an exception. Agent will ensure file is in proper closing order and forward to an Agent III or higher for Final Review. Agent III or higher will ensure all the above have been completed. Agent III or higher will sign off and forward the file to the Payment Processor for final processing.

5.10 Outdoor Advertising Signs or Displays Purchased

a. Process of Acquisition File: Upon receipt of an advertising display parcel file, the Agent shall ascertain that the combined documents will transfer to the State all title and/or interest requested and should coordinate acquisition with the ADOT sign permits office.

b. Documents contained in sign owner's acquisition file transmitted for review:

1. Parcel Transmittal
2. Contact Report
3. Instrument of Conveyance, i.e. sign owner's agreement
4. Approved appraisal
5. Salvage value estimate (if applicable)
6. All correspondence, including written offer letter

c. Advertising signs and displays purchased under normal acquisition procedures: There are two types of advertising displays to be acquired and they are categorized as:

1. Realty Structure - an advertising display constructed on property owned by others.
2. Realty Interest - an advertising display constructed by the property owner or legal tenant.

d. Final processing of acquisition file: After the Agent ascertains that the documents contained in the acquisition file are correct and convey the required interest to the State, they will approve the transaction by affixing their initials at the appropriate place on the Parcel Transmittal, enter the date of review completion in the sign and sites project log. From this point, the Agent will proceed in accordance with the procedures set forth in paragraph 5.09.

e. Performing the review:

1. Realty Structure - In addition to the documents necessary to acquire the fee interest in the land, the parcel file will contain the following additional documents:
 - (a) Contact Report
 - (b) Instrument of Conveyance
 - (c) Building Report
 - (d) Approved appraisal
 - (e) Written Offer Letter
 - (f) Salvage value estimate (where applicable)
 - (g) All correspondence
 - (h) Parcel Transmittal, showing name of display owner in space marked "Grantor and Address" and the purchase price in space marked "Settlement Data" to the right of property owner settlement

Realty Interest - An advertising display designated as realty interest will be appraised in conjunction with the fee estate and will be reviewed as outlined in this chapter.

Chapter 6 Acquisition Section Standards

6.01 Purpose

The purpose of this chapter is to describe the Acquisition standards. The purpose of the acquisition program of the Arizona Department of Transportation is to acquire from public and private landowners, for just compensation, such properties or rights in property as are required for construction and maintenance of all State and federal highway systems located, or to be located, within the State. Authorization for the

acquisition program is provided in ARS; ARS 28-7092, the Law of Eminent Domain which requires that the owner be paid just compensation for all properties taken for public use or purposes.

6.02 Policies of Acquisition

Policies of acquisition will be established for the Right of Way Group by the Acquisition Section Managers, with the concurrence of the Deputy Right of Way Administrator for Real Estate, and Right of Way Administrator. The policies set forth in this chapter are those which the Agent shall adhere to in conducting all acquisition transactions for the State.

- a. Agent participation in parcel acquisition: No Agent who has made, or has assisted in the making of the parcel appraisal shall in any manner participate in the acquisition thereof, unless authorized by Statute. No Agent shall acquire any parcel of property in which he has any present or contemplated personal interest. Generally, no Agent shall acquire property in which they have held an interest in the past¹. Exceptions to this rule must have the written approval of the Right of Way Administrator.
- b. All acquisitions are to be based on an approved appraisal or determination of the value². All offers must be made in strict accordance with this requirement. No offers are to be made to the property owner in excess of the amount of the approved appraisal or determination of value unless the higher amount has been first approved in writing through a duly authorized Administrative Settlement (Exhibit 9.21).
- c. The Agent must completely and honestly inform the property owner as to how the highway construction will affect the subject property. The property owner must be advised of the ingress and egress provisions for any remaining property not acquired by

¹ 49 CFR PART §24.102(n)

² 49 CFR PART §24.102(d)&(i); ARS §28-7096(A)

the State. The property owner must be advised what land and/or improvements will be acquired by the State in the transaction¹.

d. The Agent must at all times be aware of the fact that he is an employee of the public. Therefore, no matter how difficult the transaction, the Agent must conduct the acquisition in a courteous manner. The Agent must explain to the property owner that the purchase of his property cannot and will not be final until accepted by ADOT on Transaction Report. The Agent must refrain from any action which may be construed in any manner as being coercive².

e. The Agent shall be responsible for all information in the acquisition parcel file³, from receipt of the assignment from the Acquisition Section Manager to the time the file is submitted by the Agent for payment.

f. The Agent will compile accurate and clear records of each contact, or attempted contact, with the property owner, or his authorized representative⁴. Such records shall contain the date and the place of the contact, persons present, amount of the offer made, any counteroffer, the reason a settlement was not reached, and any other information pertinent to the subject transaction.

g. The Agent shall ascertain that all transaction instruments are properly executed and are contained in the acquisition file. These shall include warranty deed, quitclaim deeds, and other instruments, as required. This includes the property owner's acceptance or denial of the owner's rights to repurchase the property in the event the property is deemed excess or is no longer needed for highway purposes⁵. The Agent

¹ 23 CFR §710.201(k); 49 CFR PART §24.102(e)(1-3)

² 49 CFR PART §24.102(h)

³ 49 CFR PART §24.9(a)&(b)

⁴ 49 CFR PART §24.9(a)&(b); 23 CFR §710.201(f)(1)

⁵ ARS §28-7099(A)

will ascertain that the acquisition parcel is complete in every respect before the file is submitted for payment.

6.03 Attributes of the Agent

The following is a list of qualifications and attributes of an Agent:

- a. The Agent must possess the education, training, and experience as set forth in the qualifications requirements for the position.
- b. The personal appearance of the Agent at the first meeting with the property owner will generally establish an impression of the Agent, which will remain throughout the entire transaction. An Agent must, therefore, dress in a manner that will establish a good impression and confidence. The Agent should dress in the attire most appropriate for the particular transaction in consideration of the area, the property owner, and all others involved.
- c. The Agent must at all times maintain a calm, understanding and patient attitude when with the property owner.
- d. The Agent must exercise extreme caution and self-control when dealing with the public. Vulgar or profane language is prohibited. The Agent shall refrain from the use of tobacco in the presence of the property owner. A display of temper or discourtesy toward the public will not be tolerated.
- e. The Agent must possess the ability to promote the acquisition transaction to the property owner or his representative. The Agent must consider the fact that the owner may not desire to sell his property. In such instance, the Agent must be able to establish confidence in the reputation, integrity, ability, and judgment of the members of Arizona Department of Transportation Administration and the Transportation Board, and of the

State's need for the property without coercive action¹. The Agent must convince the owner that the Right of Way Group is obligated to represent not only those of the public whose property will be affected by the highway, but also the taxpayers who will benefit from the public works program.

f. The Agent will be thoroughly familiar with the proposed acquisition. In the case of acquiring property for right of way purposes, the Agent must fully understand the appraisal and all facts pertinent to the need for the property.

1. The Agent must be aware of the values of properties comparable to the subject parcel. The Agent must be familiar with the plans and the construction features of the highway and how such features will affect any remaining property not acquired by the State. The Agent must know when and how to establish escrow and obtain title insurance for the transaction. The Agent must know how to obtain the clearances of encumbrances, or title report requirements, for which the Acquisition Section will be responsible.
2. The Agent must know the applicable procedures and requirements for processing each type of transaction.

6.04 General Definitions

This section is devoted to defining the words and phrases normally used in the process of acquiring rights of way. These definitions do not constitute a complete right of way glossary, but other definitions may be found in other, more comprehensive texts dealing with real estate. The following parts have been grouped according to topical categories, with their subsequent terms arranged alphabetically.

a. Conveyance: A conveyance is a written instrument by which a title, estate, or interest in a property is transferred. The instruments of conveyance with which Right of

¹ 49 CFR PART §24.102(h)

Way Acquisition Section will generally be concerned will involve transfers of title from a grantor to the State, as grantee, and will include, but not be limited to, the following:

1. Patent - The instrument by which the government (usually BLM and SLD) conveys title for public domain lands to other parties.
2. Quitclaim Deed - (Exhibit 9.11) A deed which conveys, without warranty, any title, interest, or claim to grantor may have in the estate conveyed.
3. Special Warranty Deed - A deed in which the grantor warrants the title against any defects arising after grantor acquired the land, but not against prior defects.
4. Warranty Deed - (Exhibit 9.13) A written instrument by which title to real property is conveyed, wherein the freehold interest is guaranteed by the grantor and his heirs.

b. Easements¹: An easement is a right acquired by public authority to use or to control property for a designated highway purpose. To create this right, such as for rights of way, the same formalities as those necessary in a conveyance are required. Such rights, and the related legal documents, which will include, but not be limited to, the following, may be either of a temporary or a permanent nature and may also constitute standard land uses, or specialized, subsurface, or air and overhead uses:

1. Ditch and Dike (Drainage) Easement (Exhibit 9.17) - An easement for directing the flow of water through a ditch or canal.

¹ 23 CFR §710.105(b)

2. Permanent Easement (Exhibit 9.12) - A general purpose instrument conveying rights incidental to the location, construction, operation, maintenance, and improvement of a public highway.
 3. Slope Easement (Exhibit 9.14) - An easement for cuts or fills for highway slopes.
 4. Temporary Construction Easement (Exhibit 9.15) - An easement of specific duration for the use of the State in connection with a specific construction project.
- c. Miscellaneous licenses, permits, and agreements: When conditions require specific types of agreements not embodied within conveyances or easements, special licenses and other agreements will be utilized, as appropriate, and will include, but not be limited to, the following:
1. Ground Lease - A lease which conveys the right of use of unimproved land.
 2. Lease - A written document by which the possession of land and/or a building is given by the owner to another person for a specified period of time and for the amount of rent specified.
 3. Railroad Company Permits - Those documents necessary to obtain authority for the rights of way and incidental requirements of the acquisition of railroad properties, including material site license and haul road crossing permits, foundation investigation licenses, and traffic signal licenses.
 4. Temporary Land-Use Permit (Exhibit 9.04) - A permit requested of, and issued by, an agency of the federal government, usually the Bureau of Land Management, for the purposes Stated on the permit.

d. Other terminology: The following is a list of words and phrases, and the definitions generally associated with Right of Way.

1. Acquisition or Taking¹ - The process of obtaining property for use as right of way.
 2. Cloud on Title - An outstanding claim or encumbrance which, if valid, will affect or impair the owner's title.
 3. Color of Title - That which, by virtue of the characteristics, appears to be good title, but which, in fact, is not.
 4. Condemnation - The process by which property is acquired for highway purposes through legal proceedings under the power of eminent domain.
 5. Dike - An embankment for restraining or directing the flow of water.
 6. Eminent Domain - The power of the State to take property for public use with just compensation.
 7. Escrow - A transaction wherein the grantor delivers a written instrument to a third party, to be kept until terms specified in the agreement are performed and then is delivered to the grantee.
 8. Fee Simple - An absolute estate or ownership in property, including the unlimited power of alienation.
 9. Freehold - An estate of inheritance for life and an unencumbered fee simple free of any division of interests.
-

¹ 23 CFR §710.105(b); 23 CFR 710.309; ARS §12-1136(6)

10. Grantee - A person to whom real estate is conveyed; the buyer.
 11. Grantor - A person who conveys real estate by deed; the seller.
 12. Instrument - In real estate, the term refers to a formal, legal document such as a contract, deed, lease or will.
 13. Just Compensation¹ - The loss sustained by the owner as a result of the taking or damaging of private property for highway purposes.
 14. Lessee - One who acquires the right of use of the property of another and thus may create a leasehold interest.
 15. Lessor - One who rents real property to another person; usually the fee owner.
 16. Mortgagee - A person to whom property is conveyed as security for a loan.
 17. Mortgagor - An owner who conveys his property as security for a loan; the debtor.
 18. Public Domain - Land which is owned and held in trust by the federal government.
 19. Right of Immediate Possession - The right to occupy property for highway purposes after preliminary steps for acquisition have been taken and before a trial settlement has been reached.
 20. Right of Entry (Temporary) - The right to enter property temporarily to make surveys and other investigations for proposed highway improvements.
-

¹ ARS §12-1136(2)

21. Entry Agreement (right of way) - The right to enter property to construct and/or maintain highway improvements prior to acquisition of the right of way by the State.
22. Right of Way¹ - A general term denoting land, property or interest therein, acquired for or devoted to a highway.

6.05 Assurances for Acquisition²

As a domestic Agent of the federal government, the Arizona Department of Transportation is obligated to abide by certain federal regulations which govern public roads activities. Public Law 91-646, approved January 2, 1971 as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", details the requirements for assuring the general public of equitable land policies. Each State involved in the Interstate Highway Program, including Arizona, must show proper conformance to the provisions of the Act. In compliance with the requirements of Section 305, Public Law 91-646, the Right of Way Group of the Arizona Department of Transportation has provided the Federal Highway Administration with specific assurances of policy in direct response to the law.

Chapter 7 Miscellaneous Acquisition Activities

7.01 Purpose

The purpose of this chapter is to describe general procedures for miscellaneous acquisition activities not covered in preceding chapters of this manual. When such procedures do not meet the requirements of a particular transaction, the Acquisition Section Manager will determine the appropriate course of action.

¹ 23 CFR §710.105(b)

² 49 CFR PART §24.4(a)

7.02 Rights of Entry¹

Requests for rights of entry are generated from several Sections or services within the Highways Division:

Reason	Unit/Service
Testing for hazardous contaminants	Environmental Planning Services
Soil & Foundation Investigations	Materials Unit
Archaeological Exploration	Environmental Planning Services
Surveying ²	Location Unit Photogrammetry & Mapping

Any request for right of way entry should be directed to the Manager of Right of Way Project Management Section.

Upon receipt of the acquisition file from the Acquisition Section Manager, the Agent shall pursue execution of the Temporary Entry (Exhibit 9.16) document by the previously researched property owner. A one hundred dollar payment is hereby authorized

It should be noted that all temporary entry documents generated from Right of Way Plans Section will contain references to ALL the above noted activities.

Should a stalemate occur through negotiations with the owner over allowing ALL the above noted activities, the Agent may research if all of the activities are required. If not required, certain activities may be deleted from the document prior to execution by striking their reference and initialing same.

¹ 49 CFR PART §24.102(j), for further information see Appendix A, 24.102(j)

² ARS §12-1115(A-C); ARS §12-1142(B)

7.03 Administrative Settlements¹

In certain instances, when a property owner or authorized representative has rejected the State's offer for the subject property and has made a counteroffer to the State, a determination may be made by the Right of Way Administrator, Deputy Right of Way Administrator for Real Estate, Acquisition Section Managers, and/or Agent, to acquire the property through an administrative settlement rather than through Condemnation. The criteria for such determination generally will be that the administrative settlement acquisition will cost the State less than Condemnation, and that the determination is in the best interests of ADOT and the property owner². All other pertinent factors of the individual parcel acquisition will also be carefully considered in making a determination for an administrative settlement acquisition.

a. When the Agent considers a counteroffer from a property owner or authorized representative and determines that an proposed administrative settlement may be in the best interests of the State and the property owner, the Agent will prepare an administrative settlement memo. Agent will submit memo to the appropriate management personnel to make a determination as outlined in the above paragraph. Upon approval of the administrative settlement, Agent will prepare the necessary acquisition documents in the amount of the administrative settlement, and will obtain the signature(s), as required and process acquisition file according to Chapter 4. When the signatures are obtained, the Agent must advise the signing parties that the transaction will not become valid until accepted by ADOT on the Transaction Report.

b. Administrative Settlement Authority for Agents

Right of Way Agent II

Up to \$10,000 over approved appraisal amount.

¹ 23 CFR §710.105(b)(2)

² 49 CFR PART §24.102(i); ARS §28-7092(A)

Right of Way Agent III	Up to \$20,000 over approved appraisal amount.
Manager	Up to \$75,000 over approved appraisal amount.
Deputy Right of Way Administrator for Real Estate	Up to \$100,000 over approved appraisal amount.
Right of Way Administrator	Up to \$2,000,000 over approved appraisal amount.

7.04 Exchange of Excess Lands¹

Property Management Section will maintain current inventory of all remnant land acquired in conjunction with highway right of way properties for the State of Arizona, by and through the Transportation Board, and the Director of the Arizona Department of Transportation.

a. When the acquisition file containing a request for an exchange transaction of State-owned remnant land is received the Acquisition Section Manager will review the request. The Manager will enter the receipt of the parcel file, and the name of the Agent to whom the file will be assigned, in the acquisition database.

b. Upon receipt of the acquisition file, the Agent will initiate a Contact Report for the parcel. Each document in the acquisition file will be reviewed and analyzed by the Agent.

1. The Agent will prepare an email the Property Management Section Manager requesting pertinent information relative to the remnant land parcel contained in the remnant land catalogue and the remnant land file.

¹ ARS §28-7095(F)

2. Upon receipt of the acquisition file and the requested information from Property Management Section , the new information in the file will be examined.
3. The acquisition file must contain a current appraisal of both the State-owned property and the property to be exchanged. If a current appraisal of both properties is not in the file, the Agent will prepare an email to Property Management Section, requesting an appraisal of the subject properties.
4. The appraisals will be studied by the Agent and the subject properties will be physically inspected.

c. When the preliminary work set forth above is completed, the Agent will contact the property owner of the land required in exchange for the State-owned excess land. From this point, the consummation of the exchange of properties will be accomplished in generally the same manner as the appropriate procedures governing the acquisition of private lands in Chapter 4.

7.05 Miscellaneous Easements

Where it becomes necessary for the Arizona Department of Transportation to obtain the right to use or to control property for a specified highway-related use, and interest in such property will continue to rest with principals other than ADOT, such controlled, non-possessing interest will be created by an easement, jointly entered into by the State and the property owner.

a. An easement of the standard land-use type may convey or grant to the State certain rights of usage, or may be explicitly restrictive, such as those termed “negative easements.” An easement may also serve to satisfy a unique purpose, such as for subsurface rights or for obtaining air rights or aerial easements. “An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of his land.”

b. To create such an easement, whether standard or unique, formal procedures similar to those required for a conveyance of title are usually necessary, entailing the use of various specialized legal instruments known as easements, the definitions and discussions of which are included in the following paragraphs:

1. Temporary Easements - standard: Easements of a temporary nature are those which grant, or warrant, the exclusive rights of use for highway construction and related purposes, but which also specify definite durations of time, and expiration or termination dates.
2. Permanent Easements - standard: Easements of a permanent nature are those which convey the exclusive rights of use for construction, maintenance, and related highway purposes, but, unlike temporary easements, do not embody limitations of time, and, in fact, are granted in perpetuity, and include the following:
 - (a) Easement in Perpetuity - a general purpose instrument, conveying rights incidental to the location, construction, operation, maintenance, and improvement of a public highway.

(b) Ditch and Dike Easement (Exhibit 9.17) - also known as a drainage easement; an instrument conveying the rights to construct and maintain a ditch or dike for directing the flow of water, with the ingress and egress rights to said ditch.

(c) Slope Easement - a legal instrument conveying the rights of, and incidental to, cuts and fills in highway construction; permits the location, construction, repairing, and maintenance of highway slopes in excavation or embankments.

3. Special or Unique Easements: When specialized easements are required to obtain certain rights of use above or beneath that which is generally recognized as the surface, they will be utilized, if already existent, subject to acceptance by the ADOT Office of Legal Advisor, according to the nature of the specific transaction requiring their use.

(a) Examples - Such cases may arise in obtaining an access right to buried cable, or other utility lines below ground level requiring a subsurface easement; or under circumstances utilizing an extensive elevated structure, it may be considered appropriate to obtain only nominal amounts of standard surface right of way and concentrate on the acquisition of air rights through the use of an aerial easement.

(b) Preparation of specialized documents by Right of Way Plans Section - While most specialized instruments normally originate within the Delineation Section of Right of Way Plans Section, they are generally processed by the Right of Way Acquisition Section, thus accommodating their inclusion herein. When such documents have not been prepared by Right of Way Plans Section and therefore are not included in the acquisition file, it will be the responsibility of the Agent through the Acquisition Section Manager to request

preparation of these documents by the Delineation Section of Right of Way Plans Section. Any document thus prepared is subject to approval by the ADOT Office of Legal Advisor.

7.06 Entry Agreement Procedures

The following instructions apply for use of the entry agreement in Acquisition:

- a. An entry agreement will be obtained in emergency situations or when it is to the mutual advantage of the State and the property owner¹. The reason for the entry agreement will be fully explained on the Contact Report. Before an entry agreement may be sought, Right of Way Administration must give approval. When a parcel involved federal aid, written approval must be received from FHWA.
 - b. There are two different entry agreement situations. One applies to an emergency need where the offer has not been made. The other is for cases after the offer has been made and the entry agreement is obtained to resolve problems to the mutual advantage of the State and the property owner.
 - c. The one hundred dollar (\$100.00) consideration will be processed immediately with the entry agreement on a Transmittal Sheet with a working file to be turned in for payment.
 - d. An explanation must be made of any title matters and other limitations, restrictions, and/or prohibitions as disclosed by a physical inspection of the property. It is necessary that the Agent ensure that there is no obstacle, legal or physical, that will prevent the use of the entry agreement for the clearance of the parcel. (In emergency situations, a title report may not be available.)
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¹ 49 CFR PART §24.102(j)

- e. In the same manner, the Agent will examine the appraisal, if available, and make an inspection to determine what disposition is to be made of any improvements that are affected. As there will be no Improvement Report at this stage, the Agent will state on the entry agreement that arrangements have been made with the property owner for clearance of the improvements for the purpose intended.
- f. Instructions will be put on the Parcel Transmittal to return the working file to the Agent after payment of the consideration. Subsequently, the Agent will make timely follow-ups for action to be taken to ensure that the rights of the property owner and any other parties involved are protected.
- g. If there are any problems involving relocation, such as the moving of tenants or the disposition of personal property, the Agent shall accomplish the required relocation activities. Should there be any delay in processing the entry agreement file due to technical problems, such as the voucher, notification of the entry agreement should be sent immediately through the Acquisition Section Manager to those involved.
- h. In some cases, a property owner may request a special condition or a special construction feature that will require the approval of Administration and/or engineering personnel. The procedures to be followed should generally follow that used for administrative settlements and special condition approvals. When the property owner is willing to grant an entry agreement subject to conditions, this matter should immediately be called to the attention of the Acquisition Section Manager, who will direct the procedure for proper approval and processing.
- i. In some cases on a right of way parcel, an owner is willing to grant an entry agreement and give up possession because he feels it is to his advantage to have construction start without delay, and yet he desires that the parcel be processed for Condemnation procedures. In this situation, the Agent will ensure that the provision for payment of interest is complied with. Agent will process the working file for entry agreement procedures independent of the Condemnation file, and will process without

delay, with the Condemnation letter. A copy of the entry agreement will be included in the Condemnation file.

7.07 Interest Provision¹

a. The procedures for complying with the interest provision will become a part of any final agreement and be shown therein. The payment for interest will be made in the usual manner for escrowed and non-escrowed parcels except that the exact amount of interest payment will not be known by the Agent at the time of processing the final closing. The interest payment will cover the period from the beginning date of the entry agreement to the date of payment, as determined by Right of Way Operations Section. The Agent will be responsible for showing the interest provision on the Purchase Agreement and the Parcel Transmittal. For example, "State shall pay statutory interest on the "Total Purchase Price" from 10/26/15 to the close of escrow/date of recording directly to Grantor by separate warrant." The working file used for obtaining an entry agreement will become a part of the right of way parcel file.

b. Owner will sign the entry agreement providing for one hundred dollar (\$100.00) payment, plus interest per Arizona Revised Statute 28-7101.

7.08 General Information

In all cases where an entry agreement is obtained, the Agent must document on the contact Report that the owner was informed of his right to compensation prior to giving up possession.

7.09 Procedures for Testing and Acquiring Properties Suspicious of Hazardous Materials

¹ ARS §12-1123(B); ARS §28-7101

The purpose of this section is to define the responsibility of the Right of Way Acquisition Section as it pertains to Highway Development Group Policy and Implementation Memorandum 88-3 issued by the Deputy State Engineer (issued 10-25-88).

If Environmental Planning Services has evaluated a property for its potential presence of hazardous materials and determines that the property is suspicious, a memo will be generated to Right of Way Project Management initiating request for temporary entry document, obtain signatures from the appropriate property owner to allow the State's entry onto the lands to perform a preliminary site analysis.

Should the preliminary site analysis reveal the need to further define the extent of hazardous materials, a subsequent Temporary Right of Entry (Hazardous Material Remedial Measures) shall be executed by the property owner.

The State's cost policy for testing and remediation of properties contaminated with hazardous materials is:

Testing - State's responsibility

Cleanup (remediation) - owner's responsibility or as Agency determines as necessary

Project scheduling will dictate when an Agent should pursue obtaining fee title of property suspicious of hazardous materials.

Ideally, the State will not enter into negotiation until the property is certified "clean."

In the event the Agent must pursue acquiring the property to meet project scheduling, an adequate security deposit as determined by the Office of Environmental Services shall be withheld in escrow to cover potential cleanup (remediation costs).

The letters kept on storage with the administrative secretary of the Section define the strategies, time frames and responsibilities of the State and the property owner as they pertain to the cleanup and remediation of the hazardous waste problem.

7.10 Procedures for Land Donation¹

If an Agent presents an offer and the property owner would like to donate to ADOT you should:

- 1) Prepare offer to donate letter.
 - 2) Agent will provide property owner waiver of compensation² and/or appraisal to sign and notarize.
 - 3) Agent will complete a Delineation request to have the special consideration language put on the deed. (If property owner already signed the Agent shall get their written permission to change the deed)
 - 4) Agent will open escrow and obtain title insurance on any parcel requested for donation. On rare occasions where it is not feasible for the Department to obtain Title Insurance, the Agent has the option of requesting a waiver approval from the Titles Section Manager for Escrow and Title services. However, the donated property must be free of all liens, encumbrances and all taxes must be current for this to happen. Escrow and Title Fees can be paid by ADOT.
 - 5) Agent will process file according to the normal acquisition procedures.
 - 6) All donations must be approved by the Right of Way Administrator.
- If the property owner states they do not want to be compensated, that is considered a donation and the Agent must follow the above procedures.

¹ 23 CFR §710.505; ARS §28-7095(A)

² 49 CFR PART §24.102(c)(2)(i)

- When the file is processed, it MUST have an appraisal if the value is over \$25K¹. Worksheets are only acceptable if the value is \$25K or under². Local agencies must have an appraisal if the value is over \$10K.

NOTE: Per ARS §28-7096(B) a valuation worksheet may be used on property up to \$50K. The \$50K threshold WILL NOT apply to projects that are federally funded.

7.11 Right of Way Contract

When a property owner has been granted something beyond a monetary payment, the Agent shall make note of the agreement in the acquisition database and attach the Right of Way Contract to the Purchase Agreement.

Chapter 8 Sign Control

8.01 Purpose

The purpose of this chapter is to describe procedures for acquiring outdoor advertising displays.

8.02 Sign Files Sent to Acquisition Section

Upon receipt of any file containing an outdoor advertising display, the Acquisition Section Manager will send the acquisition file to an Acquisition Agent for analysis. Files with outdoor advertising display signs will be determined if they have a legal status (legal, legal non-conforming or illegal).

8.03 Files Used for Presentation of Written Offers

¹ 49 CFR PART §24.102(c)(2)(ii)(C)

² 49 CFR PART §24.102(c)(2)(ii)

The objective is to prepare the file for presentation of the written offer to the owner and to make the necessary follow-ups for completion. The Agent will meet personally with in-State owners to present the offer, unless a meeting is not possible, or practical, due to remote locations, preference of the owner, etc. Out-of-State contacts will be made by mail.

8.04 Assignment of Sign Owner Acquisition Package

Usually the Agent will handle the acquisition from the sign owner and will contact the owner for an appointment to present the State's offer, or send Certified mail, return receipt required, the offer letter and documents to the sign owner. All out-of-State offers will be sent by Certified mail, return receipt required¹.

Upon securing the signature of the sign owner, the acquisition package will be processed and forwarded for further processing according to procedures outlined in Chapter 4.

8.05 Disposition of Sign

The Agent will transmit one copy of each sign Building Report (Exhibit 9.20) to the Maintenance Services Section Permit Manager for disposition of the sign when permits are required. The Maintenance Service Section Permit Manager will determine whether the sign will be disposed of by the State or by demolition contract through Property Management Section (if the sign owner does not retain and remove the sign).

8.06 Highway Right of Way Parcel – Outdoor Advertising Sign

Upon receipt of a right of way parcel file where a sign is located on proposed new right of way property, the Agent will determine whether the sign constitutes a "realty interest"

¹ 49 CFR PART §24.5

or a “realty structure” by examination of the appraisal report and the review appraiser’s sheet.

Outdoor advertising display signs to be acquired under highway right of way are of two types:

- a. Realty Interest - A sign erected by the property owner or a legal tenant. On-premises sign.
- b. Realty Structure - A sign erected on property owned by other than the sign owner. Off-premises sign.

8.07 Assignment of Parcel – Sign as Realty Interest

On determination by the Acquisition Section Manager that the sign constitutes a realty interest, the sign will be handled by an Agent assigned by the Acquisition Section Manager.

8.08 Familiarization with Parcel File – Realty Interest

Upon receipt of the parcel file, the Agent will familiarize himself with the appraisal and other documents for the preparation of the offer letter and documents to be presented to the property owner. The Agent will contact the property owner by telephone to establish personal contact for an appointment, or by mailing the offer letter and other documents, according to the circumstances. The offer letter and other documents will be presented to the owner with an explanation of the acquisition. A copy of each document will be retained by the owner. When the State’s offer has been accepted, the Agent will secure the necessary signatures. At this time, the Agent must advise the owner that the transaction is not final until accepted by ADOT on the Transaction Report. The Agent will complete the acquisition package and transmit it for further processing according to procedures in Chapter 4.

8.09 Assignment of Parcel – Sign as Realty Structure

Upon determination by the Acquisition Section Manager that the sign constitutes a realty structure, the Agent will prepare the offer letter, Sign Owners Agreement, Right of Way Contract, as needed, Sign Building Owners Report, and a contact report, site clearance deposition provision, if any, shall appear on structure sign owners agreement.

8.10 Familiarization with Parcel File – Realty Structure

Upon receipt of the parcel file, the Agent will familiarize himself with the appraisal and other documents for the preparation of separate offer letters and any other documents to be presented to the property owner and the sign owner. The Agent will proceed to contact the property owner and the sign owner separately.

- a. The real property portion of the file will be handled in the manner set forth in the private lands chapter of this manual.
- b. The sign portion of the file will be handled by presenting the offer letter and other documents to the sign owner with an explanation of the acquisition. A copy of each

document will be retained by the owner. When the State's offer has been accepted, the Agent will obtain the necessary signatures. At this time, the Agent must advise the owner that the transaction is not final until approved the Director of the Arizona Department of Transportation.

c. If it is in the best interest of the State, the acquisition of the sign may be handled as a separate transaction. This could occur in cases where the land parcel is to be condemned or a right of entry is received.

8.11 Transmission for Payment

The Agent will complete the Payment Transmittal Sheet indicating each of the documents in the parcel file. The Contact Report will be updated with the transmittal date and to be entered in the acquisition database.

8.12 Acquisition Agents Review – Outdoor Advertising Display Signs

Upon completion of an outdoor advertising display acquisition file, the Agent shall determine that the combined effect of the documents is to transfer to the State all rights, title, and interest required. Under federal and State law, two types of interest must be acquired:

- a. Site Owner's Interest (owner of real estate on which sign is located).
- b. Sign Owner's Interest (owner of outdoor advertising display having a signed lease, license, or other authorization to erect and maintain a sign on the property).

8.13 Contents of Sign Owner's Acquisition File

The following documents are to be contained in the sign owner acquisition file, in addition to the required documents listed on the Acquisition File Contents Checklist:

- a. Building Report (sign) 22-3303 R3/87 (Exhibit 9.20)
- b. Outdoor Advertising Purchase Agreement (display owner's interest), form ADOT 22-6301 R8/86 (Exhibit 9.18) or Outdoor Advertising Relocation Agreement (display owners interest), ADOT form 22-5701 R1/90 (Exhibit 9.19)
- c. Written Offer Letter
- d. Approved appraisal of value
- e. Salvage value estimate, if applicable
- f. All correspondence
- d. Copy of permit, if applicable

The acquisition package will be reviewed in the same manner as outlined in Chapter 5.

8.14 Site Transfer Approval Action

After the Agent has ascertained that the instruments contained in the acquisition package are correct and do convey the required interest to the State, he will then transmit for entry in acquisition database.

8.15 Sign as a Realty Interest

An outdoor advertising display sign designated as a realty interest will be appraised in conjunction with the real estate interest required, and will be reviewed as outlined in Chapter 5.

8.16 Sign as a Realty Structure

In addition to the documents necessary to acquire the fee interest in the land, set forth in Chapter 4, the instruments and documentation required in the acquisition package are as follows:

- a. Transmittal Sheet
 1. The name and address of the sign owner will be included in the top portion under "Grantor."
 2. The appraised value of the outdoor advertising display will be included in the section headed "Settlement Data."
- b. Contact Report - there will be a separate contact report for the sign owner.
- c. Instrument of Conveyance (sign owner's agreement).
- d. Building Report
- e. Approved appraisal of value
- f. Written Offer Letter
- g. Salvage value estimate, if applicable
- h. All correspondence
- i. Copy of permit, if applicable

The acquisition package will be reviewed as outlined in Chapter 5.

Chapter 9 Exhibits

The following Exhibits are intended for reference purposes. Some of the Exhibits have been reduced in size in order to include them in this manual. [Click Here](#) to view the Exhibits for Chapter 9.

Chapter 10 General Relocation Information

10.01 Purpose

The Arizona Department of Transportation has the responsibility, by administrative rule & public law, of providing relocation assistance to those persons who are impacted by community need for their property for a designated public transportation project. The purpose of the law is to ensure that persons displaced as a direct result of such designated projects are treated fairly, consistently and equitably so that such persons shall not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. The Right of Way Acquisition Section has been delegated the responsibility of administering the relocation program as mandated by State Law A.R.S. 28-7141 through 28-7156 through acceptance of, and conformance to Title 49 of the Code of Federal Regulations, Part 24. The policies and procedures set forth in this

manual define and clarify the application of 49 CFR Part 24 but may in no way supersede or alter these rules.

10.02 History and Delegated Authority of Administration

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) was enacted by the Federal Government to provide more comprehensive assistance (both advisory and monetary) to those persons displaced by a public works project utilizing Federal monies in any phase of the project. The Federal Highway Administration promulgated regulations for implementation of the law to assure uniform, equal treatment of those impacted by the acquisition of their properties.

a. State Authority:

The Department's relocation program began under regulations adopted by the Arizona State Highway Commission on April 2, 1969. The Relocation Assistance Program was implemented on April 16, 1971, by State legislation enabling the State to provide relocation assistance in accordance with Public Law 91-646.

The Director of the Arizona Department of Transportation was delegated the authority and responsibility of adopting such rules necessary and appropriate to carry out this article. Arizona Administrative Code, Title 17 - Transportation Chapter 3 - Highway Division, Article 3, A.2, required the relocation program to fully conform to State and Federal statutes and regulations thereto on a continually current basis

The Director further delegated, through the State Engineer to the Right of Way Administrator, the authority and responsibility for the organization, direction and performance of the appraisal, acquisition and relocation functions of Right of Way, which included the development of the policies and procedures, necessary to implement this program.

b. Transition:

The Federal Government, recognizing a need for expansion of the program to address uniformity of application throughout the various agencies, and broader latitude in the implementation of the program, began the development of new legislation to modify and/or augment the mandates set forth in PL 91-646.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17) amended Public Law 91-646 providing increased entitlements to displacees in some areas of assistance and modified entitlements in other areas. The Federal government was to develop, publish and issue regulations to address the amendments, with an effective date no later than two (2) years after the date of this enactment. The new provisions could not be implemented by the State, however, until such time State law could be revised to encompass the revisions.

c. Current Legislation and Present Authority:

The Federal Final Rule, Title 49 of the Code of Federal Regulations, Part 24 (49 CFR PART 24) dated March 2, 1989, became effective April 2, 1989. Enabling legislation was enacted through the ARS A.R.S. 28-7141 through 28-7156 as amended by Senate Bill 1020 on April 17, 1989. The new legislation still empowers the Director

with the authority and responsibility adopted by these rules as deemed necessary and appropriate.

All rules required by 49 CFR PART 24 are addressed in the updated regulatory provisions of A.R.S. 28-7141 through 28-7156. The Director continues to delegate the responsibility of administering these laws and regulatory material contained therein to the Project Delivery and Operations Division through its Right of Way Group and also delegates the responsibility of developing and establishing the policies and procedures necessary to interpret and equitably implement the laws in accordance with Title 17, Chapter 3, Article 3, A.2.

d. Purpose:

The purpose of the policy defined herein is to establish the procedures and guidelines developed for the administration and equitable application of Federal Regulation 49 CFR PART 24 and State Law A.R.S. 28-7141 through 28-7156.

10.03 Definitions

The following definitions are supplemental to those found in A.R.S. 28-7141 through 28-7156 and 49 CFR PART 24.2. The definitions are specific to the terminology used herein to detail Departmental policy and procedures. Additional definitions will be provided in the categories to which they specifically apply.

a. Federal Agency¹:

For the purpose of this policy, Federal Agency means the Federal Highway Administration (FHWA) as lead agency for administering and monitoring State compliance with Federal Regulation 49 CFR PART 24 on any project with Federal funding utilized in any phase of the project.

¹ 49 CFR PART 24.2(a)(iii)

b. State¹:

The State of Arizona

c. Department²:

The Arizona Department of Transportation (ADOT)

d. Management:

The Manager of the Acquisition Section and/or those persons who have been delegated the authority to act on behalf of the Manager.

e. Advance Acquisition³:

The process of determining the need for and proceeding with the acquisition process on individual parcels in advance of normal project scheduling due to defined hardship on the part of the property owner or to forestall development of the parcel.

10.04 Assurances

To fulfill its responsibilities, the State assures that:

a. Regulatory authority provided through A.R.S. 28-7141 to 28-7156 and delegated authority through its Project Delivery and Operations Division, Right of Way Group, enables the State to implement policies and procedures in full compliance with 49 CFR PART 24.

¹ 49 CFR PART 24.2(a)(25)

² 49 CFR PART 24.2(a)(1)(i),(ii)&(iv) provides for various forms of "Agency" and "Department"

³ 23 CFR §710.501; 23 CFR §710.503; ARS §28-7151

b. A qualified staff of adequate size to address the acquisition/relocation needs of those persons impacted by a federally funded project is maintained.

The staff can be supplemented with services performed by qualified consultants when such services are needed to maintain a quality level of assistance. Such services are monitored for compliance with Federal requirements.

c. Project impact shall be identified as early as possible in project planning¹. The needs of those persons to be displaced shall be identified and addressed with special emphasis on the handicapped, elderly or infirm and last resort housing needs for the project. At the direction of the Agency on State funded projects a relocation plan may or may not be prepared. The scope and depth shall be predicated upon the complexity of the identified problems and will be determined if such a plan is considered necessary.

d. Implementation of 49 CFR PART 24 shall be applied with equitable treatment to all displaced persons impacted by a public works project to ensure that the State shall be in compliance should Federal funds be utilized in any phase of the project.

Pursuant to 49 CFR PART 24.4 the State provided assurances to the Federal Highway Administration which was accepted in 1989. Based on this acceptance and the State's continued compliance, it is unnecessary to submit assurances on an individual project basis.

10.05 General Information

The following general information is applicable to all displaced persons; owners and tenants, both residential and business.

¹ 49 CFR PART §24.205(a)

a. Displaced Person¹:

"Displaced Person" is any person who is required to move from the real property or moves his or her personal property from the real property as a direct result of such real property being acquired in whole or in part for an approved State project.

2. Those persons who do not meet the statutory occupancy requirements but are unable to obtain comparable replacement housing within their financial means shall be eligible for assistance in obtaining comparable, Decent, Safe and Sanitary (DS&S) housing.
3. Management shall determine whether or not a person is required to relocate permanently as a direct result of a project.

b. Persons Not Displaced²:

A "displaced person" is not:

1. A person who moves prior to the initiation of negotiations unless this requirement is waived by Management due to a move necessitated for reasons beyond the occupant's control.
2. A person who moves onto the real property or moves personal property onto the real property after the State obtains possession.
3. A person who is not displaced as a direct result of a partial acquisition.
4. A person who is determined by the Department to be an unlawful occupant.

¹ 49 CFR PART §24.2(9); ARS §28-7141(3); ARS §11-961(4)

² 49 CFR PART §24.2(9)(ii); ARS §28-7141(3)(c)

5. A person notified by the Department that the offer to purchase the property is withdrawn (except that the person may be entitled to receive reimbursement for reasonable allowable expenses incurred as a result of the offer).
6. Any others determined by the Department to be ineligible in accordance with State law or Federal regulations.

c. Relocation Advisory Services¹:

Relocation advisory services are available to all displaced persons as part of the relocation assistance provided. In addition, relocation assistance advisory services are provided to the following persons that are not classified as displaced:

1. An occupant of a property adjacent to the real property acquired for the project, if it is determined by Management that such acquisition has caused the occupant substantial economic injury.
2. Tenants of property already owned by the Agency who are required to move when the property is needed for a program or project are eligible for advisory services.
3. Departmental employees being transferred by the Department from "home base" to a new org, in accordance with Administrative guidelines, if such service is requested by the transferring org supervisor.

d. Eligibility²:

Eligibility is established by a written Notice of Intent to Acquire¹ (Exhibit 14.01) or first written offer to purchase² a property required for right of way purposes. The

¹ 49 CFR PART §24.205(c)(1-2); ARS §28-7142; ARS §11-962

² 49 CFR PART §24.203

eligibility date is the date of the First Written Offer or, the date a prior written notice of intent to acquire was delivered to the owner of the property.

A Notice of Intent to Acquire³ is issued:

1. When there is a defined hardship on the part of the person to be displaced, as determined by the Right of Way Administrator.
2. Due to project scheduling requirements.
3. To establish eligibility for a complex relocation with lengthy time requirements.

e. Notices⁴:

All required relocation notices shall be sent by certified mail, hand delivered, or other acceptable means to the displaced person or his/her designated representative. As verification of delivery, the certified mail receipt, or, if hand delivered, the displacees' signed acknowledgement of notice receipt, shall be retained in the parcel case file. In the case of email delivery, a read receipt or other email verification will suffice as proof of delivery.

The Agent shall hand deliver, if possible, to the displaced person those notices defining offers of entitlements that may require additional explanation. An interpreter shall be made available in any instance that translation to another language is required⁵.

It is mandated by Federal law (and therefore by State law) that the following notices be provided (in the above manner) in the following circumstances:

¹ 49 CFR PART §24.203(d)

² 49 CFR PART §24.203(b)

³ 49 CFR PART §24.203(d)

⁴ 49 CFR PART §24.203

⁵ 49 CFR PART §24.5

1. Notice of Intent to Acquire¹.

Provided to the property owner to establish eligibility for relocation assistance for the owner, or tenants, prior to the First Written Offer to purchase the property.

2. Eligibility Letter²

Provided to both owner and tenant-occupants (as defined in 10.05 d.), this notice establishes eligibility for relocation assistance as of the date of the initiation of negotiations.

3. Entitlement Letters³

The displaced person must be notified, in writing, of all monetary entitlements or denial thereof.

4. Ninety (90) Day Vacate Notice⁴

This notice must be provided to the displacee at least ninety (90) days prior to an established, required vacate date.

It is Departmental policy to issue the ninety (90) day vacate notice (Exhibit 14.02) to the occupants of a property as soon as feasible after the First Written Offer to purchase the property. For an eligible residential owner-occupant or tenant, the notice is usually provided in the same letter that defines the replacement housing entitlement and information on available,

¹ 49 CFR PART §24.203(d)

² 49 CFR PART §24.203(b)

³ 49 CFR PART §24.202

⁴ 49 CFR PART §24.203(c)(1-4)

comparable housing. (The 90-day notice cannot be presented prior to the entitlement information.) The notice is provided at this time to encourage the displacee to relocate during the period of time the determination of entitlement is current and valid. There must be at least one available comparable at the time the notice is presented.

5. Thirty (30) Day Notice¹

The subsequent thirty (30) day notice (Exhibit 14.03) shall not be issued until the State obtains possession of the property, with the required vacate date no earlier than in conjunction with the ninety (90) day date.

6. One Hundred and Eighty (180) Day Notice²

State law requires that occupants of a mobile home park are to be provided at least one hundred and eighty (180) days to vacate. The State shall therefore issue a one hundred and eighty (180) day notice to the displaced mobile home park occupant with subsequent ninety (90) and thirty (30) day notices, with the final required vacate date being no earlier than the full one hundred and eighty (180) days.

If the displacee requests extended occupancy due to difficulties in relocating within the specified time frame, Management may approve extensions contingent upon project scheduling and the displacee's compliance with the terms and conditions of the lease.

The Department may require an occupant to vacate the premises in less than the prescribed time frames only in circumstances where the person's continued occupancy would constitute a substantial danger to health or safety.

¹ 49 CFR PART §24.203(c)(3)

² ARS §33-1476(H), this is a component of the Arizona Landlord Tenant Act

f. Claim Filing Time¹

The time period for filing claims with supporting documentation shall be eighteen (18) months² from the date:

1. A tenant vacates the subject property³
2. An owner vacates the subject property, the State obtains possession of the subject property, or when the last acquisition payment is made, whichever is the later date⁴.

This time period may be extended for good cause with approval from Management⁵.

In the event that an eligible displacee vacates a property without notification to the Department, and as a result cannot be located, the Department will attempt, within reason, to determine current residency information and advise the displacee regarding relocation benefits. If the Agent is unsuccessful in contacting the displacee, the file shall be forwarded for finalization. The inability to contact a displacee shall not affect the eighteen (18) month eligibility period.

g. Delinquent Rents

¹ 49 CFR PART §24.207, general requirements for claims

² 49 CFR PART §24.207(d)(1)

³ 49 CFR PART §24.207(d)(i)

⁴ 49 CFR PART §24.207(d)(ii)

⁵ 49 CFR PART §24.207(d)(2)

1. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to the State or any other creditor.

h. Eviction for Cause¹

Eviction for cause must conform to applicable State and Local law. Management shall determine the occupant(s)' eligibility for relocation assistance.

If eviction proceedings are initiated by the property owner prior to the initiation of negotiations, and the occupant could subsequently be determined to be eligible for relocation assistance, a possible hardship shall be considered, a notice of intent to acquire issued and advance assistance provided as appropriate.

Eviction proceedings initiated by the State are defined in the Property Management Section of the Department's manual and may be implemented due to:

1. Unlawful activities being conducted on State-owned property.
2. Willful destruction of State-owned property.
3. Refusal to vacate the property after all required notices to vacate have been delivered and appropriate assistance provided.
4. Failure to pay rent where there is no defined hardship.

i. Condemnation²:

¹ 49 CFR PART §24.206

² ARS §28-7093; ARS Title 12, Chapter 8, Article 2 (12-1111 through 1130)

In the event the property owner refuses the State's offer to purchase a property required for an approved project, the State may move to initiate eminent domain proceedings.

1. To the extent possible, the Agent shall continue providing relocation assistance by direct contact with the occupants of the property. The Department shall not withhold advance monetary assistance¹ due to litigation regarding the property.
2. If the property owner obtains an attorney to represent him/her or elects to be represented by a consultant (at their own expense²), a letter of authorization must be provided and retained in the parcel file to enable the Department to negotiate or provide relocation assistance through the third party.
3. Correspondence shall be mailed certified³ or by other acceptable means to the property owner's representative with a copy mailed also to the property owner, unless otherwise directed.
4. It is the Agent's responsibility to provide the Attorney General's office with information regarding price differential entitlements processed in advance of the State's possession of the property or any other information that may be relevant to the pending eminent domain proceedings.

Once the file is forwarded to the Attorney General's office, any further requests from the property owner or representative for material copied from the file must be cleared through the Attorney General's office.

¹ ARS §28-7148 (a)(2)

² ARS §12-1129, 1130, 1135, and §28-7153 speak to reasons cost may be awarded

³ 49 CFR PART §24.5

10.06 The Appeal Process¹

Applicants for payment under a State project and/or a project with Federal participation who feel that the Acquisition Section has failed to properly determine their eligibility for, or the amount of, a relocation payment² may appeal that determination in accordance with the following procedures:

a. Scope of the Appeal Process

The Scope of the appeal process includes, but is not necessarily limited to, the following items:

1. A one-time review of all material upon which the Acquisition Section based its original or any subsequent determinations, including the appropriate State and Federal law, and appropriate policies and procedures.
2. Consideration and review of the displacee's arguments, Statements and/or documents in support of their appeal, allowing reasonable latitude for the hearing of relevant material.

b. Procedural Information

The following general information is provided to assist in understanding the appeal process:

1. The displaced person's right to appeal is incorporated in the letter of eligibility. Additional detailed information is included in the relocation brochure which is provided to the displacee during the initial call.
-

¹ 49 CFR PART §24.10; ARS §28-7147; ARS §28-7148(A)(3)

² 49 CFR PART §24.10(b)

2. Displaced persons will be offered assistance in filing an appeal, including appropriate information about other valuable sources of assistance¹.
3. Upon written request, the displaced person may have the opportunity to review and/or copy non-confidential documentation contained in Department files pertinent to the issue(s) being appealed².
4. Displacees may be accompanied or assisted by an advisor, or an attorney of their own choosing, at their own expense, at the appeal hearing³.
5. Prompt payment will be made to the displacee of any amount(s) they are determined to be eligible for as a result of the hearing, provided that all requirements for the type of payment involved are satisfied.
6. The displacee's acceptance of a payment less than the full amount to which they feel entitled does not limit their right to appeal.
7. Appeal decisions will be decided within the specified time limit per Section C below. The decision shall be presented in writing and shall include an explanation of the basis on which the decision was made, and what relief, if any, is to be provided⁴.
8. At the request of the displacee, the Department may waive the appeal procedure enabling displacee to seek judicial review.

c. Appeal Process Requirements

¹ 49 CFR PART §24.10(b)

² 49 CFR PART §24.10(e)

³ 49 CFR PART §24.10(d)

⁴ 49 CFR PART §24.10(g)

The appeal must be filed within sixty (60) days¹ after the person receives written notice of the Agency's determination on the person's claim. The filing of an appeal, however, does not automatically extend eligibility periods under the regulation. Therefore, appeals should be submitted as soon as possible within the required time frames. An appeal will not extend a required vacate date.

The date the appeal request is received (date stamped) will begin the official time limit constraints.

Within forty-five (45) days after receiving a request outlining the complaint and the relief sought, the Department shall set a mutually acceptable date for a hearing before an independent hearing officer.

Within thirty (30) days of the hearing, the hearing officer will make a recommendation for approval by the Right of Way Administrator².

The Acquisition Section is responsible to ensure that the displacee is notified in writing, by certified mail, of the final decision. The displacee will be advised of their right to judicial review³ if they are not satisfied by the decision rendered by the hearing officer.

10.07 Relocation Planning⁴

Development of the relocation plan during early stages of a project that recognizes the problems associated with the displacement of individuals, families, businesses, farms and nonprofit organizations and develops solutions to minimize the adverse impacts of displacement. No contact should be made with potential displacees during this planning.

¹ 49 CFR PART §24.10(c)

² 49 CFR PART §24.10(h); ARS §28-7147; ARS §11-967

³ 49 CFR PART 24.10(g)

⁴ 49 CFR PART §24.205(a); ARS §28-7142

The Relocation plan shall contain the following¹:

- a. An estimate of the number of households to be displaced².
- b. An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates)³.
- c. An estimate of the number, type and size of businesses, farms and nonprofit organizations to be displaced and the number of employees that may be affected⁴.
- d. An estimate of availability of replacement business sites⁵.
- e. Planning for displacement businesses which are expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/ or few alternative relocation sites⁶.
- f. Relocation advisory services that may be necessary⁷.

Chapter 11 Nonresidential Relocations

¹ 49 CFR PART §24.205(a)

² 49 CFR PART §24.205(a)(1)

³ 49 CFR PART §24.205(a)(2)

⁴ 49 CFR PART §24.205(a)(3)

⁵ 49 CFR PART §24.205(a)(4)

⁶ 49 CFR PART §24.205(a)(4)

⁷ 49 CFR PART §24.205(a)(5)

11.01 Scope for Nonresidential Relocations

Following is an outline of the Arizona Department of Transportation (ADOT) Policies and Procedures in the administration of Federal Regulations as they pertain to nonresidential moves.

It is not intended that the policies set forth here shall stand alone, but serve only to define ADOT policy within the confines of the regulations.

11.02 Nonresidential Displacee - Defined

A nonresidential displacee is defined as any eligible individual or group of individuals owning or occupying a property to be acquired for purposes other than use as their personal residence.

ADOT further identifies these displacees in four separate categories¹:

- a. Non-occupant-owners, or owners occupying the property solely for the purpose of renting to others,
- b. Property owners or tenants occupying the property solely for the purpose of storing personal property,
- c. Nonprofit organizations, farm operations, and
- d. Those individuals who are actually engaged in business on the property being acquired.

11.03 Preliminary Contact

¹ 49 CFR PART §24.205(a)

A right of way Agent shall be assigned and become involved as early in the project planning process as Management determines appropriate:

- a. To identify occupancy status and primary use of the property.
- b. To proceed with the requirements outlined in Section 2.04, Realty and Personalty Identification.
- c. To become familiar with an on-site business and relate to the business owner how the appraisal process might affect the relocation process.

NOTE: It may become necessary at this point to discuss lease conditions or outside agreements pertaining to tenant improvements with both landlord and tenant(s)¹.

If the property is tenant-occupied, the property owner shall be advised that if the tenant vacates after the First Written Offer to the owner (or letter of intent to acquire) but prior to the State obtaining possession, the lessor may be eligible for Protective Rents at a negotiated amount not to exceed the amount defined in the lease.

NOTE: This compensation shall be resolved as an acquisition issue (administered through Property Management Section) as an inducement to the property owner to leave the property vacant and thus avoid additional relocation expense.

No tenant shall be denied the opportunity to meet and discuss the effects of the acquisition on his/her occupancy and relocation from the property to be acquired. This contact shall not occur, however, until contact has been made with the property owner.

11.04 Realty and Personalty Identification (Business Relocations)

¹ 49 CFR PART §24.105; ARS §12-1116(A), (B), & (C); ARS §28-7154(B)&(C); ARS §11-973(B)&(C)

It is imperative that the existence and ownership of all tenant improvements be accurately identified on the Ownership Identification form¹.

a. The Agent shall accompany the appraiser on his/her initial inspection of the property:

1. To assure that ownership of tenant improvements (if applicable) is clearly defined and addressed accordingly through the appraisal process².
2. To assist in clarification of personalty as it pertains to business operations.
3. And make available to the appraiser a copy of the Ownership Identification form.

b. In determining the division of realty and personalty, the appraiser shall address the issue of sign structures.

1. If the sign structure is determined to be realty, the appraiser shall appraise the structure, and the Acquisition Section shall consider any attached sign component belonging to an on-site business under the relocation section of the program.
2. If the sign is determined to be personalty, Acquisitions will address allowable entitlement reimbursement under the relocation program.

Items identified in the appraisal as realty will not receive consideration for reimbursement of moving expenses, related expenses, or re-establishment expenses³.

¹ 49 CFR PART §2.205(c)(2)(i)(C)

² 49 CFR PART §24.105; ARS §12-1116; ARS §27-7154; ARS §11-973

³ 49 CFR PART §24.3

11.05 General Information

a. First Call

The purpose of this meeting is to more clearly define the relocation program discussing possible entitlements, administration of funds, and the responsibilities of both the displacee and the assigned Agent.

The Agent shall be specific in the discussions, as applicable, regarding actual move expenses, related expenses and limitations, re-establishment expenses and limitations, and the option for a Fixed Payment in lieu of moving, related and re-establishment expenses (Exhibit 14.07). The displacee shall be provided with sufficient information, as it relates to the business to be relocated, to enable the business owner to make knowledgeable decisions regarding the move to a replacement site.

b. Inventory Preparation¹

The displacee shall be responsible for providing a certified inventory of personalty to be moved. The inventory may be prepared on forms provided by ADOT (Exhibit 14.04) or in a format of the displacee's choice. The Agent shall, upon request, assist in the preparation of the inventory. Reimbursement for time claimed with regard to inventory preparation shall be limited to ADOT requirements, i.e., the inventory list shall consist of machinery, equipment, office furnishings (large items); business inventory shall be identified by volume, i.e., approximate carton count, cubic feet, bulk weight, etc. The commercial movers will address and identify the business inventory in a manner consistent with the method recommended for transporting the inventory.

Consideration will be given to reimbursement for film (either video tape or photograph) documentation of the inventory and move, where applicable.

¹ 49 CFR PART §24.301(d)

Reimbursement will be addressed as an "Other Moving-Related" expense. No reimbursement shall be given for digital videotaping or photography.

c. Hourly Rate Computations¹

Personal time, or employee time, claimed by displacees eligible under the nonresidential section of the relocation program, shall be reimbursed based on the hourly rate established for the individual performing the work (not to exceed rates assessed by local planning & moving specialists). This rate shall be supported by documentation in the form of payroll records, W-2 forms, or income tax forms provided to the Department. The Agent shall provide and explain the Professional Services procedures.

11.06 Moving Expenses (Ref. 49 CFR PART 24.301)²

Any business or farm operation which qualifies as a displaced person is entitled to payment for such actual moving and related expenses, as Management determines to be reasonable and necessary as follows:

a. Low Cost or Uncomplicated Moves (Commercial or Self-Move)³

Reimbursement for low cost or uncomplicated moves may be based on a determination of moving costs prepared by ADOT personnel, the lower of two (2) firm bids prepared by licensed bonded moving companies, or a combination of one (1) bid provided by a licensed bonded moving company and a determination of moving costs prepared by ADOT personnel.

¹ 49 CFR PART §24.301(d), (e), & (g)

² ARS §28-7143; ARS §11-963

³ 49 CFR PART §24.301(b)(1)&(2); ARS §28-7143(A)(1); ARS §11-963(A)(1)

Non-occupant-owners, owners occupying solely for the purpose of renting to others, and persons occupying the property solely for the purpose of storage, shall, with few exceptions, fall within this category.

b. Large or Complex Moves (Commercial or Self-Move)¹

Reimbursement for actual moving costs for larger moves and business and nonprofit organization moves, shall be based on two (2) firm bids provided by licensed bonded moving companies (or vendors in the case of specialty items such as computer systems or telephone systems). Bids are to be obtained as follows:

1. The Agent shall determine the specific needs of the displacee at the first meeting through interviews and personal observation and shall provide the opportunity for the displacee to assist in the selection of the moving firms to be contacted.
2. The Agent shall prepare moving cost bid specifications (Exhibit 14.05) to be provided to each bidder which instructs that the bid is to be based on a move within a 50 mile radius, shall address pack, transport, unpack and re-shelve of all personalty, shall provide full replacement insurance, and shall identify any special move requirements.
3. Moving companies shall be contacted to schedule inspection of personalty to be moved.
4. The Agent shall accompany movers during the personal property (Exhibit 14.04) inspection.

Upon receipt of moving bids, or a staff-prepared moving cost determination, the Agent shall analyze the bids to assure compliance with Departmental

¹ 49 CFR PART §24.301(d)(1)&(2); ARS §28-7143(A)(1); ARS §11-963(A)(1)

requirements and shall compare the bids for similar services. A moving expense determination letter will then be prepared and presented to the displacee either in person or by certified mail.

c. Commercial Move¹

If the displacee elects to have their personalty moved by a commercial moving company, ADOT shall, at the request of the displacee, make direct payment to the moving company upon completion of the move or payment as required by the moving company

d. Self-Move²

If the displacee elects to perform a self-move of the personalty, payment shall be made based on the lower of the two (2) bids with no reduction for profit, overhead or insurance (by allowing compensation for insurance, the Department considers it reasonably available). A reasonable payment shall be made to the moving companies for their time in bid preparation.

e. Displacee/Employee Involvement

In the event the displacee elects to move a portion of their personal property, the amount reimbursed for pack/unpack/re-shelve shall not exceed standard industry rates³ for similar services performed by a professional moving company.

Special care shall be taken to assure that amounts paid supplemental to the entitlement established by the low bid do not represent a duplication of payment for work performed. Supplemental entitlements may be established by additional bids.

¹ 49 CFR PART §24.301(b)(1) or (d)(1)

² 49 CFR PART §24.301(b)(2) or (d)(2)

³ 49 CFR PART §24.301(d)(2)(ii)

The displacee shall be advised that sufficient advance notification must be provided to the Agent regarding move dates. The Agent will monitor the move, as necessary.

11.07 Moving-Related Expenses (Ref. 49 CFR PART 24.303)

a. Third Party Services¹

All third party services, (i.e. disconnect/reconnect for personal property moved) shall be addressed under a separate bid for services, where possible. Bids shall be obtained as outlined under Actual Moving Expenses.

b. Storage²

Storage shall be considered on a pre-approved basis, and only with appropriate justification for necessity. It may be limited to a time period less than twelve (12) months but shall not exceed twelve (12) months unless Management determines that a longer period is necessary.

c. Licenses and Permits³

Licenses and permits considered under the moving-related section of the regulations shall be limited to those necessary for the occupancy and operation at the replacement site and those necessary to reinstall relocated personal property. They shall not include permits and licenses related to, or required for, realty purposes (i.e., building permits, landscape permits, etc.). These items may be covered within the limits of the re-establishment section of the regulations.

¹ 49 CFR PART §24-301(g)(3)

² 49 CFR PART §24-301(g)(4)

³ 49 CFR PART §24.301(g)(11)

d. Professional Services for Planning¹

Professional services for planning shall be limited to time spent SPECIFIC to the move of the personal property. This category shall be limited to such items as space planning for machinery and equipment, meetings with movers/vendors in relation to the actual placement of personal property, and time spent to obtain necessary permits allowable under the moving-related category.

Time shall not be considered for issues not relating to the move of the personalty. This includes, but is not limited to, time spent with contractors and inspectors with regard to remodeling a replacement site, time spent in rezoning issues and time spent in obtaining permits for realty items.

ADOT shall consider time requirements of an outside consultant AS IT APPLIES TO THE MOVE OF THE PERSONAL PROPERTY only, as Stated above.

The hourly rate reimbursed to the displacee shall not exceed the average rate for outside firms performing similar services.

All Professional Services fees must be preapproved by ADOT prior to any work completed.

e. Stationery Reprint²

Stationery reprint shall be reimbursed based on a certified inventory of those items to be reprinted at the time of the move. Reimbursement shall be limited to either inventory on hand, or minimum order requirements as established by a printing firm. ADOT participation shall be limited to reproducing a similar product; in the event the

¹ 49 CFR PART §24.301(g)(12)

² 49 CFR PART §24.301(g)(13)

displacee elects to elaborate on the existing product, the additional costs incurred shall be reduced from the total charges.

f. Site Search¹

Reimbursement for time spent searching for a replacement site shall be limited to \$2,500 for time, mileage and other eligible related expenses. Hourly compensation shall be computed as previously outlined.

g. Other Moving-Related Costs (Double Rents)

In the event a displaced business secures a replacement facility which requires modifications to accommodate the business, consideration shall be given to reimbursement of double rent expenditures during remodeling. The Agent shall assess the situation and, if warranted, make a recommendation regarding Department participation based on the following criteria:

1. The Department may, with Management approval, reimburse the lower of two (2) rents in a double rent situation, provided the improvements at the replacement site are necessary to accommodate the business, are completed within a reasonable period of time, and the business is not in operation at both locations.
2. If the displacee is in a rent-back situation with the Department and the monthly rent charged is the lower of the two (2) rents, the subject rental amount shall be waived for a pre-determined period of time through Property Management Section.

h. Other related nonresidential eligible expenses²

¹ 49 CFR PART §24.301(g)(17); ASR §28-7143(A)(3)

² 49 CFR PART §24.303

The following expenses form moving personal property shall be provided if the Agency determines the expense to be actual, reasonable, and necessary:

1. Connection to available nearby utilities from the right of way to improvements at the replacement site.
2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced business operation:
 - a. Soil testing
 - b. Feasibility and market studies (excluding any fees or commissions directly related to the purchase or lease of such site)
3. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

11.08 Re-Establishment Expenses (Ref. 49 CFR PART 24.304)¹

In no event shall the total reimbursement under the re-establishment portion of the program exceed \$25,000.

Re-establishment expenses must be reasonable and necessary, as determined by Management, and administered as set forth in the Federal regulations².

11.09 Entitlement Notification

¹ ARS §28-7143(A)(4)

² 49 CFR PART §24.304(a)(7)

The Department shall, as soon as possible¹, provide a moving expense determination as Stated in Section 2.06.

The Department shall inform the displaced business, as soon as possible upon completion of move, areas of consideration which require further documentation.

a. A Determination of Entitlements, Preliminary Assessment, shall be completed and either hand delivered or sent by certified mail to the displaced business showing the total amount claimed by the displacee in specific categories, total amount unsupported, and amount eligible for reimbursement.

The Department shall afford each displaced business the opportunity to provide additional documentation to support requests for payment which are categorized as "unsupported."

b. Upon receipt of additional documentation, a Determination of Entitlements, Preliminary Assessment Update shall be completed and either hand delivered or sent by certified mail to the displaced business.

c. At such time as all possible expense categories have been addressed and it is apparent that the displaced business and the Department cannot reach an agreement on remaining claims, the Department shall issue a Determination of Entitlement, Summary of Relocation Expenses (Exhibit 14.06), denying participation in any unresolved areas.

d. The displaced business shall be advised, by letter, of the Department's position with regard to the denied claims. The letter shall also define the right of the business to request a review of the denied claims. The Determination of Entitlement, Summary of Relocation Expenses, cover letter and information regarding the appeal process shall be hand delivered by the Agent or sent by certified mail.

¹ 49 CFR PART §24.301(i)

e. Every effort shall be made to assure that funds are made available to the displacee as soon as a commitment is made for the replacement site, (or) scheduling is on line for the impending move, and upon receipt of acceptable documentation¹.

11.10 Fixed Payment - Nonresidential²

A displaced business may be eligible to choose a Fixed Payment in lieu of actual moving (Exhibit 14.07), related and re-establishment reimbursement.

a. General

A Fixed Payment for a business, farm operation or nonprofit organization shall not be less than \$1,000 or more than \$40,000.

b. To qualify for this optional payment the business must:

1. Own or rent personal property to be moved from the subject site for which moving expenses would be incurred and the business must relocate from the subject site. Therefore, when a partial acquisition requires a move of only a portion of the business, that business would not be eligible for a Fixed Payment unless it is impacted to a degree that the entire operation must relocate and Management approves a total acquisition and/or relocation³.
2. Be unable to relocate without a substantial loss of its existing patronage (clientele or net earnings). In most instances a business is assumed to meet this test, except the Department may require a business to provide probable reason the business could be expected to suffer loss of existing clientele. This

¹ ARS §28-7148(A)(2)

² 49 CFR PART §24.305; ARS §28-7143(C); ARS §11-963(C)

³ 49 CFR PART §24.305(a)(1)

would include, but is not necessarily exclusive to, a business with limited walk-in trade such as telephone oriented business enterprises and in-home business operations which should not be adversely impacted by the relocation from one site to another¹.

3. Contribute materially to the income of the displaced person².

As defined in 49 CFR PART 24.2(7) any business operation that is engaged solely in the rental of space to others, including the rental of space for residential or business purposes, is not eligible for a Fixed Payment.

In determining whether two (2) or more legal entities constitute separate businesses and therefore separate eligibility entitlements, the criteria set forth in 49 CFR PART 24.305(b), (1) thru (4) shall be carefully assessed.

c. Computation³

The payment shall be the average annual net earnings of the displaced business, based on the two (2) years prior to the initiation of negotiations for the subject property, except that:

1. A year that reflects a negative income shall be considered as zero for the purpose of the computation.
2. Another year may be substituted for one (1) of the two (2) prior years if it is considered that the business was impacted by the project during that period or Management determines that another year is more reflective of the business income.

¹ 49 CFR PART §24.305(a)(2)

² 49 CFR PART §24.305(a)(6)

³ 49 CFR PART §24.305(e)

3. Remuneration to the business owner(s), immediate family or corporate members that have been deducted as a business expense shall be added back as part of the net income.
4. A business loss carried forward from prior years shall not be considered in the computation.
5. The computation for a business in operation less than two (2) years shall be based on the net income for the period of time the business was in operation, projected to the two-year period for the purpose of the computation.

The displaced business, farm operation, or nonprofit organization shall be required to provide sufficient business income data to enable the Department to establish the net income for the years considered in the computation. Tax returns for the business operation should be provided, if possible, but the Department may accept financial Statements or other income information deemed acceptable for an accurate assessment. The displacee shall be required to disclose depreciation factors that have been, or will be, applied during the two (2) years being assessed, as well as verification of wages to be considered as part of the net income.

d. Farm Operation¹

A Fixed Payment (Exhibit 14.07) for a farm operation is calculated by the same criteria as a business except that the Department may consider a Fixed Payment for a partial acquisition, if the acquisition of part of the land causes the operator to be displaced from the farm operation on the remaining land or causes a substantial change to the nature of the farm operation.

¹ 49 CFR PART §24.305(c)

e. Nonprofit Organization¹

A Fixed Payment for a nonprofit organization is based on the gross revenue less administrative expenses (but not operating expenses) in accordance with 49 CFR PART 24 Appendix A, Subpart D.

11.11 Functional Replacement²

Functional Replacement is defined as the replacement of real property (either lands or facilities, or both) acquired as a result of a highway or highway related project with lands or facilities, or both, which will provide equivalent utility. The property to be functionally replaced must be in public ownership.

Functional Replacement is an administrative process in that the procedures for performing this activity for a Federally funded project are mandated by 23 CFR 710.509; therefore, the decision to offer Functional Replacement should be based on administrative review and approval.

The activity performed in providing Functional Replacement is acquisition/relocation oriented in context and therefore the responsibility for performing this function lies with the Acquisition Section³.

a. General

During the early stages of project development the Department shall identify any properties that would be eligible for application of the Functional Replacement concept. Right of Way Group shall forward a memo to the Director's office advising of the possible Functional Replacement and the estimated cost of providing this option.

¹ 49 CFR PART §24.305(d)

² 23 CFR §710.509

³ 23 CFR §710.509(e)

1. The Acquisition Section shall call on the public entity in ownership of the property and explain the Functional Replacement option and the procedures required to obtain the necessary administrative approval.
2. The Operations Section shall have the property appraised to establish the amount it believes to be just compensation to enable the owning agency to better assess the options. The owning agency may elect to waive its right to the appraisal process if it prefers the Functional Replacement option.
3. Once the decision is reached, the owning agency shall submit a formal request to the Department and fully explain why the application of Functional Replacement would be in the public interest. The request shall also indicate whether the owning agency currently owns additional property to accommodate the replacement facility or prefers that the Department proceed to acquire an acceptable replacement property.

b. Minor Improvements

When approval is received from the Director of the Department of Transportation (or designee), the acquisition Agent may proceed with the acquisition of the displacement and replacement sites and provide assistance in the construction of minor improvements.

c. Major Facility

If a major facility is being functionally replaced, the owning agency shall proceed with the development of detailed plans, specifications and estimates. Advertising for bids and letting of the contract to construct the replacement may, with the approval of the Acquisition Section Manager, follow the general procedures utilized by the owning agency and Federal Procedures if a Federal Aide Project. The submitted bids shall include a provision for Departmental inspections during construction of the replacement facility. The bids shall also contain assurances from the contractor that construction activities shall be performed in compliance with applicable State and Federal laws (i.e., Civil Rights Act of 1964, O.S.H.A. requirements, etc.). An agreement in the form of a Letter of Understanding shall be prepared setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site and the construction of the replacement facility. The agreement shall also set forth how the costs of the new facility are to be shared between the parties.

d. Funding

Advance funds may be made available to the owning agency in accordance with the Letter of Understanding or as deemed necessary. The final payment, however, shall not be issued until the Department has conducted a final inspection and the owning agency has provided a Statement that the cost of the replacement facility has actually been incurred and all provisions of the executed agreement have been satisfied. The Statement shall also certify that the final inspection was completed by both parties; and that the owning agency is releasing the Department from any further responsibility.

e. Federally Funded Projects

If Functional Replacement is to be provided on a project utilizing Federal funding, the Federal Highway Administration (FHWA) shall be involved in all phases of the procedure. The formal request from the owning agency to receive Functional Replacement shall be forwarded to FHWA for approval. The Letter of Understanding shall be between the State and the owning agency with concurrence from FHWA. All activities shall be performed in accordance with 23 CFR Part 710.509, Subchapter H, and Subpart F.

11.12 Utility Relocation

Utility relocation is, in general, handled by the Utilities and Railroad Engineering Services of Highway Development Group in accordance with 23 U.S.C. 123 and 23 CFR 645, Subpart A. If a major facility is impacted by an approved project, the Acquisition Section shall lend such support as requested by Utilities and Railroad Engineering Services in the acquisition/relocation of the facility.

Chapter 12 Residential Relocations

12.01 Scope for Residential Relocations

The following is an outline of the Arizona Department of Transportation (ADOT) Policies and Procedures for the administration of Federal Regulations pertaining to residential relocations.

It is not intended that the policies set forth herein stand alone, but shall serve only to define ADOT policy within the confines of the regulations.

12.02 Initial Relocation Survey

The initial relocation survey is performed by the relocation function of the Acquisition Section. A relocation Agent shall accompany the appraiser on the initial inspection of the property to be acquired. The occupants are interviewed to assess the needs of the persons to be displaced and determine their occupancy status in accordance with the established criteria of the Acquisition Section as follows:

a. Residential Displacee

A residential displacee is any person who meets the definition of a displaced person and who occupies the property as his/her primary residence.

1. A 90-Day Tenant-Occupant is¹:

A person or family who has the temporary use and occupancy of real property owned by another for at least ninety (90) days prior to the initiation of negotiations.

2. A 90-Day Owner-Occupant is²:

A person who has owned and occupied the dwelling to be acquired for at least ninety (90) days but less than one hundred and eighty (180) days prior to the initiation of negotiations.

3. A Less than 90-Day Tenant or Short-Term Owner-Occupant is:

A person who is in occupancy less than ninety (90) days, but prior to the time the State obtains possession of the property.

¹ 49 CFR PART §24.402(a); ARS §28-7146

² 49 CFR PART §24.402(a); ARS §28-7146

The information obtained shall be evaluated for the purpose of preparing the appropriate replacement housing payment and, if applicable, a determination of estimated Increased Mortgage Interest Costs and/or Debt Service¹.

The completed determination, together with title report, approved appraisal and prepared documents are forwarded to the Acquisition Section Manager for assignment to an Agent.

12.03 The Assignment

a. Single Agent Concept

In most instances, the single Agent concept shall be utilized and the Agent assigned to the acquisition of the parcel shall also be responsible for providing relocation assistance to the occupants of the property. One or more additional Agents may be assigned to provide assistance to multiple occupants of a single parcel.

A separate Determination Agent shall be assigned to prepare the determination for a displacee. To avoid any perceived conflict of interest, the Determination Agent shall have no prior knowledge or contact with the displacee.

b. Field Inspection²

The assigned Determination Agent shall review the contents of the relocation package prepared by the Relocation Agent. A field inspection shall be performed of the comparable properties with regard to exterior amenities to assess general and neighborhood conditions³. The Determination Agent shall ascertain that the comparable properties used in the computation of the replacement housing entitlement are still

¹ 49 CFR PART §24.401(d)(1-5); ARS §28-7144(A)(2)

² 49 CFR PART §24.403(b)

³ 49 CFR PART §24.403(a)(2)

available for purchase¹. The property owner and occupant(s) are then contacted by the Relocation Agent to schedule an appointment to present the relocation offers.

c. Preparation of Required Eligibility and Offer Letters

The offer letters are prepared and dated based on the appointment date. An eligibility letter shall also be prepared for each displacee (family unit) occupying the property². The letter establishes their eligibility for relocation assistance as of the date the First Written Offer to purchase the property is presented to the property owner³.

In some instances, eligibility for relocation assistance may have been previously established as the result of a written notice of intent to acquire presented to the property owner in advance of the First Written Offer.

12.04 The First Call

At the first scheduled meeting with the person to be displaced, the Relocation Agent shall reevaluate the occupancy status and verify that the information obtained by the Determination Agent for use in preparing the replacement housing determination of entitlement is valid and remains unchanged.

a. Once the acquisition offer is presented, the Agent shall then present:

1. The letter establishing eligibility for relocation assistance⁴.
 2. The determination letter(s) defining the maximum replacement housing payment entitlement.
-

¹ 49 CFR PART §24.204 & §24.404(b); ARS §28-7152

² 49 CFR PART §24.403(a)(5)

³ 49 CFR PART §24.2(a)(15)

⁴ 49 CFR PART §24.203(b)

3. The letter defining the estimated Increased Mortgage Interest Cost and Debt Service assistance (where applicable)¹.
 4. A relocation brochure.
- b. The Agent shall explain the Relocation Assistance Program² in general and the following categories that relate to the specific relocation being addressed.
1. The method used in computing the replacement housing payment entitlement³.
 2. The availability of the comparable properties listed in the determination letter and used in the computation⁴.
 3. The method of estimating the possible Increased Mortgage Interest Costs/Debt Service⁵.
 4. The ninety (90) day vacate notice defined in the determination of entitlement letter and the procedure for requesting an extension of the required vacate date when necessary⁶.
 5. The one (1) year eligibility period for obtaining and occupying replacement housing to qualify for entitlement¹.
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¹ 49 CFR PART §24.401(d); ARS§28-7144(A)(2)

² 49 CFR PART §24.202

³ Could fall under 49 CFR PART §24.401, 402, 404, 502, or 503 depending on occupant situation. Also, ARS §28-7144 & 7146.

⁴ 49 CFR PART §24.204 & §24.404(b); ARS §28-7152

⁵ 49 CFR PART §24.401(d); ARS§28-7144(A)(2)

⁶ 49 CFR PART §24.203(c)

6. The three (3) moving expense reimbursement options².
 - (a) The self-move reimbursement based on the “fixed move” room count schedule³ or an actual cost move
 - (b) A commercial move based on the lower of two (2) bids and reimbursed to the displacee or, upon request, paid directly to the moving company⁴.
 - (c) A combination of the above.
 7. The possibility of advance partial payment, if necessary, to alleviate hardship⁵.
 8. The eighteen (18) month eligibility period for submitting claims and providing supporting documentation for consideration of reimbursement⁶.
- c. The Agent shall also explain the criteria for claiming the replacement housing payment, additional entitlements and the documentation required⁷ to support the claims as follows:
1. The satisfactory DS&S Inspection of the replacement dwelling, including repairs and/or modifications to the dwelling that may be required to meet the criteria¹.
-

¹ 49 CFR PART §24.401(a)(2)&(b) and §24.402(a)(2)

² 49 CFR PART §24.301(b); ARS 28-7143(A)

³ 49 CFR PART §24.301(b)(2)(i)

⁴ 49 CFR PART §24.301(d)(1)

⁵ 49 CFR PART §24.207(c); ARS §28-7148(A)(2)

⁶ 49 CFR PART §24.207(d)

⁷ 49 CFR PART §24.207(a)

2. The spending requirement as defined in the determination and the procedure for application of the payment in purchasing or renting a replacement property.
 3. The documentation required to support the purchase or rental of the replacement property.
 4. The documentation required to support the final determination of an Increased Mortgage Interest Cost and/or Debt Service reimbursement².
 5. The reimbursement of allowed incidental expenses for an owner³.
 6. Reimbursement of utility transfer expenses (if the commercial move option is selected)⁴.
 7. Reimbursement of necessary relocation related storage expense as approved by Management for a period of time not to exceed twelve (12) months⁵.
- d. The Agent shall inform the displacee of the various options in selecting replacement housing⁶ that may qualify for claiming the replacement housing payment entitlement as follows:
1. Changing current occupancy status⁷.
-

¹ 49 CFR PART §24.2(a)(8); §24.401(a)(2); §24.402(a)(2); §24.403(b)

² 49 CFR PART §24.401(d); ARS §28-7144(A)(2)

³ 49 CFR PART §24.401(e); ARS §28-7145

⁴ 49 CFR PART §24.301(g)(3) NOTE: per §24.301(h)(12) refundable security and utility deposits are not reimbursable

⁵ 49 CFR PART §24.301(g)(4)

⁶ As defined in 49 CFR PART §24.2(a)(6)

⁷ 49 CFR PART §24.401(f) and §24.403(e)

- (a) Rental Assistance option for owner-occupants.
 - (b) Down payment Assistance for tenants.
- 2. Housing available on the market.
- 3. New construction.
- 4. Reconstruction of substandard or less than comparable housing.
- 5. Pre-owned property that, based on a current appraisal, meets the spending requirement.
- e. The displacee shall be informed of the review/appeal process¹.

The Agent shall offer to provide additional lists of available housing², transportation to search for replacement housing³ and appropriate advisory assistance⁴.

The Agent shall document the meeting in the file contact report⁵ noting those persons present at the meeting, all above items explained to the displacee and other areas of importance that were discussed.

12.05 Determinations for Replacement housing Payments

Determinations for replacement housing payment, Increased Mortgage Interest Costs and Debt Service entitlements are prepared by the Determination Section of the

¹ 49 CFR PART §24.10; ARS §28-7147

² ARS §28-7142(C)

³ 49 CFR PART §24.205(c)(2)(ii)(E)

⁴ 49 CFR PART §24.205(c); ARS §28-7142

⁵ 49 CFR PART §24.9(a)

Acquisition Section in accordance with 49 CFR PART 24 and applicable State laws. The policies and procedures for determining these entitlements are further defined in the next chapter (chapter 4).

The Relocation Agent shall be knowledgeable of the criteria and methods used by the Determination Agent in computing a replacement housing payment and the procedures for applying the determined entitlement to purchase or rent a DS&S replacement dwelling.

a. Price Differential - 90-Day Owner-Occupant¹

The Price Differential entitlement for a ninety day owner-occupant is the amount supplemental to the market offer for the property to be acquired necessary to purchase comparable replacement housing as determined by the Determination Section.

1. The determination shall establish the required purchase price for claiming a maximum entitlement. If the cost of the selected replacement property is less than the amount specified in the determination, the entitlement shall be reduced accordingly. If the cost of the selected replacement exceeds the determined cost of comparable housing, the difference shall be the responsibility of the displacee.
2. If the replacement home purchase contract includes personal property, the monetary value of the personal property shall be deducted from the purchase price to determine the actual cost of the replacement dwelling.
3. The Agent shall obtain a copy of the purchase contract or other supporting documentation to verify that the spending requirement has been met prior to processing a claim for a replacement housing payment.

¹ 49 CFR PART §24.401; ARS §28-7144

4. The resultant entitlement may be assigned into escrow or to a third party to assist the displacee in purchasing a property, or may be reimbursed to the displacee after the purchase of the property has been completed¹.
5. An entitlement may be applied toward the construction of a replacement dwelling. When construction costs exceed the purchase price of the State-acquired property, a partial payment may be advanced to assist with additional expenses to complete the replacement. A percentage of the entitlement, as determined by Management, shall be withheld until construction is completed, a satisfactory DS&S Inspection has been performed, and required documentation has been provided. The spending requirement shall be supported by actual construction cost receipts plus the value of the lot, but shall not include any betterments to the replacement dwelling.
6. A ninety (90) day owner-occupant may be eligible to receive Rental Assistance not to exceed \$7,200², if the cost of renting a comparable replacement property exceeds the market rental rate of the property to be acquired by the State, as determined by the Determination Section. If the displacee selects the Rental Assistance option and later purchases replacement housing within the prescribed one (1) year period, the amount claimed as Rental Assistance shall be deducted from the established Price Differential to determine the remaining entitlement.

If the combined total of replacement housing entitlements exceeds \$31,000³, the provisions of Last Resort Housing⁴, as defined in 49 CFR PART 24.404 shall be implemented. The combined total shall be a composite of the replacement housing entitlement, the Increased Mortgage Interest Cost/Debt

¹ 49 CFR PART §24.106; ARS §28-7145

² 49 CFR PART §24.401(f)

³ 49 CFR PART §24.401(b); ARS §28-7144(A)

⁴ 49 CFR PART §24.404; ARS §28-7152(A)

Service entitlement and eligible incidental expenses. When Last Resort Housing provisions are employed less than three (3) comparable replacements may be utilized for the purpose of payment computation.

b. Rental Assistance - 90-Day Owner-Occupant; Tenant-Occupant; Less than 90-Day Tenant-Occupant

1. A displaced person who has occupied the property for at least ninety (90) days¹ prior to the initiation of negotiations for the property to be acquired shall be eligible to receive Rental Assistance if the cost of available comparable rentals exceeds the rental rate of the residential unit being acquired. A person who has not met the occupancy requirements but is unable to rent comparable housing within his/her financial means shall be eligible to receive Rental Assistance if the cost of comparable available rentals (including utility costs) exceeds thirty percent (30%) of the displacee's gross income if falling below H.U.D. income limits². The Rental Assistance Determination is prepared by the Determination Section of the Acquisition Section.

(a) 90-Day Tenant³

If the determined Rental Assistance entitlement exceeds \$7,200 the provisions of Last Resort Housing shall be implemented.

(b) Owner-Occupant⁴

Rental Assistance for the one hundred and eighty (180) day owner-occupant is limited to \$7,200 unless the Price Differential entitlement would have exceeded \$31,000. In this event, Last Resort Housing provisions shall be implemented, if the Rental Assistance Determination exceeds \$7,200. The

¹ 49 CFR PART §24.402; ARS §28-7146

² 49 CFR PART §24.402(b)(2)(ii) and §24.404(c)(3)

³ 49 CFR PART §24.402(b)(2)

⁴ 49 CFR PART §24.401(f)

amount of unclaimed rental assistance may be applied to the purchase price of a replacement dwelling.

(c) 90-Day Owner-Occupant¹

Rental Assistance for the ninety (90) day to one hundred and seventy-nine (179) day owner-occupant is also limited to \$7,200. The determined entitlement for the ninety (90) day owner may be applied toward the purchase of replacement housing, per 12.05c below.

To qualify for this entitlement, the displacee shall rent and occupy a DS&S dwelling within one (1) year from his/her established vacate date², unless Management determines that an extension of the eligibility period is justified.

2. If the required monthly rent for a replacement dwelling is less than the spending requirement defined in the determination, the allowed entitlement shall be reduced accordingly. Any amount of rent that exceeds the determined amount shall be the responsibility of the displacee.
3. An entitlement that falls under the provisions of Last Resort Housing shall be paid in a lump sum to the displacee, unless the Agent recommends and Management concurs, that the future replacement housing needs of the displaced person can be better addressed by providing the entitlement in installments³.
4. If a partial or installment payment has been provided for Rental Assistance, and the displacee elects to purchase a replacement dwelling within the

¹ 49 CFR PART §24.402(b)(1)

² 49 CFR PART §24.402(a)(2)

³ 49 CFR PART §24.402(b)(3)

prescribed one (1) year period, the balance of the Rental Assistance entitlement may be applied as Down payment Assistance¹.

5. The Agent shall obtain a copy of the lease and/or rental receipt prior to the release of the Rental Assistance entitlement.
6. Required non-refundable cleaning or security deposits may be reimbursed as a moving related expense².
7. In the case of a defined hardship, an advance payment may be assigned or a partial payment processed to assist the displacee in obtaining replacement housing³.

c. Down payment Assistance - 90-Day Owner or Tenant-Occupant⁴

1. A tenant-occupant or ninety (90) day owner who has been determined eligible for a Rental Assistance entitlement may elect the option of applying the amount of the determined entitlement as Down payment Assistance toward the purchase of replacement housing.

(a) Tenant-Occupant

The rent supplement for a tenant-occupant may be applied in the manner defined below in 2(a) thru (e) but the total amount of down payment plus closing costs, etc., may not exceed the Rental Assistance determined.

(b) 90-Day Owner

¹ 49 CFR PART §24.402(c)(1)&(2)

² 49 CFR PART §24.301(g)(7)

³ 49 CFR PART §24.207(c); ARS §28-7148(A)(2)

⁴ 49 CFR PART §24.402(c)(1)

Down payment Assistance for the ninety (90) day owner is limited to the amount he or she would have been eligible to receive as an owner-occupant not to exceed the rent supplement calculation except that eligible incidental expenses, Debt Service, and Increased Mortgage Interest Costs may be added to the down payment provided the total does not exceed \$7,200.

2. The Down payment Assistance entitlement must be applied toward the purchase of replacement housing¹. Funds may be administered in the following categories (or combination thereof) as necessary:
 - (a) The actual cash down payment is defined as the difference between the purchase price of the replacement property and the principal balance of the mortgage.
 - (b) Eligible closing costs.
 - (c) Loan origination fees, appraisal fees and other financing charges.
 - (d) To reduce the principal balance of the mortgage.
 - (e) To correct any DS&S deficiencies of the property.
3. The Agent shall obtain the documentation necessary to support the entitlement prior to processing for payment. The entitlement may be applied toward the purchase as defined in the above categories or reimbursed to the displacee after the transaction is complete and occupancy established.

12.06 Mobile Homes²

A residential occupant displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements is entitled to a replacement housing payment to

¹ 49 CFR PART §24.402(c)(2)

² 49 CFR PART §24.501

the same extent, and subject to the same requirements, as persons displaced from conventional dwellings.

a. During the early stages of project development, an in-depth review shall be conducted of mobile homes located within the project area as to:

1. Condition
2. Age
3. The availability of comparable housing
4. The cost to move the mobile home and reestablish in a DS&S condition
5. Inability to relocate the mobile home without substantial damage or unreasonable cost
6. Whether or not the mobile home can be relocated due to local mobile home park entrance requirements

The information provided by the review shall be assessed by Management to determine whether to relocate the mobile home(s) or, to proceed with the appraisal, and acquisition.

b. If a mobile home is not acquired, and Management determines that it is not feasible to relocate it, the determination for a replacement housing payment for the owner-occupant shall be calculated using the salvage value or trade-in value of the mobile home, whichever is higher, in lieu of the acquisition cost as the base for the determination¹.

¹ 49 CFR PART §24.502(b)(2)

c. Both the mobile home and mobile site must be considered when computing entitlement(s) for a replacement housing payment. The occupant may own the mobile and site, rent the mobile and site, own the mobile and rent the site, or rent the mobile and own the site. The replacement housing payment entitlement is determined by the Determination Section based on the occupancy status in accordance with the regulations for computing replacement housing payments for the specific categories¹.

d. The replacement housing payment entitlement(s) may be applied to the purchase or rental of the replacement property with the same options and requirements as entitlements determined for conventional housing in the same categories².

e. The mobile home occupant shall be advised that established eligibility for relocation assistance under the Uniform Relocation and Real Property Acquisition Policies Act renders the displacee ineligible to claim relocation benefits under the Arizona Mobile Home Parks Residential Landlord and Tenant Act.

12.07 DS&S Inspection

A DS&S Inspection³ (Exhibit 14.08) of the replacement dwelling shall be performed by the Agent in accordance with the standards set forth in 49 CFR, Part 24.2(f) prior to releasing any replacement housing payment other than an approved advance partial payment due to a defined hardship.

a. In addition to the criteria set forth in the above cited reference, it is required that:

1. The replacement dwelling has an operable cooling unit in areas of the State where climatic conditions indicate the need.

¹ 49 CFR PART §24.502(b)(1)

² 49 CFR PART §24.502(c)

³ 49 CFR PART §24.2(a)(8); ARS §28-7144(B)

2. Swimming pools shall be fenced to control access with fences of sufficient height (both from ground level and overall) to guard against entry by a child. All gates shall be self-closing and shall be installed to open (swing) away from the pool.
 3. Bedroom windows with security bars shall be inspected to ensure that at least one (1) window is of sufficient size to allow for an emergency exit, and is equipped with a window guard complete with a self-contained quick release device.
- b. Upon completion of an approved inspection, the Agent shall fully explain the Disclaimer Statement contained in the DS&S Inspection form with specific emphasis on advising the displacee that the inspection does not constitute or imply any guarantee or warranty on the part of the State as to the condition of the inspected property.
- c. If a displacee purchases a replacement property of the State, the Agent shall coordinate the required inspection through the Department of Transportation Agency closest to the property to be inspected. The Agent shall provide the DOT agency with a written request for the inspection to be performed and enclose the necessary inspection forms.
- d. Only in rare and unusual circumstances may the inspection, or non-conforming areas of the inspection, be waived by Management. If Federal funding is utilized in any phase of the project, the Federal Highway Administration must also concur with the waiver.

12.08 Increased Mortgage interest Cost/Debt Service¹

The Determination Section of the Acquisition Section shall prepare both the preliminary estimate and final determination of Increased Mortgage Cost and/or Debt Service.

¹ 49 CFR PART §24.401(d); ARS §28-7144(A)(2)

a. The preliminary estimate is based on information obtained by the Determination Agent prior to the State's offer to purchase the property. The computation, therefore, is based on the mortgage balance, the remaining term of the mortgage, and the average prevailing interest rate, origination fee and points at that time¹.

b. The calculation results in an entitlement which, if applied to a replacement home purchase at the price level established as comparability together with the equity from the State's purchase of the previous property and the replacement housing payment, will result in a lower new mortgage amount that required the same monthly payment rate as that of the previous dwelling.

c. The payment must therefore be made available at the time of the replacement home purchase, if the displacee chooses to apply it in this manner, to offset the loss of favorable financing caused by the State's purchase of the subject property.

Reasonable precautions shall be taken to safeguard against an overpayment, such as reassessing the factors used in the calculation just prior to the replacement home purchase date, and/or ensuring that remaining entitlements, such as moving cost reimbursement, can be adjusted to offset any overpayment.

d. The final determination shall be prepared based on the exact figures at closing, providing the interest rate and Debt Service are reflective of the prevailing market rate. Higher interest rates, and/or Debt Service, shall be considered if a hardship exists and the displacee is unable to obtain lower financing. If a decrease in the amount of mortgage is created by applying the entitlement, as intended, the final calculation shall be based on the previous mortgage amount or the new mortgage plus the estimated entitlement, whichever is lower.

¹ 49 CFR PART §24.401(d)(1)

e. A ninety (90) day owner-occupant is entitled to an Increased Mortgage Interest Cost/finance charge entitlement only to the extent of any difference remaining between the amount that would have been received as a Price Differential entitlement as a one hundred and eighty (180) day owner and the maximum \$7,200 entitlement limitation for a ninety (90) day owner-occupant¹. Eligible closing costs may also be paid within this limitation².

12.09 Incidental Expenses³

a. Incidental expenses are generally considered to be the one-time charges normally paid by the buyer, necessary to complete the transaction for the purchase of the replacement dwelling and further defined in 49 CFR PART 24.401.

b. Incidental expenses based on the purchase price of the replacement property, or the amount of the mortgage (such as escrow charges and owner's title policy) shall be adjusted to the price of the comparable property and the displacement mortgage amount, respectively.

c. Finance charges, but not prepaid expenses shall be considered as an eligible incidental expense for tenant-occupants, but shall be paid only within the limitation of the Downpayment Assistance entitlement.

12.10 Moving Expenses⁴

All individuals qualifying under the residential portion of the program are entitled to be reimbursed for the move of personal property.

¹ 49 CFR PART §24.402(c); ARS §28-7146(B)

² 49 CFR PART §24.401(e); ARS §28-7145; ARS §28-7146(A)

³ 49 CFR PART §24.401(e); ARS §28-7145

⁴ 49 CFR PART §24.301; ARS §28-7143

The following outlines the options available to residential displacees:

a. Actual Commercial Move¹

1. Reimbursement shall be based on the lower of two (2) firm bids prepared by licensed, bonded moving companies.
 2. The displacee shall contact moving companies of their choice to schedule an inspection of the personalty to be moved. The Agent shall provide the moving companies with bid specifications (Exhibit 14.05) to ensure conformity in preparation of bids, and shall accompany bidders during the personal property inspection.
 3. Upon receipt of moving bids, the Agent shall analyze the bids to assure compliance with Department requirements. A moving determination letter shall be prepared and presented to the displacee in person or by certified mail.
 4. If the displacee elects to have personalty moved by a commercial moving company, ADOT shall either pay the mover directly upon completion of the move or shall reimburse the displacee upon evidence of payment to the moving company.
 5. A payment can be made to a mover for preparation of the moving bid.
 6. The Agent shall monitor the move, as necessary, until satisfactorily completed.
 7. Under the provisions of the commercial move, the displacee shall also be reimbursed for the expense of transferring utility services. Consideration will be given to utilities in place at the subject site, comparable service required at the replacement site and necessary non-refundable deposits. Establishing
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¹ 49 CFR PART §24.301(b)(1)&(d)(1); ARS §28-7143(A)(1)

service from the right of way or lot line to the home would be permissible, but not from a further location.

b. Self-Move¹

Any person displaced from a dwelling is entitled to receive an alternative to a payment for actual moving and related expenses. This entitlement shall be determined in accordance with the Residential Moving Expense & Dislocation Allowance Payment Schedule contained in the Federal Register.

1. The amount shall be calculated by the assigned Agent based on the number of rooms in the subject dwelling with consideration given to volume of personal property. The displacee shall be advised by letter, either personally delivered or sent by certified mail, of the amount of the entitlement.
2. Inventory shall be required for self-move computed in this manner.
3. The amount computed includes provisions for reconnecting utilities.
4. Non-occupant owners of residential properties are not eligible for a fixed payment moving option. Their move shall be addressed under the provisions for a nonresidential move.
5. Displacee shall be fully advised regarding these two (2) moving options, with instructions that a choice must be made.

c. Moving & Related Expenses - Mobile Homes²

¹ 49 CFR PART §24.301(b)(2)(i)

² 49 CFR PART §24.301(c)

1. Reimbursement for the move of a mobile home determined to be personal property shall be based on the lower of two (2) firm bids provided by licensed, bonded moving companies as outlined under “a”, Actual Commercial Move.
 2. There shall be no relocation participation in the self-move of a mobile home without Management approval.
 3. In addition to the moving cost, the displacee may be eligible for reimbursement of actual and reasonable costs to modify and/or repair the mobile home, as Management determines necessary to place the dwelling in a DS&S condition.
 4. A mobile home salvaged by the displacee is not eligible for a moving expense reimbursement.
 5. Advance moving funds shall be made available, as necessary, to enable the displacee to prepare for and begin the move. Funds shall be provided only at such time as a definite move date has been established.
- d. A combination of the above methods may be used to facilitate the move.

12.11 Housing of Last Resort¹

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, the Department shall provide additional or alternative assistance as defined in 49 CFR PART 24.404.

- a. When a person to be displaced is determined ineligible for a replacement housing payment because of failure to meet the occupancy requirements, and is unable to rent a
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¹ 49 CFR PART §24.404; ARS §24-7152

comparable dwelling within his or her financial means¹, the Agent shall determine, using the financial means formula, the amount of gross income available to meet housing needs.

1. If the monthly rent for a comparable, available property exceeds the displacee's ability to pay, the information shall be submitted to the Determination Section requesting a determination of entitlement for a replacement housing payment.
2. Such assistance shall cover a period of 42 months².

b. A replacement housing payment for an owner-occupant that exceeds \$31,000 shall be applied toward the purchase of the replacement home, unless this requirement is waived by Management³. A Last Resort Rental Assistance entitlement shall be paid in a lump sum payment, unless the Agent determines the need to release the entitlement in installments to ensure that the future housing needs of the displacee are protected⁴.

c. Last Resort Housing provisions may be applied to owner-occupants or tenants whose entitlements do not exceed the established monetary limits⁵ when a defined hardship exists and Management determines that the displacee cannot be successfully relocated without Last Resort Housing consideration⁶.

d. The State does not have enabling legislation to implement the option provided by 49 CFR PART 24.404, (c)(1)iv, of providing assistance by carrying a direct loan to obtain the replacement dwelling; therefore, no direct loans will be made available.

¹ 49 CFR PART §24.404(a)

² 49 CFR PART §24.404(c)(3); ARS §28-7146(B)

³ ARS §28-7152(A)

⁴ 49 CFR PART §24.404(c)(1)(i)

⁵ 49 CFR PART §24.404(a)

⁶ 49 CFR PART §24.404(c)(3)

e. The State is prohibited from paying more for a home than its market value (“just compensation”). Therefore, residential homeowners may be responsible for any outstanding mortgage amount over and above the market value of their home (“negative equity”).

f. When Last Resort Housing provisions are employed, less than three (3) comparable replacements may be utilized for the purpose of payment computation.

Federal regulations charge the State with the responsibility of implementing the provisions of Last Resort Housing in a cost-effective manner. In most instances, the State finds that providing a replacement housing entitlement in excess of the limitations is most cost effective. In some instances, however, alternative measures may be necessary.

The Federal Highway Administration has avoided restrictive guidelines for implementing Last Resort Housing, intending that the provisions allow broad latitude in methodology used to assist with relocation in the diverse situations that occur. It is the State's intention to preserve the latitude of the Last Resort Housing provisions.

Chapter 13 Determination Policies and Procedures

13.01 Purpose

The purpose of this chapter is to outline those policies and procedures which will generally apply to the operation of the Determination Section. When deviation from these procedures is necessary, the Manager will determine the course of action which will most effectively resolve the situation. The same procedures are applicable to both staff and consultants.

13.02 Authority

The guiding authority for replacement housing determinations are found in both the U. S. Department of Transportation's Uniform Relocation Assistance Regulations for Federal and Federally Assisted Programs (49 CFR Part 24) and in ARS, Title 28, Chapter 13, Article 3, Relocation Assistance (28-7141 thru 28-7156).

13.03 Separation of Functions

Agents assigned to the Determination Section shall not be assigned as field Agents on the same parcels on which they have made a monetary determination.

a. All replacement housing benefits shall be calculated by the Determination Section in accordance with the noted Federal regulations and State statutes.

b. All determinations must be approved by Management before they are processed to the Relocation Agent.

13.04 Data Collection

Data collecting and compiling is performed by the Determination Section on a continuous basis for use on all applicable parcels under the Relocation Assistance Program. The basic purpose is to provide a database of accurate and current information on mortgage interest rates. Rental and sale properties pertinent to the project market area will include:

- a. Sales and rental information drawn from daily newspapers, multiple listing services, local real estate brokers, rental agencies and field surveys.
- b. Mortgage information drawn from daily newspapers, multiple listing services, local real estate brokers, field surveys and mortgage service offices.

13.05 Determination Agent Assignment

A Determination Agent shall be assigned to each parcel containing residential improvements which will be impacted by the acquisition of the property by the Department. The assignment shall be made at the time the request for appraisal is made. The Relocation Agent shall be assigned at the same time in order to make one coordinated, owner contact by the Acquisition/Relocation Agent and the Appraiser. Other assignments shall be made as deemed necessary by the Manager.

13.06 Owner/Tenant Contact

It is the responsibility of the Relocation Agent to make personal contact with occupants of residential property for the purpose of completing the Relocation Survey in order to establish eligibility for relocation benefits and gather the information necessary to complete the required determinations. This personal contact is typically accomplished during the initial site inspection with the Appraiser. A Contact Report¹ will be maintained

¹ 49 CFR PART §24.9(a)

from first contact with the occupant to finalization of the determination. Alien certification¹ shall be obtained by the Relocation Agent (Exhibit 14.23).

13.07 Determination of Entitlement - General

The Determination Section is responsible for determining the displacee's eligibility and the amount of replacement housing and mortgage differential relocation entitlements. Replacement housing payments are to be accomplished in the most cost effective, equitable way, and limited to occupants of a dwelling that meet the appropriate eligibility criteria. The following paragraphs identify each type of relocation payment and eligibility.

13.08 Replacement Housing Payments - 90Day Owner Occupant²

A displacee that is an owner/occupant at least 90 days is eligible for a replacement housing payment not to exceed \$31,000³. This payment shall be the sum of the following:

- a. Price Differential⁴
- b. Increased Mortgage Interest Costs⁵
- c. Incidental Expenses⁶

¹ 49 CFR PART §24.208

² 49 CFR PART §24.401; ARS §28-7144

³ 49 CFR PART §24.401(b); ARS §28-7144(A)

⁴ 49 CFR PART §24.401(c); ARS §28-7144(A)(1)

⁵ 49 CFR PART §24.401(d); ARS §28-7144(A)(2)

⁶ 49 CFR PART §24.401(e); ARS §28-7144(A)(3)

d. A 90 day owner/occupant who is eligible for a replacement housing payment but, as an option, elects to rent a replacement dwelling, is eligible for a Rental Assistance Payment (Exhibit 14.10) not to exceed \$7,200¹.

13.09 Determination of Price Differential²

A Price Differential Determination (Exhibit 14.11) is the difference between the acquisition cost offered to the owner/occupant for the displacement dwelling and the amount required to purchase a functionally similar DS&S replacement dwelling³. Particular attention must be paid to the following types of properties since only that portion of the acquisition payment attributable to the residential displacement dwelling shall be considered its acquisition cost when computing the Price Differential:

- a. Multiple dwellings/buildings on a single parcel
- b. Multiple families/occupants in a single dwelling
- c. Mixed use properties
- d. Dwellings on non-typical residential lots

The displacee shall be provided with data relating to the functionally similar properties⁴ used to determine the amount of the replacement housing payment.

13.10 Determination of Increased Mortgage Interest Costs (IMIC)⁵

¹ 49 CFR PART §24.401(f); ARS §28-7146(C)(2)

² 49 CFR PART §24.401(c)

³ 49 CFR §24.401(c)(ii)

⁴ 49 CFR PART §24.2(a)(6)(ii)

⁵ 49 CFR PART §24.401(d)

The purpose of the IMIC payment is to reduce the replacement mortgage. The IMIC (Exhibits 14.12 and 14.13) are the sum of:

- a. The present value of the increase in interest when the prevailing fixed mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling¹, and
- b. Other Debt Service costs such as points, mortgage insurance premiums and loan origination fees².

13.11 Determination of Incidental Expenses³

Incidental expenses are those necessary and reasonable costs actually incurred by the displacee that are necessary to the purchase of a replacement dwelling and customarily paid by the buyer. These expenses may include such items as closing costs, title policy and recording fees, etc.

13.12 Replacement Housing Payments - Tenants

A displacee is eligible for a replacement housing payment not to exceed \$7,200⁴. This payment is in the form of Rental Assistance or Down payment Assistance.

13.13 Rental Assistance⁵

Rental Assistance is the difference between the contract or market rent at the displacement dwelling and the available market rent a displacee will be required to pay

¹ 49 CFR PART §24.401(d)(3)

² 49 CFR PART §24.401(d)(4)

³ 49 CFR PART §24.401(e); ARS §28-7144(A)(3); ARS §28-7145

⁴ 49 CFR PART §24.402(a); ARS §28-7146(B)

⁵ 49 CFR PART §24.402(b); ARS §28-7146(B)

to obtain a similar DS&S replacement dwelling. The difference, based upon a 42-month period, is payable in a lump sum unless Management approves payments in annual installments. Market rent for all residential property shall be established in the appraisal.

Market rent will be substituted for contract rent for an owner/occupant or occupant who pays little or no rent.

13.14 Down Payment Assistance¹

A 90+-day displacee who elects to purchase a replacement dwelling is entitled to a payment for Down payment Assistance not to exceed \$7,200. The full amount of the payment must be applied to the purchase price of the replacement dwelling and incidental expenses.

13.15 Last Resort Housing²

All determinations in excess of the previously described \$31,000 or \$7,200 limitations fall under the provisions of Last Resort Housing (Exhibit 14.15). All Last Resort Housing payments must have the approval of management prior to processing the entitlement offer letter.

13.16 Determination Section Procedures

a. The Relocation Agent will establish a file for each parcel noting the parcel number, project and occupants name on the file. The parcel file should include, but not be limited to the following data: Relocation Survey Form, Contact Report(s), all pertinent documentation used to establish eligibility. The relocation file given to the Determination Agent to perform the market research, Property Comparison Spreadsheet and photographs, compute the replacement housing determinations, and IMIC

¹ 49 CFR PART §24.402(c); ARS §28-7146(C)(1)

² 49 CFR PART §24.404; ARS §28-7152

Determinations, when applicable. Copies of all information will be maintained in the relocation file for closeout by the Relocation Agent.

b. An Acquisition/Relocation Agent shall accompany the Appraiser on the first site inspection for the purpose of inspecting the property, interviewing the occupants and completing the Relocation Survey (Exhibit 14.16). All documentation necessary to establish eligibility (rent receipts, recorded documents, etc.), calculate a Price Differential and/or Rental Assistance Determination (Exhibits 14.10, 14.11, and Exhibits 14.17 and 14.18, if mobile homes), and verify mortgage balances shall be requested during this interview.

c. The Acquisition/Relocation and Determination Agents should become thoroughly familiar with the project right of way plans affecting their assignment areas.

d. Upon receipt of the approved appraisal, the Determination Agent will gather and analyze market data, drive the neighborhoods where similar properties are located, take photographs of properties and inspect those chosen to set replacement values to insure they meet Federal regulations and State statutes governing replacement housing.

e. Using all available market data along with the Property Comparison Spreadsheet (Exhibit 14.19), the Determination Agent will select the three (3) most functionally similar properties to the subject. Calculations for replacement housing benefits will be based on the list price without market data adjustments on properties which are deemed to be and are as good or better than the subject property¹. The calculation resulting in the highest differential amount will be used as the amount of the replacement housing payment. Major exterior attributes found in the subject, but not found in the comparable DS&S replacements require adjustments based on contributory market value as established by an Appraiser. Any adjustments will be made to the subject and subtracted from the appraised value before calculation of the replacement housing determination. Adjustments will be made for major attributes such as swimming pools or garages only.

¹ 49 CFR PART §24.404(c)(2)

No adjustments will be made for minor amenities such as ceiling fans, microwave ovens, etc.

f. Increased Mortgage Interest Costs (IMIC) will be calculated per Federal regulations and State statutes. IMIC Estimates (Exhibit 14.12) will be based on prevailing interest rates and points. The Final IMIC (Exhibit 14.13) calculations will be based on prevailing rates available at time of close of escrow on the replacement property and could vary from the estimate.

g. Upon completion and approval, a copy of all determinations will be processed to the Relocation Agent and all original documents will be processed to the Right of Way Record Center for inclusion into the main file.

The Acquisition Section will, as an audit function, randomly inspect the Department's vacant rental properties to insure accuracy of the monthly Property Management Section's vacancy report. A memo will be issued through the Section Manager to the Property Management Section Manager informing them of the survey's findings. A copy of the report and memo will be forwarded to the Right of Way Administrator's Administrative Assistant for information and any necessary action.

Chapter 14 Exhibits

The following Exhibits are intended for reference purposes. Some of the Exhibits have been reduced in size in order to include them in this manual. [Click Here](#) to view the Exhibits for Chapter 14.

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