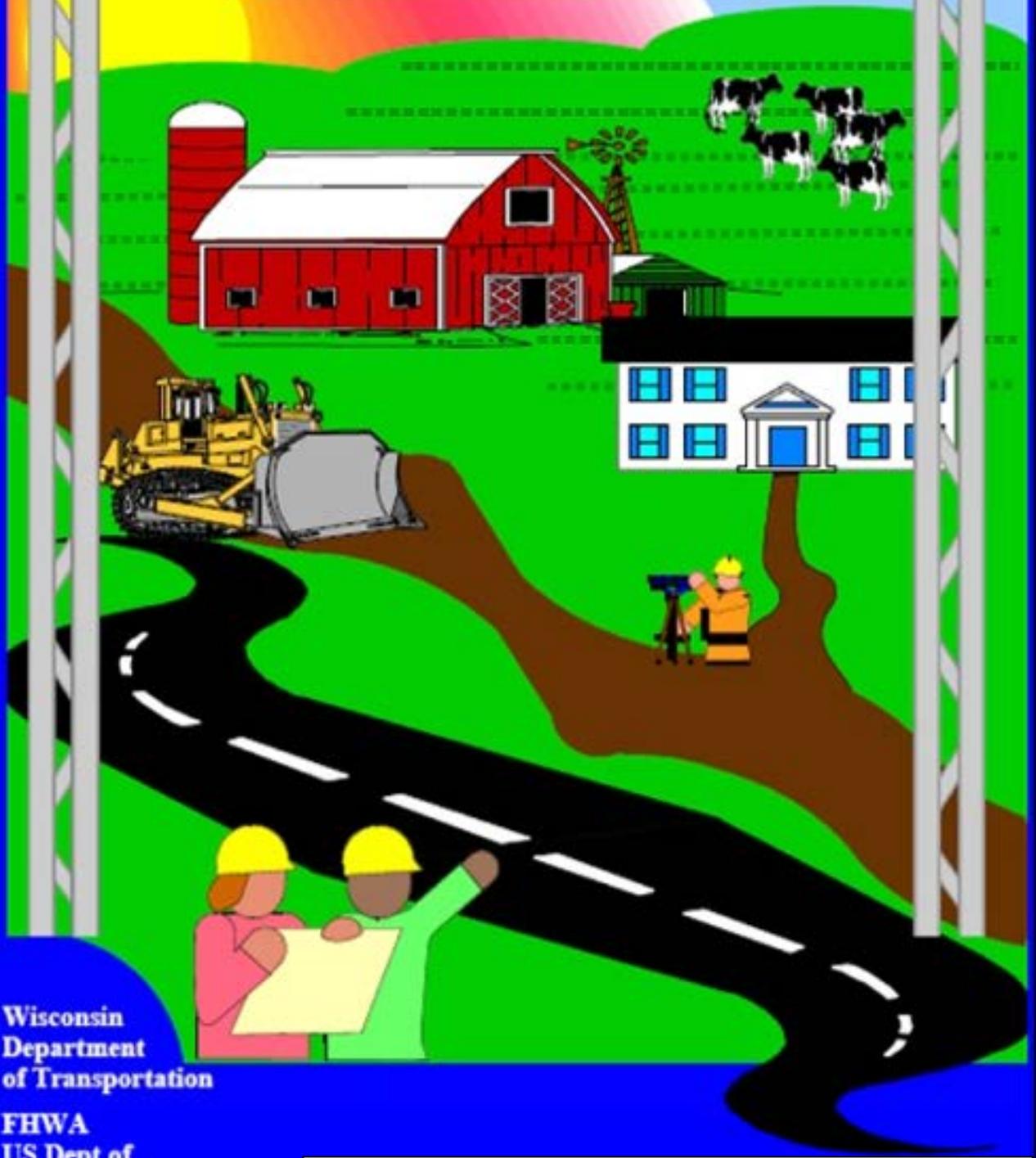


# LOCAL PUBLIC AGENCY MANUAL FOR RIGHT OF WAY ACQUISITION

(Supplement to Real Estate Program Manual)



Wisconsin  
Department  
of Transportation



FHWA  
US Dept of  
Transportation

Online at: <http://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/re/lpa-manual.aspx>

**LPA MANUAL for RIGHT OF WAY ACQUISITION**  
**THE WISCONSIN DEPARTMENT OF TRANSPORTATION**

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## PURPOSE

The Local Public Agency (LPA) Manual for Right of Way Acquisition is intended to assist Local Public Agencies (LPAs) in the state of Wisconsin to secure funding for local road projects and is to be used as a guide to right of way acquisition. This manual briefly describes the processes, documents and approvals necessary to obtain Wisconsin Department of Transportation (WisDOT) and/or Federal Highway Administration (FHWA) funds. This is a compilation of information from many sources and is intended as a reference for administrative and field personnel in local governmental agencies. It is not intended to be a comprehensive document. The official version of this manual is the online/electronic publication. Access is available via the WisDOT website. It is intended to be a living document; hence, it will be revised periodically to reflect new requirements. It will also be changed as needed to make it more useful to its readers. Users should use the current online/electronic publication for reference.

Local Public Agencies (LPAs) must follow the minimum procedures outlined in this manual to secure the approvals needed to proceed with right of way acquisition on state or federal aid projects. The request for use of federal funds in right of way is to be coordinated with the regional Real Estate (RE) Coordinator for WisDOT assigned to the area in which the local project is located. **It is the responsibility of the LPA to ensure that all state and federal procedures and laws are followed.**

Transportation construction projects using federal funds under a local project agreement, except sidewalks, are likely general improvements that primarily benefit the public at large and for which special assessments cannot be levied under [s. 66.0703, Wis. Stats.](#) Municipalities desiring to obtain the required local project funding through special assessments levied against particular parcels should seek advice of legal counsel. See *Hildebrand v. Menasha*, 2011 WI App 83.

Key documents, forms and letters as referenced throughout this manual are listed in the Appendix, and fill-ready forms can be downloaded directly from the LPA Manual/[Forms](#) page. Also be aware that this manual is a subsection of the larger Real Estate Program Manual ([REPM](#)), also accessible via [WisDOT's website](#). To obtain additional detailed information, direction and guidance relating to the policies and procedures as outlined and discussed throughout this manual, you should make frequent reference to and use of the REPM in its entirety.



**Caution! Do not start the acquisition process until the following approvals have been obtained and documented in the project files:**

- **Design Study Report**
- **Right of Way Plat or Construction Plan**
- **Relocation Plan (if required)**
- **Relocation Order**
- **Acquisition Capability Statement/Real Estate Contracts**
- **Real Estate Funding Approval (when state and/or federal aid is in right of way)**

**Exception: For advanced acquisitions, see Section 1.5 Advanced Acquisitions.**

Legal references:

[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended \(Uniform Act\); 49 CFR; and, 23 CFR; Chapter 32/Eminent Domain, Wisconsin Statutes; Dept. of Administration/Admin Code: Chapter 92 - Relocation Assistance.](#)

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Acronyms used:

FHWA – Federal Highway Administration

LPA – Local Public Agency

MC – Management Consultant

RE Coordinator – Real Estate Coordinator

REPM – Real Estate Program Manual

WisDOT – Wisconsin Department of Transportation

WisDOT BTS-RE – Wisconsin Department of Transportation, Bureau of Technical Services-Real Estate (central office)

## **CHAPTER 1.0 - PROJECT DEVELOPMENT**

The overall Local Public Agency (LPA) program is administered by the Wisconsin Department of Transportation (WisDOT), Division of Transportation Investment Management (DTIM). In addition to DTIM's program management, the Division of Transportation System Development (DTSD), Regional Program Management Team with support from a Management Consultant (MC), delivers the project management and oversight activities. A DTSD regional Real Estate (RE) Coordinator from the Regional Program Management Team is assigned to help coordinate and manage all real estate related activities, with support from the MC.

### **1.1 NOTIFICATION PROCEDURES**

The Local Public Agency (LPA) must initiate and maintain communications on all right of way projects with the Management Consultant (MC), who will work with the WisDOT Real Estate (RE) Coordinator.

Right of way includes:

- Access rights
- Construction permits
- Encroachments
- Fee purchase
- Permanent limited easements
- Temporary limited easements
- Utilities

Construction projects being let under the state of Wisconsin letting program must conform to right of way certification. See Chapter 11.0 - Certification and Records.

### **1.2 UTILITY AND RAILROAD COORDINATION**

Under federal regulation, acquisition or relocation of utility and railroad parcels is managed under different processes than the acquisition of highway right of way. The LPA must be aware that there may be differences in the relevant procedures used to relocate utilities, depending on the source of funding. The use of federal versus state funds will determine what specific actions must be taken in order to coordinate the clearing of utility interests. Similar to highway right of way, utility parcels and railroad parcels must be acquired prior to the date set for Plans, Specifications and Estimates (PS&E). The coordination of utility and railroad parcels should begin early in the design process. For questions, contact your MC.

### **1.3 ENCROACHMENTS**

An encroachment is any unauthorized use for a non-public highway purpose located partially or wholly within the highway right of way. This includes, but is not limited to: buildings, signs and fences as well as any other non-permitted uses, such as parking lots, driveways, etc. Encroachments are not allowed within local highway improvement projects, unless authorized by a Revocable Occupancy Permit. Encroachments shall not be created by the purchase of new highway right of way for a project.

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## 1.3.1 Revocable Occupancy Permits

Under unusual circumstances (typically in urban areas), a Revocable Occupancy Permit (Ipa1551) may be issued for an existing encroachment. The use of a Revocable Occupancy Permit is to be the exception and not the rule and is subject to the review and approval of WisDOT. Requests should be submitted to the MC for review and recommendation, and then forwarded to the RE Coordinator for concurrence.

A Revocable Occupancy Permit should include:

- Name of owner for the encroachment and name of adjacent landowner upon whose property encroachment exists, if different.
- Description and photograph of encroachment.
- Copy of construction plan or real estate plat showing location of encroachment with sketch and indicating distances to existing right of way lines and centerline of proposed highway.
- Statement authorizing encroachment to remain that includes the following: 1) encroachment will not conflict with public interest; 2) encroachment will not impair highway; and, 3) encroachment will not interfere with the free and safe flow of traffic.
- Because there should be no encroachment into proposed clear zones or vision corners, request should describe clear zone dimensions and/or vision corner dimensions, as appropriate.

A denial of a Revocable Occupancy Permit would require that the LPA take steps to remove the encroachment. If approved, the permit should be recorded at the county Register of Deeds office. When the encroachment is a sign owned by a business operator who does not own the property, copies of the permit are sent to both the owner of the encroachment and the owner of the property.

Revocable permits will not be issued for:

- Abandoned buildings
- Encroachments created due to purchase of new right of way
- Free-standing signs with bases wholly on new right of way
- Proposed encroachments
- Underground fuel tanks located within right of way
- Well and septic

## 1.4 HAZARDOUS WASTE AND ASBESTOS ABATEMENT

Investigations for the presence of hazardous waste within the project limits are executed as part of the design process. Since cleanup of these sites can be extremely costly, the first defense is to avoid contaminated sites if at all possible. Situations will arise where the purchase of a contaminated site cannot be avoided. Contact the MC for specific instructions.

One potential environmental hazard to be aware of involves the presence of friable asbestos. For many years asbestos materials were used in buildings for a number of different purposes. Under certain circumstances, the asbestos fibers begin to abrade and flake off. These “friable” fibers are more easily spread throughout the environment via wind or water. If the improvement project requires acquisition of structures containing friable asbestos and its presence would affect the value of the property in the market, the presence of the asbestos materials within the structure should be considered by the appraiser and discussed as an element affecting the fair market value in the appraisal report. See Chapter 4.0 - Appraisal Process. Because friable asbestos poses this environmental risk, the biggest potential problem is in the moving or razing of buildings containing asbestos. A moving or demolition contractor must be

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capable of moving or disposing of the building without releasing asbestos particles into the air. Once the presence of friable asbestos is confirmed, the LPA must follow the procedures set forth by the Wisconsin Department of Natural Resources, web reference at: <http://dnr.wi.gov/topic/Demo/>.

## 1.5 ADVANCED ACQUISITIONS (Hardship/Protective Purchases)

Only under unusual circumstances, may parcels be acquired in advance of normal procedures. Contact your MC for guidance on all advanced acquisitions. For additional details, also reference WisDOT's REPM: Chapter 3 - Acquisition/Section 3.2 Early and Advanced Acquisitions. Any advanced acquisition will require approval of WisDOT BTS-RE (Bureau of Technical Services-Real Estate [central office]) or the FHWA depending on the source of funding.

## 1.6 EARLY ACQUISITIONS

Early acquisition requires approval from the RE Coordinator. The MC will review the request and forward it with a recommendation to the RE Coordinator. Contact the MC for more guidance. For additional details, also reference the WisDOT REPM: Chapter 3 - Acquisition/Section 3.2 Early and Advanced Acquisitions.

## **CHAPTER 2.0 - PROJECT STAFFING / ACQUISITION CAPABILITY STATEMENT**

### **2.1 SEPARATION OF FUNCTION REQUIREMENT**

To ensure state and federal participation in project funding, and whenever state and/or federal funds are involved in any part of the project, the LPA must comply with the separation of function requirements. Separation of function requires the appraiser, the review appraiser, and the negotiator to be three different persons. For example, the appraiser is not permitted to negotiate the parcel, the negotiator is not permitted to appraise, etc. See Sections 5.6 Exemption from "Separation of Function" Requirement and 6.7 Relocation Assistance for specific exceptions. These provisions apply whether such person is a salaried employee of the acquiring agency or is retained as a consultant on a fee-for-services basis.

### **2.2 MINIMUM QUALIFICATIONS FOR R/W PERSONNEL**

Federal regulations ([23 CFR](#)) require that all persons performing right of way acquisition functions on federal aid projects be qualified and competent. This requirement applies whether the persons performing right of way acquisition functions are employees of the LPA or fee consultants. Accordingly, the WisDOT BTS-RE (Bureau of Technical Services-Real Estate [central office]) has established minimum standards applicable to state or federal funded highway projects. These minimum standards are described below. The RE Coordinators maintain a list of individuals who are approved as consultants for appraisal, review appraisal, negotiations and relocation assistance programs. A copy of the list is available upon request. NOTE: Certain limited exceptions to the minimum personnel qualifications may be granted. To be considered, contact your MC.



**Caution! ‘Individuals’ are approved for handling right of way functions, not companies or firms.**

#### **2.2.1 LPA Staff**

Individual LPA staff performing right of way acquisition functions must complete the following training prior to project acquisition:

- National Highway Institute online course - [Real Estate Acquisition Under the Uniform Act: An Overview](#); course number: FHWA-NHI-141045.
- Read WisDOT’s LPA Manual for Right of Way Acquisition and be familiar with the required procedures and documentation.

Then, complete the Acquisition Capability Statement Qualifications for LPA Staff (unnumbered) form and attach to the appropriate Acquisition Capability Statement (unnumbered). Contact the regional MC for further instruction.

#### **2.2.2 Appraisers**

All individuals preparing appraisals for eminent domain purposes for LPAs must possess knowledge, skills and abilities in these areas:

- Eminent domain process.
- Right of way plats.

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- Real estate appraisal reports.
- Construction plans and cross-sections.
- Title reports.
- Legal descriptions.
- Conveyance and file documents.
- Uniform Act requirements, statutes, regulations and policies pertinent to appraisal process.
- Basic relocation assistance requirements.
- Be experienced in right of way appraisal for entities with the power of eminent domain or demonstrate the ability to fulfill the requirements of such appraising.
- Have successfully completed some form of technical appraisal training or have experience in appraising the type of property being appraised.
- Have three years of continuous work experience in eminent domain/governmental appraisal field.

In addition, the individual must:

- Be a “Certified Residential Appraiser” or “Certified General Appraiser” to complete detailed or complex appraisals, or be a full-time employee of the LPA (LPA staff are exempt from the certification requirements). In Wisconsin, Certified Residential Appraisers are permitted to appraise residential properties of any limit and non-residential properties with a transaction value not more than \$250,000. Certified General Appraisers are permitted to appraise any type of property with no limitation on transaction value. See more information at [Wisconsin Dept. of Safety and Professional Services/Business Professions](#). Also note that the Uniform Standards of Professional Appraisal Practice (USPAP) requires that the appraiser must both have the knowledge and experience for any assignment accepted, or they must confer with another qualified appraiser for guidance.

NOTE: To demonstrate their level of expertise, candidates may be asked to submit sample appraisal work to the RE Coordinator.

## 2.2.3 Review Appraisers

Must have all of the above described qualifications, plus:

- Ability to logically analyze appraiser’s approach to value, and recognize deficiencies in reports.
- Experience reviewing eminent domain appraisals.
- Knowledge of condemnation proceedings.

NOTE: Where the LPA elects to review appraisals in-house, qualified staff are exempt from the appraiser certification requirements listed above.

## 2.2.4 Negotiation Agents

All individuals conducting negotiations for eminent domain purposes for an LPA must possess knowledge, skills and abilities in the following areas:

- Eminent domain process.
- Uniform Act requirements, statutes, regulations and policies pertinent to the acquisition process.
- Right of way plats.
- Real estate appraisal reports.
- Basic relocation assistance requirements.

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- Construction plans and cross-sections.
- Title reports.
- Legal descriptions.
- Conveyance and file documents.

In addition, the individual must:

- Be on WisDOT's list of LPA approved negotiators (unless an employee of the LPA).
- Have three years continuous experience working in eminent domain, negotiating for right of way acquisition, or be a qualified full-time employee of the LPA.
- Possess effective communication skills.

## 2.2.5 Relocation Assistance Specialists

All individuals conducting relocation assistance services for eminent domain purposes for an LPA must possess knowledge, skills and abilities in the following areas:

- Eminent domain process.
- Right of way plats.
- Real estate appraisal reports.
- Construction plans and cross-sections.
- Title reports.
- Legal descriptions.
- Conveyance and file documents.
- Uniform Act requirements, statutes, regulations and policies pertinent to relocation assistance.
- Basic and advanced relocation assistance requirements.

In addition, the individual must:

- Be on WisDOT's list of LPA approved relocation consultants (unless an employee of the LPA).
- Have three years of continuous experience working in the relocation assistance program of a right of way acquisition and eminent domain organization.
- Be familiar with the requirements for right of way acquisition as stated in the [Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended](#).
- Possess effective communication skills.

## 2.3 ACQUISITION CAPABILITY STATEMENT

An Acquisition Capability Statement must be completed for every project. The Acquisition Capability Statement may be waived by the RE Coordinator when there are no state and/or federal funds in the right of way. Contact your MC with questions or to initiate a waiver.

In order to qualify for consideration as a fee appraiser, fee negotiator, or relocation specialist, a qualified person must be placed on the list of approved individuals for the type of acquisition work sought. Unless previously approved and already included on the approved list of qualified consultants, the LPA must submit a resume for each individual consultant proposed to perform any part of the right of way work and must submit a completed Acquisition Capability Statement. The resume must reflect or demonstrate the individual's qualifications that fulfill the required minimum qualifications. The completed Acquisition Capability Statement with resumes attached, must be sent to MC for review and comment. The MC will forward these materials along with their recommendation to the RE Coordinator for final approval. Any

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proposed change or addition to individuals providing fee services during a project requires an addendum or revision to the Acquisition Capability Statement.



**Caution! It is recommended that no contract(s) be signed by the LPA until after the Acquisition Capability Statement and contract(s) are approved by the RE Coordinator.**

## 2.4 CONTRACTS

If state and/or federal funds are involved in the right of way acquisition, contracts for consultant services in the areas of appraisal, negotiation and relocation must be reviewed by the MC and then approved by the RE Coordinator. No work is permitted to begin under any of these contracts prior to obtaining WisDOT approval.

### 2.4.1 Contract Forms Required

When state and/or federal funding is used for the acquisition of the right of way, the use of WisDOT standard contract language and contract forms is required. Contact the MC with any questions.



**Caution! If state and/or federal funds are used in right of way acquisition procedures, the use of WisDOT forms for fee consultant contracts is required.**

### 2.4.2 State and/or Federal Funding in R/W Acquisition Bidding Requirements

LPAs must follow the open and competitive bidding procedures whenever there is state and/or federal funding in the right of way acquisition phase of the project. Reference [49 CFR 18.36 - Procurement](#). Depending on the amount of the contract, LPAs will follow one of the two processes outlined below.

**Small purchase procedure (contracts \$100,000 or less):** This is a procurement process whereby a minimum of three(3) qualified vendors are contacted and given an objective set of criteria such as description of the project, project completion date, etc. Vendors include a price proposal as a component of their response. The LPA must then base its selection from the responses and must document information, including: firms contacted, their responses, which was selected, rationale for selection and the names of the selection committee. Vendors are allowed to give verbal responses. Written responses may be requested but not required.

**Formal procurement procedure (contracts greater than \$100,000):** These contracts must use a formal solicitation/advertisement process. This may be accomplished through local or state newspapers, or through a roster of eligible consultants. A Request for Proposal (RFP) is typically used. Interested consultants respond with the requested information. A selection committee reviews the responses and then selects the consultant most qualified to perform work. Price is a component of the RFP and is used in conjunction with other qualifications to determine the selection. Documentation must include the rationale for the selection and names of the selection committee.

Work Credits, applied to construction from associated real estate acquisitions are considered the same as if using state or federal funding in right of way acquisitions.

#### 2.4.2.1 No State and/or Federal Funding in R/W Acquisition

If there are state and/or federal funds in any part of the project, the LPA is still required to comply with the Uniform Act as it relates to all other aspects of the acquisition. This means that the LPA

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is responsible for selecting qualified consultants who have the skills and knowledge necessary to understand and apply the Uniform Act. For further guidance, contact your MC.

### 2.4.3 Procurement Procedures for Engineering Contracts (“turn-key” projects)

When right of way acquisition is a component of an engineering services contract, procurement procedures follow the federal regulations for engineering contracts. Consequently, 49 CFR 18.36(d) is not applicable to those contracts. This is true whether the real estate services were included in the original contract or if they were subsequently included in a later amendment to the original engineering services contract.



**Caution! The Acquisition Capability Statement must be approved along with review and approval of the real estate portion of the engineering services contract before the contract is approved.**

## **CHAPTER 3.0 - PRELIMINARY R/W ACTIVITIES**

By this phase in the acquisition process, you should possess an approved environmental document and Design Study Report.



**Caution!** [Section 86.255, Wis. Stats.](#) prohibits use of state segregated transportation funds collected and distributed in accordance with [s. 20.395\(3\), Wis. Stats.](#) for the purchase of any interest in real estate beyond one quarter mile from the edge of the project's right of way line. This prohibition may extend to any state or federal funded LPA right of way project.

### **3.1 STATE AND FEDERAL AID COST ESTIMATE**

When state and/or federal aid is used in the right of way, a cost estimate must be prepared by a qualified individual and submitted to both the MC and RE Coordinator prior to executing and filing the Relocation Order. Preparation of the relocation plan and cost estimate is reimbursable as a design cost. The cost estimate provides justification upon which the requested funding is set aside (encumbered) for the project. If federal funding is in the real estate acquisition, no costs incurred will be eligible for reimbursement until funding has been encumbered. See Project Cost Estimate (lpa3045).

### **3.2 RELOCATION ORDER**

Wisconsin Statutes provide the authority and procedures for all LPAs to acquire right of way in the following chapters: [Cities, Chapter 62.22](#); [Counties, Chapters 83.07](#) and [83.08](#); Villages, Chapters [61.34\(3\), \(3m\)](#) and [61.36](#); and, Townships, [Chapters 60.50](#) and [82.12](#). In each instance, whichever unit of government is the acquiring agency, condemnation for real estate interests needed for the highway right of way projects proceeds under [s. 32.05, Wis. Stats.](#) Prior to beginning the process of acquiring right of way, [s. 32.05\(1\), Wis. Stats.](#), requires that the LPA file an order with the clerk of the county in which the right of way acquisition activities will occur identifying the old and the new locations of the facility and the lands and interests required. This order is called the Relocation Order (lpa1708). To accomplish this, each parcel to be acquired must be shown on a right of way plat that will contain a "Schedule of Lands and Interest Required" identifying the specific property and property interests required to construct the proposed facility. A copy of this plat must be included with the filing of the Relocation Order. In addition, the statute permitting the LPA to pursue acquisition activities must be entered on the Relocation Order. The law requires that the Relocation Order and the plat be filed "within 20 days after its issue ... with the county clerk of the county wherein the lands are located." [Section 32.05\(1\), Wis. Stats.](#) WisDOT requires the LPA to send a copy of the approved Relocation Order to both the MC and RE Coordinator.



**Caution!** Wisconsin Statutes require the Relocation Order and plat be approved prior to any real estate negotiations.

#### **3.2.1 Transportation Project Plats (TPPs)**

The LPA has the option to acquire properties under a Transportation Project Plat (TPP) rather than a standard right of way plat. TPPs include an individual Relocation Order on each TPP sheet. TPP sheets are recorded with the Register of Deeds in the county where the property being acquired is located. Sending a copy to the county clerk is not required. However, the 20-day period to file is still applicable. For more on TPPs, see [s. 84.095, Wis. Stats.](#) and [FDM/Sections 12-10-1 through 20](#).

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## 3.2.2 Exception to Relocation Order Requirement

By Wisconsin law, projects with a total compensation of less than \$1,000 for all parcels (including utilities), do not require a Relocation Order. These types of projects usually involve extremely minor acquisitions, and the estimate of total compensation must be based on a determination of the market values of the damages caused by the project. In other words, the value of the property, not the amount the LPA expects to pay, is used to calculate the total compensation for this exception. The final determination of which projects qualify for this exception shall be made by the RE Coordinator.

## 3.3 RELOCATION PLAN

If the acquisition of the required right of way will involve the displacement of persons, business concerns or farm operations, an Acquisition Stage Relocation Plan must be developed for the project. This relocation plan must be approved by the Wisconsin Department of Administration. When there is state and/or federal aid in the right of way acquisition, the WisDOT BTS-RE (Bureau of Technical Services-Real Estate [central office]) relocation coordinator must also review the plan. If the LPA requires information or assistance in developing an Acquisition Stage Relocation Plan, contact the MC.



**Caution! The Relocation Order cannot be approved by LPA until WisDOT reviews the Acquisition Stage Relocation Plan and it has been approved by the Wisconsin Department of Administration.**

## 3.4 RIGHT OF WAY PLATS

Right of way plat should show minimum requirements that would include, but are not limited to the following list. Also see sub-section 3.2.1 on Transportation Projects Plats; the WisDOT Facilities Development Manual (FDM), Chapter 12; and, contact your MC with any additional questions.

- All rights to be acquired, such as easements, permits, etc.
- Area of parcel to be acquired and any parcel remnants.
- Beginning and ending stations.
- Old and new right of way limits with sufficient ties to survey line allowing for legal descriptions of area to be acquired.
- Parcel identification numbers.
- Schedule of interest.
- Survey line or centerline for alignments.
- Signature block of the approving authority.
- Date of approval.



**Caution! Construction plans with a Schedule of Lands and Interests Required may be used instead of a right of way plat when total parcel value, including utilities as estimated by market, is under \$1,000.**

## 3.5 PROJECT MANAGEMENT CONFERENCE

The MC and/or RE Coordinator may convene a project management conference as soon as practicable. When state and/or federal funds are involved in the right of way acquisition, the RE Coordinator may require participation of a WisDOT review appraiser. Parcels that would qualify for handling under nominal payment procedures and those parcels requiring relocation assistance should also be identified at

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this meeting. See Chapter 5.0 - Nominal Payment Parcels (\$10,000 or Less) and Section 6.8 IRS Requirements. The following topics will be reviewed and discussed at the meeting:

- Time schedules and personnel assignments.
- Nominal acquisitions.
- Appraisal approaches and report formats.
- Fixture determinations.
- Remnant parcels.
- Encroachments.
- Relocation assistance.
- Hazardous waste or other parcel sensitive issues.
- Required offering price approval process.
- Reimbursement procedures.
- Utilities.

## **CHAPTER 4.0 - APPRAISAL PROCESS**

The LPA should review the appraiser's resume and work experience, references and work quality. Although, in most cases, the LPA will subcontract this work to private individuals or firms, the LPA should be familiar with the minimum qualifications for right of way personnel listed in Section 2.2 Minimum Qualifications for R/W Personnel. It is important to note that the Uniform Standards of Professional Appraisal Practice (USPAP) requires that the appraiser must both have the knowledge and experience for any appraisal assignment they accept or they must confer with another qualified appraiser for guidance. NOTE: Consultant appraisers hired to provide appraisal services on state or federal aid right of way projects must be state licensed or certified appraisers.

### **4.1 APPRAISAL FORMATS**

There are three different appraisal formats that can be utilized depending on the complexity of the appraisal problem. For details, reference the WisDOT REPM: Chapter 2 - Appraisal/Section 2.6 Appraisal Formats. Additional questions on appraisal report formats may also be referred to your MC.

### **4.2 APPRAISAL INSPECTION AND DUTY TO INVITE OWNER**

The Uniform Act and Wisconsin law require that an invitation be extended to the property owner to accompany the appraiser during the appraiser's inspection of their property. This invitation can be made in a letter to the owner that includes the appraiser's telephone number and requests that the property owner respond to the inspection invitation by a certain deadline. The purpose behind extending this invitation to the property owner is to allow the owner to set up a joint inspection with the LPA appraiser, the owner and any other representative the owner may wish to have present during the appraiser's inspection. Note that the invitation to the owner to accompany the appraiser must be documented in the appraisal report.

### **4.3 APPRAISAL REVIEW**

#### **4.3.1 Offering Price and Appraisal Review**

It is the appraisal reviewer's role to approve the offering price. Once the appraisal report is reviewed, the appraiser should correct errors detected in the appraisal review process and incorporate them into the appraisal report before the agency presents the appraisal report to the owner. It should be noted that according to [49 CFR 24.104\(b\) and \(c\)](#), the appraisal reviewer has the discretion to depart from the appraised value and modify the offering price, if necessary, so long as the factors warranting such a change in the offering price are adequately documented. At the initiation of negotiations, the presentation of the approved offer to the property owner, it is important that any appraisal report presented to the owner be accurate and error-free.

#### **4.3.2 Appraisal Review with Only Local Funds**

The LPA must have an appraisal review process in place for in-house approved offering prices, this means:

- There are only local funds involved in the right of way acquisition;
- The appraisal reviewer is either a qualified member of the LPA staff or a qualified consultant able to make a technical review of the appraisal; and,
- Prior to the initiation of negotiations, both the appraisal reviewer and an authorized employee of the LPA approve the offering price in writing.

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The appraisal reviewer must conclude that the appraisal report meets all requirements and should, prior to approval, obtain any required corrections or revisions. The appraisal reviewer shall prepare an Appraisal Review Report (lpa2128) that indicates the extent of the review process, and which documents the results of the appraisal review. Also see Offering Price Report and Submittal (lpa1894).

## 4.3.3 Appraisal Review with State or Federal Funds

If state or federal funds are used in the right of way acquisition process, the review appraiser must be a WisDOT BTS-RE (Bureau of Technical Services-Real Estate [central office]) review appraiser. Prior to commencing negotiations with a property owner, the WisDOT review appraiser must approve all offering prices for those parcels requiring an appraisal.

### 4.3.3.1 Objective Review of Appraisal

When state or federal funds are used to acquire right of way, before submitting the appraisal report to the WisDOT review appraiser for the technical review, the appraisal report shall be reviewed for minor errors and inconsistencies, such as spelling errors and basic math errors. This review is called the "objective review," and is mandatory prior to submitting the appraisal report for technical review. The results of the objective review shall be reported on the Appraisal Objective Review (lpa1000) and shall be submitted to the WisDOT review appraiser along with the appraisal report itself. Ordinarily, the assigned negotiator completes the Appraisal Objective Review; however, any member of the LPA staff is eligible to conduct such a review. In certain instances, WisDOT can waive the objective review requirement. For questions, contact the RE Coordinator.

## 4.4 OFFERING PRICE APPROVAL PROCESS

The WisDOT review appraiser shall approve:

- An Offering Price Report and Submittal (lpa1894) indicating the approval of the amount of compensation to be offered to the property owner;
- Where applicable, an alternate offering price when the offer includes any property considered an uneconomic remnant. An uneconomic remnant is defined as a parcel remaining after the acquisition that has little or no utility to the property owner. See [s. 32.05\(3m\), Wis. Stats.](#) See Alternate Offers to Purchase Offering Price for Required Acquisition (lpa1975).

NOTE: To avoid the need for numerous approvals by multiple agencies, it is strongly advised that the LPA apply only local funds to the acquisition of any remnant parcels that may be later sold. After the WisDOT review appraiser approves the offering price, the offering price shall then be reviewed and approved by the LPA. Upon final approval, the LPA is now eligible to initiate negotiations with the affected property owner. The initiation of negotiations is the point in time when the offering price letter and a copy of the appraisal are provided to the property owner. See [49 CFR 24.102\(d\)](#) and discussion beginning at Chapter 6.0 - Negotiation Process.



**Caution! Prior to formal initiation of negotiations, LPA must refrain from all discussions with property owner regarding compensation or value of the project's impacts to the owner's property.**

## **CHAPTER 5.0 - NOMINAL PAYMENT PARCELS (\$10,000 or less)**

In certain instances, when the estimate of the value of the damage to a parcel is low, the FHWA has granted a limited departure from the standard appraisal process described above. This is commonly referred to as the nominal payment process, or known as waiver valuation process under federal regulations. The nominal process allows for a waiver of the appraisal and can be used for those parcels that meet the following criteria:

- Parcel damages valued at \$10,000 or less.
- Appraisal problem is non-complex.
- Land value can be easily established from size and type categories in Data Project Book.
- No damage to improvements.
- Minor severance damages to owner's remaining land can easily be explained up to \$2,000.
- Minor economically justified costs to cure can be included.
- Site improvements, such as landscaping, fencing, etc. can be included.

To assist in evaluating damages to parcels eligible to be acquired using the nominal payment process, Reference the Nominal Payment Parcel Report (Ipa1889) and the following discussion. Also see Nominal Payment Parcel – Waiver of Appraisal Recommendation and Approval (Ipa1897).

### **5.1 ESTABLISHING FAIR MARKET VALUE**

The Project Data Book and Sales Study are mechanisms used to establish the market rates for the various types of property required by the project. The land values for the various categories of land being examined are determined using the sales comparison approach. The unit values derived is based on unit prices for vacant land of the particular category of land being studied, for example: commercial, agricultural or residential. These unit values are then used to compute the value of damages to the landowner's property. The damages to land are one of the components of damage that are documented on the Nominal Payment Parcel Report (NPPR). The total damages for each parcel are the sum of all the items of damage found on the NPPR, and this total becomes the basis for the offer of just compensation to the owner. The importance of a thorough and well-documented Project Data Book or Sales Study cannot be over emphasized. For additional details, reference the WisDOT REPM: Chapter 2 - Appraisal/Section 2.5 Project Data Book. When seeking to establish land values for the types of properties upon which the project will have an impact, sales chosen for comparison to the project parcels should meet the following:

- Comparable sales will be most current available within past several years.
- Selected sales will be in close proximity to project.
- Selected sales will have similar characteristics to project parcels.

Once a representative sample of comparable sales has been assembled for each category of property encountered on the project, the appraiser must determine unit values for each type of property to be acquired. For each type of property, the ranges in values of the selected comparable sales should allow for a determination of value without further analysis or adjustment. Where the comparables include mixed-use properties, allocation of the uses into their component parts may help tighten the value ranges. The appraiser must conclude an individual unit value for each category of property encountered on the project. These conclusions of value will serve as the basis for the nominal payment. The appraiser must also include a location map in the sales study showing where all selected comparable sales can be found. LPA must keep the Project Data Book, Sales Study, and comparable sales used to determine the individual unit value for each category in their project file.

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**Caution! Assessed value may NOT be used to determine fair market value. Assessor's knowledge of the market and ability to find recent sales may be helpful to the LPA to document fair market value; however, assessed values cannot be used as the basis.**

## 5.2 NOMINAL PAYMENT PARCEL REPORT

Once land values are determined, these values are applied to the acquisition areas found on the Schedule of Lands and Interests Required on the right of way plat. These figures, along with any other items of damage encountered on any particular project parcel are then compiled and recorded on the Nominal Payment Parcel Report (NPPR) (Ipa1889). The calculated amounts for each parcel represent the amount of damage the project will cause to each of the project parcels. It is these amounts that become the “nominal” offers of compensation to the individual property owners. The Project Data Book and the NPPR must be approved prior to commencing negotiations. Contact the MC once the Project Data Book and the NPPR have been completed. NOTE: The RE Coordinator has the discretion to allow approval of both to be done by the LPA when there are no state or federal funds in the right of way.

## 5.3 PROJECT DATA BOOK/SALES STUDY AND NOMINAL REPORT APPROVAL

Because the Project Data Book/Sales Study and the Nominal Payment Parcel Report (NPPR) serve as the basis upon which the offers of just compensation to the property owner are determined, when state and/or federal funds are used in the right of way acquisition process, the Project Data Book/Sales Study must be approved by a WisDOT review appraiser. Similarly, when state and/or federal funds are used in the right of way acquisition, the RE Coordinator must approve the NPPR prior to the LPA commencing negotiations with the property owners.

## 5.4 MINIMUM PARCEL VALUES

The RE Coordinator and the LPA acting together can establish a minimum value on a per parcel basis of up to \$500 for fee and easement acquisitions. Project files must be documented explaining the basis for establishing the minimum parcel payment.

## 5.5 PREPARING NOMINAL PARCEL FILE

Once the Project Data Book, Nominal Payment Parcel Report, and the offering price have all been approved, the LPA must prepare a parcel file. Each nominal parcel file must include all of the following:

- Copy of approved Nominal Payment Parcel Report.
- Copy of Nominal Payment Parcel - Waiver of Appraisal Recommendation and Approval.
- Cover letter if contact made via mail.
- Negotiation Diary.
- Photographs of the land and items being acquired.
- IRS Form W-9 for parcels \$600 and over.
- Statement to Construction Engineer.

If contact with the owner is made by mail, the offer to purchase letter is recommended. See sample in Appendix.

## 5.6 EXEMPTION FROM “SEPARATION OF FUNCTION” REQUIREMENT

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Unlike the standard appraisal process for properties with damages exceeding \$10,000, in the nominal payment process, the same agent who prepared the Project Data Book and parcel estimates is permitted to present the offers to the property owners. However, see the discussion at Section 6.1 Brochure Requirement mandating delivery of the [Rights of Landowners Under Wisconsin Eminent Domain Law](#) brochure prior to the initiation of negotiations.



**Caution! If negotiations on the nominal parcel fail, the appraisal of the parcel done by any fee appraiser must be done by a Wisconsin licensed or certified appraiser.**

### 5.7 SUBSEQUENT CHANGES TO NOMINAL OFFERING PRICE

Once the offer is made to the property owner, any change in price agreed upon between the agent and owner should be made with an ink pen on the Nominal Payment Parcel - Waiver of Appraisal Recommendation and Approval (lpa1897), and should be initialed by both the owner and the agent. These changes must be approved by the LPA when there are no state and/or federal funds in the right of way. All adjustments must be justified in the Negotiation Diary (lpa2058). Any increases from the approved nominal amount must be re-approved by the RE Coordinator if there are state and/or federal funds used in the right of way. Any increases to nominal parcels once appraised must be approved under Administrative Revision (lpa1592).



**Caution! Nominal process is up to \$10,000. No exceptions!**

The LPA is responsible for maintaining project consistency. Therefore, it is recommended that you do not change the land value unless it is well supported by new sales data and documented in the Project Data Book.

In order for the owner to receive the benefit of a full explanation of the offer and appraisal report, it is preferable to present the offer in person. The negotiator should take the Project Data Book along as a reference to support their explanation. In most cases, owners will sign on the first call. If not, the Nominal Payment – Waiver of Appraisal Recommendation and Approval should be left with the owner for review. Although less desirable, if negotiations are to be done by mail, the comparable sales from the Project Data Book used to establish the offer should be included with the correspondence with the written explanation of how the offer was determined.

The owner's right to receive an appraisal of the damages to the property must be explained. If the owner chooses, the owner may waive his/her right to the appraisal. No matter what, no coercion or coercive tactics may ever be used to obtain an owner's signature! If at any time the owner requests an appraisal, or if at the second negotiation visit, no agreement with the property owner is reached, so long as the negotiator is either a qualified member of the LPA staff, or a licensed or certified fee appraiser, the negotiator/appraiser may ask the owner to accompany the negotiator/appraiser on an appraisal inspection and a Short Format Appraisal should be prepared. If, for some reason, the appraisal problem is determined to be complex, the management for the LPA should be notified so arrangements can be made to complete an appraisal. Refer to Section 4.1 Appraisal Formats for more discussion on appraisal formats.

## **CHAPTER 6.0 - NEGOTIATION PROCESS**

### **6.1 BROCHURE REQUIREMENT**

Before making the approved money offer to the property owner, the LPA must provide the owner with the brochure entitled, the [Rights of Landowners Under Wisconsin Eminent Domain Law](#), provided online by the Wisconsin Department of Administration/Energy Office. The date the brochure is delivered to the property owner should always be indicated in the Negotiation Diary. See Section 6.2 Negotiation Diary. Contact the MC for more information.

When relocation assistance is involved, the displacee must also be given the brochure entitled, [Wisconsin Relocation Rights Residential](#) or [Wisconsin Relocation Rights for Business, Farm and Nonprofit Organizations](#) (both also linked from Appendix), also provided online by the Wisconsin Department of Administration/Energy Office. Contact the MC for more information.

LPAs that prefer to mail the brochure to the property owner prior to either the initiation of negotiations or the “appraisal call,” may wish to send the property owner a letter similar to the sample brochure/appraiser letter in the Appendix.

### **6.2 NEGOTIATION DIARY**

The LPA negotiator is required to maintain a Negotiation Diary (Ipa2058), which must include the date of delivery for the brochure entitled, the Rights of Landowners Under Wisconsin Eminent Domain Law. All other entries must be sufficient to adequately describe the entire story of the negotiations. Entries should indicate such things as: persons present during any discussions; the nature of any information given to the property owner; any discussions of price; and, should document any and all concerns expressed by the property owner. As a matter of practice, it is important to summarize each discussion of importance and to record the summary promptly after meeting with the property owner since important aspects of the discussion may be forgotten or inadvertently overlooked. NOTE: Each and every entry must clearly indicate (by signature or initials) which negotiator(s) made the contact. Also see Section 6.1 Brochure Requirement. Upon conclusion of the negotiations, the negotiator is required to sign the Negotiation Diary, confirming completeness and that the transaction is closed. Any counter-offers proposed by the owner and any justification for settlement above the initial offer should also be fully documented in the Negotiation Diary. Contact your MC for additional guidance.

### **6.3 NEGOTIATION PROCEDURES**

Once the property owner has received the brochure, the Rights of Landowners Under Wisconsin Eminent Domain Law, the LPA is required to discuss the following with the property owners, where applicable:

- Acquisition policies and procedures.
- Terms of the offer to purchase, including discussing the property or interests required as well as basis on which offer of just compensation is made.
- If relocation assistance is involved, offer relocation services as per the WisDOT REPM: Chapter 5 - Relocation. See additional discussion in Section 6.8 IRS Requirements.

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## 6.3.1 Prohibited Conduct During Negotiations

According to Section 301 of the Uniform Act as implemented by [49 CFR 24.102\(h\)](#), the LPA may not use any technique or take any action, other than the condemnation process itself, which in any way coerces a property owner into selling or donating the property or property interests the LPA needs to build its project. The FHWA as well as WisDOT are charged with the duty of monitoring LPA activities to ensure against coercive actions.

Examples of actions considered to be illegally coercive include: levying assessments against only selected property owners who refuse to donate the needed property or property interest; or, levying or threatening to levy a special assessment on a land owner who rejects an offer of compensation for the needed property or property interest. In addition, the following actions are considered prohibited coercive actions:

- Requesting affected property owners waive their appeal rights;
- Requesting affected property owners waive their relocation benefits;
- Advancing of the time of condemnation; and,
- Deferring negotiations, condemnation, or depositing of funds with the court;



**Caution! Any coercive actions or false statements made by an employee or representative of the LPA, directly or indirectly intimidating, threatening, or coercing any person in order to induce an agreement on the price to be paid for the property may result in the loss of state or federal funds for the project. This may also result in other serious legal consequences, including fines or imprisonment. See [s. 32.29, Wis. Stats.](#)**

## 6.3.2 Initiation of Negotiations

The initiation of negotiations is the day on which the written offer to purchase, including the allocated amount of just compensation, is delivered to the property owner. If the offer is made in person, the initiation of negotiations is the day on which the written offer of just compensation is presented to the owner. If the offer is mailed, it is the date of the mailing as postmarked. At the initiation of negotiations, the property owner must be given a copy of:

- Unless already provided, copies of all required brochures.
- All appraisals made of the property.
- Legal description of the real property that identifies and describes interests to be acquired.
- Map (plat) showing all property affected by project and title sheet listing property owners.
- Offering price letter.



**Caution! LPA must offer to acquire all uneconomic remnants as defined in Section 4.4 Offering Price Approval Process.**

## 6.3.3 Offering Price Letter

The offering price letter (see samples in Appendix) must include the following, when applicable:

- Total compensation being offered to property owner for damages to property.
- Any alternate offers that include remaining lands considered uneconomic remnants. Reference [s. 32.05\(3m\), Wis. Stats.](#)

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- Description of buildings and other improvements including fixtures, considered to be part of the real property for which offer is made.
- List of any improvements such as fixtures not owned by someone other than owner of the real property (i.e., tenant owned improvements).
- Offering price must be allocated between the land, improvements, or other interests lost by owner as a result of project and any damages to remaining property retained by owner (severance damages).
- Statement regarding tax proration.
- Statement that determination of just compensation:
  1. Is based on appraised fair market value of property.
  2. Disregards any decrease or increase in fair market value caused by the project for which property is being acquired.

### 6.3.4 Clear Title

The LPA, when accepting state or federal funds to be used for any aspect of their transportation project (real estate, design, or construction), agrees to follow all state and federal requirements. See [23 CFR 710.201\(h\)](#). Under federal law, property acquired for a state or federal-aid project must be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public. See [23 CFR 710.201\(e\)](#). Meeting the adequacy of interest test requires the LPA to acquire clear, marketable title to the real property or real property interest necessary to build the project.

Where the interest to be acquired is only a portion of the subject property (partial acquisition), WisDOT's policy, with FHWA's concurrence, requires the LPA to obtain either partial releases or subordination agreements for any prior recorded liens or title encumbrances. This requirement applies to recorded mortgages, no matter the complexity or dollar amount. The sole exception to this requirement is for temporary limited easements (TLE) where the risk of foreclosure prior to, or during, construction is low.

Because the title to lands encumbered by liens or mortgage encumbrances is divided between the lien holder and the property owner, a best practice is to alert the property owner to the issue early in the negotiation process. That way, a concerned property owner can contact their lien holder or mortgage company, to determine whether there is likely to be resistance to providing a recordable partial release or subordination agreement.

Should the LPA determine that the lien holder or mortgage company is not cooperative or reasonable in its demands, resorting to the condemnation process may be necessary. If it becomes clear to the LPA that the timeframe or costs of securing either a partial release or subordination agreement may jeopardize the project schedule, a jurisdictional offer (JO) can be used as an alternative and acceptable route. Consult your MC for assistance.

For 'nominal' parcels being acquired through the nominal waiver valuation process (non-complex parcel valuations, with estimated damages below \$10,000), if the acquiring agency determines that condemnation will be necessary, then the nominal waiver valuation should be converted to a full appraisal. Under these circumstances, a short form appraisal can be done to shorten the acquisition timeline. The acquiring agency will then proceed by following the regular process as described in the REPM in sub-section 2.10.6. Consult your MC for assistance.

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Reminder, this LPA Manual is a sub-section of the larger Real Estate Program Manual ([REPM](#)). Refer to sub-section 3.6.1 of the REPM for more details on obtaining clear title and partial release of mortgages.



**Caution! The LPA should notify any potential negotiation consultants that obtaining partial releases of mortgages, subordination agreements, or JOs should be considered when bidding on projects.**

## 6.4 PROPERTY OWNER APPRAISALS

[Section 32.05\(2\)\(b\), Wis. Stats.](#), allows a property owner to obtain an independent appraisal of the damages caused by the project. This owner's appraisal expenses shall be paid for, so long as: the owner's appraiser is qualified; the appraisal report is received within 60 days of delivery; the report adheres to the LPA Appraisal Guidelines & Agreement; and, the fee charged for the owner's appraisal is reasonable. When a property owner exercises the option of obtaining their own appraisal report and provides a copy of the report to the condemning agency, before reimbursing the owner for the entire cost of their appraisal report, the condemning agency should consider:

- Whether fee, in whole or in part, for producing the appraisal report is reasonable and justified; and,
- Whether the merits of the appraisal report warrant a change to the LPA's offering price.



**Caution! The owner's appraisal must be received within 60 days of the presentation of the offer and appraisal to the property owner in order to be considered for reimbursement. No exceptions! For guidance, see sub-section 6.4.1 Calculating 60-Day Deadline.**

When considering the merits of the owner's appraisal, during the negotiation process the LPA may decide that owner's appraisal:

- Is inadequate and that offer will not be changed;
- Has certain information which warrants an adjustment to the original offering price; or,
- Has significant new evidence that warrants either an administrative change to the LPA's offering price, or a second appraisal.

Any time the LPA elects to update its offer of compensation to the property owner, the LPA must issue a revised offering price letter to the property owner. See Section 6.9 Temporary Right of Entry Easement.

### 6.4.1 Calculating 60-Day Deadline

[Section 32.05\(2\)\(b\), Wis. Stats.](#), provides the property owner 60 days to submit its appraisal report to the LPA in order to have the LPA reimburse the reasonable cost of preparing a qualified appraisal report. The 60-day deadline for reimbursement begins upon delivery of the LPA's appraisal to the property owner. Receipt of the appraisal is considered to have been accomplished either upon the date of personal delivery or three (3) days following the date of postmark. When delivered in person, the 60-day timeframe starts on the day of personal delivery. If the 60<sup>th</sup> day falls on a Saturday, Sunday or Legal Holiday the time for receiving the owner's appraisal report is then pushed to the next regular business day. It is the LPA's responsibility to calculate the 60<sup>th</sup> day and to notify the owner of the deadline.

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## 6.4.2 Reimbursement of Owner Appraisal Costs

In addition to the foregoing requirements, for the LPA to be eligible for state or federal reimbursement of property owner appraisal fees, the LPA is required to certify that the owner's appraisal report meets certain minimum standards. Use FHWA Reimbursement - Owner's Appraisal Fee (lpa1001). To be eligible for state or federal reimbursement, each owner appraisal expense must be accompanied by one completed certification.

## 6.5 WRITTEN STATEMENT OF COMMITMENTS

Any commitments between the property owner and the negotiator made during negotiations must be in writing and provided to the required personnel in charge of carrying out the commitments, usually the project or construction engineer. All commitments must be noted in the Negotiation Diary. If there are no commitments the form should indicate "none." In all cases, even when no commitments are made, the property owner must sign this form. This will aid the project or construction engineer should an owner later try to claim that commitments were made when, in fact, there were none. Finally, any owner concerns expressed during negotiations should be listed on the form for informational purposes.

Use of the Statement to the Construction Engineer (lpa1528) is required. This form simplifies the process of ensuring that the owner, construction engineer, design engineer, and the LPA all receive a copy of any commitments made to a property owner by the negotiator in the field. The LPA must retain documentation in the parcel file of any commitments made with the property owner.



**Caution!** Any commitments on state/federal funded projects are subject to WisDOT approval.

## 6.6 CONFLICT OF INTEREST/SEPARATION OF FUNCTION

Federal law requires that the LPA's appraiser, review appraiser and the negotiator for the parcel be separate individuals. This requirement is referred to as the "separation of function." However, there is an exception for nominal parcels. See Section 5.6 Exemption from "Separation of Function" Requirement.

## 6.7 RELOCATION ASSISTANCE

When state or federal dollars are used in acquiring right of way, all relocation computations and claims require review and approval by WisDOT. When only local dollars are used, computations and claims are still required, but are reviewed and approved by the municipality. Contact MC for routing and details.

All displaced owners or tenants must receive the applicable relocation benefits brochure when the relocation benefits and services are presented. The eligibility for relocation assistance begins on the date of the initiation of negotiations. If a displaced owner or tenant vacates prior to the initiation of negotiations, it may result in the loss of relocation benefits. Any move deemed necessary prior to the initiation of negotiations due to non-decent, safe, and sanitary conditions will require a Notice of Intent to Acquire. Contact MC for details on process and proper approvals.

Displaced owner or tenant replacement payment computations must be approved prior to the initiation of negotiations. The relocation agent should try to meet with the property owner to present the relocation benefits at the initiation of negotiations with the acquisition agent. If this is not possible the relocation information must be presented to the owner or tenant being displaced within seven (7) days of the

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initiation of negotiations. The appraiser, acquisition agent, and relocation agent must coordinate their work to insure that their individual functions provide the necessary information needed to calculate an accurate and up-to-date relocation computation.

The relocation agent must be notified of:

- Proposed date of the initiation of negotiations in order to prepare the relocation information, and attend the negotiations.
- Offering price, and associated allocations, to address potential carve-outs.
- Economic use of remnants, and calculate computation dollars.
- Any changes to appraisal and/or offering price in order to revise relocation computations, if necessary.
- Date of closing, and any associated agreements, of the acquisition in order to address occupancy, or lease agreements.

When state or federal dollars are used to acquire the right of way, any money received for lease payments, salvage items, or any similar incomes from a project or parcel will be used to offset the cost of relocation or acquisition of that project. For non-complex residential relocations, or simple moving costs, the acquisition agent, whether LPA staff or fee consultant, may also assume the role of relocation agent as long as they are approved to do so under the Acquisition Capability Statement.

Even though there may not be any displaced residence or business on a project, there still may be moving payments for improvements, fixtures, or personal property not being acquired. These payments may be handled as a relocation moving payment, or may be compensated for in the acquisition, depending on their significance. Contact the MC for details.

## 6.7.1 90-Day Assurance of Occupancy

At the initiation of negotiations, a 90-day assurance of occupancy letter must be given to the property owner or tenant when “any items” are to be moved from the property being acquired, whether compensation for such move is made by a relocation moving payment, or by compensation in the acquisition. Unlike the law in Wisconsin, under the federal regulations, business replacement payments pursuant to [s. 32.19\(4m\), Wis. Stats.](#), are not eligible for federal reimbursement. Contact the MC for assistance in determining business replacement payment reimbursement eligibility. If applicable, the relocation agent must be advised of the date of closing, and if there has been any change in the original offer. For more information, contact your MC.

## 6.8 IRS REQUIREMENTS

If the compensation for the acquisition is \$600.00 or over, the agent must advise the property owner that Internal Revenue Service regulations require that the transaction be reported to the IRS through the use of IRS Form 1099-S, Proceeds from Real Estate Transactions. The agent must also advise the property owner that in order for the LPA to comply with IRS regulations, the property owner must complete IRS Form W-9, Request for Taxpayer Identification Number and Certification, and inform the owner of the obligation to fulfill these IRS requirements. The property owner faces potential civil and criminal penalties for failing to comply with this requirement. The agent should attempt to have Form W-9 completed at the first negotiation meeting. If negotiations are by mail, appropriate written notification must be made. In the event a property owner refuses to provide the required W-9 information, the negotiation agent must document the attempt and the property owner’s refusal in the official parcel file.

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### 6.9 INCREASES TO ORIGINAL OFFERING PRICE

To ensure compliance with the term “highest written offer” as intended by [s. 32.28\(2\) and \(3\), Wis. Stats.](#), all increases in the compensation offered to the owner must be presented in writing by means of a revised offering price letter. These written offers must contain a statement allocating the damages into the component parts (i.e., land, improvements, severance, etc.). When local funding is used to acquire the right of way, any change in the original offering price would be approved by the LPA. However, WisDOT must approve any change to the original offering price when state and/or federal funds are used to acquire the right of way.

Also, where condemnation of a parcel becomes necessary, the Jurisdictional Offer (lpa1786) presented to the property owner must reflect the same dollar amount of compensation as any approved increase to the original offering price. See Chapter 9.0 - Condemnation Process.

The LPA may choose to revise the offer using the administrative revision process (see sub-section 6.9.1 Administrative Revisions).

The Agreement for Purchase and Sale of Real Estate (lpa1618) is recommended as the format for any agreement the LPA reaches with the property owner.

#### 6.9.1 Administrative Revisions

An Administrative Revision is used when the offer is changed for any reason other than a change in the size of the taking, or intent of the taking (change from PLE to Fee). Administrative revisions may include such items as uncertainty of compensability or damage, substantial difference in appraisal opinions, minor changes in market conditions, cost to cures missed in original offer, consideration of litigation costs, etc. Requires RE Coordinator approval when state and/or federal funds are used in right of way. The agency must submit the rationale for the increase in writing on the Administrative Revision (lpa1592). This form requires a written analysis of each appraisal’s “before and after” values, an allocation of damages, and recommended revised values for anticipated damages.



**Caution! Although the LPA may approve any administrative revision that it considers reasonable, prudent and in the public interest, there is no guarantee that the FHWA or state will fully reimburse the LPA if there is a disagreement with any of the justifications used for the increase. Therefore, it is important to seek advice from the RE Coordinator when significant administrative revision amounts are being considered.**

### 6.10 TEMPORARY RIGHT OF ENTRY EASEMENT

WisDOT no longer accepts temporary right of entry as a means to clear right of way for certification. Any exceptions must be pre-approved by FHWA. This action should be the exception, not the rule! A Temporary Right of Entry Easement (lpa1561) is a temporary permit to enter lands for construction purposes. This is used only when negotiations to acquire a permanent right are already underway. A temporary right of entry may be executed when the property owner is willing to allow construction to proceed prior to the actual date of acquisition. Since a temporary right of entry easement acquires only the right to enter upon the land for construction, the required interest must subsequently be acquired as quickly as possible by conveyance or Award of Damage. The LPA must explain, as a part of its right of way certification, the exceptional circumstances surrounding the need to use a temporary right of entry easement and commit to the date by which the acquisition will be completed.

## **CHAPTER 7.0 - DONATIONS AND TEMPORARY INTERESTS**

### **7.1 DONATIONS**

An owner may donate all or part of the required real property interest. The donation cannot, however, be formally accepted until the owner has been given the brochure entitled, the Rights of Landowners Under Wisconsin Eminent Domain Law, and has been fully advised of the right to receive just compensation based upon an appraisal. For the donation to be effective, the owner must sign a Donation - Waiver of Appraisal Recommendation and Approval (lpa1896). The procedure for closing the transaction is explained later in this manual. See Chapter 8.0 - Closing Procedures.

Prior to accepting any donation, all adverse environmental considerations (hazardous materials) must be addressed. Any donation of property shall be subject to all guidelines concerning valuation of the parcel, including sales studies, and shall be subject to the \$1,000 value limit for determining whether it is necessary to file a Relocation Order (lpa1708). See Section 3.2 Relocation Order.

NOTE: For purposes of the owner's right to appeal the amount of compensation paid by the LPA, Wisconsin law requires that the amount to be shown on the conveyance document. This requirement presents a dilemma for the acquiring agency seeking to accept a donation of property or property interest. Consult your agency's legal counsel for guidance when determining the value that should be written on the conveyance (i.e., one dollar and other valuable considerations, mutual benefits, etc.). Contact the MC for instruction on documenting the donation. For additional details, also reference the WisDOT REPM: Chapter 3 - Acquisition/Section 3.4 Donations, Temporary Interests and Right of Entry Easements.

#### **7.1.1 Valuation of Exchanges for Construction Features**

To avoid the possibility of having state and/or federal funding in a project jeopardized, the rules governing donations of property interests are stringent and the process to be used is mandatory. Before using this process, contact the MC. The acquiring agency may accept a property owner's offer to donate property or a portion thereof in exchange for construction features or services rendered that will benefit the property owner. However, from a project funding standpoint, to be eligible to receive credit from federal dollars for the value of the donated property against the LPAs or state's share, for example, 80 percent federal funding and 20 percent state or local funding, the value of the donated property and the value of the feature or service provided to the landowner in exchange must be established as fair market value by an appraisal done by a qualified appraiser. The amount of any credit for purposes of matching funds will be the net difference between the value of the property donated and the benefit received by the property owner for the features or services provided. Also see sub-section 6.3.1 Prohibited Conduct During Negotiations regarding prohibitive conduct during negotiations and coercive tactics when considering property by donation.

### **7.2 TEMPORARY LIMITED EASEMENTS**

A Temporary Limited Easement (TLE) (lpa1577) is limited in purpose and time, and will normally terminate upon completion of construction. Work to be done within a TLE may range from minor sloping and drainage work to minor blending and driveway reconstruction work. Payment, if any, for a TLE will vary by the nature of the impact upon the property. Consequently, where the work to be done is only minor aesthetic blending or reconstruction, there may be no payment. In this case, the words "one dollar and other good and valuable consideration" should be entered into the compensation line of the TLE conveyance document. Where the impact is more substantial, payment can normally be based upon an estimate of fair market rental for the land required. For guidance and examples, also reference the

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WisDOT REPM: Chapter 2 -Appraisal/subject 2.8.9.3 Temporary Limited Easements (TLE). Any affected landscaping or other site improvements located within the TLE work area should be included as items of compensation in the payment to the owner. A separate fencing claim may also be considered if the existing fencing is clearly identified and the need for the fencing can be demonstrated. Payment should not be considered for items that are to be replaced under the construction contract, such as lawn, asphalt, or concrete drives. According to Chapter 32 of the Wisconsin Statutes, all instruments of conveyance are to be recorded in the Register of Deeds office in the county where the project is located. If the LPA elects not to record the TLE, the property owner's right of appeal technically goes on indefinitely. Also, if the conveyance is not recorded, the LPA may not be protected against the rights of a subsequent owner if the property is sold prior to construction. For assistance in evaluating these risks, contact the MC.

## 7.3 CONSTRUCTION PERMIT

A Construction Permit Recommendation and Approval (lpa1732) is not appropriate in most cases. It may only be used to facilitate a request from the property owner to temporarily enter upon private property to perform certain construction activities that help make the property compatible to the roadway such as:

- Blending back-slopes behind curb and gutter
- Completing work requested by the owner
- Matching lawns to sidewalks or slopes
- Providing a temporary work area
- Reinstallation of a driveway entrance
- Replacement of driveway surfacing
- Temporary staging of construction materials or equipment

A construction permit may be obtained during the negotiation or the construction phase of the project. Generally, a construction permit should only be obtained when damages to the property on a before or after basis are minimal or none. Restoration of the property must be near 100% of its former utility when construction is complete. The affected property disruption should be of relatively short duration and should not significantly interfere with the overall use and enjoyment of the property. Since these permits are for the property owner's benefit and not required to construct the project, most do not require compensation. Construction permits must be obtained with the cooperation and agreement of the owner only. The LPA cannot condemn the interests identified in a construction permit. If condemnation is required, the LPA must use another form of conveyance such as the Temporary Limited Easement discussed in Section 7.2. Construction permits are not typically recorded and terminate upon the acceptance and completion of construction. The limits of the permitted work area should be shown on the permit and on the construction plan. These are usually used when there is no fee simple acquisition from a particular property.



**Caution! Construction Permits identified during the design or acquisition stages must be shown on right of way certification.**

## **CHAPTER 8.0 - CLOSING PROCEDURES**

In order for the LPA to secure the permanent property interests necessary to certify a clear right of way, the LPA must adhere to the following procedures.

### **8.1 ACQUIRING PROPERTY INTEREST**

#### **8.1.1 Conveyance Types**

Construction Permit (CP): Used to secure a temporary right to use land for a limited period of time. Construction permits cannot be used when condemning property. See Section 7.3 Construction Permits.

Highway Easement: A right granted or taken, for the construction, maintenance and operation of a highway. The grantor retains fee ownership in this case. Ordinarily in the case of a public thoroughfare, the abutting landholders are assumed to own the fee to the centerline of the right of way. Highway easements are recommended in situations where it may be necessary to acquire contaminated parcels.

Permanent Limited Easement (PLE): Used to acquire permanent interest in the land for a limited purpose such as maintenance of drainage facilities, etc.

Temporary Limited Easement (TLE): Used to acquire a temporary rights or interest for a limited period. Always used when condemnation of temporary interest is necessary. See Section 7.2 Temporary Limited Easements (TLEs).

Warranty Deed: A deed conveying to the grantee title to the property free and clear of all encumbrances, except those specifically set forth in the document.

#### **8.1.2 Conveyances of Permanent Property Interests**

When agreement has been reached, the owner(s) must sign whichever of the following types of conveyance documents is applicable: (1) Warranty Deed (lpa1560); (2) Highway Easement (lpa1565); or, (3) Permanent Limited Easement (PLE) (lpa1552). The following must appear on the particular conveyance document utilized:

- Names of all legal owners of record
- Name of acquiring agency
- Amount of compensation
- Names of all other parties of interest
- Explanation of owner's six-month appeal right.
- Description of parcel being acquired.
- Homestead properties must be signed by both husband and wife.
- Name of person drafting document.
- Tax parcel number.
- Notary block, verifying all signatures.



**Caution! When preparing the conveyance, if applicable, insert the appropriate clause concerning hazardous waste. Contact the MC for details.**

### **8.1.3 Use of Approved Forms**

LPAs must use only approved current forms, including conveyance documents. A list of forms referenced explicitly in this manual can be found in the Appendix, and to access the full inventory of current and approved LPA documents go to LPA Manual/Forms page. To ensure that you have the most current and updated form(s) before starting a new project, always go to the forms page first to download the current posted electronic copy. Any modifications to the authorized and approved forms or use of non-WisDOT forms requires advanced approval by the RE Coordinator. Failure to comply with this requirement carries the risk of a loss of state and/or federal funding. For help in completing any forms, contact either the MC or RE Coordinator as appropriate.

### **8.1.4 Closing Statement Requirement**

When the value of the transaction exceeds \$600, a Closing Statement is required. Proceeds of the sale must be reported to the Internal Revenue Service by using form 1099-S, Proceeds from Real Estate Transactions. See Section 6.9 Increases to Original Offering Price.

### **8.1.5 Notice of Appeal**

[Section 32.05\(2a\), Wis. Stats.](#), provides that all parties of interest in the parcel have six months to appeal for greater compensation, even though the owner voluntarily signed the conveyance. Notice of the right to appeal is required to be included on the face of the conveyance document. Therefore, the following statements must appear on the conveyance:

*"An appeal from the amount of compensation may be made within six months after the date of recording of this conveyance as set forth in [s. 32.05\(9\) to \(12\)](#) and [Chapters 808](#) and [809](#) for appeals from an award under [s. 32.05\(7\) Wis. Stats.](#) For the purpose of any such appeal, the amount of compensation stated on conveyance shall be treated as the award, and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation."*

*"Other persons having an interest of record in the property: \_\_\_\_\_. All persons having an interest of record in the property must be named on the conveyance and must be served with the notice of appeal rights either by personal service or by certified mail."*

### **8.1.6 Recording Conveyance**

All conveyances of a permanent interest in real estate must be recorded at the Register of Deeds office in the county where the property is located. For purposes of the property owner's right to appeal for greater compensation, Wisconsin law says that the amount of compensation stated on the conveyance shall be treated as the award. NOTE: For purposes of recording the conveyance, payment must be made to the property owner prior to the recording, or the Award of Damages (lpa1559) if condemnation is required.

## **CHAPTER 9.0 - CONDEMNATION PROCESS**

In the event the LPA is unsuccessful in acquiring the necessary property interests through agreement with the owner, it may become necessary to invoke the power of eminent domain. The exercise of this power should be undertaken with great care in order to ensure that the property owner's rights are fully considered and protected under the law. Because the condemnation process is extremely inflexible, before starting the process, contact the MC for guidance.

### **9.1 REVISED OFFER LETTER REQUIREMENT**

Once the LPA determines that agreement with the property owner is not likely, the LPA must ensure that any amount of compensation offered above the initial offering price be provided to the property owner by revising the offering price letter. See Section 6.9 Increases to Original Offering Price.



**Caution! If the just compensation award has been revised upward, a letter must be sent to owners informing them of the revised offering price amount prior to mailing the Jurisdictional Offer.**

### **9.2 JURISDICTIONAL OFFER AND 60 DAY APPRAISAL DEADLINE**

Wisconsin law allows the property owner 60 days after receipt of both the LPAs offer of compensation and any appraisals of the owner's property prepared by the LPA, in order to obtain their own appraisal by a qualified appraiser. If the LPA is unable to negotiate a satisfactory settlement during that 60-day period, at the end of the period, the LPA shall prepare a Jurisdiction Officer (Ipa1786) and forward to MC for review. After review, the LPA will then send the Jurisdictional Offer by certified mail to all owners of record, mortgagees and all other parties of interest. The Jurisdictional Offer is a formal written offer that provides a final 20 days to negotiate a settlement. The LPAs negotiator must make at least one negotiation contact during this period for the LPAs actions to constitute "good faith" negotiations. Also see Section 6.4 Property Owner Appraisals.

### **9.3 NOTICE OF LIS PENDENS**

A Notice of Lis Pendens (Ipa1547) must be filed in the Register of Deeds office within 14 days of the date of mailing (or date of publication) of the Jurisdictional Offer. The Notice of Lis Pendens shall include a copy of the Jurisdictional Offer and a legal description of the lands to be acquired.

### **9.4 AWARD OF DAMAGE**

If the owner either does not accept the Jurisdictional Offer or the owner affirmatively rejects the Jurisdictional Offer within the 20 day period provided law, an Award of Damages (Ipa1559) should be prepared and reviewed by the MC before being served on the owner either in person or by sending it to the owner via certified mail. Once service of the Award of Damages has been completed, and after payment to the owner of the compensation stated on the Award of Damages, it must then be recorded at the Register of Deeds office in the county where the property is located. The date the Award of Damages is recorded is the date that the described property interest vests in the LPA. Subject to the owner's right to challenge the necessity of the taking and the owner's two (2) year right to challenge the amount of compensation, the interests needed are now fully acquired for purposes of certifying the right of way. See Chapter 11.0 - Certification and Records.

## **CHAPTER 10.0 - MISCELLANEOUS PROCEDURES**

### **10.1 OUTDOOR ADVERTISING**

The state of Wisconsin has a procedure for relocation of signs. This process must be managed on a case-by-case basis. For information, contact the MC. In general, the procedure is outlined below:

- Show and list all signs on plat.
- List sign owner's name.
- If sign needs to be relocated, enclose Relocation Rights brochure.
- Negotiate a settlement.

This process is revised periodically. To ensure the LPA has the most recent sign schedule information, contact the MC.

### **10.2 PROPERTY MANAGEMENT**

The use of state and federal funds in the acquisition of right of way requires that surplus/excess property, including buildings, cannot be sold without state and/or federal approval. Revenue generated from the sale of excess property will be divided in the same ratio as was contributed by the FHWA or the state at the time when the property was originally acquired. For ease of liquidation, it is strongly advised that the LPA apply only local funds to the acquisition of any remnant parcels. For additional details, also reference the WisDOT REPM: Chapter 6 - Property Management.

### **10.3 SALES OF SURPLUS/EXCESS PROPERTY**

When only local funding is used to acquire right of way, municipalities should use their own procedures for selling the surplus/excess property, but if state or federal funds are used in any part of the right of way acquisition, the LPA will follow these basic processes in selling surplus/excess property:

- Surplus/excess property must be appraised before any sale can occur (type of land or characteristics of property being sold will determine appraisal complexity).
- Provide details on how property is to be sold, considering abutting owners, public sale, etc.
- Submit request to sell along with the appraisal to MC for review and approval of the RE Coordinator.



**Caution! Any property acquired with the use of state and/or federal money that is subsequently sold as surplus will require reimbursement at the current fair market value and at the rate of participation at which it was acquired.**

### **10.4 BUILDING REMOVAL**

All buildings, structures or other improvements purchased may be offered for sale or razed, whichever is in the public interest. If any of these items are to be sold, it is good public policy to offer those items to the former owner at a reasonable salvage value prior to offering them to the general public. Both parties must sign any agreement whereby the owner retains improvements. NOTE: WisDOT demolition contract forms are recommended but not required if no state or federal funds are used within the right of way.

It is recommended that any improvements sold require the buyer to provide a performance deposit, and state that said improvement reverts, and again becomes the property of the condemning agency if not

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removed by the date stated in the sales agreement. In such event that a buyer fails to perform, the performance deposit will then applied to the razing or project cost.

Razing costs are a reimbursable item when using state and/or federal dollars. If the razing is done by the municipality, or under separate razing contract, and if request for reimbursement for razing costs are through the real estate process, they would be calculated at the same rate of participation as the real estate costs. If reimbursement for razing is applied to construction costs, or razing is in the construction contract, reimbursement should be addressed in the construction portion of the state/municipal agreement. Any proceeds from the sale of improvements would be applied towards the project costs when calculating the reimbursement. For information regarding hazardous materials inspections and removal, prior to demolition, contact the MC.

### **10.5 FEDERAL LAND TRANSFER**

Where you are acquiring lands held by any federal agency, contact the MC.

## **CHAPTER 11.0 - CERTIFICATION AND RECORDS**

### **11.1 RIGHT OF WAY CERTIFICATION**

WisDOT expects all rights of way and/or interests for a construction contract letting to be fully acquired prior to the PS&E submittal. When seeking to certify to WisDOT that the property interests have been successfully acquired, the LPA must use the Certification of Local Public Agency Right of Way Acquisition (lpa3028). This form is used to document that all of the following have been properly acquired:

- Deeds and easements.
- Construction permits.
- Utilities for project.
- Encroachments removed or accounted for.
- Relocation completed.

In addition to the Certification of Local Public Agency Right of Way Acquisition (lpa3028), the LPA shall submit the following to the MC four weeks prior to PS&E Submittal (per FDM 19-1-1):

- Appraisal waivers (lpa1897 or lpa1896), if applicable, and documentation supporting the just compensation
- Negotiation Diaries (lpa2058)
- Recorded conveyance documents
- Statements to Construction Engineer (lpa1528)

At the discretion of the RE Coordinator, signed conveyances, documentation that payment was made, and a draft Certification of Local Public Agency Right of Way Acquisition (lpa3028) may be acceptable. The MC and/or RE Coordinator may request other documents or information to be assured the acquisition process was properly completed. At minimum, these documents must be in the MC files before the Certificate of Right of Way (RE1899) can be prepared and submitted as a #1 certification for the state construction letting (in some cases additional documents may be required):

- State/Municipal Project Agreement(s)
- R/W plat and/or construction plan sheets
- Acquisition Capability Statement
- Consultant contract copies, if applicable
- Negotiation Diaries (lpa2058)
- WisDOT approvals for state and/or federally funded real estate, if applicable
- Conveyance documents
- Statements to Construction Engineer (lpa1528)
- Certification of LPA Right of Way Acquisition (lpa3028)
- Region Certificate of Right of Way (RE1899)

### **11.2 RECORDS MANAGEMENT**

#### **11.2.1 Project Files and Parcel Folder Contents**

The project file shall, in the order listed below, include (where applicable) copies of the following:

- State/Municipal Project Agreement(s)
- Relocation Plan

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- Design Study Report approval letter
- R/W plat and/or construction plan sheets
- Relocation Order and Cost Estimate
- Acquisition Capability Statement
- Consultant contract copies (if applicable)
- Project Data Book , Sales Study, or comparable sale information
- Nominal Payment Parcel Report
- Certification of LPA Right of Way Acquisition (lpa3028)

Each individual parcel folder within the project file shall, in the order listed below, include (where applicable) copies of the following essential items:

- Title report
- Appraisal(s), signed Waiver of Appraisal (lpa1897) or signed Donation Waiver of Appraisal (lpa1896)
- Offering Price Report Approval
- Offering Price Letter (dated)
- Negotiation Diary (lpa2058)
- Agreement for Purchase and Sale of Real Estate (lpa1895 or lpa1618)
- Administrative Revision (lpa1592) with supporting justification and approval
- Statement to Construction Engineer (lpa1528), including commitments made to property owners
- Closing Statement
- Check copies and/or evidence of payment (w/letter and notes made in Negotiation Diary)
- Recorded conveyances and mortgage releases
- Condemnation documents - Jurisdictional Offer (lpa1786), Notice of Lis Pendens (lpa1547), Award of Damages (lpa1559)
- Relocation related documents
- W-9 and 1099s
- Litigation case summary and related documentation, showing approvals

NOTE: Before a project is closed, the project file and each individual parcel folder included within should be reviewed for completeness.

## 11.2.2 Records Retention

The LPA shall maintain adequate records of its acquisition and displacement activities as detailed above to demonstrate compliance with all the requirements of this manual. These records are to be maintained at a centralized location in the LPAs office. Normally, all pertinent project records must be retained by the LPA for five years. If construction of the project is delayed or litigation is involved, the records would have to be maintained for five years or more after the project is closed. Questions should be directed to MC.

## 11.3 COMPLIANCE

WisDOT, MC as a representative for WisDOT, and FHWA have the right to conduct a review of your files at any time to ensure compliance with state and federal policy and procedures.

## **CHAPTER 12.0 - REIMBURSEMENT OF STATE/FEDERAL AID**

### **12.1 GENERAL PROCEDURES FOR OBTAINING REIMBURSEMENT**

The State/Municipal Agreement defines the percent of participation for reimbursement. It also defines the type as either direct reimbursement or work credits. Either type requires approval by the RE Coordinator. Requests for reimbursement must be submitted on the Right of Way Detailed Statement of Expenditures (lpa1959). In addition, a variety of supporting materials need to be submitted as part of the LPA's packet for reimbursement. The materials need to be organized so that each enclosed document is appropriately labeled/numbered to correspond with the associated line item and attached in the same sequential order as entered on the Right of Way Detailed Statement of Expenditures form. All requests for reimbursement must be accompanied by the applicable documentation as identified below, and follow this procedure.

The procedure to request eligible state or federal reimbursement is:

1. Prepare an original Right of Way Detailed Statement of Expenditures (lpa1959) to include evidence of an original signature by the LPA's authorized official.
2. Submit the completed signed original Right of Way Detailed Statement of Expenditures to the MC for review, along with photocopies of the supporting materials and/or documents described below. LPA's may also use the optional LPA Reimbursement Checklist (lpa1002) as a tool to ensure that all supporting documentation is complete as required.
  - State/Municipal Agreement.
  - Any contracts for consultant services, consultant invoices, and any checks showing a payment was made.
  - Nominal Payment Parcel Report (lpa1889), approved.
  - Documents associated with each parcel, including (but not limited to):
    - Negotiation Diary (lpa2058).
    - Statement to Construction Engineer (lpa1528).
    - Recorded conveyances, unrecorded temporary conveyances are acceptable.
    - Nominal Payment Parcel Waiver of Appraisal Recommendation and Approval (lpa1897), signed by owners and LPA.
    - Offering Price Report and Submittal (lpa1894), signed and approved.
    - Alternate Offers to Purchase Offering Price for Required Acquisition (lpa1975), signed and approved.
    - Owner appraisal expenses with certification and approval. FHWA Reimbursement - Owner's Appraisal Fee (lpa1001) is required if federal funds are used in R/W.
    - Administrative Revisions (lpa1592).
    - Disposition of Real Estate Taxes (lpa1616).
    - Closing Statements, signed.
    - Property owner compensation checks and other disbursement checks as shown on Closing Statement.
    - Legal counsel's Litigation Report and Case Summary (lpa1651) of condemnation commission hearings and trial in circuit court, and written rationale by LPAs legal counsel for any settlements made during the litigation process.
    - Relocation computations and claims, signed and approved, and including the following where applicable (also see below: \*NOTE: Business replacement payments...):
      - Net rental loss.
      - Costs of re-installing existing fencing.
      - Realignment of personal property.

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- Plans rendered unusable.
  - Invoices for incidental payments, pursuant [s. 32.195, Wis. Stats.](#), including (but not limited to):
    - Recording fees.
    - Utility bills.
    - Charges for mortgage releases.
    - Penalties or costs of mortgage prepayment penalties.
  - Checks with supporting documentation for any payments made for which the LPA is seeking reimbursement.
  - Documentation for municipality delivery time, and miscellaneous costs.
  - Rent receipts, bills of sale for salvage items, or any other incomes received to be applied as credits toward the reimbursement total.
3. After review, the MC will forward request along with all materials to the RE Coordinator.
  4. RE Coordinator certifies that all required documents with approvals, as needed, are in the WisDOT regional file (LPA's must keep copies of all materials in their files as well). RE Coordinator approves final amount for reimbursement. Amounts approved for reimbursement will be processed by WisDOT BTS-RE/Finance (Bureau of Technical Services-Real Estate [central office]).

\* NOTE: Business replacement payments under Wisconsin law, pursuant to [s. 32.19 \(4m\), Wis. Stats.](#), are not eligible for federal reimbursement under federal regulations. Consequently, contact the RE Coordinator for assistance in determining business replacement payment reimbursement eligibility.

The MC, along with the RE Coordinator, serves as the LPA's resource to ensure financial participation and compliance with state and federal law. For questions about the general procedures for obtaining reimbursement, contact either the MC or RE Coordinator.

## 12.2 REIMBURSEMENT FOR LITIGATION EXPENSES

In certain cases, expenses incurred by the owner must be reimbursed by the LPA. These expenses include reasonable "disbursements and expenses," reasonable attorney, appraisal and engineering fees actually incurred by the owner because of a condemnation proceeding, where:

- Condemnation commission award or jury verdict exceeds the Jurisdictional Offer or highest written offer prior to the Jurisdictional Offer by at least \$700 and at least 15 percent.
- Condemnation proceeding is abandoned by the LPA.
- Court having jurisdiction renders a judgment in favor of owner in an inverse condemnation proceeding, or LPA effects a settlement of such proceeding.
- Final judgment of the court is that agency cannot acquire the real property by condemnation.

Only costs eligible for state and/or federal participation may be claimed. For assistance in determining eligibility for reimbursement, contact the MC. The MC will offer assistance and guidance to help facilitate the LPA project. The MC, along with the RE Coordinator, serve as the LPAs resource for guidance and expertise to ensure financial participation and compliance with state and federal law. For any legal settlement to qualify for reimbursement, including condemnation commission awards and awards of the circuit court, the Litigation Report and Case Summary (lpa1651) must receive written approval from WisDOT management through the RE Coordinator.

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## 12.3 REIMBURSEMENT FOR INCIDENTAL EXPENSES

[Section 32.195, Wis. Stats.](#), provides that owners of the real property shall be reimbursed for all reasonable expenses incurred for:

- Recording fees, net rental loss, realignment of personal property, charges for mortgage releases, costs of re-fencing, and plans rendered unusable and similar expenses incidental to conveying property to the agency.
- Penalty costs and other charges for prepayment of any pre-existing recorded mortgage encumbering the real property.
- Prorated real estate taxes attributable to the period after the agency obtains ownership of the parcel. See Disposition of Real Estate Taxes (lpa1616) for guidance in computing the prorated share of taxes.

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## CONCLUSION

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The Local Public Agency (LPA) Manual for Right of Way Acquisition is intended to assist LPA's in planning and funding right of way projects on local roads. This manual is a compilation of information from many sources and is not intended to be a comprehensive document. It is impractical, if not impossible, to address or anticipate all possible situations. Frequent references are made to the [Wisconsin Statutes](#), the Real Estate Program Manual ([REPM](#)), and to the Facilities Development Manual ([FDM](#)). The official version of this manual is the electronic publication and may reflect changed or updated policies. WisDOT is not responsible to provide notice to users when modifications are made. Access to this manual for non-WisDOT staff is through [WisDOT's website](#). LPA's should follow the minimum procedures outlined in this manual to secure the approvals needed to proceed with right of way acquisition on state or federal aid projects. It is the responsibility of the LPA to ensure that all state and federal procedures and laws are followed. The applicable state and federal law will govern any conflicts found with the language of this manual. WisDOT invites any questions or comments. Contact the Division of Transportation System Development (DTSD), regional RE Coordinator.

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## APPENDIX (FORMS AND OTHER MATERIALS REFERENCED):

- Acquisition Capability Statement - Local Funding
- Acquisition Capability Statement - Qualifications for LPA Staff
- Acquisition Capability Statement - State and/or Federal Funding
- Administrative Revision (lpa1592)
- Agreement for Purchase and Sale of Real Estate (lpa1618)
- Alternate Offers to Purchase Offering Price for Required Acquisition (lpa1975)
- Appraisal Guidelines & Agreement
- Appraisal Objective Review (lpa1000)
- Appraisal Review Report (lpa2128)
- Award of Damages (lpa1559)
- Brochure - appraiser / negotiator letter
- Certification of Local Public Agency Right of Way Acquisition (lpa3028)
- Construction Permit Recommendation and Approval (lpa1732)
- Disposition of Real Estate Taxes (lpa1616)
- Donation - Waiver of Appraisal Recommendation and Approval (lpa1896)
- FHWA Reimbursement - Owner's Appraisal Fee (lpa1001)
- Highway Easement (lpa1565)
- Jurisdictional Offer (lpa1786)
- LPA Reimbursement Checklist (lpa1002)
- Litigation Report and Case Summary (lpa1651)
- Negotiation Diary (lpa2058)
- Nominal Payment Parcel Report (lpa1889)
- Nominal Payment Parcel Waiver of Appraisal Recommendation and Approval (lpa1897)
- Notice of Intent to Acquire Letter
- Notice of Lis Pendens (lpa1547)
- Offer to Purchase Letter
- Offer to Purchase Letter - Nominal Value
- Offering Price Report and Submittal (lpa1894)
- Permanent Limited Easement (lpa1552)
- Project Cost Estimate (lpa3045)
- Release of Temporary Limited Easement (lpa1019)
- Relocation Order (lpa1708)
- Revocable Occupancy Permit (lpa1551)
- Right of Way Detailed Statement of Expenditures (lpa1959)
- Rights of Landowners Under Wisconsin Eminent Domain Law (English)
- Statement to the Construction Engineer (lpa1528)
- Temporary Limited Easement (lpa1577)
- Temporary Right of Entry Easement (lpa1561)
- Warranty Deed (lpa1560)
- Wisconsin Relocation Rights (Residential and/or Business)

For a full inventory of current and approved LPA forms, go to the [LPA Manual/Forms](#) page.