

**MARYLAND DEPARTMENT OF TRANSPORTATION  
STATE HIGHWAY ADMINISTRATION  
OFFICE OF REAL ESTATE**



**MARYLAND DEPARTMENT  
OF TRANSPORTATION**

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**STATE HIGHWAY  
ADMINISTRATION**

**OPERATIONAL GUIDELINES**





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

**Maryland Division**

31 Hopkins Plaza, Suite 1520  
Baltimore, Maryland 21201

December 3, 2018

In Reply Refer To: HDA-MD

Director Olu A. Okunola  
State Highway Administration  
707 N. Calvert Street, M-301  
Baltimore, Maryland 21202

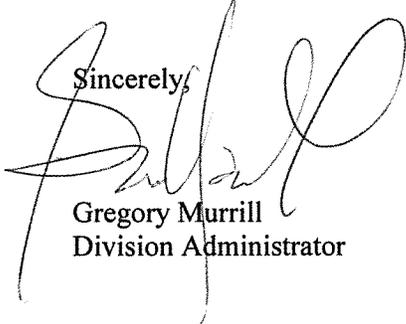
Dear Director Okunola,

We have completed our review of the Maryland Department of Transportation State Highway Administration Office of Real Estate Operational Guidelines. We approve of your use of these operational guidelines, subject to FHWA's previously submitted comments, as Maryland State Highway Administration's Right of Way Manual pursuant to 23 CFR 710.201(c)(2)(i).

I recognize that considerable effort went into this update. It demonstrates the importance of regularly updating the procedures manual. Please continue to submit proposed operational guidelines and form changes for review and approval prior to use.

Thank you for the concerted effort of all involved in preparation of this edition of the operational guidelines. If you have any questions or concerns regarding this letter, you may contact Daniel Hawk at 202-493-7032.

Sincerely,



Gregory Murrill  
Division Administrator

October 23, 2018,

Mr. Gregory Murrill  
Division Administrator  
Federal Highway Administration  
31 Hopkins Place 15<sup>th</sup> floor  
Baltimore, Maryland 21201

Attn: Mr. Daniel Hawk

Re: MDOT SHA Office of Real Estate Operational Guidelines

Dear Mr. Murrill:

Please find attached MDOT SHA Office of Real Estate's revised Operational Guidelines in accordance with 23 CFR 710.201(c) for your review and approval. The Operational Guidelines had been previously submitted on August 20, 2018; subsequently, it has been updated to address MDOT SHA's Outdoor Advertising and Junkyard Control program.

Should you have questions regarding this submittal, I can be reached by email at [ookunola@sha.state.md.us](mailto:ookunola@sha.state.md.us) or via telephone at (410)545-8754.

Sincerely,



Olu A. Okunola, Director  
Office of Real Estate

cc: Tess Fountain, Deputy Director, MDOT SHA, Office of Real Estate

Attachment

MDOT SHA Office of Real Estate Operational Guidelines



STATE HIGHWAY  
ADMINISTRATION

Larry Hogan  
Governor  
Boyd K. Rutherford  
Lt. Governor  
Pete K. Rahn  
Secretary  
Gregory Slater  
Administrator

August 20, 2018

Mr. Gregory Murrill  
Division Administrator  
Federal Highway Administration  
31 Hopkins Place 15<sup>th</sup> floor  
Baltimore, Maryland 21201

Attn: Mr. Azmat Hussain

Re: MDOT SHA Office of Real Estate Operational Guidelines

Dear Mr. Murrill:

In accordance with 23 CFR 710.201(c), the MDOT SHA's Office of Real Estate is submitting its updated Operational Guideline for your review and approval.

Should you have questions regarding this submittal, I can be reached by email at [ookunola@sha.state.md.us](mailto:ookunola@sha.state.md.us) or via telephone at (410)545-8754.

Sincerely,

Olu A. Okunola, Director  
Office of Real Estate

cc: Tess Fountain, Deputy Director, MDOT SHA, Office of Real Estate

Attachment

MDOT SHA Office of Real Estate Operational Guidelines

## **PREAMBLE**

These Operational Guidelines are developed for internal use to assist the Office of Real Estate personnel in complying with State and Federal laws, rules and regulations. It is intended as a general guide to its operation and the sequence of procedures in carrying out its responsibilities. Further guidance may be found in each individual unit.

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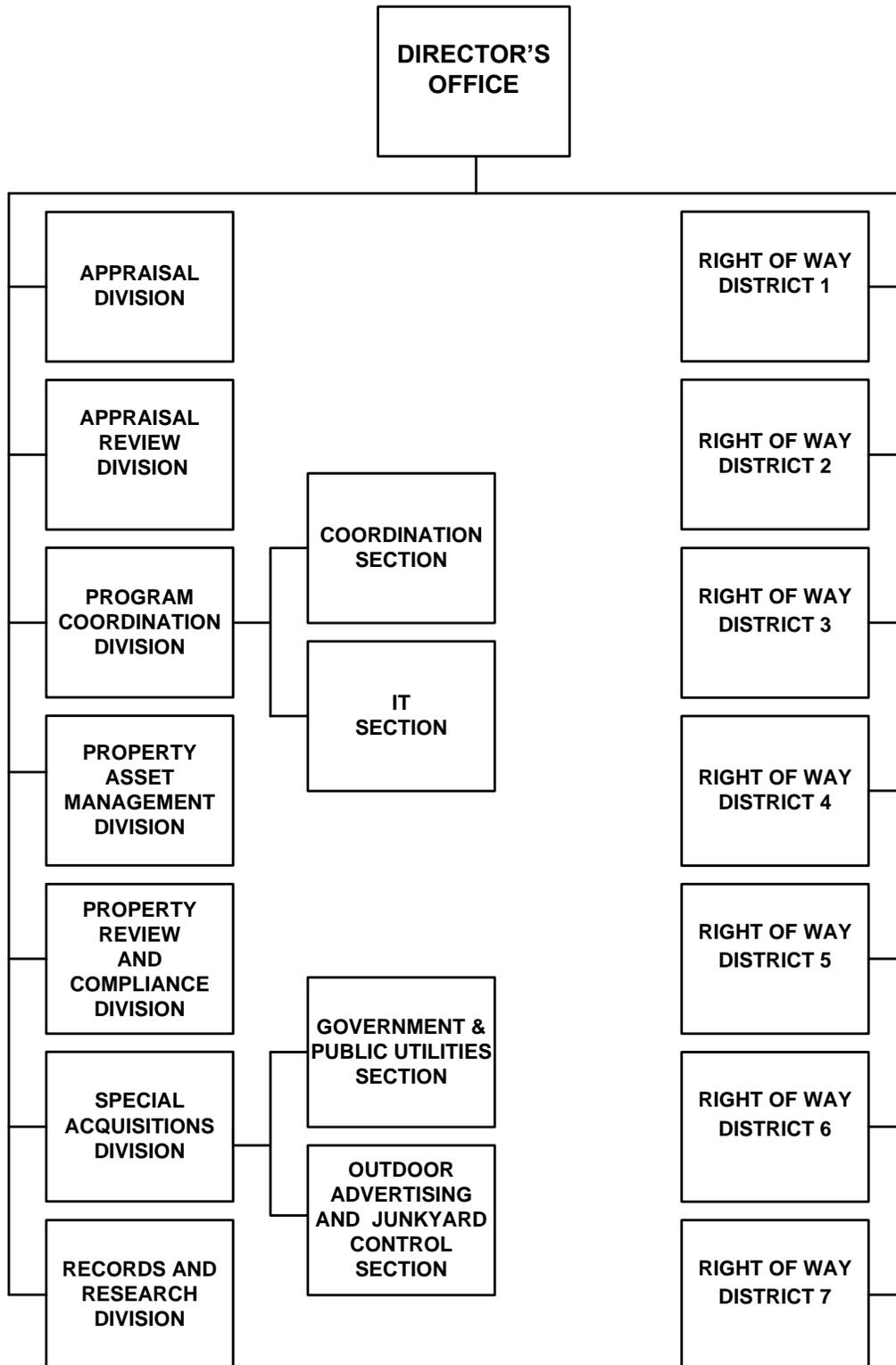
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MARYLAND DEPARTMENT OF TRANSPORTATION  
STATE HIGHWAY ADMINISTRATION  
OFFICE OF REAL ESTATE



**OFFICE OF REAL ESTATE**  
**OPERATION GUIDELINES**  
**CHAPTER 1**  
**ORGANIZATION AND RESPONSIBILITIES**

**CHAPTER 1**  
**ORGANIZATION AND RESPONSIBILITIES**

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**100 PURPOSE AND GENERAL RESPONSIBILITIES OF THE OFFICE**

**100.1 MISSION STATEMENT**

The mission of the Office of Real Estate (ORE) is to acquire real estate and provide real estate services for the Maryland Department of Transportation State Highway Administration (MDOT SHA) and other Maryland Department of Transportation (MDOT) transportation business units (TBU's) projects throughout the State of Maryland in a timely, cost effective and customer-oriented manner.

**100.2 GENERAL RESPONSIBILITIES**

ORE is delegated the responsibility and authority to acquire all real estate rights and interests necessary for the completion of MDOT SHA Highway Program and for complying with all the rules, regulations and laws governing the acquisition and disposal of these rights and interests. These responsibilities may be divided into three major categories:

1. Acquisition of real property rights and interests
2. Relocation Assistance services to persons and organizations displaced by an acquisition
3. Real Estate support services including disposal of surplus property rights, maintenance of acquisition and disposal records, financial and other related activities.

**100.3 OFFICE OF REAL ESTATE GUIDING PRINCIPLES**

1. Perform duties with the highest degree of professionalism
2. Provide fair and equal treatment to all who are affected and/or displaced by its activities
3. Maintain a high ethical and moral standard in dealing with people
4. Adhere to and comply with all Federal and State laws, rules, and regulations in performance of its duties.

**100.4 RELATIONSHIP WITH THE FEDERAL HIGHWAY ADMINISTRATION**

ORE operates in cooperation with the Federal Highway Administration (FHWA) in compliance with federal regulations and the Joint Stewardship Agreement. ORE is a self-monitored operation and acts to monitor Local Public Agencies' (LPA's) activities to ensure compliance with FHWA's Regulations and the Uniform Act as amended.

**100.5 RELATIONSHIP WITH LOCAL PUBLIC AGENCIES**

ORE provides advice, guidance and assistance when requested by LPA's. It also monitors LPA's projects involving FHWA funding for compliance

with federal rules, regulations and laws. If noncompliant situations are encountered, ORE will make every effort to facilitate an equitable resolution to the situation between the LPA and FHWA.

**101 GENERAL ORGANIZATION AND STAFFING**

**101.1 ORGANIZATIONAL CHART**

See Diagram Page 4

**101.2 ORGANIZATION, GENERAL DESCRIPTION**

ORE consists of seven Headquarters (HQ) and seven District Right of Way (ROW) offices under the Director of ORE. The District ROW offices and Special Acquisitions Division (SAD) are responsible to ORE for the acquisition and relocation assistance activities for the MDOT SHA Capital Program. SAD is also responsible for the Outdoor Advertising (OA) and Junkyard Control (JC) Programs.

**101.3 ORGANIZATIONAL CHANGES**

It is the intent of ORE to maintain an organization that can adapt to achieve program goals. Therefore, organizational changes and/or the reassignment of functions and duties on a temporary or permanent basis may occur.

**101.4 STAFFING**

It is the intent of ORE to maintain a trained professional staff that is equipped and organized to discharge its responsibilities. Its permanent staff may be augmented by contracting with qualified firms or individuals to meet program goals.

**102 UNIT DESCRIPTIONS AND RESPONSIBILITIES**

**102.1 DIRECTOR'S OFFICE**

The Director's Office of ORE is responsible for managing, coordinating, directing and supervising the activities involved in implementing MDOT SHA real estate program. The Director of ORE reports to the Deputy Administrator/Chief Engineer of Planning, Engineering, Real Estate and Environment. The services provided by the Director's Office staff include, but are not limited to the following:

1. Implements MDOT SHA wide policies and programs
2. Formulates and implements ORE wide policies and procedures, and for overall coordination and achievement of program goals

3. Manages and directs staff in seven Headquarters' Divisions and seven (7) District ROW Offices
4. Ensures that all personnel and administrative operations are handled effectively and efficiently
5. Ensures that adequate training is made available to maintain a professional staff capable of carrying out their program responsibilities
6. Provides guidance and assistance to maintain operations on sound quality principles
7. Payment of invoices and the procurement of supplies and equipment for ORE
8. Processes all land acquisition settlement checks and payments for services for all State and Federal projects
9. Provides the Secretary for the Maryland State Roads Commission (SRC).

## **102.2 APPRAISAL REVIEW DIVISION**

The Appraisal Review Division (ARD) is responsible for providing appraisal review services to MDOT SHA and, upon request, to other TBU's and State Agencies, as well as, LPAs. There are two review sections in this Division, both of which have State-wide responsibilities. This Division reports to the Director. The services provided include, but are not limited to the following:

1. Administers State and Federal regulations, and the Uniform Standards of Professional Appraisal Practice (USPAP) in the preparation and review of appraisals
2. Determines fair market value (FMV) and establishes just compensation for real estate acquisitions
3. Provides expert appraisal testimony, as required
4. Reviews LPA's appraisal functions on Federal Highway projects when requested
5. Issues directives and standards for appraisals and maintain appraisal manuals, valuation schedules, etc., for the appraisal and appraisal review functions
6. Provides real estate valuation guidance and acts as a resource to ORE.

## **102.3 DISTRICT RIGHT OF WAY OFFICES**

The District ROW Offices are responsible to ORE for achieving the MDOT SHA Capital Program goals and, upon request to other TBU's and State Agencies, as well as, LPAs. These offices report to the Director and Deputy Director.

The services provided by these offices includes appraising, negotiating,

cost estimating and relocation assistance. They also provide support to MDOT SHA's 7 Metropolitan District engineering offices.

## **102.4 PROGRAM COORDINATION DIVISION**

The Program Coordination Division (PCD) is responsible for initiating project activities on the Capital Program, which handles the development and approval of cost estimates, contract management, major contract procurement and cash flows. In addition, this Division is responsible for all information technology initiatives and coordination. This Division reports to the Director.

### **102.4.1 COORDINATION SECTION**

This Section is responsible for the coordination of cost estimates, monitoring and preparing third party and other agreements, providing project funding setup on the State and Federal levels, and providing contract management for ROW Consultants.

### **102.4.2 INFORMATION TECHNOLOGY SECTION**

This Section manages and coordinates all of ORE's technology system efforts. This includes designing, developing, implementing, maintaining the Office of Real Estate Management System (OREMS) and other database systems utilized by ORE. In addition, this Section manages all information technology services, including computer hardware and software, application installation and upgrades and providing help desk support.

## **102.5 PROPERTY ASSET MANAGEMENT DIVISION**

The Property Asset Management Division (PAM) is responsible for providing and coordinating property management services for MDOT SHA, The Secretary's Office (TSO), and other MDOT TBUs. This Division reports to the Director and is responsible for the following:

1. Maintains an inventory of all MDOT SHA's real property assets
2. Coordinates the clearance for disposal of surplus MDOT SHA real estate
3. Disposes of surplus MDOT SHA's real property interests
4. Coordinates ORE's Rental Program
5. Coordinates the conveyance of road segments to LPAs and the conveyance of easements to public utilities.

## **102.6 PROPERTY REVIEW & COMPLIANCE DIVISION**

The Property Review & Compliance Division (PRD) is responsible for the review of all MDOT SHA real estate acquisitions to ensure compliance

with Federal and State laws and regulations. This Division is also responsible for seeking the approval of the SRC to initiate the eminent domain process, the administration of the Relocation Assistance Program and the coordination of the LPA Program. This Division reports to the Director. The services provided include, but are not limited to the following:

1. Reviews, approves, and processes all relocation assistance claims and maintains relocation assistance activity records
2. Reviews and processes, for acceptance, all options, or awards for real estate acquisitions
3. Prepares real estate presentations to the SRC
4. Provides review for compliance for MDOT SHA Relocation Assistance Program and other State and Local Agencies upon request
5. Coordinates securing of real estate titles for ORE's acquisition program statewide
6. Coordinates property settlements for ORE statewide
7. Monitors and adjusts federal aid billing for real estate activities
8. Administers the LPA Program, which includes monitoring LPA projects and resolution of compliance conflicts with FHWA
9. Prepares 1099s for the acquisition program
10. Provides ROW certifications
11. Provides project funding closeout on the State and Federal Aid projects.

## **102.7 SPECIAL ACQUISITIONS DIVISION**

SAD is responsible for real estate acquisitions from other governmental agencies, public utilities, private landowners, and for environmental mitigation sites. They are also responsible for the statewide OA and JC Program. In addition, it also provides assistance to District ROW offices, as needed. This Division reports to the Director and Deputy Director.

### **102.7.1 GOVERNMENT AND PUBLIC UTILITIES SECTION**

This section provides various acquisition services including gathering preliminary ROW information, bidding and securing appraisals, acquiring real property interests from government and public utilities. They also assist with relocation assistance services and may provide real estate estimates for use in the Consolidated Transportation Program (CTP).

### **102.7.2 OUTDOOR ADVERTISING & JUNKYARD CONTROL SECTION**

This Section is responsible for enforcing Federal and State laws and regulations governing the mandated statewide OA and JC Program. This includes the following:

1. Conducting field inspections of billboards and junkyards
2. Maintaining a comprehensive inventory of all off premise OA signs
3. Monitoring highways for code compliance
4. Preparing violation notices
5. Issuing and renewing sign permits and licenses and junkyard licenses
6. Handling customer complaints and inquires
7. Coordinating enforcement activities with other MDOT SHA offices, TBU's, local governments and agencies, and the FHWA.

## **102.8 APPRAISAL DIVISION**

The Appraisal Division (AD) provides in-house appraisals for partial acquisitions, total acquisitions, assemblages, property dispositions, rental values and master appraisals for short form appraisals to be completed by ROW specialists. Appraisals are written in a narrative format and according to USPAP guidelines.

## **102.9 RECORDS & RESEARCH DIVISION**

The Records & Research Division (R&R) is responsible for determining MDOT SHA ownership for all State-owned property. This includes the following:

1. Provides existing ROW research to MDOT SHA and the public
2. Provides prior rights research for the relocation of utilities
3. Maintains and preserves MDOT SHA acquisition plats
4. Maintains and preserves ORE's official acquisition records and other real estate holdings.

**OFFICE OF REAL ESTATE**  
**OPERATIONAL GUIDELINES**  
**CHAPTER 2**  
**PROGRAM AND PROJECT DEVELOPMENT**

**CHAPTER 2**  
**PROGRAM AND PROJECT DEVELOPMENT**

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## **200 PURPOSE**

This chapter is devoted to a general summary of the ROW activities during the various phases of the highway development process. It is not intended to describe all the procedures involved in the ROW process and/or functions. These will be set forth in other chapters.

## **201 OVERVIEW OF RIGHT OF WAY ACTIVITIES BY PROJECT DEVELOPMENT PHASES**

### **201.1 PROJECT PLANNING**

On all Federal Aid projects, a Letter of Authorization for Preliminary Engineering Studies (PR-1240) must be obtained before any ROW activities are undertaken.

During the Corridor Location Phase, initial ROW cost estimates are prepared by the District ROW Office for each alignment. These estimates are submitted to Office of Planning and Preliminary Engineering (OPPE) and are used in their alignment studies.

ORE is responsible for the presentation of information on the acquisition and relocation processes at both the informational and corridor public hearings.

### **201.2 PROJECT SCHEDULE**

The schedule for a construction project in general comprises of the advertisement (Ad) date, the bid date and the notice to proceed (NTP) date. These are the major milestones that govern the project schedule.

1. The Ad date is the date by which offers of just compensation has been made and the construction contract can be advertised for bid
2. The bid date is the date by which all the bids submitted by the contractors are opened
3. The NTP date is the date by which the contractor has been given the authorization to proceed with construction. From a ROW perspective, all property rights needed to construct the project has been acquired or are in the possession of MDOT SHA.

The NTP date must take in to account the ROW clear date, the utility clear date and the date where all agreements are executed if ROW acquisition is a component of the agreement. Also, relocation assistance must be considered when setting the project schedule.

### **201.3 PROJECT DESIGN AND DELIVERY**

When the alignment has been approved, ORE submits the necessary ROW programming data to the Office of Finance (OOF).

All necessary relocation and ROW information is sent by OOF on Federal Aid Programming Division (FAPD) (Form MDOT SHA 51.1-25c) to FHWA to obtain their approval of the ROW Program.

Advanced ROW acquisitions and relocation assistance activities may be pursued during this phase in accordance with the applicable Federal regulations.

After design approval has been received, ORE participates in a preliminary investigation (PI). This is an opportunity to further identify potential ROW impacts.

A request by FAPD is made to FHWA for authorization to acquire, after design approval, budget funds and Transportation Improvement Program/Statewide Transportation Improvement Program have been approved.

The receipt of the Letter of Authorization to acquire ROW initiates the acquisition process.

NOTE: If a Third-Party Agreement is needed, the acquisition process begins when both the Executed Agreement and the Letter of Authorization are received.

Appraisals are assigned, prepared, and reviewed, and FMV and just compensation are established. Individual relocation assistance studies are also prepared at this time, if necessary.

To assist appraisers, stakeouts may be requested and performed on all properties on a project. Preliminary construction plans and cross sections should also be made available.

Right of entries with railroads, utility and governmental agencies are pursued at this time and must be obtained prior to the NTP for the construction contract.

Upon review and approval of appraisals, negotiations for the required ROW are initiated. At each negotiation for an improved property the relocation information is also supplied to the displacee.

If negotiations fail, properties may be filed in condemnation either under

the Board of Property Review (BPR) procedures (Title VIII) Part III or the Accelerated Procedures Part IV (Immediate Entry Condemnation). All condemnation actions must receive prior approval from the SRC. Under the BPR Procedures, properties must be certified to the BPR within six months after the filing date. Hearings must be held within three months after certification to the BPR or the property must be filed under the accelerated procedure. When the BPR hearing is held, an award is rendered. If the award is agreeable to both parties, a deed is secured.

If either party appeals the award, the property is filed into formal condemnation. Properties which were filed in condemnation are acquired by inquisition.

Settlements and depositing of additional monies for the court awards are handled by ORE with assistance from the Office of Counsel.

## **201.4 RIGHT OF WAY CERTIFICATON**

ROW certification is issued by ORE, at the request of the Project Engineer, certifying that the real property rights necessary for the completion of a construction project have been obtained or in the process of being obtained. This requirement is further described in 23 CFR Part 635.309.

This certification must be issued for all projects whether they are Federal Aid, State funded or administered by an LPA. The certification must follow the processes described in Sections 201.4.1 and 201.4.2.

### **201.4.1 TYPES OF RIGHT OF WAY CERTIFICATIONS**

1. Type 1 - This type of certification is used when the project will be fully constructed within MDOT SHA's existing ROW. This type may also be used when all the real property interests are under the LEGAL AND PHYSICAL POSSESSION of MDOT SHA. This ROW certification must list all the real PROPERTY interests with their corresponding acquisition information such as the date of acceptance of the option contract, the date of Title VIII filing, Immediate Entry filing or deed recordation information
2. Type 2 - This type of certification is used when all necessary real property interests have not been fully acquired however physical possession and the legal rights to occupy the property have been obtained by MDOT SHA. A secured right-of-entry agreement with the property owner falls under this type of certification
3. Type 3 - This type of certification is used when all the real property interests have not been acquired. This certification must

state the plan of action MDOT SHA intends to take to acquire all real property interests necessary to construct the project. If the project impacts improvements requiring relocation assistance to displaced persons, it must state all the necessary steps MDOT SHA will take and the timeline to have legal and physical possession of the improvements.

#### **201.4.2 REAL PROPERTY INTEREST STATUS**

The ROW certification should include the status of the real property interest being acquired. These are milestones in the acquisition process: Offer of Just Compensation, Option Contract, Title VIII, Immediate Entry, Right-of-Entry, Inquisition or Deed. For properties requiring relocation assistance: Replacement Housing Payment, Business Relocation and vacate date by displacee. For more detail of these statuses refer to Chapter 6 & 7.

#### **201.4.3 RIGHT OF WAY CERTIFICATION FOR ALTERNATIVE DELIVERY PROJECTS**

Alternative delivery projects involve non-traditional procurement of engineering and construction services where there is no marked distinction between project design and construction from a time perspective. These services are most often done concurrently. Common alternative delivery procurement methods are Design Build (DB) and Construction Manager/ General Contractor (CM/GC). For a Federal Aid project utilizing an alternative delivery method, the ROW certification must comply with 23 CFR Part 635.309(p).

##### **201.4.3.1 ALTERNATIVE DELIVERY PROJECTS – REAL PROPERTY RIGHTS ACQUIRED BY OTHERS**

In order for ORE to issue a ROW certification for the project under this procurement method the following requirements apply:

1. The National Environmental Policy Protection Act (NEPA) review process has been concluded
2. A statement must be received from the LPA, DB or CM/GC that either all ROW acquisition, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of ROW acquisition, utility, and railroad work
3. ORE may require copies of approved appraisals, Offer of Just Compensation, and other documents authorizing legal or physical possession of the real property interests necessary to construct the project.

In the event that the DB or CM/GC request a certification stating that all

necessary arrangements will be made for the completion of ROW work, ORE will utilize the established and approved processes and procedures for requesting ROW certification as described in Section 201.4.1.

**202 RIGHT OF WAY COST ESTIMATE UPDATES AND STUDIES**

On a periodic basis, and as may be needed, requests are received by ORE for ROW Cost Estimates, Relocation Studies and other studies providing planning and programming information.

All cost estimates and studies should be the result of a thorough field investigation, prepared on the proper forms with copies and backup information retained in the District ROW office and PCD.

**203 CREDIT FOR COSTS INCURRED BY THE DEPARTMENT FOR ADVANCED ACQUISITION PURCHASES (SOFT MATCH)**

1. When MDOT SHA acquires real property in advance of a transportation project and when that parcel or a portion thereof is incorporated into the project, the costs incurred by MDOT SHA may become eligible for use as credit towards MDOT SHA's share of a Federal-aid project. The criteria for determining the eligible match is set forth in 23 CFR Part 710.507
2. The historical cost paid for the real property acquired shall typically, be the primary value used in calculating the dollar amount expended for the actual acquisition. However, in unusual circumstances, the current market value of the real property may be substituted for the historical cost of the purchase. Such conditions could include a significant lapse in time since the property was acquired or when there has been a significant change in market conditions not caused by the project since the property was acquired and only with prior federal approval
3. Only the purchase price for real property acquired by MDOT SHA in advance of the FHWA transportation project authorization may be eligible for the match
4. ORE shall be responsible for gathering the information and data relating to advanced real property acquisition submission for possible matches
5. The ORE Director or his/her designee shall, upon receipt of a request to identify potential soft match properties, initiate the process of determining whether a possible eligible match scenario exists
6. If the match scenario does not exist, the ORE Director shall, in writing, advise the requesting party of the findings
7. If the match scenario does exist, the ORE Director or his/her designee shall prepare a report detailing the amount of money

that MDOT SHA believes is eligible for the match. The report shall include documentation supporting the square footage or acreage of the real property acquired in advance of the project that has been incorporated into the transportation project and the appropriate documentation for the costs incurred. The ORE Director shall forward the report to the requesting party. A copy shall be retained in the appropriate project administrative file.

**OFFICE OF REAL ESTATE**  
**OPERATIONAL GUIDELINES**  
**CHAPTER 3**  
**MARYLAND DIVISION STEWARDSHIP PLAN**

**CHAPTER 3**  
**MARYLAND DIVISION STEWARDSHIP PLAN**

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**BACKGROUND**

The following oversight elements involving the Federal-aid ROW program are covered under 49 CFR Part 24 which has no provision for exemptions under the Fixing America's Surface Transportation (FAST) Act:

1. Appraisal
2. Acquisition
3. Relocation Assistance

The elements listed below are covered under 23 CFR (Parts are listed in parentheses beside elements) and require specific approval on FHWA's part:

1. ROW authorization (Part 710.303 Subpart C)
2. ROW certification (Part 635 Subpart C)
3. Functional replacement (Part 710.509 Subpart E)
4. ROW Use Agreements (Part 710.405 Subpart D)
5. Disposal of excess real property (Part 710.409 Subpart D)
6. Federal land transfers (Part 710.601 Subpart F)
7. Early acquisition, protective buying, and hardship (Part 710.501 and 503 Subpart E)
8. State ROW operations manual (Part 710.201 Subpart B)
9. Indirect costs (Part 710.203 Subpart B)
10. Highway Beautification (Part 750).

The last group of elements is covered in 23 CFR and do not require specific program or project approvals but are not exempted from FHWA oversight under the FAST Act.

1. Direct eligible costs including administrative, legal and court settlements (Part 710.203 Subpart B)
2. Real property donations (Part 710.505 Subpart E).

**OVERSIGHT ACTIVITIES**

Even though there are no exemptions under the law for any functions covered in 49 CFR Part 24, for practical purposes there are two levels of review of those elements. One level depends on whether the project involves ROW acquisition and has Federal-aid in other phases of work but none in ROW. The second level depends on whether there is Federal-aid in the ROW project phase. Although ROW regulations must be followed under both levels, there is less concern about the reasonableness of the actual dollar-expenditure in those projects containing no Federal-aid in ROW. The primary concern with these projects is to protect the rights of property owners and displaced persons.

For the second level of projects, there is a dual concern for the rights of property owners and displaced persons and the stewardship of the federal dollars. Continuous review of the MDOT SHA's activities has proven to be an effective means of assuring that the rights of owners and displaced persons are protected as well as monitoring the expenditures of federal funds. This will be continued under this stewardship plan. Process reviews and program evaluations will be conducted when needs/trends are identified. The reviews will be conducted jointly with MDOT SHA personnel whenever possible.

For 23 CFR program areas, recent changes in the regulations have added some flexibility to the oversight responsibilities. With this flexibility, MDOT SHA will be taking more direct approval and oversight responsibility. The attached table identifies the responsible agency for each 23 CFR activities, approving actions, and products under the revised agreement. Each element already has an end product review of 100%. If during the normal approval action any problems are identified, a process review may be scheduled. Also, process reviews will be the method for evaluating compliance and effectiveness in each of the program areas. Where certain ROW activities are not covered specifically by either 49 or 23 CFR but are a combination of other agency's regulations, sound business practice and the occasional national emphasis areas which affects the ROW program, joint reviews of these topics and their application will be conducted as needed.

**301.1 RIGHT OF WAY SUMMARY TABLE**

<b>Activities/Item</b>	<b>MDOT SHA Action</b>	<b>FHWA Action**</b>	<b>Product</b>
Appraisals	Approval all Projects	Authorization and Oversight all Projects within 5 days *	Appraisal Reports
Acquisitions	Approval all Projects	Authorization and Oversight all Projects within 5 days *	Property Titles, Easements
Relocations	Approval all Projects	Authorization and Oversight all Projects within 5 days *	Relocations
ROW Authorizations	Request	Electronic Signature all Projects within 5 days *	1240s and Agreements

<b>Activities/Item</b>	<b>MDOT SHA Action</b>	<b>FHWA Action**</b>	<b>Product</b>
ROW Certification	Approval Non-NHS and Exempt Projects	Approval Interstate and NHS Projects within 5 days *	Certificates
Functional Replacement	Approval and Oversight	Concurrence	Manual
Air Rights Interstate	Request	Approval and Oversight	Airspace Agreement
Airspace leases/joint use agreements	Approval and Oversight Non-Interstate	Approval - Interstate within 10 days *	Leases/Agreements
Disposal of Excess ROW	Approval Non-Interstate and Oversight	Approval - Interstate and less than FMV within 10 days *	Sale Receipts
Federal Land Transfer	Prepare Request	Approval and Oversight within 3 months	Transfer Deeds
Early Acquisition, Hardship, Protective Buying	Prepare Submission	Approval and Oversight within 10 days *	Manual
ROW Operations Manual	Prepare Manual	Approval within 10 days *	Manual
Indirect Cost	Request	Approval within 10 days *	Manual
Highway Beautification	Prepare Request	Approval and Oversight within 10 days *	Manual
Administrative, Legal, and Court Awards	Approve	Oversight	Manual
Access Control- Disposal and Changes	Request (Interstate) Approve (Non-Interstate)	Approval - Interstate within 10 days *	Manual
Early Acquisition Cost	Approve	Concurrence	Manual

\* Working days

\*\* Action refers to comments and/or approvals

**OFFICE OF REAL ESTATE**  
**OPERATIONAL GUIDELINES**  
**CHAPTER 4**  
**PRELIMINARY RIGHT OF WAY ACQUISITION ACTIVITIES**

**CHAPTER 4**  
**PRELIMINARY RIGHT OF WAY ACQUISITION ACTIVITIES**

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## **400 PURPOSE**

This chapter presents and briefly explains the early steps performed by ORE leading to the acquisition of ROW. These steps are presented in a logical sequence, but in actual practice circumstances may require a departure from the sequence presented here.

Preliminary ROW acquisition activities, as presented in this chapter, are defined as those steps or procedures conducted from the time of project initiation by any of MDOT SHA's engineering offices prior to the issuance of the Authorization to Acquire Memorandum by the ORE Director or his/her designee.

## **401 POLICY**

All preliminary acquisition activities must be done to ensure efficient and effective project delivery in accordance with all State and Federal laws and regulations.

## **402 PROJECT FUNDING AND AUTHORIZATION**

1. A Program Approval Form (Form 42-25C) is completed by PCD for all ROW projects. For Federal Aid projects, the Federal Aid information portion must also be completed
2. State funded only projects are submitted to the Chief Engineer's Office for approval
3. Federal Aid projects are submitted to Federal Aid Programming for processing for FHWA approval
4. PCD shall prepare and submit a Work Order Request (Form 30) as soon as an approved Program Approval Form is received under paragraph 2 of this section or Federal approval (Form 1240) is received under paragraph 3 of this section
5. Upon receipt of a valid project number, the PCD prepares a memorandum to the acquiring office authorizing the initiation of the appraisal and/or acquisition process
6. PCD also updates OREMS with the appropriate project information.

## **403 INITIAL RIGHT OF WAY, UTILITY & PROPERTY INFORMATION FOR PLATS & SURVEYS DIVISION**

When the project is approved and its funding is programmed, the Plats and Surveys Division (PSD) will request property data, metes, and bounds deed descriptions, subdivision plats, etc., from ORE. Accompanying this request will be a copy of the tax map indicating the location of the properties that may be impacted by the project. PSD may also request existing ROW information from R&R. If needed,

railroad valuation maps, utility information, and wetland replacement information will be provided by SAD.

#### **404 ASSIGNMENT OF ITEM NUMBERS AND CREATION OF ITEM FILES**

Item Numbers are unique property identifiers acquired through OREMS by the Real Property Specialist (RPS) assigned to the project after ROW funding has been established. All general property data must be input in OREMS to create a Title Lead Data form (Part 1). R&R will prepare the Headquarters (HQ) Item File when notified that a new Item Number has been generated. This is the OFFICIAL ORE Item File. The District ROW office is responsible for setting up its own working file for each item.

#### **405 TITLE ABSTRACTS**

In general, it is ORE's policy to obtain title examination on all real property interests being acquired. However, at the discretion of the Real Property Manager (RPM) of the acquiring office, this policy may be waived under certain conditions as described in this section.

##### **405.1 INITIAL REQUEST FOR TITLE EXAMINATIONS**

After Item Numbers are assigned, title examinations may be requested through PRD. All ORE Directives concerning when and what type of title is required are to be followed.

Three (3) hard copies are to be ordered for each title examination. Upon receipt, these are to be distributed as follows:

1. One (1) copy to the PRD
2. One (1) copy to the District ROW Office
3. One (1) copy to the central HQ file in ORE.

##### **405.1.1 REQUIRED TITLE EXAMINATIONS**

Title Examinations are to be ordered on all properties to be acquired by MDOT SHA except:

1. Federal, State, or Municipal Agencies
2. Railroads and utilities
3. Properties valued at \$10,000 or less under documented risk management as described in Section 405.1.2
4. Temporary easements.

After inputting all available property information into the Item General

screen in OREMS, check the "Title Exam Required" field if a title examination is required. This notifies the Settlement Coordinator to proceed with procurement.

#### **405.1.2 PROPERTIES VALUED AT \$10,000 OR LESS**

For a property having estimated Just Compensation of \$10,000.00 or less, it may not be necessary to order a title examination prior to negotiations. In this case, the RPM has the discretion as to whether a title examination is needed for the property. If the RPM elects not to order a title, the following procedure should be followed:

1. A Part 1 shall be prepared indicating no title examination is being requested
2. A copy of the most recent deed will be placed in the District and HQ's files
3. If an option is secured, it shall be processed, and settlement with the property owner will occur without a title examination
4. If an agreement cannot be reached with the property owner, the District ROW office shall go back to the Item General screen in OREMS and check the Title Exam Required field
5. The Property Review Division shall update OREMS with date the title was ordered and date when the title is received.

#### **405.2 MORTGAGES, DEEDS OF TRUST AND LIENHOLDERS' RELEASES**

ORE will not seek a release for mortgages, deeds of trust and/or liens if just compensation is under \$15,000 for fee, perpetual easement and revertible easement acquisitions and there is sufficient property remaining to protect said mortgage, deed of trust or lien.

1. The RPM has the discretion as to whether releases should be secured
2. The RPS **must** inform the property owner that we shall be paying him/her and will not be seeking releases from their lien holders.

#### **406 PARCEL CONTROL**

The District ROW office is responsible for entering all acquisition data in the Acquisition General Details screen in OREMS. This enables ORE to identify all the real property interests that need to be acquired for the project.

## **407 NOTIFICATION TO THE SPECIAL ACQUISITIONS DIVISION**

The following procedures may be followed when ROW is required from a State, Federal, Municipal Governmental Agency, Public Utility, or a Railroad entity.

1. The District ROW Office may notify SAD immediately upon receipt of the Item Number and ROW plat(s) of any acquisition involving the entities described in this section
2. It is the responsibility of the District ROW Office to procure in a timely manner an appraisal for any property referred to SAD for acquisition
3. The District ROW Office should keep SAD informed of when the appraisal was ordered, who it was ordered from, when it is due and when it is received and forwarded to ARD for review
4. The District ROW Office should keep SAD informed of any changes in the acquisition needed from these parcels
5. The District ROW Office's RPM should notify PCD to assign SAD to the project in OREMS
6. SAD is responsible for keeping the District ROW Office's RPM updated on the progress of the acquisition and entering all acquisition information into OREMS.

## **408 RIGHT OF WAY PLATS**

### **408.1 PLATS AND SURVEYS DIVISION**

Upon completion of the metes and bounds plats, PSD may transmit by memo the plat tracing and any issued property tabulation sheet to R&R and to the District ROW Office or SAD assigned to the project.

### **408.2 RECORDS AND RESEARCH DIVISION**

R&R shall maintain digital copies of the plat on the MDOT SHA intranet. A copy of each plat is placed in the Master Plat File. The tabulation sheet, if issued, will be filed in the Project's General File.

### **408.3 REVIEW OF PLATS, PLANS AND CROSS SECTIONS**

Upon receipt of the plats, plans and cross sections for the project, the District ROW Office assigned to the project should carefully examine and compare the ROW plats with the construction drawings to ascertain their accuracy, completeness and to determine if any problem areas exist. Immediate action should be taken to correct any inaccuracies which are discovered. For example, the limit of disturbance (LOD) as shown on the construction plans should match the extent of the real property rights to be acquired on the plat(s).

**409 FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO APPRAISE AND TO ACQUIRE**

Proper authorization must be secured on Federal Aid projects prior to beginning any phase of ROW activity. The authorization memorandum to the District ROW Offices is prepared by the PCD and signed by the ORE Director or his/her designee.

**Failure to have the proper authorization before any ROW activities are embarked on may jeopardize federal participation.** It is the responsibility of the acquiring District ROW Office to ensure that the proper Federal authorizations have been secured prior to beginning any ROW activity.

**410 RIGHT OF WAY STAKE-OUT FOR APPRAISING**

Upon receipt of the ROW plats, the ROW Project Manager may request PSD to stake-out of the real property interests being acquired. The request for the stakeout should be submitted at least 30 days in advance.

**411 RIGHT OF WAY FIELD INVESTIGATION AT PROJECT INITIATION**

The ROW Project Team may view the project in the field and evaluate the following:

1. The properties to be appraised by fee and staff appraisers
2. The need for machinery and equipment valuation
3. The need for engineering studies
4. The potential for relocation assistance or moving of personal property
5. The need for personalty/realty determinations
6. If any on-premise or off-premise signs are to be considered as personal property
7. Identify tenant owned improvements, etc.
8. Onsites that may be impacted by the project.

**412 SELECTION AND ASSIGNMENT OF APPRAISERS**

The RPM or Procurement Officer shall comply with all applicable procurement regulations regarding the selection and assignment of appraisers. All selection and assignment of appraisers shall be in accordance with COMAR Regulation 21 which provides solicitation requirements for any contract entered by the State of Maryland, the Maryland Annotated Code, ORE Appraisal Guidelines, ORE Directives and Chapter 5 of this manual.

## **413 DISPOSITION OF OUTDOOR ADVERTISING SIGNS IMPACTED BY A PROJECT**

This section describes the procedure when an OA sign is being acquired because of a project. When the impacted sign has been acquired, it cannot be leased back to the sign owner or landowner.

### **413.1 CONDUCTING A SIGN INVENTORY**

The ROW Project Manager and the OA Representative should make a physical examination of the impacted OA sign and record its location within the real property interest areas being acquired. Each OA sign should be recorded regardless of the size, type or nature and checked against the OA Sign Inventory in Outdoor Advertising and Junkyard Control Management System (OAJCMS).

The following procedures may be used when acquiring legal and non-conforming billboards/signs on highway construction projects:

1. The District ROW Office and the OA Representative will compile a complete list of all signs impacted by the project. These signs shall be classified whether they are legal, non-conforming, or illegal signs
2. The OA Representative(s) should immediately have all illegal signs removed according to MDOT SHA's procedures and the Annotated Code of Maryland, Transportation Article, Section 8-701 through 8-749
3. The list of legal and non-conforming billboards/signs should include the following:
  - a. Route number and nearest intersecting street
  - b. Current MDOT SHA sign permit tag number(s)
  - c. Sign owner's name(s)
  - d. Tax map/parcel number
  - e. Construction type (wood-steel, etc.)
  - f. Digital picture of sign (front and back view).

### **413.2 VALUING AN OUTDOOR ADVERTISING SIGN**

It is the policy of the ORE that an OA sign impacted by a project shall be valued as personal property. The following procedures should be followed:

1. Upon completion of the sign inventory by the OA Representative, the complete list of the impacted signs/billboards should be forwarded to the acquiring District ROW Office RPM for review and assigning a staff/Fee

- Appraiser
2. Each sign shall be appraised using the current “Reproduction Cost Index for Outdoor Advertising”. This reproduction cost index must be updated every two years by ARD
  3. The appraiser should obtain the date of erection for each sign to determine depreciation. This information can be obtained from the OA Representative
  4. The following signs/billboards cannot be moved or relocated to the adjoining property:
    - a. Off-premise OA signs on Scenic Byways
    - b. Non-conforming signs
  5. When the valuation of the sign is completed, it must be forwarded to ARD for review and approval. Upon approval, the valuation may be provided to the appraiser appraising the real property interests being acquired to incorporate into their appraisal report.

### **413.3 REMOVAL OF ABANDONED AND ILLEGAL SIGNS**

Signs on the list, which are determined to be abandoned or illegal will be processed by the OA Representative for removal according to established ORE guidelines and/or procedures.

### **413.4 LEGAL SIGNS**

The legal signs are to be acquired as part of the normal acquisition process in accordance with Chapter 6 of this manual.

### **414 NONCONFORMING SIGN AND SITE PROJECTS**

These are highway beautification projects that may require the removal of an OA sign. All activities shall conform to the appropriate State and Federal laws and regulations, as well as ORE procedures described in this Chapter.

### **415 SCREENING PROJECTS**

Upon receipt of the project information, the acquiring District ROW Office will develop Item Files and information for each property. Where no acquisition of real property interests is required for the project, the acquiring District ROW Office is expected to assist the Division of Landscape Architecture, the District Engineer, or other units of the MDOT SHA in what may be requested within its scope of activities.

### **416 TRANSPORTATION ENHANCEMENT PROJECTS**

Transportation Enhancement Projects will be handled by the appropriate District ROW Office in accordance with procedures described in this Chapter. If an LPA is responsible for the enhancement project, PRD shall provide oversight on the project in accordance with State and Federal laws and regulations and Chapter 10 of this manual.

**417**

### **STREETSCAPE PROJECTS**

Streetscape projects will be handled by the appropriate District ROW Office in accordance with the procedures described in this chapter. All preliminary ROW activities must follow the appropriate State and Federal laws and regulations. The acquiring District ROW Office must notify the Road Conveyance Section if there is a road transfer commitment made as part of the project.

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**CHAPTER 5**  
**APPRAISALS**

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**500 PURPOSE**

This chapter is devoted to the establishment of criteria and procedures for the appraisal function. It is not intended to instruct or guide appraisers in the preparation of their reports but to be an administrative aid in the securing and processing of appraisals. ORE's Guidelines for ROW Appraisals and the Reproduction Cost Index for OA will guide the appraiser in the development of an appraisal report.

**501 POLICY**

All appraisal activities shall be done in accordance with applicable State and Federal laws and regulations affecting the appraisal function including the adoption of USPAP.

Properties shall be appraised and just compensation established by ARD prior to the beginning of negotiations.

**502 QUALIFICATIONS**

**502.1 STAFF APPRAISERS**

One of the functions of a RPS is appraising and specialists may be used as staff appraisers, at the discretion of their RPM or his/his designee, if they possess the knowledge and experience to perform a specific appraisal assignment competently. Although State of Maryland licensing is not required, qualifications and experience should be consistent with the scope of work for the assignment.

**502.2 FEE APPRAISERS**

To be placed on ORE's Fee Appraiser List the appraiser must be licensed by the Department of Labor, Licensing & Regulation in the state of Maryland.

To qualify for consideration to be placed on the ORE Fee Appraiser List, each applicant must, at minimum, meet the following criteria:

1. Must hold a current Residential or General Certified Appraisal License:
  - a. Issued by the State of Maryland
  - b. In good standing
  - c. Completion of some condemnation courses is preferred
  - d. Must have good written and verbal communication skills
  - e. Must provide sample appraisals showing a level of expertise in residential and/or commercial/industrial appraising

- f. Must provide professional references
- g. Must not be an active employee of the State of Maryland.

### **502.3 SPECIALISTS AND EXPERTS**

Experts, such as builders, land planners, surveyors, geologists, engineers, and those who specialize in estimating machinery and equipment, or other types of experts used to testify in condemnation cases are not specifically required to meet any set educational or experience criteria. If such experts are required, inquiries must be made to assure the level of expertise and the reputation of the specialist or expert in his/her field. In such cases consultation must be made with MDOT SHA's Office of Counsel.

### **502.4 REVIEW APPRAISERS**

Review Appraisers are selected on their ability to prepare and analyze all types of appraisals.

Contract Review Appraisers must meet the requirements described in Section 502.2.

### **503 FEE APPRAISER LIST**

ORE's Fee Appraiser List is maintained by ARD.

The process of application to ORE's Fee Appraiser List begins when a Fee Appraiser sends a letter of intent to the RPM of ARD expressing his/her desire to be placed on the approved list.

Upon receipt of the letter of intent, ARD will:

1. Send a request for copies of appraisals completed by the applicant
2. Request a copy of the appraiser's license/certification
3. Send an application to the Fee Appraiser.

Applicants must meet the criteria listed in Section 502.2. The following are procedures for placement on ORE's Fee Appraiser List:

1. The prospective Fee Appraiser submits all completed documents to the RPM of ARD. After the manager's preliminary review, he/she forwards a copy of the sample appraisal to the RPM of the appropriate District ROW office
2. The District ROW office RPM and the District Review Appraiser review the sample appraisal, assigns the appraiser a demonstration appraisal to complete. The District Review Appraiser will review the completed demonstration appraisal for compliance with Section 501

3. ORE will pay reasonable costs for the completed demonstration appraisal
4. The District ROW office's RPM submits to the RPM of ARD the completed demonstration appraisal, along with his/her recommendation whether the appraiser warrants placement on the Fee Appraisal List
5. The RPM of ARD reviews the completed demonstration appraisal in conjunction with the recommendation made by the District ROW office's RPM and the District Review Appraiser. In turn the RPM of ARD forwards all the application documents, along with his/her recommendations, to the Director of ORE for final determination
6. If the ORE Director approves the application, the appraiser is placed on the Fee Appraiser List.

## **504 ASSIGNMENT OF APPRAISALS AND SPECIALTY REPORTS**

### **504.1 POLICY**

1. The property owner(s) or their designated representative must be given the opportunity to accompany the appraiser during the inspection of the property. This is also necessary for OA sign appraisals. Documentation must be maintained and should be included with the appraisal report
2. To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the FMV of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner
3. There shall be no consideration of moving costs or relocation benefits in the appraiser's report as it relates to just compensation
4. Fee Appraisers should be selected from the list of approved Fee Appraisers
5. Uneconomic remnant recommendations will be made by the Review Appraiser.

#### **504.1.1 NUMBER OF APPRAISALS**

ORE shall obtain at least one acceptable appraisal on each property being acquired.

Subsequent appraisals may be requested upon agreement between the acquiring District ROW Office, Office of Counsel and ARD.

## **504.1.2 NUMBER OF SPECIALTY REPORTS**

ORE will obtain at least one acceptable report for machinery, equipment, or other specialty items, as dictated by the circumstances of the case.

## **504.1.3 FEES**

The RPM of the acquiring District ROW Office or the Procurement Officer responsible for ordering the appraisal shall follow all applicable procurement regulations regarding sealed bid and/or sole source solicitation. All appraisal assignments shall be in accordance with COMAR Title 21 - the procurement regulations for the State of Maryland; the Maryland Annotated Code; ORE Appraisal Guidelines (See Appendixes), and ORE Directives.

### **504.1.3.1 APPRAISAL CONTRACT PROCEDURES**

1. The ORDER FOR FEE APPRAISALS and the ANTI-BRIBERY AFFIDAVIT forms should be prepared and sent to the Fee Appraisers being solicited. The completed ORDER FOR FEE APPRAISALS form must indicate the time the form must be returned for consideration, the time that will be allotted for completion of the appraisal (if awarded), and the allowance for pre-trials, BPR and condemnation testimony
2. The completed ORDER FOR FEE APPRAISAL and ANTI-BRIBERY forms signed, with the amount of the appraisal fee, should be returned to the acquiring District ROW Office. If the form is returned after the time limit prescribed, the appraiser must not be considered for the awarding of the contract. Facsimile copies and/or emails with signatures are acceptable
3. The RPM of the District ROW Office or the Procurement Officer should award the contract based upon the lesser fee of those proposals returned, and by completion of the ORDER FOR FEE APPRAISAL. A signed copy of the contract shall be returned to the Fee Appraiser. The original and one copy shall be retained in the District or headquarters' file
4. When the appraisal is received:
  - a. The date the appraisal was received will be noted on the suspense copy of the ORDER FOR FEE APPRAISAL
  - b. The date the appraisal is received will also be noted on a copy of the APPRAISAL TRANSMITTAL form, a copy of which will be attached to the appraisal along with the appraiser's invoice.

### 504.1.3.2 SOLE SOURCE CONTRACT PROCEDURES

1. The request for a sole source appraisal is submitted to and approved by the Director/Deputy Director of ORE or the Office of Counsel prior to the ordering of the appraisal
2. The form, ORDER FOR FEE APPRAISAL, will be prepared in accordance with contract procedures described in Section 504.1.3.1
3. The Fee Appraiser should return the ORDER FOR FEE APPRAISAL form, signed, with the amount of the fees and the completion date of the appraisal shown. This form must be returned in the specified time to be considered:
  - a. If the fee closely approximates the original estimate and the completion date is satisfactory, and if the form was returned within the prescribed time limit as specified in the contract, the RPM of the acquiring District ROW Office may sign the contract accepting it for MDOT SHA. A copy of the signed contract should be returned to the Fee Appraiser. The original is retained in the acquiring District ROW Office and one copy is retained in Headquarters' office
  - b. If there is a substantial difference between the original estimate and the appraiser's fee, the acquiring RPM or his/her designee is to:
    - (1) Reconcile the difference with the Fee Appraiser, or
    - (2) Submit a revised estimate, together with recommendations and the Fee Appraiser's reasons for justifying the fee, or
    - (3) Submit a recommendation for review by the Director/Deputy Director not to accept the fee
    - (4) After investigating and reviewing the information, the Director/Deputy Director will advise the acquiring District ROW Office of the determination. If the Director/Deputy Director does not accept the appraiser's fee, the District will be advised to secure another appraiser
  - c. If the completion date submitted by the Fee Appraiser is not satisfactory, the difference in completion dates must be reconciled or the appraisal request may be submitted to another appraiser
4. When the appraisal is received:
  - a. The date the appraisal is received will be noted on the suspense copy of the ORDER FOR FEE APPRAISAL form
  - b. The date the appraisal is received will also be noted on the APPRAISAL TRANSMITTAL form, a copy of which will be attached to the appraisal along with the appraiser's invoice
5. After the appraisal report is transmitted to the Review Appraiser by

the acquiring RPM or his/her designee indicating the appraisal meets the requirements of the solicitation, the copy of the ORDER FOR FEE APPRAISAL form, or the letter requesting an update, with the invoice attached, will be sent to the appropriate section so that the invoice may be processed for payment.

## **504.2 APPRAISAL ASSIGNMENT SCOPING**

To ensure that the appraisal being solicited adequately address and values the real property interests being acquired, it is important that the all pertinent aspects affecting value are evaluated and included in the scope of work in the ORDER FOR FEE APPRAISAL.

### **504.2.1 FIELD INSPECTION AT INITIATION OF A PROJECT**

An ARD representative, a representative of AD, if requested by the acquiring RPM or/his designee, and the acquiring District ROW Office Project Team may conduct a field inspection to scope the project to determine the following:

1. Which properties can be appraised by staff or Fee Appraisers
2. If there is a need for machinery and equipment valuation
3. If there is a need for engineering studies such as a land planning study etc.
4. If there are relocation assistance issues that need to be addressed in the valuation phase
5. If any on-premise signs are to be considered as personal property
6. Identify improvements to be acquired, etc.

### **504.2.2 REALTY/PERSONALTY DETERMINATION BY THE REAL PROPERTY MANAGER**

The RPM or his/her designee of the acquiring ROW Office and the assigned Review Appraiser are responsible for securing a determination as to what is realty (real estate) and what is personalty (personal property) when an improvement is being acquired. This may be done before ordering appraisals. A list of the tenant-owned improvements should be obtained whenever possible. The RPM or his/her designee may seek advice from the Office of Counsel when needed.

The realty/personalty determination must be provided to the appraiser for their consideration in the appraisal report.

**504.2.3 PROCEDURE FOR SELECTION OF FEE APPRAISERS AND/OR REAL PROPERTY SPECIALISTS**

When appraisals for acquisitions, excess land, advance purchases, etc. are needed, the RPM or his/her designee must ensure that the ORDER FOR APPRAISAL must reference compliance with applicable procurement regulations, and other regulations and guidelines prescribed by the current ORE Appraisal Guidelines, the Maryland Annotated Code, and Section 504.1.3.

For RPS conducting staff appraisals, their appraisal reports are not exempt from complying with the regulations and guidelines described in this section.

**504.2.4 ASSIGNMENT OF STAFF APPRAISALS**

The acquiring RPM may assign appraisals to his/her staff or request the RPM of AD for his/her office to prepare an appraisal report using the criteria previously set forth in Section 502.1.

**505 APPRAISALS AND SPECIALTY REPORTS**

**505.1 TYPES OF APPRAISAL REPORTS**

All appraisal reports must be on the forms or in the formats as established in ORE Directives and described in Section 505.2.

**505.1.1 APPRAISAL REPORT UPDATES**

There are circumstances where it may become necessary for the appraisal report to be updated, the procedures described in this section should be followed:

1. All requests to appraisers or RPS performing staff appraisals for updating their appraisal report shall be in writing with a requested completion date stated. MDOT SHA "SHORT FORM CONTRACT FOR APPRAISAL UPDATES/REVISIONS" is to be used
2. The fee for said request should be based on the time involved to perform the work and the per hour rate on the original ORDER FOR APPRAISAL form
3. Upon completion of the appraisal update, MDOT SHA "APPRAISAL TRANSMITTAL" form will be prepared and distributed.

## 505.2

### **MINIMUM REQUIREMENTS AND TYPES OF ACCEPTABLE APPRAISAL REPORTS**

The publications Guidelines for ROW Appraisals and/or the Reproduction Cost Index for OA provide the minimum requirements for the preparation of appraisals and specialty reports for MDOT SHA by both staff and Fee Appraisers and qualified experts. All reports received from fee and staff appraisers should conform with USPAP.

Appraisals or reports prepared for ORE are to conform to these guidelines. Periodically, revisions will be made to these publications and the most current issue or revision will govern. An original and two copies of all appraisals, specialty reports, revisions and addenda are to be submitted to ORE.

The following appraisal forms are to be used when preparing real property appraisals for ORE:

1. The MDOT SHA Appraisal form known as the "LONG FORM" may be used in the appraisal of any property
2. Either a complete or summary "NARRATIVE" report may be used if it conforms with the ORE's Guidelines for ROW Appraisals and USPAP
3. The MDOT SHA Appraisal form known as the "SHORT FORM" (5-D) is limited in its use to the appraisal of partial acquisitions, where the following conditions exist:
  - a. There is no apparent adverse effect on the remainder
  - b. The highest and best use (HBU) and unit value remain the same in the after condition of the real property being appraised
  - c. Only the comparative sales data approach to value is considered appropriate
  - d. There is no leasehold interest in the land
4. The MDOT SHA "VALUE FINDING" (5-C) form is a short form which is limited in use to appraisals in which the taking, including easements and on-sites, is limited to \$15,000.00 or less. In rare, extraordinary circumstances, the RPM of ARD, may authorize its use for other purposes
5. The MDOT SHA "VALUE FINDING FOR EXCESS LAND" form is a short form which may be used in certain circumstances when specific criteria are met. Use of this form is limited to appraisals in which the estimated value of the excess land is \$10,000.00 or less. In rare, extraordinary circumstances, the RPM of ARD, may authorize its use for other purposes
6. In certain circumstances, including but not limited to very minor acquisitions, the RPM of ARD may authorize the use of a

“RESTRICTED APPRAISAL”

7. A "WAIVER OF APPRAISAL" may be used on minor acquisitions of \$10,000.00 or less.

**505.3 APPRAISAL OR SPECIALTY REPORT OF RECORD**

Upon receipt of the appraisal by ARD, the original copy will become the record copy and may not be returned to the appraiser.

All original pages of any corrections, revisions or addenda become a part of the record copy of the appraisal when they are received by the acquiring District ROW Office or ARD.

**505.4 REVISIONS AND ADDENDA**

Any revised appraisal pages are to show the revision date. A new certification must be submitted when there is a change in value or a change in the date of value. Original pages are to be voided and retained with the record copy.

**505.5 APPRAISAL WAIVERS**

The appropriate use of appraisal waivers and in completing the appraisal waiver process is as follows:

1. The purpose for which the current appraisal waiver policy has been established is to simplify the acquisition process for acquisitions of land that are estimated to be valued at \$10,000 or less
2. The acquiring District ROW Office personnel should consult with a Review Appraiser for assistance prior to establishing whether just compensation for a property acquisition could be determined utilizing an appraisal waiver
3. The limit for completing an appraisal waiver is \$10,000. It should be noted that this limited to the land's value. On-sites and landscaping can be in addition to this limit
4. The appraisal waiver should be completed only on properties with small non-complex acquisitions that have little or no risk of needing litigation. At no time should an appraisal waiver be completed for an acquisition that may involve damages to the remainder or a change in the HBU of the property
5. The RPS completing the appraisal waiver must maintain a good working file that indicates how the amount of just compensation being offered was established. This file should include a sales brochure with all comparable sales data and all other supporting information utilized. In the absence of comparable sales information, assessment values may be used. The assessment

- data sheet should be placed in the file
6. After completing all necessary research and establishing the value of the proposed acquisition, the RPS completing the appraisal waiver should complete the "Real Estate Value Estimate" form
  7. All appraisal waivers must be administratively approved by the RPM of the acquiring District ROW Office
  8. A letter of offer of just compensation (Form 200) must be completed indicating the amount and breakdown of how the just compensation was obtained. This letter must indicate that the offer is based on an appraisal waiver
  9. At no time should a property be filed into condemnation based on an appraisal waiver. If a property that has been negotiated based on an appraisal waiver requires filing into condemnation, an acceptable appraisal must be prepared prior to submittal to the SRC.

## **506 APPRAISAL PROCESSING AND REVIEW PROCEDURES**

### **506.1 REVIEW AND TRANSMITTAL**

1. Each appraisal shall be reviewed by the ordering office to assure that the appraiser has complied with the terms of the contract and that the form and factual content of the appraisal is satisfactory
2. Exceptions and other pertinent comments are noted by the RPM of the ordering office, who signs the form and transmits the appraisal directly to the Review Appraiser assigned to the area or project
3. When transmitting additional appraisal(s) on a property previously appraised, the reason(s) the additional appraisal(s) have been secured should be stated on the APPRAISAL TRANSMITTAL Form.

### **506.2 ACTION TAKEN ON APPRAISAL REPORTS BY THE APPRAISAL REVIEW DIVISION**

It is the responsibility of the Review Appraiser to take appropriate action on all appraisals reports and to ensure that they comply with requirements set forth in the Guidelines for ROW Appraisals and ORE Directives.

#### **506.2.1 RECEIVING NOTICES OF APPRAISAL TRANSMITTALS**

All appraisal transmittals received are to be stamped with the date of receipt. The date of receipt along with the Item Number, District ROW Office, MDOT TBU, contract number, property name, appraiser's name, and reviewer's name should be added to the appropriate section in OREMS for efficient management of the appraisal review process.

## **506.2.2 RECEIVING APPRAISALS BY THE REVIEW APPRAISER**

All appraisals reports received will be stamped with the date of receipt. The date of value, action taken, amount of approval (depending on action taken) and date approved should be added to the appropriate section in OREMS for future reference. All information concerning revisions and/or additional comments should also to be included in OREMS.

Copies of the REVIEW APPRAISER'S REPORT will be attached to the appraisal and sent to the RPM of the ordering District ROW Office, who in turn makes the appropriate distribution of the copies to the Central file, District file, Review Appraiser, etc.

## **506.3 REVIEW PROCEDURES**

### **506.3.1 FIELD INSPECTIONS**

The Review Appraiser will make a field inspection of:

1. Each property being appraised
2. Comparable sales and rentals used in the appraisal
3. Other market data that may be considered relevant in establishing an estimate of just compensation
4. Machinery, equipment, or other specialty items being valued
5. If a field inspection is not made, the file and review certification should be documented with the reasons.

### **506.3.2 RIGHT OF WAY DISTRICT OFFICE ASSISTANCE**

The District ROW Office, requesting TBU, etc., are to provide adequate plans, plats, cross sections, and other information that may be required to assist the Review Appraiser and the appraiser.

The District ROW Office may provide a RPS to assist the Review Appraiser with the location of the property being appraised and the comparable sales and rental when requested.

### **506.3.3 REVIEW CRITERIA**

The Review Appraiser must assure the following:

1. The appraiser has used sound appraisal principles and practices in the development of FMV
2. The appraisal report meets the requirements for form, fact and reasonable conclusions and contains adequate justification and documentation
3. Only compensable items are included in the FMV shown in the

- appraisal report
4. The appraiser has properly shown the breakdown of the FMV and any resulting damages
  5. The appraiser has considered all applicable approaches to value
  6. A realty/personalty inventory should be included in the appraisal report for all improvements being valued as described in Section 504.2.2
  7. A list of real property of the tenant is included in the appraisal report on tenant occupied commercial and/or industrial properties when applicable as described in Section 504.2.2
  8. The reviewer has considered the possibility of an uneconomic remnant and state the reasons and justifications for this determination on the REVIEW APPRAISER'S REPORT
  9. The reviewer or appraiser has established carve-out values (residential properties) as well as economic rents where applicable for the use in determining replacement housing payment eligibility under MDOT SHA relocation assistance program
  10. Appraisals are in compliance with the requirements set forth in the ORE Guidelines for ROW Appraisals, the Uniform Act and ORE Directives.

#### **506.3.4 CONFERENCES WITH FEE APPRAISERS**

The Review Appraiser will maintain a record documenting the purpose and the results of all conferences with appraisers on the appropriate form. A copy of the record of each conference will be sent to ARD immediately following the conference.

#### **506.3.5 PROCESSING OF APPRAISALS WHICH HAVE ERRORS OR OMISSIONS**

Appraisals submitted for review are to be processed in as short a time as possible. When the appraisal contains errors or omissions the Review Appraiser is to request immediate correction. This may be done through the RPM or his/her designee who originally ordered the report or by the Review Appraiser directly. When further justification for technical or non-factual conclusions is required, the Review Appraiser may contact the appraiser directly.

#### **506.3.6 CORRECTIONS BY THE REVIEW APPRAISER**

The Review Appraiser may make minor mathematical corrections that do not affect the appraiser's final value. Minor omissions not affecting value may be supplemented by the Review Appraiser. All corrections or additions of information shall be initialed and dated by the Review Appraiser.

#### **506.4 DETERMINATION APPRAISALS**

A determination appraisal is prepared by the Review Appraiser in any of the following circumstances:

1. The Review Appraiser rejects the appraisal(s)
2. There is inadequate time to request an updated appraisal and to complete the review
3. To be consistent in establishing the FMV on similar adjoining properties
4. When the reviewer accounts for minor plat changes. The determination appraisal should be supported by reference to other appraisals on the project, factual items in the appraisal(s) submitted on the specific property, or other value items or evidence known by the Review Appraiser

#### **506.5 CODING OF ACTION TAKEN**

All appraisal review reports (Form 19) are coded by the Review Appraiser. The codes are described below:

**“S”** Appraisal review reports with this designation are recommended for use in negotiation and/or condemnation and in the opinion of the Review Appraiser, are in compliance with requirements set forth in the ORE Guidelines for ROW Appraisals. A copy of this appraisal is returned to the District ROW office or the PAM office for use in negotiation. The original is filed in the HQ file in Baltimore.

**“A”** Appraisal review reports with this designation are, in the opinion of the Review Appraiser, in compliance with the requirements set forth in the ORE Guidelines for ROW Appraisals and lends support to the selected (S) appraisal. This appraisal is retained in the HQ file in Baltimore. The District ROW office may request a copy of the appraisal to assist them in settling a case administratively or for condemnation purposes.

**“R”** Appraisal review reports with this designation, in the opinion of the Review Appraiser, are not in compliance with the requirements set forth in the ORE Guidelines for ROW Appraisals. The fee for rejected appraisals will not be eligible for federal participation and will not be used for negotiation. A written report should detail the areas of concern/non-compliance.

The rejected appraisal report is retained in ARD files. Any conference with the appraiser should be documented as per 506.3.4 and be forwarded to the RPM of ARD.

## **ESTIMATE OF FAIR MARKET VALUE AND/OR JUST COMPENSATION**

1. The Review Appraiser shall indicate the estimate of the FMV and/or just compensation on the MDOT SHA Form 19 for the “DETERMINATION OF AMOUNT TO BE OFFERED AND/OR DEPOSITED INTO COURT,” which is attached to each copy of the appraisal. This just compensation established by the Review Appraiser shall be in the Offer of Just Compensation provided to the property owner from whom real property interests is being acquired. This is the amount to be deposited in court for condemnation
2. The following thresholds are established for the approval of FMV/Just Compensation:
  - a. A Real Property Review Appraiser I with less than one year of experience may take full signature authorization on appraisals on which FMV does not exceed \$50,000 at the discretion of the RPM of ARD
  - b. A Real Property Review Appraiser I with one year or more of experience has an approval limit of \$300,000
  - c. A Real Property Review Appraiser II has an approval limit of \$500,000
  - d. The RPM of ARD has an approval limit of \$750,000
  - e. A Real Property Review Appraiser III or II (RPM or Review Appraiser II of ARD) must approve the action taken on appraisals when the FMV exceeds the Review Appraiser’s established limits
  - f. When the estimate of FMV exceeds \$750,000, the ORE Director/Deputy Director of ORE must approve the action taken by the Review Appraiser and the RPM or Review Appraiser II of ARD
  - g. All 5C’s must be approved by a Review Appraiser
  - h. For appraisal waivers, approval by a Review Appraiser is not Required as described in Section 505.5
3. On the REVIEW APPRAISER’S REPORT form the Review Appraiser should explain and reconcile differences between the appraisals when necessary. The reviewer should fully explain why an appraisal is being rejected
4. The Review Appraiser’s report should contain enough detail or guidance that may be helpful to the RPS acquiring or disposing real property interests.

## **SUMMARY OF JUST COMPENSATION**

The Review Appraiser should provide a summary of Just Compensation for each property appraised, on the Form 19. The summary should

indicate the breakdown between land and improvements, easements, damages, etc. The unit value should be indicated for all land and easement areas acquired. In addition, existing zoning and/or HBU should be included.

**OFFICE OF REAL ESTATE  
OPERATIONAL GUIDELINES  
CHAPTER 6  
RIGHT OF WAY ACQUISITIONS**

**CHAPTER 6**  
**RIGHT OF WAY ACQUISITIONS**

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<b>Right of way Acquisition Assembly Approval</b>	<b>607.2.6.1</b>
<b>Eminent Domain Assembly Approval</b>	<b>607.2.6.2</b>
<b>Settlement Assembly Approval</b>	<b>607.2.6.3</b>
<b>Replacement Housing Eligibility Approval</b>	<b>607.2.6.4</b>
<b>Relocation Assistance Appeal</b>	<b>607.2.6.5</b>
<b>Right of way Certification</b>	<b>607.2.7</b>
<b>Federal Highway Administration Oversight and Coordination</b>	<b>607.2.8</b>
<b>Responsibility of the Third Party providing Real Property Services</b>	<b>607.3</b>
<b>Access to the Office of Real Estate Management System</b>	<b>607.3.1</b>
<b>Preliminary Right of Way Acquisition Activities</b>	<b>607.3.2</b>
<b>Coordination with Plats and Surveys Division</b>	<b>607.3.2.1</b>
<b>Obtaining Item Numbers</b>	<b>607.3.2.2</b>

<b>Procuring Title Examinations</b>	<b>607.3.2.3</b>
<b>Procuring Appraisals</b>	<b>607.3.2.4</b>
<b>Appraisal Review Activities</b>	<b>607.3.2.5</b>
<b>Right of Way Acquisition Activities</b>	<b>607.3.3</b>
<b>Initiation of Negotiations</b>	<b>607.3.3.1</b>
<b>Agreement Reached with Property Owner</b>	<b>607.3.3.2</b>
<b>Negotiation at an Impasse</b>	<b>607.3.3.3</b>
<b>Construction Support</b>	<b>607.3.4</b>
<b>Settlement and Closings</b>	<b>607.3.5</b>
<b>Property Management</b>	<b>607.3.6</b>
<b>Item File Closeout</b>	<b>607.3.7</b>
<b>Relocation Assistance</b>	<b>607.3.8</b>
<b>Responsibility of the Office of the Attorney General</b>	<b>607.4</b>

**601 PURPOSE**

The purpose of this chapter is to provide ORE’s operating guidelines for its ROW acquisition function.

**602 POLICY**

ORE shall adhere to all applicable State and Federal laws and regulations in the acquisition of real property interests. Payments are not to be delivered by those who have negotiated, appraised, or acted as the Review Appraiser for the property. All acquisition assignments should be periodically reviewed to ensure that property owner's rights are protected.

**603 NEGOTIATED ACQUISITIONS**

**603.1 NEGOTIATIONS**

**603.1.1 ASSIGNMENT OF PARCELS FOR NEGOTIATIONS**

All negotiation assignments should be in writing, with the date of the assignment and the RPS’s name entered into OREMS. When needed, relocation assistance activities are to be coordinated by the RPM or his/her designee.

All acquisition information must be entered in OREMS.

**603.1.2 PREPARATION FOR NEGOTIATIONS**

Upon assignment of negotiation and receipt of the approved appraisal and Item File, the RPS shall prepare the letter of Just Compensation (Form 200), based on the Form 19. The Form 200 must be approved by the RPM before the offer is presented to the property owner.

In addition, the RPS should assemble:

1. Construction plans
2. Cross sections
3. ROW plats
4. Other pertinent documents that explain the real property interests being acquired by MDOT SHA.

**603.1.3 INITIAL NEGOTIATION CONTACT**

**603.1.3.1 NEGOTIATION BY PERSONAL CONTACT**

The RPS should make every attempt possible to schedule a prompt face

to face meeting with the property owner or their representative to make the offer to acquire the real property interests.

Under no circumstances shall the offer be for less than the Just Compensation established by the Review Appraiser.

At the Initiation of Negotiations (ION), the RPS shall fully explain the written offer and the "Summary of Just Compensation", the ROW plat(s) and real property interests being acquired, the construction plan(s) and cross sections and the booklet, "Your Land and Your Highways".

The RPS shall record all salient details of the initial negotiation contact and all subsequent contacts on the Record of Negotiations (Form 17) in OREMS.

If relocation assistance activities are required, the negotiating agent should coordinate the initial negotiating contact with the RPS handling the relocation assistance activities so that he/she may also attend the initial meeting. In some instances, the negotiations and relocation assistance activities may be handled by the same person as indicated in ORE Directives.

#### **603.1.3.2 NEGOTIATION BY MAIL**

If the negotiator cannot make a prompt face to face offer or at the property owner's request, the negotiations may be conducted by mail or email. The following documents should be included in the negotiating paperwork sent via delivery confirmation or email requesting confirmation receipt:

1. The pertinent ROW plats and construction plans
2. A copy of the booklet, "Your Land and Your Highways"
3. A written offer of Just Compensation (Form 200)
4. A written statement explaining the procedure involved, instructions on how the matter may be finalized, the name of whom to contact with questions, and a statement that the negotiator will be contacting the property owner by telephone within a reasonable period of time to discuss the situation
5. The Option Contract.

#### **603.1.4 RECORD OF NEGOTIATIONS**

A written record of all negotiation contacts must be maintained in OREMS by the RPS. All counteroffers made by the property owner(s), or their designated representatives, are to be recorded.

A separate section of the negotiation record must be used for each

negotiation contact. A detailed description of each contact should be included. Written correspondence, telephone/personal contact discussions and/or offers shall be documented in the Item File and maintained by the acquiring District ROW office.

#### **603.1.5      **OBTAINING LEGAL COUNSEL****

When a property owner obtains legal counsel, the RPS should request written notification of representation, and thereafter all correspondence is with the attorney of record. The attorney of record must be indicated in the appropriate block on the Record of Negotiations Form.

#### **603.1.6      **IMPASSE IN NEGOTIATIONS****

If the negotiations reach an impasse, the RPS will review the parcel with his/ her supervisor to determine the appropriate course of action to be followed.

#### **603.1.7      **REVIEW OF THE ACQUISITION STATUS****

The status of negotiations is to be periodically reviewed by the RPM or his/her designee. This is to ensure that the acquisition is proceeding satisfactorily and in a timely manner.

### **603.2      **ADMINISTRATIVE SETTLEMENTS****

#### **603.2.1      **ADMINISTRATIVE JUSTIFICATION****

When an impasse is reached during negotiations, the RPM and the negotiating RPS should review the circumstances surrounding the case to determine whether it is in the best interest of MDOT SHA and the property owner to reach an agreement.

The decision to recommend an attempt to purchase the real property rights by an administrative settlement at a figure higher than the approved fair market must be approved by the RPM or his/her designee and must follow ORE Directives. The RPM's recommendation for additional compensation shall be documented and the rationale for the settlement explained in the Justification and Recommendation of Acceptance of Option (Form 21).

The written justification must explain in detail the acquisition, the circumstances and the rationale for recommending MDOT SHA's acceptance of the agreement with the property owner. The justification should not be limited to administrative savings only, but rather, should include all relevant facts and reasoning.

## **603.2.2 APPROVAL OF ADMINISTRATIVE SETTLEMENTS**

Settlements in excess of the Offer of Just Compensation must be in compliance with the Delegation of Authority for ORE as approved by MDOT SHA's Administrator.

## **603.3 PREPARATION AND PROCESSING OF OPTION ASSEMBLIES**

### **603.3.1 PREPARATION OF OPTION ASSEMBLY**

After an option or agreement has been secured, the negotiating RPS should obtain and prepare the necessary documents as indicated in the ORE Directives. If any documents are omitted from the assembly, an explanation should be provided why it was not included in the assembly.

#### **603.3.1.1 ENTERING OPTION ASSEMBLY INFORMATION INTO THE OFFICE OF REAL ESTATE MANAGEMENT SYSTEM**

To create an Option Assembly in OREMS, the RPS must input the option date and option amount in the Option Details Page. An assembly is established by selecting the "Assembly" link and then selecting "New Assembly". Once on the "Assembly Forms" page, the applicable assembly type should be chosen from the "drop down" box.

Once "Option Assembly Type" has been selected, the "Assembly Check Sheet" becomes available for data entry. All applicable documents should be submitted for review in OREMS with the original documents submitted to PRD for review and approval.

#### **603.3.2 DISTRICT/DIVISION REVIEW AND APPROVAL**

The assembly shall be submitted by the negotiating RPS through his/her supervisor to the responsible RPM for review and approval. Upon the RPM's approval, the option assembly should be forwarded to PRD as described in section 603.3.1.1.

#### **603.3.2.1 TITLE COPIES FOR ASSEMBLIES**

All assemblies submitted to PRD should include the title abstract report.

#### **603.3.3 PROCESS AND REVIEW BY PROPERTY REVIEW AND COMPLIANCE DIVISION**

The assembly is reviewed by PRD to ensure compliance with all State and Federal laws and regulations and ORE guidelines. The assembly is

reviewed and approved by the RPM of PRD or his/her designee and forwarded to the Director/Deputy Director for approval if required as described in Section 603.2.2. PRD must provide the property owner written notification indicating the acceptance of the option contract and that settlement for the real property rights being acquired will be scheduled at a future date.

For ROW transactions that require the conveyance of extra land owned by MDOT SHA to a property owner from whom a real property interest is being acquired, PAM must be notified to complete its disposition as stipulated in the agreement or option contract.

A Notification of Extra Land Form (Form 91) should be forwarded to PAM if extra land has been acquired. This informs PAM to catalog the extra land parcel in their inventory.

#### **603.3.4 PROPERTY SETTLEMENTS (CLOSINGS)**

All property settlements are coordinated by the RPS responsible for property settlement coordination. An item is ready for settlement after the option or an un-appealed BPR Award has been accepted by ORE. A request for a title run-to-date is made by the settlement coordinator. Upon completion of the run-to-date, a deed should be prepared by MDOT SHA's Office of the Attorney General (OAG). The settlement coordinator orders the settlement check.

The settlement package consisting of the deed, the check is forwarded by the settlement coordinator to the RPS responsible for holding the settlement. Upon completion of settlement with the property owner the Settlement Assembly should be completed in OREMS and forwarded to PRD for closure of the Item File.

### **604 ACQUISITION BY BOARD OF PROPERTY REVIEW PROCEDURES**

#### **604.1 LEGAL AUTHORITY**

Authority to acquire real estate by BPR Procedures is established in the Annotated Code of Maryland, Transportation Article, Title 8, Section 318 through 331, "Quick-Take Condemnation by Commission- BPR Procedure". This procedure shall only be used when there are no displaced persons and there is clear title to the property. This article gives the SRC the right to condemn land to clear ROW for construction, to condemn land of a second party to provide access to a severed parcel for a third party, to acquire land severed and/or landlocked by the ROW acquisition or to acquire land for wetland replacement required for the project.

## **604.2 FEDERAL AID PREREQUISITES**

In order to comply with FHWA's interpretation of the requirements of the Uniform Act as it applies to Maryland's Quick-Take Law, the following procedures must be observed prior to filing:

1. The property must be appraised, and the owner given the opportunity to accompany the appraiser during the inspection of the property
2. There must be at least one negotiation contact with the property owner where the written offer of the established Just Compensation is given, along with a copy of the "Your Land and Your Highways" brochure and a plat, if applicable. The property owner must be given at least 30 days to consider the written offer of Just Compensation
3. Funds must be deposited with the Clerk of the Circuit Court at the time of filing.

## **604.3 ACQUISITION OFFICE ACTIVITIES**

### **604.3.1 DECISION TO FILE**

When an impasse has been reached in the negotiation process and/or it is necessary to clear the ROW for construction, the RPM of the acquiring District ROW office may recommend that various properties on a project be prepared for filing under the Transportation Article, Title 8, Sections 318 through 331.

### **604.3.2 TIME LIMIT OF TITLE EXAMINATIONS AND APPRAISALS**

Title examinations and appraisals used as the basis for filing should be less than a year old.

### **604.3.3 ACQUISITION REVIEW**

The acquisition case file should be reviewed by the Real Property Supervisor (RPSUP) and then submitted to the RPM for review and approval. Upon the RPM's approval, the assembly should be transmitted to PRD.

## **604.4 PROCESSING BY THE HEADQUARTERS OFFICE**

### **604.4.1 PROPERTY REVIEW AND COMPLIANCE DIVISION**

All condemnation assemblies are processed through PRD. Personnel in

this division will act in a liaison capacity with the acquiring District ROW office to expedite the processing of the assembly and the preparation of an agenda for submittal to the SRC for approval.

Requests for corrections and/or additional documentation shall be transmitted by PRD to the appropriate office. Upon the SRC's authorization, the ROW Authorization shall be generated by PRD for approval by MDOT SHA's Administrator or his/her designee and the ORE Director/Deputy Director.

Once the ROW Authorization has been signed, PRD must request a check from the Treasurer's Office for posting by OAG in the Circuit Court in the county where the project is located.

When notified of filing by the OAG, PRD shall record the filing date on the recommendation to post money into Circuit Court and distribute the assemblies as required. This Division also notifies the assessor's office to remove the property from the tax rolls.

#### **604.4.2 STATE ROADS COMMISSION MEETING ATTENDANCE**

The Director or Deputy Director, and designated ORE personnel shall attend the SRC's monthly meetings to obtain approval to acquire real property interests needed for a construction project by eminent domain.

#### **604.4.2.1 RECORDATION OF PLATS FOR CONDEMNATION FILINGS**

After the SRC has authorized ORE to file the ROW plats as required under Title VIII of the Transportation Code, the following steps are to be taken to ensure that the plats are recorded in a timely manner before OAG files the condemnation petition with the Circuit Courts.

1. After each SRC meeting, PRD shall forward the signed, approved plat cover sheet(s) to R&R with a request that the cover sheet(s) and associated plats be recorded with the State Archives
2. R&R, upon receipt of the request, shall prepare a separate transmittal memo to the State Archives for each cover sheet and its associated plats. The transmittal acknowledgement memo shall include:
  - a. A statement that the attached plats are being recorded in compliance with section 8-321 of the Transportation Code
  - b. The date and project number shown on the cover sheet
  - c. A list of the associated plats and a space for the Archives Representative to sign, date and acknowledge receipt of the plats for recordation
3. All cover sheets and their associated plats are to be processed

within three (3) days of receipt of the request from the PRD. This may require hand delivery of the material to the State Archives by R&R's personnel, if the regular Archives carrier is unavailable or a case is time sensitive

4. R&R shall maintain a record of each signed acknowledgement and forward a copy to PRD promptly
5. PRD shall include a copy of the signed acknowledgement with each filing package submitted to OAG, when appropriate.

#### **604.4.3 OFFICE OF ATTORNEY GENERAL ACTIVITIES**

OAG prepares the necessary filing documents and files the case with the appropriate Circuit Court after the PRD forwards the assembly, SRC approval and the check. OAG notifies PRD when the filing has been completed. PRD will then notify the Acquiring Office of the filing.

#### **604.5 AMENDMENT TO CASES FILED UNDER BOARD OF PROPERTY REVIEW PROCEDURES**

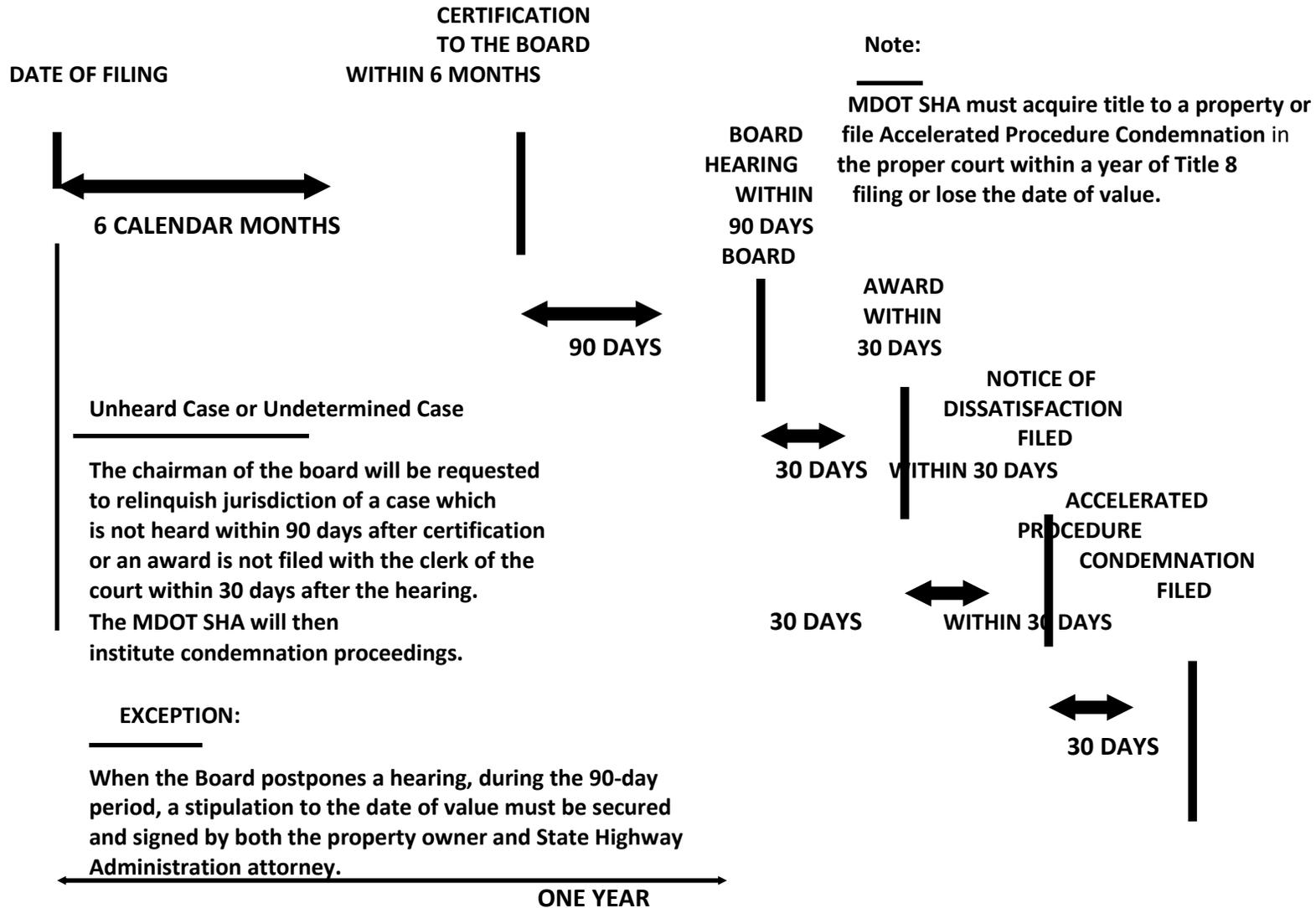
Approved ROW changes in areas, real property rights to be acquired or compensation paid require an amendment to the filing, if SRC had previously authorized the acquisition from the property owner.

The procedures for amending are the same as those for the original filing except the specific documents used. A filing amendment is not required when the change includes a transfer or addition of ownership interest only; OAG will notify the Circuit Court of these changes.

#### **604.6 ACQUISITION PROCEDURES AFTER FILING**

##### **604.6.1 BOARD OF PROPERTY REVIEW TIME LINE CHART**

**TRANSPORTATION ARTICLE 8 SECTIONS 319-331  
 "QUICK-TAKE" BOARD OF PROPERTY REVIEW PROCEDURE  
 TIME LINE CHART**



**604.6.2 CONTINUATION OF NEGOTIATIONS**

After the property has been filed and the money posted in court, negotiations should continue until the BPR hearing. An administrative settlement may be made at any time.

**604.7 BOARD OF PROPERTY REVIEW PROCEDURES**

**604.7.1 CERTIFICATION TO THE BOARD OF PROPERTY REVIEW**

Properties must be certified to the BPR by the acquiring District ROW office within six (6) months of the filing or the State will lose its date of value. The Notice of Referral shall be sent by certified mail, return receipt requested by the acquiring office to the Clerk of the Circuit Court, the Board Chairman, the property owners and other parties of interest and the property owner's attorneys/designated representatives.

**604.7.2 POSTPONEMENT OF THE BOARD OF PROPERTY REVIEW HEARING**

If the BPR hearing is postponed, a legal stipulation as to date of value must be secured and signed by both the property owner(s) or their counsel and the OAG attorney handling the case.

**604.7.3 REQUEST TO BYPASS THE BOARD OF PROPERTY REVIEW**

ORE may request from SRC to bypass the BPR if the property owner will not accept service of process and agree to the BPR's jurisdiction, or if the date of value is in jeopardy of being lost due to delays. In addition, a property owner may request bypassing the BPR and proceed with condemnation trial at any time. This request must be in writing.

**604.7.4 UNHEARD CASE BY THE BOARD OF PROPERTY REVIEW**

Unless a signed stipulation to the date of value has been secured, the Chairman of the Board may be requested to relinquish jurisdiction over the case by any party if the case has not been heard within three (3) months after the date of certification. When the Chairman relinquishes jurisdiction, condemnation shall be instituted by MDOT SHA with the approval of the SRC.

**604.7.5 BOARD OF PROPERTY REVIEW HEARING**

The BPR must hear the case within 90 calendar days of certification. The only exception is when a signed stipulation as to the date of value from the property owner(s) has been secured.

It is the responsibility of the RPS assigned to the case to ensure that all witnesses for the State have been informed of the date, time and location of the hearing.

The RPS shall testify on behalf of MDOT SHA, to assist the OAG Attorney as requested, and maintain a written summary of the proceedings.

**604.7.6 BOARD OF PROPERTY REVIEW HEARING REPORT**

The BPR award recommendation and justification of the RPM shall be transmitted within five (5) working days in an assembly to PRD.

**604.7.7 BOARD OF PROPERTY REVIEW AWARD**

The BPR must render an award within 30 days of the conclusion of the hearing. Copies of the award are sent to the appropriate parties and the Clerk of the Circuit Court by the Chairman of the BPR.

**604.7.8 UNDETERMINED CASE BY THE BOARD OF PROPERTY REVIEW**

The Chairman may be requested to relinquish jurisdiction of a case by any party if the award is not filed with the Clerk of the Circuit Court within 30 days after the conclusion of the hearing. When the Chairman relinquishes jurisdiction, condemnation is to be instituted by MDOT SHA with the approval of the SRC.

**604.8 HEADQUARTERS OFFICE PROCEDURES**

**604.8.1 AWARD REVIEW**

Upon receiving the BPR award assembly from the appropriate office, PRD shall review the accuracy and content of the assembly along with the ROW file. It shall then prepare ORE's recommendations.

**604.8.2 RECOMMENDATION TO ACCEPT THE BOARD OF PROPERTY REVIEW AWARD**

When the recommendation is to accept the BPR award, PRD shall complete a letter recommending acceptance to the ORE Director/Deputy Director for their consideration.

**604.8.3 RECOMMENDATION TO APPEAL THE BOARD OF PROPERTY REVIEW AWARD**

When an appeal is recommended by the acquiring office, PRD shall

review the recommendation letter and submit the assembly to the ORE Director/Deputy Director for their approval, prior to seeking SRC's authorization.

PRD shall request OAG to file a Notice of Dissatisfaction to preserve the date of value and remain within the prescribed time limit imposed by the Maryland Rules of Procedure as illustrated in Section 604.6.1.

If the Notice of Dissatisfaction has been filed by the property owner or the owner's attorney, OAG notifies PRD and the acquiring ROW office.

#### **604.8.4 INSTITUTION OF CONDEMNATION**

Within 30 days after the filing of a Notice of Dissatisfaction by OAG or the property owner, OAG will initiate the accelerated condemnation proceedings as established under the Transportation Article, Title 8 Section 334 to 339 (See Section 605) by filing a petition for condemnation with the Circuit Court.

#### **604.9 PROPERTY OWNER(S) REFUSES TO SIGN OPTION OR A DEED**

In those cases where there was no appeal of the BPR award and the property owner(s) subsequently refuses to sign either an option contract or a deed for the amount of the award, an administrative settlement may be reached with the property owner or proceed with acquisition activities set forth in Section 604.8.4.

#### **605 ACQUISITION BY ACCELERATED CONDEMNATION PROCEDURE**

##### **605.1 LEGAL AUTHORITY**

The legal authority for the SRC to condemn real property is established under the Transportation Article Title 8, Section 334-339 "Quick Take" Condemnation by Commission Accelerated Procedure.

The Real Property Article, Title 12, of the Maryland Code sets forth the legal requirements and procedures for the institution and trial of MDOT SHA Accelerated Procedure condemnation suit. Many actions, as far as MDOT SHA is concerned, are the responsibility of ORE, in cooperation with or at the direction of OAG.

If an agreement with the property owner cannot be reached, or if title problems exist, or if an improvement is being acquired, the SRC may authorize an accelerated condemnation proceeding after adopting a formal resolution of either immediate entry or a non-immediate entry suit.

In addition, MDOT SHA may appeal an award of the BPR by filing an accelerated condemnation procedure petition with the Circuit Court. It is also required by law to enter a condemnation suit on behalf of a property owner who appeals an award of the BPR.

## **605.2 ACQUISITION OFFICE FILING ACTIVITIES**

### **605.2.1 DECISION TO FILE**

The recommendation to acquire the required real property interests by the accelerated condemnation procedure shall be initiated by the acquiring office after an impasse in negotiations or if clear title for the property cannot be determined, or when a Notice of Dissatisfaction has been filed with the Circuit Court appealing the award of the BPR. All improved properties must be filed using the accelerated procedure.

### **605.2.2 CONDEMNATION ASSEMBLY PREPARATION**

The documents are assembled as required by the action recommended, either by Immediate Entry Condemnation, Bypass Review Board Hearing or BPR Award assembly.

The above documents are assembled by the acquiring office in accordance with ORE Directives. If any of the documents are omitted, it may be necessary to give an explanation with the assembly when submitted to PRD.

### **605.2.3 OWNER APPEAL**

In the case of an owner appeal, the condemnation action is initiated by PRD upon receipt of the filed Notice of Dissatisfaction from OAG. The PRD shall prepare the request to file Immediate Entry Condemnation.

### **605.2.4 ACQUIRING RIGHT OF WAY DISTRICT OFFICE REVIEW**

The assembly should be reviewed by the RPSUP responsible for the project before submission to the RPM for review and transmittal to PRD

## **605.3 PROCESSING BY THE HEADQUARTERS OFFICE**

### **605.3.1 CONDEMNATION ASSEMBLY REVIEW BY PROPERTY REVIEW AND COMPLIANCE DIVISION**

All assemblies are processed through PRD. Personnel of this division shall act in a liaison capacity in securing corrected, additional and/or

omitted information from the acquiring office for accurate processing of the assembly. The division shall review all the information to ensure compliance with Federal and State requirements. PRD shall prepare the resolution for SRC approval.

PRD prepares the Authorization for Expenditure. It also prepares the ROW invoice and forwards them to the Director's Office to obtain the necessary checks.

### **605.3.2 RECORDS AND RESEARCH DIVISION FILING PROCEDURE**

During the processing of the filing, the R&R procedure shall comply with the provisions set forth in Section 604.4.2.1.

### **605.4 MARYLAND STATE ROADS COMMISSION MEETING ATTENDANCE**

The ORE Director or Deputy Director and the PRD Chief shall attend the SRC meetings as described in Section 604.4.2.

### **605.5 CONDEMNATION PETITION**

OAG prepares the Condemnation Petition. The Condemnation Petition is filed by OAG with the pertinent Circuit Court for the jurisdiction where the property is located. OAG makes distribution of the Condemnation Petition. When PRD receives the date the condemnation petition was filed from OAG, written notification should be sent to the acquiring office.

The Resolution and Cover Sheet distribution package are sent by PRD to OAG.

### **605.6 ACQUISITION PROCEDURES AFTER FILING**

#### **605.6.1 OFFICE OF THE ATTORNEY GENERAL RESPONSIBILITY**

When a suit is filed in court, OAG has the authority and the responsibility for all direct action including recommendation for a legal settlement and preparation for and conducting a jury trial. It is the responsibility of OAG attorneys to properly document the file, recording his/her activities, contacts, etc. ORE shall assist in the pretrial and trial preparations and offer recommendations concerning out-of-court settlements.

The OAG attorney representing MDOT SHA at the jury trial shall provide the ORE Director, a memorandum stating the details of the trial, the award and his/her recommendations on the award. If an appeal of the award is recommended, the attorney may present his/her recommendation to the

SRC for approval.

## **605.6.2 LEGAL SETTLEMENTS**

The attorney assigned to the case by OAG's Chief Counsel and the RPM of the acquiring office may recommend a settlement amount. If the ORE Director/Deputy Director and the OAG Chief Counsel cannot agree on a settlement amount recommended by the attorney, they may individually or jointly proffer a settlement amount. The attorney responsible for the case should justify the settlement amount in writing. Final approval for legal settlement is at the sole discretion of the ORE Director.

## **605.6.3 ACQUISITION OFFICE RESPONSIBILITIES DURING LITIGATION**

### **605.6.3.1 PRETRIAL ACTIVITIES**

The RPS assigned to the case shall assist the OAG attorney in preparation for the trial.

### **605.6.3.2 PRETRIAL CONFERENCE**

In preparation for a pre-trial settlement conference, the RPM and OAG Attorney shall discuss with the ORE Director/Deputy Director and the Chief Counsel or Deputy Chief Counsel parameters to be used at the settlement Conference.

### **605.6.3.3 TRIAL ACTIVITIES**

It is the responsibility of the RPS assigned to the case to ensure that all witnesses for MDOT SHA have been informed of the date, time and location of the trial. The RPS may testify on behalf of MDOT SHA, present the exhibits when directed, assist the OAG Attorney as requested, and maintain a written summary of the proceedings.

### **605.6.3.4 CONDEMNATION ASSEMBLY**

Upon receipt of the certified true test copy of the Inquisition, an assembly is prepared in accordance with ORE Directives and forwarded to PRD.

When extra land is acquired by condemnation, a Notification of Extra Land Form is prepared and transmitted with the assembly. One copy is sent directly to PAM.

#### **605.6.4 PROCESSING OF THE AWARD BY THE HEADQUARTERS OFFICE**

PRD shall prepare the ROW Authorization and transmit it along with the letter from the attorney, and a copy of the Inquisition Condemnation Assembly to the ORE Director for approval. When the ROW Authorization has been approved, a check request is prepared by OAG and sent to PRD for processing and be posted with the Clerk of the Circuit Court.

#### **605.6.5 APPEAL OF CONDEMNATION AWARD**

It is the responsibility of OAG to submit a recommendation of appeal to SRC if the circumstance warrants it. If requested, ORE shall assist OAG in gathering or preparing information exhibits etc., for their appeal.

### **606 SPECIAL ACQUISITIONS**

#### **606.1 ENTRY AGREEMENTS**

The main purpose of an Entry Agreement is to temporarily obtain the necessary real property rights needed for MDOT SHA and/or its agents to proceed with construction on a property with the written consent of the property owner, even though steps may not have been taken to determine the FMV of the property. Entry agreements are only to be used in emergency situations or after an offer has been made in accordance with ORE Directives. ORE's Director/Deputy Director are authorized to approve Entry Agreements on behalf of MDOT SHA.

##### **606.1.1 ACQUISITION OFFICE RESPONSIBILITIES**

###### **606.1.1.1 ASSIGNMENT OF PARCELS FOR NEGOTIATING**

All entry agreement negotiation assignments should be in writing and the date of the assignment and the RPS's name entered into OREMS. When needed, relocation assistance activities should be coordinated by the RPM.

###### **606.1.1.2 INITIAL NEGOTIATION CONTRACT**

The RPS shall fully explain the necessity for securing the entry agreement and the rights and obligations of the property owner and MDOT SHA as defined in the terms of the agreement. Additionally, the RPS shall provide the property owner with a copy of "Your Land and Your Highways" brochure. When an agreement is reached, the appropriate plat, construction plans and/or drawings should be signed by the property owner and attached to the entry agreement.

### **606.1.1.3 PREPARATION OF ENTRY AGREEMENT ASSEMBLY**

After the entry agreement has been secured from the property owner, the RPS shall prepare or obtain the necessary documents as indicated in ORE Directives. If any documents are omitted from the assembly, an explanation should be provided with the assembly.

### **606.1.1.4 ACQUISITION OFFICE REVIEW AND APPROVAL**

The entry agreement assembly should be submitted by the RPS through his or her RPSUP to the RPM for their review and approval. Upon approval, the assembly should be transmitted to PRD for processing.

### **606.1.2 PROCESSING AND REVIEW BY THE HEADQUARTERS OFFICE**

PRD shall review the entry agreement assembly for accuracy, completeness, compliance with Federal and State regulations and ORE Directives. If the assembly is satisfactory, it shall be submitted to the ORE Director/Deputy Director for approval.

Upon approval of the agreement, PRD shall prepare a letter of acceptance. The letter and an approved copy of the agreement shall be sent to the property owner, the RPM of the acquiring District ROW Office, the District Engineer and ORE HQ's file.

### **606.1.3 NON-PROJECT RELATED ENTRY AGREEMENTS**

At the request of the District Engineer, the District ROW Office may secure an entry agreement to correct a problem on a private property which is being caused by a MDOT SHA roadway. The District ROW Office shall maintain records of all non-project related entry agreements and input all related information in OREMS in accordance with ORE Directives.

### **606.2 ADVANCED ACQUISITIONS**

Advanced Acquisitions conducted by MDOT SHA falls into four (4) different categories. The 4 categories are:

1. Early Acquisition - initiated by ORE
2. Hardship Acquisition - initiated by the property owner
3. Protective Buy - initiated by MDOT SHA
4. Emergency Purchases - initiated by MDOT SHA.

Advanced acquisitions usually occur prior to the start date of ROW acquisitions for a project and may require approval and authorization from OPPE before ORE could begin this activity. All Advanced Acquisitions shall be performed as indicated in ORE Directives.

These acquisitions can only commence if MDOT SHA's budget/forecast and the CTP permits.

## **606.2.1 DEFINITIONS**

*Advance Acquisition:* The term used by MDOT SHA to describe ROW acquisition occurring prior to the year in which ROW is programmed or scheduled. This term may also be used to describe federally assisted hardship acquisitions and protective buying occurring during the NEPA process.

*Early Acquisition:* The term used by FHWA, often synonymously with the term Advance Acquisition, to describe ROW acquisition other than hardship or protective buying occurring prior to the completion of the NEPA process.

*Hardship Acquisition:* The term used by FHWA to describe federally assisted acquisition of a parcel or limited number of parcels during the NEPA process to address the health, safety or financial hardship experienced by a property owner as a result of an impending project.

*Protective Buy:* The term used by FHWA to describe federally assisted acquisitions of a parcel or limited number of parcels occurring during the NEPA process to prevent imminent development that would substantially increase costs or limit future transportation alternatives.

## **606.2.2 USE OF EMINENT DOMAIN**

Eminent domain may be used for the acquisition of advance acquisition parcels. Where construction plans are not sufficiently complete to support engineering necessity and public purpose, necessity may be demonstrated using typical sections, roadway plans or profiles, anticipated trends in demographic and other growth patterns, land use and development patterns, traffic projections, expected utility needs or anticipated mass transit requirements. Eminent domain may not be used for federally funded early acquisition projects.

### **606.2.2.1 USE OF EMINENT DOMAIN FOR HARDSHIP AND PROTECTIVE BUY**

Eminent domain may be considered in a protective buy situation if at the

end of a reasonable negotiation period a settlement with the property owner cannot be reached.

For a hardship acquisition, MDOT SHA has no obligation to file condemnation earlier than the project schedule would otherwise call for. If after good faith negotiations an agreement cannot be reached with the property owner, MDOT SHA has no further obligation to acquire the property. At the time the hardship acquisition is approved by FHWA, ORE must advise the property owner in writing that the acquisition is based on reaching an agreement without the need for MDOT SHA to exercise its eminent domain authority until the scheduled ROW project begins. If negotiation ends without reaching an agreement with the property owner, ORE must notify the owner that further negotiations and eminent domain, if necessary, would be deferred until scheduled ROW activities commence.

### **606.2.3 EARLY ACQUISITIONS (FEDERAL AND STATE)**

Authorized under 23 CFR 710.501, MDOT SHA may acquire parcels using State funds at any time funds are available to do so. Federal participation would not be available for such acquisitions except as described in this section.

#### **606.2.3.1 EARLY ACQUISITION COSTS AS A STATE MATCH**

Early acquisition costs may be used as credit towards MDOT SHA's share for a federal aid project. Early acquisition costs can either be the actual cost MDOT SHA incurred for the land, improvements, severance damages and business damages or the current FMV of the property acquired. Early acquisition costs should be eligible for matching credit provided that:

1. The early acquisition complies with the Uniform Act and ORE Operational Guidelines
2. The acquired property is not Section 4(f) land
3. MDOT SHA determines and FHWA concurs that the early acquisition did not affect the environmental assessment for the project including the decision to construct the project, the consideration of alternatives, the selection of the design or the location of the project
4. The project is included in the State Transportation Improvement Plan (STIP)
5. The project is within the jurisdiction of a Metropolitan Planning Organization and the project is included in its Transportation Improvement Plan (TIP).

### **606.2.3.2 FEDERAL FUNDING OF EARLY ACQUISITIONS**

An early acquisition project may be fully federally funded if the project is included in the STIP and FHWA's authorization has been obtained. To obtain FHWA's authorization, MDOT SHA must certify in writing with FHWA's concurrence that MDOT SHA has the authority to acquire property under State law and that the acquisition:

1. Is for a transportation purpose
2. Will not cause any significant adverse environmental impact
3. Will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of FHWA on any approval required for the project
4. Does not prevent FHWA from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process
5. Is consistent with the State transportation planning process
6. Complies with other applicable Federal laws
7. Will be acquired through negotiation without threat of condemnation
8. Will not result in a reduction or elimination of benefits or assistance to a displaced person required to move pursuant to the Uniform Act and Title VI of the Civil Rights Act of 1964.

Real property interests acquired under this section may not be developed in anticipation of a project until all required environmental reviews for the project have been completed.

### **606.2.3.3 FEDERAL REIMBURSEMENT OF EARLY ACQUISITION COSTS**

Federal reimbursement of early acquisition costs may be approved by FHWA provided that:

1. There is compliance with all the requirements for FHWA's authorization as set forth in Section 606.2.3.2
2. Prior to the early acquisition, MDOT SHA obtains a certification, signed by the Governor of the State of Maryland that the early acquisition is consistent with the State's mandatory comprehensive and coordinated land use, environment and transportation plan. A copy of this certification must be provided to FHWA
3. MDOT SHA obtains written concurrence from FHWA as described in Section 606.2.3.2.

#### **606.2.4 HARDSHIP ACQUISITIONS (FEDERAL AND STATE)**

Hardship acquisitions apply to owner-occupants of real property who have been placed in an extraordinary or emergency condition due to an impending MDOT SHA transportation project. They typically fall under one of two categories - Health or Financial Case.

During the NEPA process and in accordance with 23 CFR 710.503, hardship acquisition may be approved by FHWA for a single parcel or a limited number of parcels provided that MDOT SHA and FHWA concur in a written assertion from the property owner that due to health, safety or financial reasons the continued ownership of the property poses undue hardship on the owner as compared to the other owners on the project.

The owner must also demonstrate that because of the pending project, the property cannot be sold at market value within a typical time for properties not influenced by the project. The following are examples where hardship acquisition may be appropriate:

1. Illness or advanced age within the property owner's family that causes undue economic hardship, prevents the owner from adequately maintaining their property or requires the owner to relocate to an assisted care facility or nursing home
2. Financial hardship causing the property owner to be unable to continue to meet the financial obligations of ownership
3. Significant reduction or loss of rental income resulting from knowledge of the proposed project
4. Structural inadequacies caused by an increase in family size, special needs such as health, safety or mobility requirements for disabled individuals, or structural damage that renders the dwelling unfit for habitation.

For an owner-occupant to be eligible for hardship acquisition, the RPM of the acquiring District ROW Office must certify that certain requirements have been satisfied relating to the hardship request as set forth in Section 606.2.4.1.

##### **606.2.4.1 HARDSHIP ACQUISITION CRITERIA**

Hardship acquisitions may be initiated to alleviate a hardship being experienced by a property owner due to a proposed project. Even if the criteria described in this section are met, the availability of project funding is critical in determining if MDOT SHA could proceed with the advanced

acquisition.

Advanced acquisition due to a hardship may apply to owner-occupants of real property who have been placed in an extraordinary or emergency condition due to an impending transportation project. In rare instances, an owner of income producing, or vacant property may be eligible for advanced hardship acquisition.

The RPM of the acquiring District ROW Office shall certify the following requirements have been satisfied prior to requesting hardship approval:

1. A written request from the property owner for hardship acquisition setting forth the nature of the hardship
2. Documentation of the inability to sell the property at a reasonable price because of the transportation project.

Hardship cases typically fall under one of the following categories:

1. Health
  - a. Advanced age, debilitating illness, or injury, ambulatory or other major disability or handicap of a long-term nature, where present housing facilities are inadequate or cannot be maintained by owner
  - b. Other extraordinary conditions which pose a significant threat to the health, safety and/or welfare of the owner-occupant or a member of his household for whom he is responsible
2. Financial
  - a. Probate litigation - Include copies of estate proceeding documents verifying the indicated situation
  - b. Loss of employment - Verified by employer or another source
  - c. Retirement (Retiree cannot afford maintenance) - Include amounts spent on maintenance as compared to rent, income, etc.
  - d. Pending mortgage foreclosure, tax sales, etc. Include copies of actual documents
  - e. Any documented situation similar in impact to those stated above.

#### **606.2.4.2    HARDSHIP QUALIFICATION AND DOCUMENTATION**

Qualifications for hardship acquisition must be fully documented. Examples of acceptable documentation would include where appropriate:

1. Doctor's statement - A doctor's statement clearly and fully

- describing why the patient should relocate from a medical viewpoint
2. Real estate broker certification - A real estate broker's statement indicating that the property in question is not marketable and that listing it would be futile. This should include the reason why the property is not marketable
  3. Financial statement - Where financial difficulties constitute the reason for the hardship acquisition, a reliable, accurate and complete discussion is appropriate
  4. Letter from employer - A letter from the employer certifying that the affected owner is to be transferred to a specific location would be recognized. Also, a similar certification regarding loss of employment would likewise constitute adequate documentation
  5. Court record - Copies of documents relating to any legal actions, which provide support for the indicated hardship
  6. Income tax return - A verification of that part of the return necessary to support the hardship situation will suffice in lieu of copies of the return.

This list is not all-inclusive since it is impossible to describe every conceivable source that could constitute appropriate documentation for a given situation. There may be times when the documentation, even though logical for the case involved, cannot be secured. When this situation is encountered, it is acceptable to provide alternative information which accomplishes the same objectives.

### **606.2.4.3 PROCEDURES**

In those instances where the hardship acquisition would be a partial take, it is imperative that utility easement requirements be included in the request.

The RPM of the acquiring District ROW Office should submit requests for hardship acquisition to the ORE Director. Each request should include the required documentation as described in Sections 606.2.4.1 and 606.2.4.2, the estimated cost of the acquisition and a recommendation for the action to be made by the ORE Director. ORE may require the concurrence of the OPPE Director for the hardship request.

If the ORE and OPPE Directors approve the hardship request, it may be forwarded to the MDOT SHA Administrator for approval. Upon approval by the MDOT SHA Administrator, the hardship acquisition shall be funded and authorized for the RPM of the acquiring District ROW Office to proceed with the acquisition of the property.

## **606.2.5 PROTECTIVE PURCHASES (FEDERAL AND STATE)**

MDOT SHA must demonstrate that development of a property by the property owner is imminent and such development would create an adverse impact on a planned transportation project. A significant increase in costs may be considered as an element justifying the advance acquisition for a protective purchase.

During the NEPA process and in accordance with 23 CFR 710.503, protective buying may be approved by FHWA for a single parcel or a limited number of parcels where MDOT SHA documents that the parcel(s) being proposed for protective buying are on the verge of future development or change in their physical character to limit future transportation choices or significantly increase future acquisition costs.

The following are examples where protective buying may be appropriate:

1. Parcels on the verge of costly development, expansion or change in physical character by construction, excavating, flooding, dumping etc.
2. Parcels with pending zoning or land use changes that will increase the value of the land
3. Parcels where existing improvements have been severely damaged, and reconstruction of the improvement is pending.

## **606.2.6 EMERGENCY ACQUISITIONS**

Extreme causes for a property to be purchased immediately.

## **606.2.7 FEDERAL HIGHWAY ADMINISTRATION APPROVAL OF ADVANCED ACQUISITIONS**

FHWA approval of any Advanced Acquisition project shall be in accordance with the provisions set forth in Section 606.2.3.

An advance acquisition may be approved by FHWA where:

1. The project is included in the STIP
2. If the project is within the jurisdiction of an MPO and the project is included in the TIP
3. MDOT SHA has complied with the public involvement requirements
4. The advance acquisition qualifies as Programmatic Categorical Exclusion (PCE) or a Categorical Exclusion (CE)
5. MDOT SHA has determined and FHWA concurs that the advance

acquisition would not influence the environmental assessment of the project or the selection of a specific location.

#### **606.2.7.1 FEDERALLY FUNDED ADVANCED ACQUISITION PROJECTS**

Section 1302 of the Uniform Act clarifies the type of real property interests that may be federally funded in accordance with 23 USC 108. Regardless of the type of funding for the advanced acquisition project, ORE must always seek approval from OPPE prior to any acquisition activity commences.

Requests for approval for an advanced acquisition must be supported by a written documentation from the RPM of the acquiring District ROW Office containing:

1. An explanation of how the proposed parcel(s) meet the requirements for advanced acquisition
2. An explanation how MDOT SHA has complied with the requirements for advance acquisition
3. A description or parcel sketch of the proposed parcel(s)
4. A cost estimate detailing the ROW costs for the parcel(s) included in the request
5. A completed PCE or CE.

Requests for approval of advanced acquisition shall be provided to the ORE Director. To ensure adequate time for review and approval, requests should be submitted 30 days prior to the date the acquiring District ROW Office needs FHWA's financial authorization for the advanced acquisition. Requests affecting Interstate projects shall be forwarded by the ORE Director to FHWA for approval. Upon approval by the ORE Director or FHWA, as appropriate, ORE shall notify the RPM of the acquiring District ROW Office of the approval.

#### **606.3 SPECIAL FEDERAL PROVISIONS**

##### **606.3.1 FUNCTIONAL REPLACEMENT**

FHWA's Functional Replacement Policy is set forth in the 23 CFR 24.306. Functional replacement is defined as the replacement of an existing facility being acquired with one which will have an equivalent utility. All functional replacements shall be completed as indicated in the ORE Directives and in compliance with the applicable federal regulations.

### **606.3.2 FEDERAL OWNERSHIP**

The acquisition of real property in Federal ownership shall be in accordance with the applicable federal regulations and completed as indicated in ORE Directives.

### **606.3.3 DIRECT FEDERAL ACQUISITION**

Direct acquisitions of federal lands and interests in federal land should be requested through FHWA for any project. Requests for direct Federal land acquisition shall be made as indicated in ORE Directives.

### **606.4 GOVERNMENTAL AND PUBLIC UTILITY ACQUISITIONS**

The District ROW Office and SAD are to coordinate all acquisition and condemnation activities for governmental or public utility property rights to ensure that all procedures as set forth in the ORE Directives are followed and the properties are acquired in a timely manner.

### **606.5 WETLAND ACQUISITIONS AND FOREST CONSERVATION EASEMENTS**

MDOT SHA has a program to acquire land to mitigate the acquisition of wetlands, forest conservation easements or other natural resource for highway purposes. These acquisitions will be conducted in accordance with ORE Directives.

### **606.6 DEVELOPER AGREEMENTS**

The Access Management section in a District Office may secure an agreement with a developer that require the performance of ROW activities. These ROW activities may include obtaining donations, dedications, or acquisition of property rights at FMV. These activities shall be carried out in accordance with ORE Directives.

The District ROW Office with jurisdiction over the area the donation or other similar ROW activity would take place is responsible for ensuring that the following steps are completed, and the developer is informed of their responsibilities in completing this process:

1. The developer shall provide MDOT SHA, through the District ROW Office, with an up to date title examination and title certificate supporting the developer's ownership of the property to be conveyed to MDOT SHA. If there are any potential defect in the title, MDOT SHA may require the developer to provide a title

- insurance policy in an amount enough to indemnify MDOT SHA against all future claims on the property
2. The developer shall provide MDOT SHA with a metes and bounds description of the area to be conveyed and a metes and bounds plat(s), which meets the standards of, and is acceptable to, PSD
  3. The District ROW Office shall request the ORE's PCD to create a donation project number in OREMS and issue an Item Number for the donation. If the donation is on an active project, then that project number shall be used
  4. When the developer has submitted the title report and certificate and the issued Plat(s) by PSD, the District ROW Office shall forward these as a Donation Assembly in OREMS to the PRD with a request that a deed be prepared and processed for settlement
  5. PRD shall review the title report and certificate for accuracy and completeness, enter the information into OREMS for settlement and forward the Donation Assembly to OAG for preparation of a donation deed
  6. When the deed is received from the OAG, PRD shall forward the deed to the District ROW Office for settlement. The District ROW Office shall then do the following:
    - a. Obtain the necessary signatures from the developer (It is the developer's responsibility to provide all releases for the fee area at this time)
    - b. Record the signed deed and any releases
    - c. Forward copies of the recorded deed and the Item File to PRD for processing by creating a Settlement Assembly in OREMS
  7. When PRD receives the completed Settlement Assembly package it will:
    - a. Record all necessary information on the settlement in OREMS
    - b. Forward the item to Records and Research for merging with the HQ's file.

## **606.7 STATE PARK & RIDE LOTS**

Acquisitions for State park & ride lots shall be acquired in the same manner as other real property rights. They should not be treated as separate acquisitions. Normal ROW procedures should be followed as set forth in Sections 603, 604, and 605 and any ORE Directives.

## **606.8 CEMETERIES**

Acquisitions of cemeteries shall be acquired in the same manner as other

property rights. They should not be treated as separate acquisitions. Normal ROW procedures should be followed as set forth in Sections 603, 604, and 605 and any ORE Directives. Coordination with the Cultural Resource Division of OPPE may be necessary in the relocation of grave sites if impacted by the acquisition.

**606.9 CHURCHES, NONPROFITS AND CIVIC ORGANIZATIONS**

Acquisitions of churches, nonprofit and civic organizations shall be acquired in the same manner as other real property rights. They should not be treated as separate acquisitions. Normal ROW procedures should be followed as set forth in Sections 603, 604, and 605 and any ORE Directives.

**606.10 SIGN ACQUISITIONS IN NEW RIGHT OF WAY AND/OR CONDEMNATION**

Sign or billboard acquisitions shall be acquired in the same manner as other property rights. They should not be treated as separate acquisitions. Normal ROW procedures shall be followed as set forth in Sections 603, 604, and 605 and any ORE Directives.

**606.11 HIGHWAY BEAUTIFICATION**

The Guidelines in Sections 603, 604, and 605 and ORE Directives shall be followed in all non-conforming sign acquisitions.

**606.12 JUNKYARD ACQUISITIONS AND/OR SCREENINGS**

Junkyard acquisitions shall be acquired in the same manner as other real property rights. They should not be treated as separate acquisitions. Normal ROW procedures should be followed as set forth in Sections 603, 604, and 605 and any ORE Directives

**606.13 SCENIC LAND ACQUISITIONS**

Scenic land acquisitions shall be acquired in the same manner as other real property rights. They should not be treated as separate acquisitions. Normal ROW procedures shall be followed as set forth in Sections 603, 604, and 605 and any ORE Directives.

**606.14 MINERAL RIGHTS ACQUISITIONS**

Mineral rights shall be acquired in the same manner as other real property rights. They should not be treated as separate acquisitions. Normal ROW procedures shall be followed as set forth in Sections 603, 604, and 605

and any ORE Directives.

**606.15 ACQUISITIONS FROM MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION EMPLOYEES**

During the process of acquiring the real property interest for a construction project, the ORE Director must be notified if there is an acquisition from a MDOT SHA employee or their immediate family. To avoid any inference of conflict of interest or impropriety, the determination of the property value shall be made by the BPR rather than through amicable negotiations with the property owner or their attorney.

After delivery of the written offer, the property shall be filed with the appropriate Circuit Court and certified to the BPR.

After the BPR Hearing and Award, the acquiring District ROW Office shall handle the case in the standard process for a BPR - Accept or Appeal of the award as described in Section 604.7. PRD shall receive the BPR Assembly in the usual manner except it is made known that the property being acquired is owned by a MDOT SHA employee or their immediate family.

The usual process of appealing the BPR decision to the Circuit Court by either party is not precluded. On a minor acquisition the ORE Director/Deputy Director may recommend to the MDOT SHA Administrator that these procedures be waived. This subject is also found in MDOT SHA's Policy/Procedure Manual, Section 63.0-1.

**606.16 ACCESS CONTROLS**

Once a candidate property has been established and the ownership determined, the acquiring District ROW Office shall order an appraisal to determine the FMV of the access controls. Compensation offered for the purchase of access controls shall be the greater of the FMV as appraised or as an administrative settlement. All administrative settlements for access controls shall be based on the following program guidelines:

1. Rear Access (Alternative (new) access to the rear of the property): Value of controls per foot can be no less than \$30.00 and no greater than \$40.00
2. Side Access (Alternative access to the side of the property): Value of controls per foot can be no less than \$25.00 and no greater than \$35.00
3. No alternative access (limited 50-foot breaks allowed): Value of

controls per foot can be no less than \$10.00 and no greater than \$20.00

4. Cost to cure for new driveways shall be added at cost.

606.17

#### **ACQUISITION OF SEVERED PROPERTIES ALONG CONTROLLED ACCESS HIGHWAYS**

ORE shall acquire in fee simple any property that becomes landlocked and is cut off from suitable access to a public highway because of the construction or reconstruction of any controlled access highway as permitted by law. This is in accordance with Section 8-315(a) (1) of the Transportation Article of the Annotated Code of Maryland which states:

"Even if not needed for highway purposes, property along controlled access highways may be acquired under this subtitle if the property is cut off from suitable access to a public highway because of the construction or reconstruction of any controlled access highway."

Any deviation from this policy shall require the approval of the ORE Director or Deputy Director.

The landlocked property shall be identified by the District ROW Office prior to ordering an appraisal. The landlocked area can be all or part of the remaining property. Once the landlocked area is identified, it should be shown on the ROW plat as "Extra Land" with a full metes and bounds description. The proposed ROW line identifying real property to be acquired for construction or reconstruction of any controlled access highway that borders the "extra land" will be identified as "Right-of-way Line of Through Highway."

The RPM of the acquiring District ROW Office shall notify the RPM of PAM of the potential extra land in order request from PSD the requirements necessary to have the extra land parcel catalogued adequately in ORE's Extra Land Inventory in OREMS and viewable on MDOT SHA Property Viewer, a web-based GIS platform.

The appraisal report for such an acquisition shall include the estimate of FMV for any landlocked area shown on the ROW plat as "Extra Land" unless instructed to do otherwise.

The appraisal review report's estimate of just compensation shall refer to the approved appraisal's estimate of FMV for any landlocked area identified as "extra land", unless instructed otherwise.

MDOT SHA's written offer (Form R/W 200) shall include an estimate of just compensation that includes the fee simple amount for any landlocked area shown on the plat as "extra land", unless instructed to do otherwise.

If the property must be filed into condemnation, the condemnation assembly shall include the severed "extra land" parcel in the condemnation filing, unless instructed to do otherwise.

## **607 ACQUISITION BY THIRD PARTIES**

This section describes the responsibility of ORE, OAG and a third party such as a Design Builder or any other entity having a contractual obligation with MDOT SHA to provide real property acquisition services as a part of a construction project.

### **607.1 PURPOSE**

The purpose of this section is to set forth the activities ORE must conduct on an engineering and/or construction project that has a third party provide real property acquisition services.

It also set forth processes the third party must follow in acquiring title to the real property interests necessary for the construction of the project, in form and substance acceptable to MDOT SHA, in the name of the State; performing relocation assistance of displaced persons from improvements acquired for the project, if necessary; and conducting demolition of the improvements acquired for the project.

### **607.2 RESPONSIBILITY OF THE OFFICE OF REAL ESTATE**

ORE shall have the following responsibilities in connection with a construction or an engineering project requiring the provision of real property services by a third party. The services provided by the third party under such a project may not be limited to ROW acquisition and relocation assistance services.

#### **607.2.1 ACCESS TO THE OFFICE OF REAL ESTATE MANAGEMENT SYSTEM**

ORE through its IT Section shall provide appropriate OREMS access to the third party, its staff and authorized subcontractors necessary to perform the contracted real property services. The staff and subcontractors of the third party must comply with all requirements of MDOT SHA necessary to permit access into OREMS.

##### **607.2.1.1 OFFICE OF REAL ESTATE MANAGEMENT SYSTEM TRAINING**

OREMS training may be provided to authorized staff and subcontractors of the third party necessary to perform the real property related tasks and activities for the construction project.

#### **607.2.2 PROVISION OF ALL MDOT SHA APPROVED BROCHURES**

All brochures approved by MDOT SHA may be provided to the third party for distribution to impacted property owners and displaced persons affected by the construction project. The brochures include “Your Land and Your Highways” and “Relocation Assistance”.

#### **607.2.3 ASSIGNMENT OF A REAL PROPERTY PROJECT MANAGER**

ORE may, at its sole discretion, provide a Real Property Project Manager (RPPM) to provide assistance, oversight and administration on the real property services performed by the third party. The responsibility of the RPPM is to assess the progress, timeliness, compliance, adequacy, or sufficiency of the real property activities performed by the third party. The RPPM shall be the liaison between the third party and ORE.

The RPPM shall be the third party’s point of contact with the different divisions within ORE. The RPPM shall notify the IT Section of all the third party’s staff and/or subcontractors and their roles, as described in Section 607.3.1, in performing the real property services on the construction contract so adequate and appropriate access to OREMS may be granted.

Upon completion of an acquisition case, the closed Item File shall be submitted by the third party to the RPPM for completeness and shall promptly forward the Item File to PRD for processing.

#### **607.2.3.1 CONSULTANTS AS REAL PROPERTY PROJECT MANAGER**

MDOT SHA may contract with consultants to assist ORE in fulfilling the RPPM function as described in Section 607.2.3 provided ORE’s audit authority is not delegated.

#### **607.2.4 ESTABLISHMENT OF THE OFFER OF JUST COMPENSATION**

ARD is solely responsible for establishing just compensation for real property interests being acquired by the third party for the construction project in accordance with procedures and guidelines described in Sections 506.5, 506.7 and 506.8.

## **607.2.5 APPROVAL OF THE STATE ROADS COMMISSION**

ORE shall be responsible for obtaining the authorization of the SRC to initiate eminent domain proceedings to acquire the real property interest necessary for the construction project.

### **607.2.5.1 STATE ROADS COMMISSION MEETING SCHEDULE**

The SRC meeting is scheduled by the commission's secretary. PRD is solely responsible for requesting a meeting from the SRC secretary outside of its regularly scheduled meeting.

### **607.2.5.2 PRELIMINARY STATE ROADS COMMISSION MEETING SCHEDULE**

PRD is responsible for scheduling pre-SRC meetings with the ORE Director or his/her designee to review and approve the real property interests that the third party, through the assigned RPPM, submits to the SRC for authorization to initiate eminent domain proceedings.

PRD may request the third party, the RPPM and any other personnel associated with the real property services for the construction contract to attend the pre-SRC meeting to explain the ROW acquisition and the reason the SRC authorization is being requested.

PRD should forward all the pre-SRC meeting schedules to the RPPM assigned to the third party.

### **607.2.5.3 STATE ROADS COMMISSION AGENDA APPROVAL**

The ORE Director/Deputy Director, in consultation with OAG, is solely responsible for the approval of the agenda items (all the real property acquisition cases) submitted to the SRC for authorization. PRD may request the third party to submit its agenda items for review and approval prior to the pre-SRC meeting as described in Section 607.2.5.2.

PRD may request the third party to prepare all agenda items related information in the form and format prescribed by PRD to be presented to the SRC. PRD may also request the third party to be present at the SRC meeting.

### **607.2.5.4 POSTING MONIES IN COURT**

If the third party as defined in Section 607.1, is financially responsible for acquiring the real property interests required for the construction project, PRD may request from the third party to issue payment in the amount of

the estimate of just compensation or in any other amount necessary for MDOT SHA to obtain legal possession.

PRD shall coordinate with the OAG to prepare and deliver to the Clerk of the Circuit Court of the county in which the construction project is located, the condemnation petition after the Assistant Attorney General's receipt of the condemnation documentation, including the SRC's authorization to initiate eminent domain proceedings. MDOT SHA shall deliver the condemnation petition to the third party after receipt of the condemnation petition from the OAG.

## **607.2.6 APPROVALS AND AUTHORIZATIONS**

ORE has the obligation to provide oversight to all aspects of the MDOT SHA's ROW program. This oversight responsibility is carried out by the approval and authorization for various ROW processes whether conducted by ORE staff or by a third party under contract with MDOT SHA.

PRD is responsible for providing approvals described in the following sections on a construction project where the third party is financially responsible for acquiring the real property interests required for the project. PRD's approval is to ensure that all real property services performed by the third party complies with all applicable Federal and State laws and regulations and ORE's guidelines.

### **607.2.6.1 RIGHT OF WAY ACQUISITION ASSEMBLY APPROVAL**

PRD shall review all real property acquisitions whether the third party obtains the property agreement by option contract, right-of-entry or donation. ORE shall require the third party to submit the appropriate assembly through OREMS in accordance with the guidelines described in this chapter.

Upon approval of the assembly, PRD shall inform the third party that the transaction has been accepted.

### **607.2.6.2 EMINENT DOMAIN ASSEMBLY APPROVAL**

PRD shall review all assemblies associated with the eminent domain process. Prior to the pre-SRC meeting as described in Section 607.2.5.2, PRD shall require that the third party to submit the Title VIII Assembly in OREMS and provide supporting documentation for the acquisition case it seeks the SRC's authorization. If a jury trial is imminent for an acquisition case, PRD must ensure that the Condemnation Assembly have been

submitted by the third party.

**607.2.6.3 SETTLEMENT ASSEMBLY APPROVAL**

PRD must review and approve the Settlement Assembly to ensure MDOT SHA has in its ownership the appropriate legal real property interest necessary to construct the project. The settlement assembly must be submitted in OREMS by the third party.

**607.2.6.4 REPLACEMENT HOUSING ELIGIBILITY APPROVAL**

PRD shall review and approve all last resort replacement housing eligibility to be presented to displaced persons by the third party. All other relocation assistance activities shall comply with Chapter 7 of this guidelines.

**607.2.6.5 RELOCATION ASSISTANCE APPEAL**

The ORE Director or his/her designee shall be responsible for addressing all relocation assistance appeal as described in Chapter 7 of this guidelines.

**607.2.7 RIGHT OF WAY CERTIFICATION**

PRD shall be responsible for issuing the right of way certification for the construction project as described in Section 204.

**607.2.8 FEDERAL HIGHWAY ADMINISTRATION OVERSIGHT AND COORDINATION**

ORE shall be responsible for any coordination with the third party that requires FHWA's participation. FHWA in performance of its oversight responsibilities on the construction project may require conducting a process review, the ORE Director or his/her designee may request additional information and documentation on the real property services provided by the third party to facilitate FHWA's timely review.

**607.3 RESPONSIBILITY OF THE THIRD PARTY PROVIDING REAL PROPERTY SERVICES**

This addresses the various procedures required to be conducted by the third party providing real property services on a construction project. The third party shall provide information to ORE as requested to assist in its review and assessment of the progress, timeliness, adequacy, or sufficiency of the third party's ROW activities conducted on the project.

### **607.3.1 ACCESS TO THE OFFICE OF REAL ESTATE MANAGEMENT SYSTEM**

All information associated with the performance of the real property services for the construction project shall be entered into OREMS by the third party.

The third party's authorized personnel and subcontractors performing ROW activities on the project shall comply with all the training requirements, completion of all the appropriate forms as stipulated by MDOT SHA. Access to OREMS would be granted upon full compliance with all these requirements.

The third party shall provide the names and function of their staff and subcontractors performing real property services on the project to the assigned RPPM. If any of the third-party staff or subcontractors are no longer performing real property services for the construction project, it is the responsibility of the third party to notify the assigned RPPM of this.

### **607.3.2 PRELIMINARY RIGHT OF WAY ACQUISITION ACTIVITIES**

Preliminary ROW acquisition activities, as presented in this section, are defined as those steps or procedures conducted from the time of project initiation by any of MDOT SHA's engineering offices.

#### **607.3.2.1 COORDINATION WITH PLATS AND SURVEYS DIVISION**

Coordination may be necessary with PSD and/or the entity responsible for creating ROW plats showing the real property interests that is needed for the construction project. At the request of PSD or an entity responsible for creating the ROW plats, the third party must provide Item Numbers for the ROW plat to be completed and issued.

Plats are not available to the public until recorded or filed into court.

#### **607.3.2.2 OBTAINING ITEM NUMBERS**

The third party must create parcel, owners, mortgage and tenant information in OREMS for the property on which real property interest is intended to be acquired. The Item General page contains Title VI information and must also be completed, this information is used for environmental justice reporting purposes.

Item Numbers can be generated from the Parcel page in OREMS by clicking the "Convert to Item" link for each parcel. The Item Numbers

generated must be provided to PSD or the responsible plat engineer for incorporation onto the ROW plat.

#### **607.3.2.3 PROCURING TITLE EXAMINATIONS**

It is the responsibility of the third party to procure title examinations to ensure that MDOT SHA obtain legal title to the real properties being acquired with no encumbrances.

The ORE Director or his/her designee has the sole discretion to determine whether the conditions for title abstract described in Section 405 should apply to the third party.

#### **607.3.2.4 PROCURING APPRAISALS**

Appraisals procured, and any other valuation methodology used by the third party shall be in compliance with the provisions, procedures and guidance set forth in Chapter 5 of this guidelines.

#### **607.3.2.5 APPRAISAL REVIEW ACTIVITIES**

The third party may engage the services of a qualified independent appraiser as described in Section 502.4. The contract Review Appraiser must complete his/her appraisal review in the Edit Appraisal page in OREMS and submit to ARD for review and approval.

The contract Review Appraiser must be available to discuss valuation issues with ARD and the Fee Appraiser. All applicable forms needed to complete the review shall be provided by ARD.

The estimate of Just Compensation shall be determined by ARD. This function cannot be assigned to the third party or its contract Review Appraiser.

#### **607.3.3 RIGHT OF WAY ACQUISITION ACTIVITIES**

This section sets forth the general procedure for acquiring real property interests by the third party and the various tasks that must be completed by the third party's staff or subcontractors to ensure that all ROW acquisition activities are performed in accordance with Federal, State laws and regulations and ORE guidelines.

All activities performed by the third party shall be completed in OREMS so that parcel-by-parcel acquisition processes can be adequately managed.

### **607.3.3.1 INITIATION OF NEGOTIATIONS**

Upon the determination of just compensation by ARD, the third party may proceed with contacting the property owner to present the offer to purchase the real property interest required for the construction project.

The third party may use its own forms or letter to provide the property owner the written offer of just compensation. This letter shall be approved by ORE and/or OAG prior to it being presented to the property owner.

All negotiation activities with the property owner shall all be in compliance with the procedures described in section 603.1.3.

### **607.3.3.2 AGREEMENT REACHED WITH PROPERTY OWNERS**

After an agreement has been reached with the property owner for the real property interest needed for the construction project, the third party shall ensure that the option contract or any other agreement with the property owner is in the form, format and have provisions that is acceptable to MDOT SHA.

All contracts and/or agreements for real property interest to be acquired from the property owners shall be reviewed and approved by PRD as described in Sections 603.3.1 and 607.2.6.1 to ensure compliance with Federal and State laws and regulations and ORE guidelines.

The third party has the sole discretion on administrative settlements with the property owners, if the third party is financially responsible to acquire the real property interests necessary for the construction contract.

### **607.3.3.3 NEGOTIATION AT AN IMPASSE**

If the third party and the property owner cannot reach an agreement for the real property rights to be acquired due to any specific issue (such as deed language, land/improvements value, damages to remainder), acceptable to MDOT SHA, the third party may request ORE initiate its eminent domain procedures.

All activities necessary to acquire the real property interest from the property owner must comply with the procedures, and guidelines described in Section 604 and 605 of this chapter.

The third party shall provide all eminent domain administrative support to ORE and OAG upon request.

#### **607.3.4 CONSTRUCTION SUPPORT**

The third party shall not begin construction on any parcel until a ROW certification has been issued as described in Section 607.2.7 and the real property interests from the parcel has been conveyed and recorded in favor of MDOT SHA, possession has been obtained through an option contract, eminent domain or any other method as provided for in Sections 604 and 605 of this chapter, or an Entry Agreement has been validly executed and delivered by all necessary parties and approved by ORE.

#### **607.3.5 SETTLEMENT AND CLOSINGS**

The third party shall be responsible for all financial settlements with the property owner and record all legal instruments conveying unencumbered real property interest needed for the construction with the Land Records in the County where the property is located.

All settlement information shall be submitted to PRD, as described in Section 607.2.6.3, by completing the Settlement Assembly in OREMS.

#### **607.3.6 PROPERTY MANAGEMENT**

For properties acquired in their entirety for the construction project, the third party shall be responsible for managing the improvements until such time demolition occurs.

The third party shall be financially and physically responsible for maintaining all utility service to the property, ensure the property is well maintained and not pose a nuisance or health risk to its immediate environment.

#### **607.3.7 ITEM FILE CLOSEOUT**

The third party shall provide closed Item Files to the assigned RPPM in accordance with the ORE closeout procedures.

#### **607.3.8 RELOCATION ASSISTANCE ACTIVITIES**

All relocation assistance activities performed by the third party, its staff and subcontractors shall be completed in OREMS and shall be done in accordance with the procedures set forth and described in Chapter 7 of this guidelines.

The third party may approve non-last resort replacement housing payment eligibility. PRD shall provide the final approval for all last resort

replacement housing eligibility and business relocation. The third party shall provide relocation assistance advisory services to all displaced persons on the construction project. The ORE Director or his/her designee is responsible for hearing all relocation appeals pursuant to the provisions in Chapter 7.

The third party, its staff or subcontractors providing the relocation assistance service to the displaced person, upon request by ORE, shall be present during the relocation appeal hearing.

**607.4 RESPONSIBILITY OF THE OFFICE OF THE ATTORNEY GENERAL**

OAG, with the assistance of the third party and coordination of ORE, shall be responsible for implementing all legal actions for acquiring and obtaining possession of the real property interests required for the construction project through the eminent domain and/or eviction process, if necessary.

**OFFICE OF REAL ESTATE  
OPERATIONAL GUIDELINES  
CHAPTER 7  
RELOCATION ASSISTANCE**

**CHAPTER 7**  
**RELOCATION ASSISTANCE**

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## **PURPOSE**

The purpose of this chapter is to ensure, to the maximum extent possible, the uniform, prompt and equitable relocation of all persons, businesses, farms and non-profit organizations permanently displaced as a result of acquisition for a construction project, rehabilitation and demolition activities by MDOT SHA.

The procedures contained in this chapter are intended to establish a means of providing efficient, cost effective and uniform relocation benefits and services including advisory assistance, moving cost payments, replacement housing payments and other expense payments to ensure that displacees do not suffer disproportionate injuries as a result of a program or project designed for the benefit of the public as a whole.

This manual also outlines the procedures necessary to ensure that every displaced individual shall have, or will have been offered, a comparable, Decent, Safe and Sanitary (DS&S) replacement dwelling. This manual also provides appeal procedures to amicably resolve disputes that may arise.

These procedures are designed for the use of ORE's personnel in complying with the Uniform Act. It may be used by any displacing agency or any other entity performing real property services for MDOT SHA when acquiring or permanently displacing persons when Federal or State funds are participating in the construction project.

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## **AUTHORITY**

The following are the sources of authority for the relocation assistance program.

### **MARYLAND AUTHORITY**

The Annotated Code of Maryland entitled "Real Property Article" Section 12-112 Allowance for removal of personal property, dead body, grave marker, or monument and Subtitle 2, Relocation & Assistance Sections 12-201 to 12-212.

### **FEDERAL AUTHORITY**

The Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act of 1970 (42 USC 4601-4655) as amended. Additionally, the Federal codes 23 CFR Part 740 and 49 CFR Part 24 are to be used for further guidance.

## **703 RESPONSIBILITIES FOR THE RELOCATION ASSISTANCE PROGRAM**

### **703.1 RESPONSIBILITIES OF THE RIGHT OF WAY DISTRICT OFFICES**

ORE's District ROW Offices are responsible for the performance of all activities required to provide relocation assistance payments and services to persons displaced by MDOT SHA projects in accordance to the Federal and State laws and regulations. In addition, relocation assistance activities must be entered in OREMS and performed as set forth in this chapter.

#### **703.1.1 DISTRICT REAL PROPERTY MANAGER**

The RPM in each District Office directs the daily work of the District ROW Office personnel and reports directly to the Deputy Director of ORE on all matters related to the acquisition of real property and the performance of relocation assistance activities.

The District RPM:

1. Is responsible for the uniform application of relocation assistance policies and procedures within the District ROW Office
2. Oversees all activities necessary to assist displaced persons in finding and occupying replacement housing and business sites
3. Analyzes current and anticipated relocation assistance activities in the District ROW Office to adjust staffing to meet projected workloads.

#### **703.1.2 DISTRICT REAL PROPERTY SUPERVISOR**

The RPSUP in the District ROW Office reports directly to the District RPM and directly supervises the relocation assistance activities performed by the District RPS.

The RPSUP:

1. Reviews and approves cost estimates, preliminary project planning studies, acquisition stage studies and any other planning activities deemed necessary for project approval
2. Attends public hearings and meetings as necessary to monitor the presentation of the Relocation Assistance Program to the public
3. Reviews and approves the preparation of replacement housing payment studies performed by the RPS for displaced residential occupants

4. Oversees preparation of Last Resort Housing studies and relocation assistance payment claims and recommends approval of same to the RPMs of the acquiring District ROW Office and PRD.

### **703.1.3 DISTRICT REAL PROPERTY SPECIALIST**

The District RPS reports directly to the RPSUP and are responsible for performing all the tasks necessary to provide relocation assistance payments and services to persons displaced by MDOT SHA construction projects.

The District RPS:

1. Develops all relocation assistance information required for the preparation of preliminary project planning studies, cost estimates, acquisition stage studies and any other plans or studies required for project approval
2. Prepares individual relocation assistance case studies and provides all required relocation assistance services to displaced residents and businesses
3. Prepares and submits for approval all relocation assistance payment claims and coordinates payment schedules to accomplish an orderly and humane relocation of the persons, including monitoring the move by the displacee as a result of the project
4. Provides the RPM of PRD with all pertinent case information required for relocation assistance appeal hearings.

## **703.2 RESPONSIBILITIES OF THE HEADQUARTERS OFFICE**

### **703.2.1 DIRECTOR OF THE OFFICE OF REAL ESTATE**

The Director of ORE is responsible for the development and implementation of policies and procedures necessary for the administration of the Relocation Assistance Program. The Director also serves as the hearing officer for any relocation assistance appeals.

### **703.2.2 PROPERTY REVIEW AND COMPLIANCE DIVISION**

The RPM of PRD is responsible for the prompt review and processing for payment all relocation assistance payment claims. Within designated limits, the RPM of PRD approves for payment all relocation assistance claims submitted by the District ROW personnel.

### **703.2.3 LOCAL PUBLIC AGENCY COORDINATOR**

The Local Public Agency (LPA) Coordinator, with assistance and support from the RPM of PRD, is responsible for ensuring that all local acquiring agencies that displace residential or business occupants as a result of a Federally or State aided construction project comply with the policies and procedures of the relocation assistance program, as described in this chapter.

The LPA Coordinator is also responsible for obtaining acquisition and displacement data from the LPA's and providing the same to the RPM of PRD for inclusion in periodic Federal and State relocation assistance activity reports.

## **704 GENERAL PROVISIONS**

### **704.1 AGENCY PLANNING AND ADVISORY REQUIREMENTS**

#### **704.1.1 SOCIAL AND ECONOMIC FACTORS**

ORE conducts several activities in advance of the acquisition of real property interests needed for a construction project and the relocation assistance of persons displaced by the project. These activities are done to ensure that comparable housing is available for all displaced persons.

If housing is not readily available, ORE shall provide a plan which details the methods and actions that will be taken to provide the needed replacement housing. General statistical data about the demographics and housing status of affected persons is analyzed by OPPE's personnel responsible for the project, and the cost benefits and social impacts of all the alternative plans will be weighed before any final decision is made.

ORE also provides information associated with non-residential displacements for planning purposes but has no requirement to guarantee that comparable replacement sites are available to displaced businesses.

In general, OPPE's personnel are responsible for providing broad-based statistical data concerning incomes, etc., needed to develop the required NEPA documents to obtain the Record of Decision for the project.

#### **704.1.2 PRELIMINARY RELOCATION ASSISTANCE ESTIMATES**

At the request of OPPE, ORE prepares estimates of relocation assistance impacts, costs, and comparable housing availability in conjunction with other preliminary ROW studies on all projects requiring the acquisition of

improved properties.

This information is subsequently included in the required NEPA documents prepared by OPPE for the project.

#### **704.1.3 DETAILED RELOCATION ASSISTANCE STUDY**

Prior to the Design Public Hearing, at the request of either OPPE or the Office of Highway Development (OHD), ORE evaluates the relocation assistance impacts of the final design alternates for each project in a detailed relocation assistance study. The detailed study includes estimates of the number and types of residential and non-residential displacements, anticipated relocation payment costs, and special impacts on minority, elderly or handicapped individuals. The detailed study includes an analysis of available comparable replacement housing and non-residential sites in relation to the anticipated number of displacements. The results of the detailed relocation assistance study are presented in a narrative report of sufficient scope and detail to properly address the complexity of displacement activity required for each design alternate.

The information produced by this study shall be included in the final NEPA document prepared by OPPE which is presented to the public at the Design Public Hearing.

#### **704.1.4 ACQUISITION STAGE STUDY (RELOCATION PLANNING)**

Following final design approval for a proposed project and prior to the actual commencement of acquisition activities, the District ROW Office performs an acquisition stage study. This study serves as both a planning tool for the coordination of future relocation assistance activities on the project and as a guarantee that comparable replacement housing resources will be available when actual residential displacement occurs.

While the impacts, costs, and anticipated assistance needs of any business or farm operation may also be addressed in the study for planning purposes, a formal acquisition stage study is not required for projects involving only commercial displacements.

Information for the acquisition stage study is obtained from personal interviews conducted by relocation counselors with each of the individuals or families to be displaced by the project. The personal housing needs of each potential displaced person will be documented and used to develop a relocation plan.

By compiling the information from each interview, the relocation counselor can then assess displacement impacts for the entire project and plan orderly and prioritized displacements.

Following the interview stage, the relocation counselor surveys the available replacement housing market to estimate the numbers and costs of comparable dwelling units required to meet the housing needs of the displaced persons. If the supply of available housing is estimated to be insufficient, consideration must be given to the means necessary to remedy the deficiency, including the possible use of last resort housing.

An estimate of available replacement business sites and any impacts due to a lack of available sites should be addressed. Any complex business move issues must be analyzed to lessen the impact on the business.

The acquisition stage study should be summarized in a narrative report of sufficient detail and complexity needed to explain the anticipated housing needs, the existing housing supply, and the recommended housing solution. Supporting documentation should be attached to the narrative report, as needed.

Upon completion, the detailed planning study must be submitted to the RPM of the acquiring District ROW Office for approval. A copy should also be forwarded to the RPM of PRD.

#### **704.1.5 ADVISORY SERVICES**

The District ROW Office shall provide relocation assistance advisory services to displaced persons by offering the following:

1. Determine for non-residential displacements the relocation needs and preferences of each displacee and explain the relocation payments and other assistance for which they may be eligible, the eligibility requirements and the procedures for obtaining such assistance including:
  - a. The business replacement site requirements
  - b. Determination of need for specialists required to assist in planning the move, moving, and reinstallation of personal property
  - c. Identification and resolution of personalty/realty issues
  - d. Estimate of time required to vacate the site
  - e. Estimate of the anticipated difficulty in locating a replacement site
  - f. Providing current and continuing information on the availability, purchase price and rental costs of comparable

- replacement site
    - g. Identify any advance relocation payments required for the move
- 2. Determine for residential displacements the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which they may be eligible, the eligibility requirements and the procedures for obtaining such assistance including:
  - a. Providing current and continuing information on the availability, purchase price and rental costs of comparable replacement dwelling
  - b. Inform the displacee in writing, as soon as feasible, of the specific comparable replacement dwelling
  - c. Inspect housing prior to being made available to ensure it meets all applicable standards
  - d. Whenever possible, minority persons shall be given reasonable opportunities to relocate to DS&S replacement dwellings not located in an area of minority concentration
  - e. The District ROW Office shall offer all persons transportation to inspect housing to which they are referred
  - f. Advise any displacee eligible for government housing assistance of any requirement that may limit the amount of the replacement housing payment
  - g. Minimize hardships to displacees by providing counseling, advice, and any other form of assistance as may be appropriate
  - h. Coordination of relocation activities with the construction work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment.

**704.1.6 RIGHT OF WAY PLAN**

After the engineering and ROW PI have been held and plats are available, a ROW plan may be developed. The RPM of the acquiring District ROW Office or his/her designee for relocation assistance matters shall provide input taking into consideration all possible relocation needs and actions required to complete the project. The following non-exclusive list of considerations should be addressed in the plan:

1. What appraisal information will be needed, including carve-outs and economic rents?
2. Will last resort housing be required? What solutions are expected to be used?
3. Will leases, determinations of tenant-owned improvements or

- machinery and equipment appraisals be needed?
4. What effects will the determination of uneconomic remnants, acquiring buildable lots as remnants, owner retentions, or mixed-use and multi-purpose properties have on relocation costs?
  5. What approaches would be fiscally beneficial for the State to use in calculating benefits without diminishing occupants' rights?
  6. Will owners or tenants need additional time to relocate because of the need to construct replacement housing or provide special services required for displaced family members?

## **704.2 NOTIFICATION REQUIREMENTS**

### **704.2.1 MANNER OF NOTIFICATION**

Each notice which ORE is required to provide to a displaced property owner or any other occupant shall be personally served or sent by certified or registered first class mail with a return receipt requested or any other receipted delivery service. The receipt of delivery must be documented in ORE's files.

Each notice shall be written in plain understandable language. Individuals who are not able to read or understand the notice must be provided with appropriate translation and counseling, as necessary. Each notice shall indicate the appropriate ORE contact person who is assigned to provide assistance to the displacee.

### **704.2.2 GENERAL INFORMATION NOTICE**

A General Information Notice is a letter notifying property owners of MDOT SHA's impending activity necessary for the construction of project that may be of direct or indirect impact. ORE may be requested by OPPE to provide assistance in notifying the community impacted by the project.

### **704.2.3 NOTICE OF INTENT TO ACQUIRE**

The Notice of Intent to Acquire (NIA) is a letter sent, prior to the ION, to a property owner indicating MDOT SHA's intent to acquire the real property for a construction project. The NIA must clearly state the relocation assistance eligibility of the property owner may be entitled to.

As soon as possible, any individual scheduled to be displaced shall be given a written description of the ORE's relocation assistance program and be fully informed of their rights and entitlements through the program.

This written description should:

1. Inform the individual that he or she may be displaced by the project and generally describe the relocation payments for which the person may be eligible, the conditions of eligibility and the procedures for obtaining the payments
2. Offer the person reasonable relocation advisory services, referrals to replacement properties, help in filing payment claims, and any other necessary assistance to help the person successfully relocate
3. Inform the individual that he or she will not be required to move without at least ninety (90) days advance written notice and inform any person to be displaced from a dwelling that he or she cannot be required to permanently move unless at least one (1) comparable replacement dwelling has been made available prior to the move
4. Inform the individual that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility results in a hardship to a qualifying spouse, child, or parent
5. Inform the individual of his or her right to appeal ORE's determination for assistance should the person feel aggrieved.

When a displaced person is not readily accessible, ORE must make a good faith effort to contact the person and document all efforts in writing.

#### **704.2.4 NOTICE OF RELOCATION ELIGIBILITY**

A person's eligibility for relocation assistance shall begin at the date of the NIA, the ION, or the actual acquisition of the subject property, whichever occurs first. ORE shall promptly notify all occupants in writing of their eligibility under the program.

No lawful occupant shall be required to move unless he or she is given at least ninety (90) days advanced written notice of the earliest date by which he or she may be required to move.

ORE may issue a letter granting more than ninety (90) days advance notice, if warranted by the circumstances of the individual case.

The ninety (90) day notice shall either state a specific date as the earliest date by which the occupant may be required to move or state that the displaced occupant will receive an additional notice indicating, thirty (30) days in advance, the specific date by which the individual must move.

When the ninety (90) day notice is issued before a comparable replacement dwelling is made available, the notice must state that the

occupant will not have to move earlier than ninety (90) days after such a dwelling is made available.

In special circumstances, an occupant may be required to vacate the property with less than ninety (90) days advance notice, due to emergencies such as health or safety reasons. A full explanation of the reasons for such extraordinary action shall be given to the displaced person and shall be included in the case file.

### **704.3 DETERMINATION OF ELIGIBILITY FOR RELOCATION ASSISTANCE**

#### **704.3.1 DISPLACED PERSON(S)**

The term “displaced person” means any person who moves from the real property or moves his or her personal property from the real property. This include persons who occupied the property prior to acquisition, but who fail to meet the length of occupancy requirements of Sections 705 and 706 as a direct result of:

1. A written NIA or the ION for, or the acquisition of, such real property in whole or in part for a project
2. Rehabilitation or demolition for a project
3. A written NIA for a project, or of the acquisition, rehabilitation or demolition (in whole or in part) of other real property on which the person conducts a business or farm operation. In this case, eligibility is restricted to advisory services and benefits available under Section 709.

#### **704.3.2 NON-DISPLACED PERSON(S)**

The following is a nonexclusive listing of persons who do not qualify as displaced persons under these guidelines:

1. A person who moves prior to the ION by ORE, unless it is determined by ORE that the resulting move was a direct result of the project
2. A person who initially occupies the property after the date of its acquisition for the project
3. A person occupying the property solely to obtain eligibility for relocation assistance
4. A person relocating on a non-permanent basis. Temporary displacements may qualify for some benefits under certain Federal funding agency regulations
5. Partial acquisitions where ORE determines that a person is not displaced

6. Persons who, after receiving a notice of relocation assistance eligibility, are subsequently notified in writing prior to moving that they will not be displaced by a project. Any binding contractual obligations entered into by the person because of a notification of eligibility should be satisfied by MDOT SHA
7. An owner-occupant who voluntarily conveys his or her property to MDOT SHA under the following conditions:
  - a. The improvement is not part of an intended, planned, or designated project area with a specific acquisition schedule
  - b. The property is not specifically needed by MDOT SHA for any other use
  - c. The owner is informed in writing that MDOT SHA will only acquire the property through a mutually satisfactory agreement on the terms of conveyance
  - d. The owner is given ORE's opinion of the property's FMV in writing
8. Persons retaining and exercising the right of a life license or estate after having been informed in writing of their rights as a displaced person
9. Unlawful occupants or persons evicted under contract law, providing that the eviction was not undertaken for the purpose of evading the agency's obligation to provide relocation assistance under these procedures.

**704.3.3 WAIVER OF RELOCATION ASSISTANCE ELIGIBILITY**

ORE shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act.

**704.4 REQUIREMENTS FOR A RELOCATION ASSISTANCE OFFICE**

**704.4.1 DISTRICT RELOCATION ASSISTANCE OFFICE**

In each District, an office may be maintained which is accessible to the public during normal business hours and alternate hours, if necessary on a specific project. If possible, such an office should be arranged to afford privacy during the displaced person's interview.

The staff should have readily available information of local agencies rendering services that may be useful to the displaced person(s). Such local agencies include, but are not limited to: social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, the local Chambers of Commerce, as well as the Federal Housing and Urban Development Administration, Veterans'

Administration, Small Business Administration, and Farmer's Home Administration.

Local sources of information on replacement property, including private listings, real estate brokers, property managers, apartment owners and operators, and homebuilding contractors may be maintained to provide assistance to displacees. The staff should have available access to multiple listing services, apartment directory services, neighborhood and regional newspapers. Local ordinances pertaining to housing codes, building codes, open housing requirements and other consumer oriented educational literature on housing, shelter costs and family budgeting may be made available in the office.

Copies of the MDOT SHA's Relocation Assistance brochure shall always be available.

The office should have access to a current list of DS&S replacement dwellings, both for rent and for sale, which is fair and open housing, available to persons without regard to race, color, religion, or national origin, drawn from various sources, suitable in location, size, price and condition for the displacee.

A similar list of suitable commercial properties and locations for businesses should also be kept. The office should also have available current data of incidental costs for non-residential properties such as security deposit for utilities, typical down payment, interest rates and financial terms, closing costs, general lease information, taxes, property assessments, etc.

The office should also maintain maps and other information giving the location and costs of public transportation and other neighborhood services.

#### **704.4.2 PROJECT SITE OFFICE(S)**

The need for the establishment of a site office to serve displaced persons impacted by a project shall be determined during the pre-acquisition study for the project. If, in the opinion of the MDOT SHA, a field office is necessary, the study shall include a statement explaining the reasons why such an office is necessary.

All project site offices shall be identified by adequate signage, visible to the public, stating "MDOT SHA Relocation Assistance Office". The site office shall be open during hours convenient to the displaced persons on the project.

When the need for a site office has been approved by MDOT SHA prior to the start of acquisition activities on a project, it may be necessary to lease space for this purpose. If this occurs, the District RPM with responsibility for the project shall prepare a written request to the ORE Director to lease the needed space, explaining the necessity for such action, and providing details about the office location, ownership, size, and estimated cost of maintenance.

## **704.5 METHODS OF VERIFYING GROSS HOUSEHOLD INCOME**

### **704.5.1 INCOME VERIFICATION FROM TAX RETURNS**

When ORE finds it necessary or prudent to verify the income of a displaced person, the following procedure shall be followed:

1. Consult Internal Revenue Code (IRC) 6103(c) and Treasury Regulation 301.6103(c)-1(a) governing disclosure of income information to designees
2. Prepare a written authorization for disclosure of tax returns or other information for the displaced person's signature. The authorization must contain the following items:
  - a. The taxpayer's identity; name, address, social security number (SSN)/Employee Identification Number (EIN), or any other information that will enable the Internal Revenue Service (IRS) to clearly identify the individual taxpayer
  - b. The identity of the person and the office to whom disclosure will be made
  - c. The type of return, or specific portion of the return information to be disclosed
  - d. The taxable period covered by the return or information requested
  - e. The date the authorization is signed by the displaced person
3. The date on which an authorization is received from the displaced person should be stamped or otherwise noted on the request because Treasury Regulation 301.6103(c)-1(a) provides that returns or other information cannot be disclosed unless a request is received within sixty (60) days of the date that the authorization is signed and dated by the taxpayer. This sixty (60) day requirement does not apply when taxpayers themselves request information or assistance relating to their own tax matters - Treasury Regulation 301.6103(c)-1(b)
4. The following situations may also apply when seeking verification of income by use of disclosure authorizations:
  - a. Practitioners and legal representatives may also serve as

- the taxpayer's designees
- b. The designation by the taxpayer must be in writing unless the taxpayer appears in person with a designee
  5. The taxpayer may authorize, but not compel the disclosure of the tax return information. If an official authorized in accordance with paragraph 1(a) of Delegation Order 156 (as revised) determines that disclosure of any return information would adversely impact the IRS, the IRS may withhold disclosure of tax return information
  6. Generally, the IRS and other taxpayer contact personnel would not request returns from the Federal Records Center solely for the verification of a taxpayer's signature. If there is serious doubt concerning the signature on an authorization, additional identification should be sought, or an offer should be made to mail the information to the taxpayer's address of record.

## **704.5.2 ADDITIONAL METHODS OF INCOME VERIFICATION**

Social Security income may be verified by copies of check stubs, photocopies of current checks or through a written request for verification from the local Social Security office. Additional income from other sources, such as other occupants of the displacement dwelling, must also be verified; however, occupants claimed as dependents by the displaced person are exempted. Only signed copies of income tax returns or other documents will be accepted as certified documentation.

Any income from public assistance should be verified, with the recipients' permission, by writing or visiting the local Social Services office. If the local agency partitions payments into allotments for housing, utilities, etc., a breakout of the payments should be requested. If the agency does not specifically allocate payment distribution, then the entire payment must be used for the gross household income test.

## **705 REPLACEMENT HOUSING PAYMENTS FOR 180-DAY OWNER-OCCUPANTS**

### **705.1 GENERAL PROVISIONS**

#### **705.1.1 REPLACEMENT HOUSING PAYMENT**

A displaced individual or family, if eligible under the provisions of this section, may receive a replacement housing payment the combined total of which cannot exceed the Federal statutory limit of \$31,000. However, under the State of Maryland Law, such payment cannot exceed \$45,000. The payment is comprised of the costs necessary to purchase a comparable replacement dwelling, compensate for the increased interest

and other debt service costs incurred in connection with the mortgage(s) on the replacement dwelling and reimburse the owners for eligible costs incidental to the purchase of the replacement dwelling.

#### **705.1.2 DECENT, SAFE, AND SANITARY HOUSING INSPECTION**

Before submitting the displaced person's claim for payment, the District ROW Office must inspect the replacement dwelling and determine that it meets the standard for DS&S housing. The inspection results shall be documented in the case file in sufficient detail to support the payment. The DS&S housing inspection is performed solely for the purpose of qualifying displacees for payment under this section and should not be used as representation for any other purpose.

#### **705.1.3 STATEMENT OF ELIGIBILITY TO LENDING AGENCIES**

At the displaced person's request, the District ROW Office may provide a statement of eligibility for payment to a designated lending agency, financial institution or other interested party to aid the displacee in purchasing and occupying a replacement dwelling.

The statement should clearly state the amount of eligibility, as well as any preconditions for payment, such as a DS&S housing inspection or the prescribed time limit for purchase and occupancy.

#### **705.1.4 REPLACEMENT HOUSING PAYMENTS DOCUMENTATION**

Following the commitment by the displaced person to purchase and occupy replacement housing, the relocation counselor must properly complete the appropriate claim forms for the displaced person's signature. In those instances where there exists more than one owner-occupant claimant, each must sign the claim for payment.

The relocation counselor shall submit the signed claim forms to the District RPM for review and approval, prior to submitting it for processing by PRD.

#### **705.1.5 PAYMENT DISBURSEMENT**

The replacement housing payment may be made directly to the displaced person or, with his or her written instruction, directly to a seller, lessor, lending agency or other institution providing the replacement housing.

#### **705.1.6 ADVANCE PAYMENTS**

If a displacee demonstrates the need for an advance relocation payment

to avoid or reduce a hardship, ORE may issue such payment, subject to appropriate safeguards to ensure the proper use of the advance payment. The displacee should sign an agreement to repay the advanced monies to MDOT SHA in the event the displacee does not occupy a replacement dwelling as stipulated in the agreement.

## **705.2 ELIGIBILITY CONDITIONS**

### **705.2.1 OCCUPANCY OF DISPLACEMENT DWELLING**

The displaced person must have owned and occupied the displacement dwelling for at least 180 consecutive days immediately prior to the earlier of:

1. The ION.
2. If the NIA been issued, the date on which the person vacates the acquired dwelling by MDOT SHA.

### **705.2.2 PURCHASE OF REPLACEMENT DWELLING**

The displaced person must purchase and occupy a DS&S replacement dwelling within one year after the later of:

1. The date the owner receives full payment of just compensation for the acquired dwelling; or, in the case of condemnation, the date the final deposit is posted in court for the owner's use
2. The date MDOT SHA meets its obligation to provide the owner with comparable housing.

The displaced person is considered to have "purchased" a replacement housing when the person:

1. Purchases an existing DS&S dwelling
2. Purchases and rehabilitates a substandard dwelling. The combined purchase price and cost of correcting DS&S deficiencies may not exceed the amount determined by the comparable replacement housing study
3. Relocates to a dwelling that he or she owns or purchases
4. Constructs a dwelling on a site that he or she owns or purchases
5. Contracts for the purchase or construction of a dwelling on a site provided by a builder or contracts for the construction of a dwelling on a site that he or she owns or purchases
6. Currently owns a previously purchased dwelling and site, valuation of which shall be based on current market value
7. Purchases a life estate in a retirement home or other managed care

facility. The actual cost of housing is considered to be the entrance fee plus any other initial monetary commitments made to the facility, excluding periodic service charges. The replacement housing payment may not exceed the limit established by the comparable study, and excludes any refundable charges made by the facility to the displaced person.

When calculating a housing payment based on a newly constructed replacement dwelling, the costs are limited to those necessary to construct housing comparable to the acquired dwelling. Adding new features simply to increase the amount of the replacement housing payment to the maximum eligibility is prohibited.

A displaced person may utilize a dwelling and/or site that he or she has previously purchased for replacement housing. In this case the actual cost of housing, for payment calculation purposes, is considered to be the current FMV of the dwelling and/or site and not its original purchase price.

### **705.2.3 OCCUPANCY OF REPLACEMENT DWELLING**

A displaced owner “occupies” a replacement dwelling within the meaning of this section only if the dwelling is his or her permanent place of residence and the eligibility requirements set forth herein have been satisfied. A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling but who, for reasons beyond his or her control, cannot occupy the replacement dwelling within the one (1) year time period, shall be considered to have achieved constructive occupancy. The replacement housing payment under these conditions may be deferred until actual occupancy is achieved, unless ORE provides partial payments on a mutually agreeable schedule. For example, partial payment may be made at the completion of each construction phase of the replacement dwelling.

### **705.3 REPLACEMENT HOUSING PRICE DIFFERENTIAL**

#### **705.3.1 AMOUNT OF PAYMENT FOR AN OWNER-OCCUPANT**

The first component of the replacement housing payment is the replacement housing price differential. This differential is the amount, if any, that must be added to the acquisition cost of the displacement dwelling to equal the lesser of either:

1. The amount determined by ORE as necessary to purchase a comparable DS&S replacement dwelling
2. The actual amount spent by the displaced person for a DS&S

replacement dwelling.

ORE has the obligation to present to the displacee a comparable replacement dwelling available for purchase prior to his or her displacement. If the displacee desires to relocate as a tenant, rather than as an owner-occupant, ORE shall make a reasonable effort to accommodate this request and calculate the appropriate payment under Section 705.7 of this chapter.

### **705.3.2 PARTIAL OWNERSHIP**

When a single-family dwelling is owned by more than one individual and is not occupied by all of the owners, the replacement housing payment shall be the lesser of:

1. The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling
2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by the District ROW Office as necessary to purchase a comparable replacement dwelling.

If the displaced owner-occupants do not purchase and occupy a DS&S dwelling, they may be entitled to receive a rent differential payment based on the cost of a comparable DS&S rental unit less the economic rent of the acquired dwelling. This eligibility may not be greater than the amount of eligibility as a partial owner.

If the application of this procedure creates undue hardship on the occupant(s) with partial ownership, the details of the circumstance and a recommended solution should be submitted as a last resort housing plan to the RPM of PRD. The plan should consider alternate housing solutions such as changing the displacee with partial ownership occupancy status.

### **705.3.3 THREE COMPARABLE METHOD**

The probable selling price of a comparable replacement dwelling is determined by surveying the inventory of available housing for sale and choosing at least three dwellings which meet the criteria for a comparable replacement dwelling.

From these three dwellings, the relocation counselor must carefully consider all the needs of the displaced person and select the one available dwelling which is considered most comparable to the acquired dwelling in as many aspects as possible. The evaluation process shall be

documented in writing, with the results forming the basis of the comparable replacement housing study. Generally, the selected comparable should be equal to, or better than, the acquired dwelling with respect to its functional utility and ability to support the same or similar life style. Trading off features may be considered in evaluating available replacement housing when full comparability is not possible.

The District ROW Office may deviate from the use of the three comparable method under the following circumstances:

1. Less than three comparable properties may be used for this determination when the availability of housing is limited due to market conditions or other special circumstances. When this occurs, the relocation counselor preparing the comparable replacement housing study must fully document the case file with the reasons for deviating from the normal three comparable method
2. If no comparable DS&S housing is located after a diligent survey of the existing market, the District ROW Office may, as a last resort, utilize available non-decent safe and sanitary dwellings as the basis for the study. In this case, the estimated costs of correcting the existing deficiencies should be added to the probable selling price of the dwelling before performing the normal calculation process. When using this method to provide a comparable replacement dwelling prior to actual displacement, the displaced person must agree in writing to the use of the selected dwelling before any payments are made
3. In the absence of any available housing with which to compute the replacement housing price differential, the District ROW Office may contact at least two reputable home builders for obtaining firm bids for the cost of constructing a DS&S comparable replacement dwelling on a home site typical in size for the area. Any reasonable method of establishing the value of a typical home site may be used, including available vacant land sales. The replacement housing price differential shall be the difference between the combined construction and lot costs and the acquisition price of the subject dwelling.

#### **705.3.4 ACQUISITION PRICE ADJUSTMENTS**

No adjustments shall be made to the asking price of the selected comparable unless local market studies indicate that an adjustment is warranted. The District ROW Office will periodically survey the housing market in its area(s) of operation to determine if significant variations between asking and final selling prices regularly occur. When a specific dwelling is obviously overpriced in relation to other comparable properties,

it should not be used in the replacement housing study.

The dwelling used to compute the replacement housing payment differential should be comparable to the acquired dwelling. If the selected comparable replacement dwelling lacks any major exterior attributes (garages, outbuildings, swimming pools, etc.) that are found in the acquired property, the contributing value of such items must be subtracted from the acquisition price of the subject before computing the housing differential. The value of exterior attributes may not be added to the asking price of a selected comparable property; however, when the actual replacement dwelling lacks attributes found in both the subject and selected comparable property, the actual cost of attributes may be added to the purchase price of the replacement dwelling when computing the actual replacement housing payment. In this case, the payment may not exceed the amount of the replacement housing differential based on the selected comparable.

### **705.3.5 REPLACEMENT HOUSING PRICE REVISIONS**

When the housing used to compute the replacement housing price differential is no longer available in the same price range, the District ROW Office must establish a new price differential amount based on currently available comparable housing. The District ROW Office may not offer less than the originally computed replacement housing price differential as the new amount of payment eligibility.

If the amount offered as FMV for the acquired dwelling is increased by either an administrative settlement or a condemnation award, the replacement housing price differential must be recalculated using the revised acquisition price. The relocation counselor must provide written notification on the displaced person if the recalculation results in a reduction in the replacement housing payment eligibility.

## **705.4 INCREASED MORTGAGE INTEREST PAYMENTS**

### **705.4.1 AMOUNT OF PAYMENT**

A component of the replacement housing payment is the increased mortgage interest payment. This payment is provided to compensate a displaced person for the increased interest costs required to finance a replacement dwelling.

The displacee is eligible for increased interest payment if the dwelling acquired by ORE is encumbered by a bona fide mortgage provided the displacee meets the occupancy of displacement dwelling provision

described in Section 705.2.1. All bona fide mortgages on the acquired dwelling shall be used to compute the increased interest cost portion of the replacement housing payment. Home equity loans are to be included in the increased interest computation. If the acquired dwelling is encumbered with an adjustable rate mortgage, the mortgage interest rate that is current on the property as of the last month prior to the date of acquisition, or of the move if closer in time, must be used in the computation.

#### **705.4.2 PAYMENT COMPUTATION**

The amount of the increased mortgage interest payment may be computed by PRD or the District ROW Office, in accordance with the following procedures:

1. The increased mortgage interest costs shall be the lump sum payment that would reduce the mortgage balance on the replacement dwelling so that the displacee would have the same monthly payment as he or she had on the acquired dwelling
2. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displacee obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the ION or the balance on the date of acquisition, whichever is less
3. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or of the term of the new mortgage, whichever is shorter
4. The interest rate of the new mortgage used in determining the lump sum payment shall not exceed the prevailing fixed interest rate for conventional mortgages issued by the lending institutions in the area where the replacement dwelling is located
5. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent that:
  - a. They are not paid as incidental expenses
  - b. They do not exceed rates normal to similar real estate transactions in the area
  - c. The District ROW Office determines them to be necessary
  - d. The computation of such points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the displacee's current mortgages are known. The payment shall be made available at or near time of closing on the replacement dwelling to reduce its mortgage as intended. Any amount established by this payment beyond the statutory limits shall be programmed under the last resort housing provisions.

#### **705.4.3 PAYMENT RECIPIENT(S)**

The payment described in Section 705.4.2 can be made directly to the displacee, or upon written instruction from the displacee, directly to the mortgagee of the replacement dwelling. In cases where the displacee qualifies for an interest payment and upon his or her request, ORE would consider depositing the mortgage interest payment into an escrow account prior to the displacee's settlement on their replacement dwelling.

#### **705.4.4 PARTIAL ACQUISITIONS**

On a construction project where MDOT SHA has a partial acquisition that does not result in displacement and the mortgagee requires the property owner to obtain a new mortgage to secure the remaining property, the increased mortgage payment shall be reduced as follows.

1. For a typical residential property, the increased interest payment shall be prorated based on the acquisition price of the acquired area and the Before Value (BV) of the property. The mortgage interest reduction would not apply if the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary for the property owner to refinance
2. Where a dwelling is located on a tract considerably larger than a typical residential property, the total mortgage balance shall be prorated based on the value of the residential portion bears to the BV of the entire property for computational purposes. The mortgage balance shall be the basis for computing the increased interest payment. This reduction shall apply whether or not the mortgage requires that the entire mortgage balance be paid.

#### **705.4.5 OTHER HIGHEST AND BEST USE**

For a residential dwelling located on a tract where the FMV is derived from a more valuable higher and best use, the BV of the property's use as a residential property must be obtained. If the mortgage on the dwelling is based on a residential value, the increased interest payment shall be computed as described in Section 705.4.2. If the mortgage on the

dwelling is based on the more valuable HBU, the increased interest payment shall be prorated based on that the estimated residential BV of the parcel has to the BV on the more valuable HBU.

## **705.5 INCIDENTAL PURCHASE EXPENSES**

### **705.5.1 ELIGIBLE COSTS**

Another component of the replacement housing payment is the incidental purchase expenses payment. The incidental expenses payment is the amount necessary to reimburse the displacee for the reasonable costs incurred incidental to the purchase of a replacement dwelling but does not include prepaid expenses such as state or local real estate taxes, fire insurance, etc.

Eligible costs include the following items if normally paid by the buyer:

1. Legal, closing and related costs, including those for title search and mortgage insurance, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees
2. Lender, Federal Housing Administration (FHA) or Veterans Administration (VA) appraisal fees
3. FHA or VA application fees
4. Professional home inspection, certification of structural soundness and termite inspection when required
5. Credit reports
6. Owner's and mortgagee's evidence of title, e.g. title insurance, not to exceed the cost for the comparable replacement dwelling
7. Escrow agent's fee
8. State and local revenue or documentary stamps and sales or transfer taxes charged to record a deed (not to exceed the costs for a comparable replacement dwelling) including new construction as a replacement, if this is customarily paid by the buyer in the area
9. Loan origination or assumption fees that do not represent prepaid interest
10. Purchaser's points, but not seller's points normal to similar real estate transactions
11. Such other costs as ORE determines to be incidental to the purchase.

### **705.5.2 INELIGIBLE COSTS**

No fee, cost, charge or expense is reimbursable as incidental expenses when determined to be part of the debt service or finance charge under the Truth in Lending Act.

No cost for seller's points will be reimbursed by ORE, whether it is stipulated in the contract of sale or not.

### **705.5.3 METHOD OF PAYMENT**

Except when the replacement housing is paid into escrow, the combined total of the payments, as described in Section 705.5.1, shall be paid to the displacee as a lump sum payment.

### **705.6 RETENTION OF EXISTING DWELLINGS**

An owner-occupant is allowed the option of retaining his dwelling at a predetermined retention value, moving it from the acquired property, and occupying it on a new site as the replacement dwelling. The replacement housing payment in these cases is computed in accordance with the following procedures described in this section.

#### **705.6.1 COMPUTATION OF REPLACEMENT HOUSING PAYMENT**

When the displaced person re-occupies the retained dwelling the purchase price shall be considered the sum of:

1. The cost of moving and restoring the dwelling to a DS&S condition comparable to that prior to the move
2. The current FMV of the replacement site for residential use
3. The retention value of the dwelling if this value is a part of the FMV in the determination of the replacement housing payment eligibility.

#### **705.6.2 LIMITATIONS ON PAYMENT**

The payment computed above cannot exceed the amount of eligibility determined by the replacement housing study using the selected comparable. If the owner of the dwelling rented the site, a rent differential calculation shall be used to determine the FMV of the site.

### **705.7 RENTAL REPLACEMENT HOUSING PAYMENTS TO OWNER-OCCUPANT**

#### **705.7.1 AMOUNT OF PAYMENT**

An owner-occupant eligible for a replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed the amount they would have received from their replacement housing payment if they chose to purchase a replacement

home.

#### **705.7.2 CHANGE OF STATUS – LIMITATIONS**

Payment shall be computed using the same method as for a tenant who occupied the property for ninety (90) days or more, with the economic rent of the acquired dwelling being used in the calculation as the displacement rent. The monthly utility costs of the subject shall be taken from the fixed utility schedule.

#### **705.8 DETERMINING CERTAIN ACQUISITION COSTS FOR DISPLACED DWELLING**

This section addresses how certain acquisition costs should be derived for computing the replacement housing payment for a displaced dwelling. The acquisition cost should be obtained by evaluating the circumstance surrounding the acquisition of the displacement dwelling and its supporting real property. Replacement housing payment computation shall be done in accordance with Section 705.3.

##### **705.8.1 PARTIAL ACQUISITION WITH AN ECONOMIC REMNANT**

If the acquisition of a portion of a residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, MDOT SHA may offer to purchase the entire property. If the owner refuses to sell the remainder of the property, the FMV of the remainder shall be added to the acquisition cost of the displacement dwelling when computing the replacement housing payment.

##### **705.8.2 PARTIAL ACQUISITION WITH AN UNECONOMIC REMNANT**

If the District ROW Office determines that a partial acquisition would leave the owner with an uneconomic remnant as a remainder, the Office shall offer to buy the remnant. If the owner subsequently refuses to sell the remnant, the FMV of the uneconomic remnant shall not be added to the acquisition cost of the displacement dwelling when calculating the replacement housing payment.

##### **705.8.3 EXCESS LAND**

If the acquired dwelling is located on a tract larger in size than typical for the area, the maximum replacement housing payment eligibility is the lesser of:

1. The asking price of a comparable dwelling on a similarly sized lot

- less the subject's acquisition price
2. The asking price of a comparable dwelling on a lot typical in size for the area less the acquisition price of the subject dwelling on that portion of land which represents a lot typical in size in the area (the carve-out value)
  3. The actual cost of a DS&S replacement dwelling less the displacement dwellings carve-out value.

#### **705.8.4 DWELLING ON LAND WITH HIGHER AND BETTER USE**

When a dwelling is located on a tract where the FMV is established on a higher and better use than residential, the replacement housing price differential is calculated by subtracting the acquisition price of the subject property from the asking price of a comparable replacement dwelling on a typical residential lot. The acquisition price of the subject property shall be the greater of:

1. The sum of the appraised value of the dwelling plus the HBU value of that portion of the acquired land representing a typically sized residential lot for the area
2. The market value of the acquired dwelling and typical lot valued residentially.

In all cases involving extra land acquired by ORE, the replacement housing study should include comparable properties that are similar in size to the entire subject property. If comparable properties are not available, the extra land value must be carved out of the acquisition price. The typical lot size and carve-out value must then be adequately documented in the case file.

The value derived above may not exceed the actual total of the taking and damages for the subject property. If the use of this procedure would prevent the displaced person from obtaining a comparable replacement dwelling, the District ROW Office shall take reasonable measures to make such housing available.

#### **705.8.5 MULTIPLE OCCUPANCY OF THE SAME DWELLING UNIT**

Two or more occupants who maintained separate households, with distinct living areas, within the same dwelling prior to displacement are each entitled to a separate replacement housing payment eligibility.

Two or more occupants who maintained a single household, with shared living areas, within the same dwelling prior to displacement have one combined eligibility for a replacement housing payment. If the occupants

establish separate households after being displaced, they each receive a reasonably prorated share of the payment that would have been made had they moved together into a comparable replacement dwelling. In cases of divorce or legal separation, the relocation counselor should seek the advice of the Office of Counsel, when necessary, in ascertaining claims for eligibility.

Should an individual vacate the subject property prior to the ION, the District ROW Office may consider that individual not displaced and award any payment eligibility to the remaining occupant(s).

If a prorated owner-occupant eligibility prevents any displaced person from purchasing replacement housing, ORE may allow the person to change occupancy status and relocate as a tenant; however, the amount of payment made under this option may not exceed the amount of the person's prorated eligibility as an owner-occupant.

Dependent children or other family members are included under their parent's or other guardian's eligibility in all cases.

#### **705.8.6 MIXED USE AND MULTI-FAMILY PROPERTIES**

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, only the portion of the acquisition payment directly attributable to the displacement dwelling shall be considered its acquisition cost when computing the replacement housing payment.

The following factors should be considered in determining the replacement housing payment:

1. **Comparability:** The comparable dwelling should be similar to the acquired dwelling. For example, if the acquired property is a triplex then the comparable should also be a triplex. If similar density comparable properties are not available, then a property with the next lower density may be used such as a duplex. If there are no comparable multi-family properties available, the owner's living unit should be compared to a single-family residence
2. **Payment Determination:** If last resort housing is necessary, the most cost-effective alternative should be selected regardless of density. The value of the owner's living unit should be used as the basis for computing the replacement housing payment, not the entire FMV of the subject property. The replacement housing payment is the difference, if any, between the value of the owner's living unit and the value of a living unit most comparable to the

subject. If the comparable, for example, is a triplex the replacement housing payment should be based on the value of only one (1) of the three (3) units; if a duplex, the payment should be based on the value of only one of the two (2) units of the dwelling.

The other living units of a multi-family dwelling cannot be included in the value of a comparable unless, for example, the subject is a triplex, title for all units is vested in the owner and a comparable triplex is available.

In the absence of any available housing upon which to compute the maximum replacement housing payment the displacee is eligible for, the District ROW Office may establish the estimated selling price of a new comparable DS&S dwelling on a comparable home site. The relocation counselor should contact reputable homebuilders for the purpose of obtaining firm commitments for the cost of building a comparable dwelling on a comparable home site.

The District ROW Office should have this homebuilder's estimate reviewed by ARD. The District ROW Office should request any necessary carve-out or contributory values, economic rent or typical lot estimates from the appraiser or any qualified ARD staff person. These factors that may affect the timely and effective relocation of the displacee should be identified as soon as possible before the appraisal is ordered.

## **706 REPLACEMENT HOUSING PAYMENTS FOR 90-DAY OCCUPANTS**

### **706.1 GENERAL PROVISIONS**

#### **706.1.1 REPLACEMENT HOUSING PAYMENT**

A displaced person, if eligible under the provisions of this section, may receive a replacement housing payment of up to the Federal statutory limit of \$5,250, however under the State of Maryland Law such payment shall not exceed \$10,500. The payment may be used by either tenants or owner-occupants of at least ninety (90) days to rent a comparable DS&S replacement dwelling or may be used as down payment for the purchase of a replacement dwelling.

#### **706.1.2 DECENT, SAFE AND SANITARY HOUSING INSPECTION**

Before submitting the displaced person's claim for payment, the relocation counselor must inspect the replacement dwelling and determine that it meets the standards for DS&S housing. The inspection results shall be documented in the case file in sufficient detail to support the payment.

The DS&S housing inspection is performed for the sole purpose of qualifying relocated individuals and families for payments under the provisions of this Chapter.

### **706.1.3 DISBURSEMENT OF PAYMENT**

The amount of the replacement housing payment shall be paid in a lump sum unless the displaced person requests in writing an alternate plan of equal payments over a forty-two (42) month period. ORE has the sole discretion to determine whether such payments schedule are required. The full amount of the replacement housing payment vests immediately and shall be unaffected by any change in the displacee's income or rent, or in the condition or location of the his or her housing; however, the payment may be affected by the provisions described in Section 706.1.4.

### **706.1.4 PAYMENT AFTER DEATH**

A replacement housing payment is personal to the displaced person and upon his or her death, the non-disbursed portion of any such payment shall not be paid to the person's heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid
2. The remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies
3. Any portion of a replacement housing payment necessary to satisfy the legal obligations of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

### **706.1.5 CHANGE OF OCCUPANCY**

If within one year of relocating, a tenant moves again to a higher cost DS&S rental unit, he or she may claim the remaining difference between any payments already received and the amount of the original payment eligibility. Should the tenant elect to change status and purchase housing, the payment would equal the difference between any rental assistance already paid the person and the down payment assistance allowance of \$10,500.

## **706.2 ELIGIBILITY CONDITIONS**

### **706.2.1 OCCUPANCY OF DISPLACEMENT DWELLING**

The displaced person must have physically and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the ION to qualify for a payment under this section. A displaced owner or tenant occupant who fails to meet the above length of occupancy requirement and who consequently cannot find comparable replacement rental housing within his or her financial means may still qualify for a payment under the housing of last resort provisions. Such cases shall comply with the procedures described in Section 708 even if the resulting payment eligibility falls within the statutory limits.

### **706.2.2 RENTAL OR PURCHASE OF REPLACEMENT HOUSING**

A displaced tenant-occupant must rent or purchase and occupy, a DS&S replacement dwelling within one (1) year after the date he or she moves from the displacement dwelling.

A displaced owner-occupant must rent or purchase, and occupy, a DS&S dwelling within one (1) year after the later of:

1. The date he or she receives final payment for the displacement dwelling or in the case of condemnation, the date the final deposit is posted in court for the owner's use
2. The date he or she moves from the displacement dwelling. The displaced person is considered to have "rented" replacement housing when that person executes a written lease agreement providing for the use and occupancy of a residential property by that person in exchange for periodic monetary payments. The displaced person is considered to have "purchased" replacement housing when that person performs any of the actions described in Section 705.2.2.

### **706.2.3 OCCUPANCY OF REPLACEMENT DWELLING**

A displaced tenant or owner "occupies" a replacement dwelling within the meaning of this section only if the dwelling is that person's permanent place of residence and the eligibility requirements set forth herein have been satisfied.

A displaced person who has entered into a lease agreement, a purchase contract, or a construction or rehabilitation contract for a replacement dwelling, but who cannot occupy said dwelling within the one (1) year time

period for reasons beyond his or her control, will be considered to have achieved constructive occupancy. Under these conditions, the replacement housing payment may be deferred until actual occupancy is accomplished, unless the District ROW Office agrees to provide partial payments to relieve a hardship or to facilitate construction or rehabilitation of the dwelling.

## **706.3 RENTAL REPLACEMENT HOUSING PRICE DIFFERENTIAL**

### **706.3.1 AMOUNT OF PAYMENT – TENANT OCCUPANT**

The rental assistance payment shall not exceed the Federal statutory limit of \$7,200 (State of Maryland limit is \$10,500) and shall be forty-two (42) times the amount obtained by subtracting the base monthly rent for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities based on a fixed schedule for a comparable replacement dwelling
2. The monthly rent and estimated average monthly cost of utilities based on a fixed schedule for the DS&S replacement dwelling occupied by the displaced person.

The base monthly rent for the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities at the displacement dwelling during a reasonable period prior to the ION. For a tenant who paid little or no rent for the displacement dwelling, the fair market rent shall be base monthly rent unless such a use would result in financial hardship that would prevent the displacee from obtaining comparable replacement housing
2. Thirty percent (30%) of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's (HUD's) Annual Survey of Income Limits for the Public Housing and Section 8 Programs
3. The total amount specifically received by the person from public assistance for shelter and utility costs, if applicable. When a financial hardship is indicated, the ROW District Office must verify the amount received by the displacee as household income or public housing assistance prior to calculating the amount of payment eligibility. If the displacee refuses to provide appropriate evidence of income or is a dependent, the ROW District Office need not consider financial means in calculating the rental assistance payment.

**706.3.2 AMOUNT OF PAYMENT – OWNER-OCCUPANT**

The rental assistance payment, not to exceed the Federal statutory limit of \$7,200 (State of Maryland limit is \$10,500), shall be computed as set forth in Section 706.3.1 except that the base monthly rent shall be the fair market rent of the displacement dwelling plus the average monthly utilities actually paid by the displaced owner-occupant. Financial means need not be considered. In no instance shall the rental assistance payment exceed the amount if the owner elected to purchase a replacement dwelling.

**706.3.3 THREE COMPARABLE METHOD**

The District ROW Office shall determine the rental costs for comparable replacement rental housing using the three (3) comparable method wherever possible. If less than three comparable replacement rental housing are used, the District ROW Office must document in its case file the reason(s) for the deviation from this method.

**706.4 DOWN PAYMENT ASSISTANCE PAYMENT**

**706.4.1 AMOUNT OF PAYMENT – TENANT**

A displaced tenant who is eligible to receive a rental replacement housing payment may elect to receive the calculated rental price differential payment up to the Federal statutory limit of \$7,200 (State of Maryland limit is \$10,500) towards the purchase of a DS&S replacement dwelling. If the down payment assistance payment is less than \$7,200, ORE, at its discretion, may increase the payment to statutory limit. The entire amount of the payment must be applied directly to the purchase price of the dwelling and related incidental expenses.

If the calculated rental price differential payment exceeds the statutory limit and is in Last Resort Housing, the entire amount may be applied directly to the purchase price of the dwelling and incidental expenses.

**706.4.2 AMOUNT OF PAYMENT – OWNER-OCCUPANT**

A displaced owner-occupant who is eligible to receive a rental replacement housing payment may elect to apply the entire payment, not to exceed the statutory limit as described in Section 706.4.1 toward the purchase of a DS&S replacement dwelling. The payment received shall not exceed the amount that the owner would have received had he or she met the 180-day owner occupancy requirements. A displaced person who is eligible to receive this payment as a 180-day owner-occupant is not eligible for the payment under this section.

## **706.5 DETERMINING CERTAIN BASE MONTHLY RENT**

This section addresses how certain base monthly rent should be derived for computing the rental replacement housing payment for a displaced dwelling. The base monthly rent should be obtained by evaluating the circumstance surrounding the acquisition of the displacement dwelling. Replacement housing payment computation shall be done in accordance with Section 706.3.1.

### **706.5.1 MULTIPLE OCCUPANCY OF SAME DWELLING UNIT**

The provisions of Section 705.8.5 shall also apply in those cases involving the multiple occupancy of displacement rental housing.

### **706.5.2 MIXED USE AND MULTI-FAMILY PROPERTIES**

If the displacement rental unit is part of a property containing multiple dwelling units and/or space used for non-residential purposes, only that portion of the monthly rental payment and utilities directly attributable to the residential use of the displacement rental unit shall be considered when computing the rental price differential.

## **707 RELOCATION ASSISTANCE PAYMENTS FOR OWNERS AND TENANTS OF MOBILE HOMES**

### **707.1 GENERAL PROVISIONS**

#### **707.1.1 RELOCATION ASSISTANCE PAYMENTS**

The displaced owner or tenant of a mobile home or mobile home site must qualify for replacement housing assistance or moving expenses in the same manner as the occupant of a conventional dwelling (see Sections 705, 706 and 708). In addition, each category of payment is subject to the special conditions outlined in this Section.

#### **707.1.2 OCCUPANCY STATUS**

The displaced person's status of occupancy in the mobile home, not the mobile home site, determines whether he or she should be treated as an owner-occupant or as a tenant under this Section. The displacee's eligibility for payment is conditioned on when the ION for the site or the date that a NIA was given to the property owner by ORE.

### **707.1.3 REPLACEMENT HOUSING PAYMENT**

Replacement housing payments made to displaced occupants of mobile homes are calculated in two parts: a replacement housing differential and a replacement site differential. The sum of the two parts cannot exceed the \$31,000 statutory limit (State of Maryland limit is \$45,000) for 180-day owner-occupants or \$7,200 (State of Maryland limit is \$10,500) for tenants and 90-day owner-occupants.

### **707.1.4 DECENT, SAFE AND SANITARY INSPECTION**

Before submitting the displaced person's claim for payment, the District ROW Office must inspect the replacement dwelling and determine that it meets the standards for DS&S housing. The inspection results shall be documented in the District ROW Office's case file in enough detail to support the payment. The DS&S housing inspection is performed solely for qualifying relocated individuals and families for payments under this Section and should not be used as representation for any other purpose.

### **707.1.5 THREE COMPARABLE METHOD**

The same standard for comparability used in calculating payments under Sections 705 and 706 shall be used in replacement housing payment calculations for mobile homes and sites. When a comparable replacement mobile home is not available, the purchase and rent price differentials shall be calculated using conventional housing.

### **707.1.6 ACQUISITION OF PERSONAL PROPERTY**

Even if an owner-occupied mobile home is determined to be movable personal property, an offer should be made to acquire it if:

1. The structural condition of the home has deteriorated so that it cannot be moved without substantial damage or unreasonable cost
2. The home is not DS&S and cannot be made so without unreasonable cost
3. The home cannot be relocated because there are no comparable replacement sites available
4. The home cannot be relocated because it does not meet existing mobile home park entrance requirements.

If the owner-occupant is eligible under this Section, the displacee from a mobile home acquired under one of the conditions set forth in this section is entitled to a replacement housing payment. The amount of the housing differential portion of such payment will be the lesser amount of:

1. The difference between the acquisition price of the existing mobile home and the price of a comparable replacement home acceptable to the mobile home park
2. The cost to rehabilitate the existing home, if practical, to meet the park entrance requirements. The acquisition price of the existing mobile home shall be the greater of its depreciated value in place or its salvage value.

#### **707.1.7 PARTIAL ACQUISITION OF A MOBILE HOME PARK**

If the partial acquisition of a mobile home park results in either the relocation or closure of the entire park, the owners and lawful occupants of homes that were not located within the acquisition area, but who are now forced to move, are eligible for the same payments as those persons who were located within the acquired property.

#### **707.2 MOVING EXPENSES**

##### **707.2.1 PERSONAL PROPERTY**

An owner-occupant or tenant displaced from a mobile home is entitled to receive reimbursement for the actual, reasonable and necessary costs of moving his or her personal property under the same methods and conditions explained for residential moves in Section 708.

##### **707.2.2 MOBILE HOMES**

The owner of a mobile home which is not acquired as real property may receive payment for the actual, reasonable and necessary costs of moving the mobile home to another site. The payment may include the costs of preparing the home for transport, moving the home and securing or anchoring it on the replacement site. Utility service reconnection charges are also reimbursable as are the costs of removing and re-attaching porches, decks, awnings or skirting not acquired by ORE with the mobile home.

If the District ROW Office determines that it would be more cost effective to repair and move a mobile home than to purchase it as real property, the owner(s) may be reimbursed for the actual and reasonable cost of the necessary repairs and/or modifications to make the mobile home DS&S.

Non-refundable entrance fees for mobile home parks are reimbursable to the extent that it does not exceed the fee at a comparable mobile home park or ORE determines that the payment of the fee is necessary to effect

relocation.

### **707.3 REPLACEMENT HOUSING PAYMENTS – 180-DAY OWNER OCCUPANTS**

#### **707.3.1 AMOUNT OF PAYMENT**

A displaced owner-occupant of a mobile home who has occupied the home and site for at least 180 days prior to the ION is eligible for a replacement housing payment of up to \$31,000 (State of Maryland limit is \$45,000) for:

1. The additional cost, above the acquisition price of the displacement property necessary to purchase comparable DS&S housing
2. The amount determined as necessary to compensate the owner for increased interest and other debt service costs incurred in the financing of the replacement housing
3. The amount necessary to reimburse the owner for reasonable expenses incidental to the purchase of the replacement housing.

A displaced owner-occupant of a mobile home who is eligible for the replacement housing payment described in this section, but who instead elects to rent replacement housing is eligible for a rental assistance payment of up to \$7,200 (State of Maryland limit is \$10,500).

#### **707.3.2 PAYMENT CALCULATION**

##### **707.3.2.1 OCCUPANT OWNS HOME AND SITE – BOTH ARE ACQUIRED**

For an owner-occupant that owns both the mobile home and site, the replacement housing price differential shall be the amount, if any, added to the acquisition price of the displacement home and site which equals the lesser of:

1. The amount determined by the District ROW Office as necessary to purchase a comparable DS&S mobile home and site
2. The actual amount that the displaced owner is required to pay for a DS&S replacement housing.

Should the displaced person choose to rent replacement housing instead of purchasing, the rental replacement housing price differential shall be forty-two (42) times the difference between the estimated economic rent plus estimated utility costs for the acquired home and site and the lesser of:

1. The monthly rent and estimated average utility costs determined by the District ROW Office as necessary to rent a comparable replacement dwelling and site
2. The actual monthly rent and estimated utilities paid by the displaced person for a DS&S replacement housing.

#### **707.3.2.2 OCCUPANT OWNS HOME, RENTS SITE – HOME IS ACQUIRED**

For an owner-occupant that owns the mobile home, but rents the site, the replacement housing price differential shall be the amount, if any, added to the acquisition price of the displacement home to equal the lesser of:

1. The amount determined by the District ROW Office as necessary to purchase a comparable DS&S mobile home plus forty-two (42) times the difference between the monthly rent for a comparable site and the monthly rent paid for the displacement site
2. The actual amount paid by the displaced person for DS&S replacement housing.

The rental replacement housing price differential under these conditions shall be determined by the same method as set forth in Section 707.3.2.1, except that the actual rent rather than economic rent of the displacement site shall be used in calculating the payment.

#### **707.3.2.3 OCCUPANT OWNS HOME, RENTS SITE – HOME IS NOT ACQUIRED**

When only the site is acquired, and the mobile home must be moved, the owner-occupant is eligible to receive a site rental assistance payment of up to \$31,000 (State of Maryland limit is \$45,000). The rental replacement price differential shall be forty-two (42) times the difference between the monthly rent paid for the displacement site and the lesser of:

1. The amount determined by the District ROW Office as necessary to rent a comparable replacement home site
2. The monthly rent paid by the displaced person for a replacement site.

As an alternative, the displaced person may choose to apply all the payment towards purchasing a replacement home site.

Although the owner-occupant may not be eligible for payment for moving the mobile home, he or she may be eligible for payment for moving personal property from the mobile home.

**707.4 REPLACEMENT HOUSING PAYMENTS – 90 DAY TENANTS AND OWNER-OCCUPANTS**

**707.4.1 AMOUNT OF PAYMENT**

A tenant or 90-day owner-occupant may receive a replacement housing payment of up to the Federal statutory limit of \$7,200 (State of Maryland limit is \$10,500) for use either in renting a comparable DS&S mobile home and/or site or as a down payment for purchasing such housing.

**707.4.2 PAYMENT CALCULATION**

**707.4.2.1 TENANTS**

The rental assistance payment shall be forty-two (42) times the difference between the base monthly rent for the displacement mobile home and site and the lesser of:

1. The monthly rent and estimated average utility costs for a comparable replacement home and site
2. The actual monthly rent and estimated utilities paid by the displaced person for a DS&S replacement housing.

The base monthly rent shall be determined in the same way as for tenants of conventional housing as set forth in Section 706.3.1. If the displaced tenant chooses to purchase replacement housing, he or she shall receive a payment of up to the Federal statutory limit of \$7,200 (State of Maryland limit is \$10,500) towards the purchase price and related incidental costs.

**707.4.2.2 OWNER-OCCUPANTS**

The rental assistance payment shall be calculated using the method described in Section 707.3.2.1. A displaced owner-occupant eligible for payment under this section may apply the full amount of such payment toward the purchase of DS&S replacement housing.

**708 RESIDENTIAL MOVING AND RELATED EXPENSE PAYMENTS**

**708.1 GENERAL PROVISIONS**

**708.1.1 ELIGIBILITY FOR PAYMENT**

Any individual or family is entitled to receive payment for the actual, reasonable and necessary expenses of moving personal property from the displacement dwelling when:

1. The displaced person is in occupancy at the ION for the acquisition of the real property in whole or part
2. The displaced person is in occupancy at the time that a written NIA was given by MDOT SHA
3. The relocation of the displacee or personal property occurs after the earliest date established in (1) or (2) above.

If the move occurs after a written NIA was given by MDOT SHA, the displaced person is eligible for payment of resulting moving expenses even if the real property subsequently was not acquired.

#### **708.1.2 REIMBURSEMENT METHOD**

The displaced person may claim reimbursement of his or her moving costs and related expenses using either the actual cost method or the fixed payment schedule.

#### **708.1.3 ELIGIBLE COSTS**

Costs which are eligible for reimbursement as actual, reasonable and necessary residential moving expenses include:

1. Transportation costs for the displaced person and the personal property
2. Costs for packing or otherwise preparing the personal property for moving as well as costs of unpacking and set-up of the personal property in the replacement dwelling
3. Costs for disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances or other personal property
4. Utility service reconnection charges
5. Costs for storing personal property
6. Costs for providing replacement value insurance for personal property during moving and storage
7. Other costs, not excluded by these procedures, which PRD determines are necessary for the successful relocation of the displaced person.

#### **708.1.4 INELIGIBLE COSTS**

The following expenses or losses are ineligible for reimbursement under this section. The ineligible costs include:

1. Additional expenses incurred because of living in a new location

2. Costs of moving structures, improvements or other real property in which the displaced person reserved ownership
3. Costs of improvements or modifications to the replacement property to adapt personal property to the replacement site
4. Interest on loans to cover moving expenses
5. Personal injury or loss of employment
6. Legal fees or other costs of preparing claims or appeals for moving and related expenses
7. Costs incurred in searching for a replacement dwelling
8. Costs for storing personal property on real property already owned or leased by the displaced person.

#### **708.1.5 DISTANCE OF MOVE**

Reimbursement for moving expenses is limited to fifty (50) miles from the acquired property, unless the District ROW Office determines that the relocation cannot be accomplished within 50 miles from the acquired property. In this case, a written justification for exceeding this limitation must be provided by the displaced person.

#### **708.1.6 PAID MOVING BIDS OR ESTIMATES**

If necessary, ORE may pay for the cost of obtaining bids or estimates for residential moving costs. These should be limited to two (2) estimates or bids per move, except in unusual cases. The cost of obtaining bids or estimates shall be approved by the RPM of PRD prior to the actual move being performed.

#### **708.1.7 PAYMENT CLAIM**

After completion of the move, the displacee must submit a completed relocation certification and claim for payment form provided by the District ROW Office supported by either firm bids or receipted bills no later than eighteen (18) months after the latter of:

1. For tenants, the date of displacement  
or
2. For owners, the date of displacement or the date of the final payment for the acquisition of the property, whichever is later.

ORE may waive this time period for good cause.

In special circumstances, the District ROW Office may authorize a moving cost claim in advance to alleviate hardship on the displacee. Such payments must be based on firm bids or the fixed payment schedule.

#### **708.1.8 DELIVERY OF PAYMENT**

Whenever possible, moving payments should be delivered to the displaced person or other payee. If the move is being conducted by a commercial mover, the moving payment may be made payable to both the displacee and the commercial mover. In no instance shall the person(s) establishing the amount of the moving cost payment be permitted to directly deliver that payment to the displaced person, except approved by the RPM of the District ROW Office responsible for the relocation.

#### **708.1.9 DIRECT PAYMENTS TO COMMERCIAL MOVERS**

The displaced person may request that an unpaid moving bill be settled by direct payment to the commercial mover. Any such payment must be pre-arranged in writing between the displacee, ORE and the mover and must comply with all applicable State procurement regulations.

#### **708.1.10 UTILITY SERVICE RECONNECTIONS**

Charges for the reconnection of basic utilities, including telephone and cable television service are reimbursable expenses. They must be based on existing rates for similar work in the area and may not represent improvements to the real property.

#### **708.1.11 PERSONAL PROPERTY STORAGE**

The displaced person may be reimbursed for the cost of storing personal property for a period of up to twelve (12) months when ORE determines that such storage is reasonable and necessary for the move. However, the cost of using real property already owned or leased by the displaced person is not reimbursable. The use of storage must be pre-approved by PRD and at comparable rates for the area.

#### **708.1.12 INSURANCE AND MOVING LOSSES**

ORE shall pay the reasonable cost of insuring personal property against loss or damage during moving and storage; however, the cost of such insurance shall not exceed the replacement value of the personal property. If insurance coverage is not available, ORE shall pay for the personal property lost, stolen or damaged when such loss is not caused by the displaced person, his or her agents or employees. Failure of the displaced person to obtain insurance, when available, shall negate ORE's liability.

### **708.1.13 OWNER RETENTION**

The cost of moving items not categorized as personal property in which the displaced owner-occupant has retained ownership is not eligible for reimbursement as part of personal property moving costs. If the owner leaves his or her personal property in the acquired dwelling or any other improvement while it is being moved, he or she can be paid personal property moving costs using the fixed payment schedule.

### **708.1.14 DENIAL OF CLAIM**

If ORE disapproves of all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or on other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination and the procedure for appealing the determination.

## **708.2 ACTUAL COST MOVING PAYMENTS**

### **708.2.1 COMMERCIAL MOVES**

The displaced individual or family may choose to have the move performed by a commercial mover. To establish the reasonable cost of such a move, the displaced person should solicit firm bids from at least two reputable movers and submit the bids for review by the District ROW Office prior to contracting for the move. When the displacee is unable or unwilling to provide the bids in a timely manner, it is the relocation assistance counselor assigned to the case responsibility to obtain the needed information from the commercial mover.

The District ROW Office shall work with the displaced person to ensure that all the commercial movers are bidding on the same scope of work to be performed. In most instances, the lowest acceptable bid shall establish the maximum amount that may be paid for the move; however, this amount may be exceeded with proper supporting documentation when unusual circumstances cause the actual cost of the move to exceed the bid. The displaced person is responsible for hiring the mover and must present a copy of the receipted bill to the District ROW Office after completion of the move.

### **708.2.2 SELF-MOVES**

Displacee(s) performing a self-move of his or her personal property should be encouraged to use the fixed payment schedule method if practical; however, self-moves may be allowed on an actual cost basis in unusual

cases. The displaced person must fully explain the reasons for the self-move and must provide receipts for all costs claimed for reimbursement, including hourly rates and equipment rental fees based on the actual cost of renting, neither to exceed the cost paid by a commercial mover.

The relocation counselor assigned to the case must verify that all costs claimed were actual, reasonable and necessary before payment is made.

### **708.3 FIXED PAYMENT MOVES**

#### **708.3.1 PAYMENT DESCRIPTION**

Any individual or family displaced from an acquired dwelling may choose to be reimbursed for their personal property moving costs using a fixed payment schedule instead of the actual cost method. Under the fixed payment schedule, all the various eligible costs explained in Section 708.1.3 are included in one lump sum payment paid directly to the displacee(s) without the need for supporting bids or receipts.

#### **708.3.2 PAYMENT CALCULATION**

The amount of fixed payment made shall be based on the number of rooms which the displaced person occupied within the acquired dwelling, excluding areas such as bathrooms, hallways, etc. Attics, unfinished basements, garages or outbuildings may be counted as additional rooms when the ROW District Office considers that they contain sufficient amounts of personal property to justify an increase in the payment to be made.

The amount of payment is limited to Fifty dollars (\$50.00) for those persons who are moved by the District ROW Office at no cost to themselves or for those who have a minimal amount of personal property to be moved such as boarders in a single room apartment or dormitory. In unusual circumstances, the District ROW Office may waive this limitation by authorizing the relocation assistance counselor to use the landlord-furnished room schedule to determine the fixed payment amount.

### **708.4 SPECIAL CIRCUMSTANCES**

#### **708.4.1 MULTIPLE OCCUPANTS – FIXED PAYMENT MOVES**

Two or more persons occupying the same displacement dwelling as a single household, regardless of their relationship(s) to one another, share one moving cost payment eligibility. If one or more persons decide to move to separate locations, each occupant shall receive a proportional

share of the payment that would have been made if the occupants had moved together to a comparable replacement dwelling. Each person's share should be based on the rooms actually occupied and the anticipated expense of moving their personal property from the dwelling.

When the District ROW Office determines that two or more occupants of a dwelling maintained separate households (i.e. no shared facilities) within the dwelling, each displacee shall have a separate moving cost payment eligibility.

Combined actual cost and fixed payment moves may be used to resolve difficult or unusual problems in multiple occupancy cases.

#### **708.4.2 MULTI-USE PROPERTIES**

Occupants who use their properties both as dwellings and as a farm or business may choose to either handle each use as a separate move or combine them. If handled separately, the residential move may be made using either the actual cost or the fixed payment method. When combined, the relocation must be made as an actual cost move.

#### **708.4.3 PERSONAL PROPERTY MOVES – RESIDENCE NOT ACQUIRED**

A person who owns personal property that is located outside of a dwelling and must be moved may receive reimbursement of actual and reasonable moving costs even though the dwelling is not acquired and permanent displacement of its occupants does not occur. The payment shall be computed on an actual cost basis.

#### **708.4.4 SEASONAL DWELLINGS**

Individuals or families whose personal property is displaced from a seasonal dwelling (i.e. not the permanent place of residence) may choose to be reimbursed for moving costs using either the fixed payment schedule or the actual cost method.

### **709 NON-RESIDENTIAL MOVING AND RELATED EXPENSE PAYMENTS**

#### **709.1 GENERAL PROVISIONS**

##### **709.1.1 ELIGIBILITY FOR PAYMENT**

Any business, farm or nonprofit organization is entitled to receive payment for the reasonable expenses of moving personal property when:

1. It occupies the displacement property prior to the MDOT SHA's acquisition
2. It provides the ORE with a written inventory of the items to be moved
3. It notifies the ORE, in advance, of the date of the move and the location of the replacement property.

If the move occurs after a written NIA is given by MDOT SHA, the displaced business, farm or nonprofit organization is eligible for payment for the resulting moving costs, even if the property is subsequently not acquired.

#### **709.1.2 CATEGORIES OF PAYMENT**

The displaced business, farm or nonprofit organization is entitled to reimbursement of eligible moving and related expenses using either the actual cost or fixed payment method. Displacees receiving payments under one method may not receive payments under the other.

#### **709.1.3 ACTUAL COST METHOD**

Under this method, payments may be made for:

1. Actual, reasonable and necessary expenses incurred in moving the entity or its personal property
2. Actual and direct loss of tangible personal property resulting from moving or discontinuing the business operation
3. Actual and reasonable expenses in searching for a replacement location.

#### **709.1.4 FIXED PAYMENT METHOD**

As an alternative to the payments described in Section 709.1.3, the displaced business, farm or nonprofit organization may be paid a lump sum fixed payment between \$1,000 and \$ 40,000 based on the Federal regulations governing this payment method. The State of Maryland statutory limit for fixed payment is \$60,000.

#### **709.1.5 ELIGIBLE MOVING COSTS**

Costs which are eligible for reimbursement as actual, reasonable and necessary non-residential moving expenses include:

1. Cost for transporting personal property
2. Cost for packing or otherwise preparing personal property for moving as well as costs for unpacking and set-up of the property at

- the new location
3. Cost for disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment, substitute personal property and connections to utilities available within the building.
  4. Cost for storing personal property
  5. Cost for providing replacement value insurance for personal property during moving and storage
  6. Cost for required licenses, permits or certifications required at the replacement location, however the payment may be based on the remaining useful life of the existing license, permit, fees or certification
  7. Cost for professional services necessary to facilitate the relocation of the personal property
  8. Cost to re-letter or replace signing made obsolete by the move
  9. Cost to replace stationery on hand at the time of displacement and made obsolete by the move
  10. Actual and direct losses of tangible personal property incurred because of displacement
  11. Reasonable cost incurred in attempting to sell personal property that will not be relocated
  12. Cost of purchasing substitute personal property
  13. Cost of searching for a replacement location
  14. Cost of high bulk/low values items not to exceed the lesser of the cost to move or the value in place
  15. The replacement value of property lost, stolen, or damaged in the process of moving where insurance covering such loss, theft or damage is not available
  16. Other moving-related expenses, not listed as ineligible in Section 709.1.6, which the District ROW Office determines to be reasonable and necessary.

Some of these costs are subject to limiting conditions which are addressed in greater detail in this Section.

#### **709.1.6 INELIGIBLE MOVING COSTS**

The following expenses and losses are ineligible costs for reimbursement under this section:

1. Additional operating expenses incurred at the new location, except as covered under Re-establishment expenses as set forth in Section 709.5
2. Cost of moving structures, improvements or other real property in which the displaced entity reserves ownership
3. Cost of improving the real property at the replacement location or

- modifying it to accept the relocated personal property except as covered under Re-establishment expenses
4. Interest on loans to cover moving expenses
  5. Loss of goodwill
  6. Loss of profits
  7. Loss of trained employees
  8. Personal injury
  9. Legal fees or other costs of preparing claims or appeals for moving or related expenses
  10. Costs for storing personal property on real property already owned or leased by the displaced entity
  11. Physical changes to the real property at the replacement site except as provided for in the move or under Re-establishment expenses
  12. Refundable security and utility deposits.

#### **709.1.7 DISTANCE OF MOVE**

Reimbursement for non-residential moving costs and related expenses is limited to fifty (50) miles from the acquired property unless the District ROW Office determines that the relocation cannot be accomplished within the 50-mile area. In such cases, a written justification for exceeding this limitation must be provided by the displaced entity to the District ROW Office.

#### **709.1.8 NOTIFICATION OF MOVE BY DISPLACED PERSON**

The displaced person operating the business or farm must provide the District ROW Office with advance written notice of the anticipated date of the move, an inventory of items to be moved and the address of the replacement location. The displacee must also allow District ROW Office to inspect the personal property at both the displacement and replacement sites and to monitor the progress of the move.

To facilitate compliance with these requirements, the relocation assistance counselor assigned to the case should provide the displacee with complete explanation of his or her responsibilities under this section as soon as possible after the ION.

#### **709.1.9 PERSONAL PROPERTY INVENTORY**

The owner of the displaced business or farm shall prepare and present to the District ROW Office a certified inventory of the personal property that will be moved, including separate listings of any items that may require special handling and/or removal and re-installation expenses. Any items

that will not be moved but will instead be handled under the loss or substitution of personal property provisions as set forth in Section 709.3 should also be listed separately.

The certified inventory must be checked against ORE's approved appraisal to ensure that items which have been purchased as real property are not moved. The inventory should be completed prior to the solicitation of moving cost bids and should be given to all bidders to ensure uniformity during the bidding process. When moving businesses with widely fluctuating inventories of goods or products, the District ROW Office shall obtain a re-certification of the inventory immediately prior to displacement.

#### **709.1.10 MOVE SURVEILLANCE**

All moving expenses must be actual, reasonable and necessary. To ensure compliance, the District ROW Office must inspect both the displacement and replacement sites and shall provide surveillance of the move in a manner that commensurate with the anticipated expense and complexity of the relocation activity. Commercial moves of \$10,000 or less may be randomly monitored; all those greater than \$10,000 must be monitored by the District ROW Office. All surveillance activities must be fully documented in the case file, preferably by including photographs or other visual media as appropriate for the move.

#### **709.1.11 PAID MOVING BIDS OR ESTIMATES**

When necessary, ORE may pay for the cost of obtaining bids or estimates for nonresidential moving costs. These should be limited to two per move except in unusual cases. A commercial mover who successfully bids on and performs a move shall not be paid for the cost of bidding. The cost of obtaining bids or estimates shall be approved by the RPM of PRD prior to the actual work being performed.

#### **709.1.12 PAYMENT CLAIM**

To receive reimbursement, the displaced operator of a business or farm must submit a completed relocation certification and claim for payment form supported by either firm bids or receipted bills no later than eighteen (18) months from the completion of the move. This period may be extended by ORE for good cause in unusual cases. ORE may waive this time period for good cause.

In case the move creates a financial hardship on the displacee, ORE may authorize a moving cost claim in advance of the actual move. Such

payments must be based on firm bids and may not be paid in their entirety until the actual move occurs, although partial advance payments with proper safeguards may be made to facilitate the relocation.

**709.1.13 DENIAL OF CLAIM**

If ORE disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing by the displacee or on other grounds, ORE shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedure for appealing the determination.

**709.1.14 DELIVERY OF PAYMENT**

Whenever possible, moving payments should be mailed directly by PRD to the displaced person or other authorized payee. Only in rare instances shall the person(s) establishing the amount of the moving cost payment be permitted to directly deliver that payment to the displaced person and then only with the approval of RPM or PRD.

**709.1.15 DIRECT PAYMENTS TO COMMERCIAL MOVERS**

The displaced person may request that an unpaid moving bill be settled by direct payment to the commercial mover. Any such payment must be pre-arranged in writing between the displacee, ORE and mover and must comply with all applicable State procurement regulations.

**709.2 ACTUAL COST MOVING PAYMENTS**

**709.2.1 COMMERCIAL MOVES**

The displaced business or farm operation may choose to have the move performed by a commercial mover. To establish the reasonable cost of the move, the District ROW Office should solicit bids from at least two (2) reputable movers.

A walk-through of the displacement site should be made by the business or farm operator, the bidders and the relocation assistance counselor to examine the personal property to be moved and to identify possible problems related to the move. A copy of the certified inventory should be provided to all bidders at the walk-through to ensure uniformity during preparation of the bids.

The District ROW Office shall review all bids received to ensure that they cover the same scope of work to be performed. ORE shall reserve the

right to reject any or all bids. In most instances, the maximum amount that may be paid for the move is established by the lowest acceptable bid. However, the maximum amount may be exceeded with proper supporting documentation when unusual circumstances cause the actual cost of the move to exceed the bid. The operator of the displaced business or farm is responsible for hiring the mover and must present a copy of the receipted bill to the District ROW Office after completion of the move.

#### **709.2.2 NEGOTIATED SELF-MOVES**

As an alternative to a commercial move, the displaced business or farm may choose to self-move. To establish the reasonable cost of a self-move, the District ROW Office shall solicit at least two bids in the same manner as described in Section 709.2.1. The District ROW Office should negotiate directly with the displaced person on the amount to be paid for a payment for less than the amount that a commercial mover would charge for the same work.

However, the agreed upon payment may never exceed the lowest acceptable bid received. In cases involving low cost (under \$2,500) or uncomplicated self-moves, the District ROW Office may negotiate using a moving cost finding prepared by a qualified RPS. The finding shall explain the basis for the estimated costs and its use must be pre-approved by the RPM of the District ROW Office responsible for the relocation of the displacee.

The results of the finding shall be given to the displaced person in writing prior to negotiating the final amount of payment. The District ROW Office must be careful during its surveillance of self-moves to ensure that all items that were included in the bid or finding are moved. Adjustments should be made to the final payment if any substantial deviation occurs.

#### **709.2.3 HIGH BULK, LOW VALUE MOVES**

Whenever the estimated cost of moving personal property such as sand, gravel, hay, etc. would exceed the cost of purchasing and delivering an equivalent substitute to the replacement site, ORE may limit the payment made to the lesser amount. If the owner of the personal property accepts the substitute, the person must transfer ownership of the personal property at the displacement site to MDOT SHA.

#### **709.2.4 REMOVAL AND REINSTALLATION EXPENSES**

The displacee may receive payment for the actual, reasonable and necessary expenses of removing and re-installing machinery, equipment,

or other personal property used by the business or farm operation. These eligible costs include charges for reconnecting utility service to the items, but do not include the cost of betterments or improvements to the real property except as provided for under Re-establishment expenses set forth in Section 709.5.

Any removal and reinstallation costs should be shown separately from moving costs in all bids, estimates or findings.

#### **709.2.5 PERSONAL PROPERTY STORAGE**

The displaced business or farm operation may be reimbursed for the cost of storing its personal property for a period of up to twelve (12) months when the District ROW Office determines that such storage is reasonable and necessary for the move; however, the cost of using real property that is already owned or leased by the displacee is not a reimbursable expense. The payment of storage costs must be pre-approved by the RPM of PRD and should be based on typical rates for the area.

#### **709.2.6 INSURANCE AND MOVING LOSSES**

ORE shall pay the reasonable cost of insuring the displaced business or farm operation's relocated personal property against loss or damage during the move or storage. The cost of such insurance shall not exceed the reasonable replacement value of the property. If insurance coverage is not available, ORE shall pay the replacement cost for any personal property that is lost, stolen or damaged where such loss is not caused by the displacee, his or her agents or employees. Failure of the displaced person to obtain insurance coverage, when available, shall remove ORE's liability.

#### **709.2.7 LICENSES AND PERMITS**

ORE shall pay application or processing fees for licenses, permits or other certifications which may be rendered obsolete or inoperative as a direct result of the move. Payments shall be prorated for those licenses or permits having less than half their useful life remaining prior to displacement. No payment shall be made under this section for licenses or permits handled as Re-establishment expenses as set forth in Section 709.5.

## **709.3 ACTUAL DIRECT LOSS OF TANGIBLE PERSONAL PROPERTY**

### **709.3.1 PAYMENT ELIGIBILITY**

The displaced business or farm operation may be compensated for the direct loss of tangible personal property which it is entitled to move from the displacement location, but which it chooses not to relocate. Compensation for actual direct losses may only be paid after the owner of the personal property has made a bona fide effort to sell or otherwise dispose of the item(s) unless the District ROW Office has decided that such efforts are unnecessary. No payment shall be made for abandoned property.

### **709.3.2 PAYMENT CALCULATION**

The method used to calculate payments for actual direct losses of tangible personal property is determined by whether the item claimed is replaced or discontinued at the replacement location.

If the business or farm replaces or substitutes an item of personal property used at the displacement site with another functionally similar item, the payment shall be the lesser of:

1. The overall cost, installed, of the replacement item less any sale or trade-in value received for the old item
2. The estimated cost of moving and reinstalling the old item at the replacement location.

If the business or farm chooses to discontinue the use of the item at the replacement location, the payment shall be the lesser of:

1. The item's FMV for continued use in place less any sale proceeds
2. The estimated cost of moving and reinstalling the item at the replacement location.

Estimates of moving cost for the item(s) shall not include any storage costs and are limited to a distance of up to fifty (50) miles from the displacement location unless extended by ORE for good cause. The displaced person shall receive the actual and reasonable expenses for advertising and conducting the sale of items claimed as a direct loss.

The payment must be supported with copies of the advertisement, auction records, receipted bills or similar documentation of the sale expenses and proceeds. Payment shall be made for bona fide sale attempts even if no offers of purchase were received. The cost of removing personal property

left at the displacement site following a bona fide, but unsuccessful effort by the displacee shall not be deducted from any other moving payment.

#### **709.4 REPLACEMENT SITE SEARCH COSTS**

##### **709.4.1 PAYMENT ELIGIBILITY**

A displaced business or farm operation is entitled to reimbursement of its actual expenses, not to exceed \$2,500, incurred in searching for a replacement location. Expenses must be determined to be reasonable and necessary and may include:

1. Transportation
2. Meals and lodging away from home
3. Time spent searching based on salary or earnings
4. Fees paid to real estate agents or brokers to locate a replacement site but excluding fees or commissions related to the purchase of said site
5. Other moving-related expenses, not listed as ineligible in Section 709.1.6, as authorized by ORE.

##### **709.4.2 PAYMENT DOCUMENTATION**

Any claim for searching costs must be supported with receipted bills, time records or other similar documentation prior to actual payment by ORE.

#### **709.5 RE-ESTABLISHMENT EXPENSES**

##### **709.5.1 PAYMENT ELIGIBILITY**

In addition to other actual moving payments, a small business or farm operation may be eligible to receive a payment not to exceed the Federal statutory limit of \$25,000 for actual expenses incurred in relocating and re-establishing its operation at a replacement site. However, the State of Maryland's statutory limit for this payment cannot exceed \$60,000. A small business is defined as one having between 1-500 employees working at the displacement site.

##### **709.5.2 ELIGIBLE EXPENSES**

Re-establishment expenses must be actual, reasonable and necessary and may include:

1. Repairs or improvements to the replacement real property as required by Federal, State or local laws, codes or ordinances

2. Modification to the replacement property to accommodate the business operation or to replacement structures suitable for conducting the business
3. Construction and installation costs for exterior signing that advertise the business. If the signing at the displacement site was purchased as real property, the replacement cost of the new signing must exceed the FMV of the old signing before reimbursement shall be made
4. Provisions for utilities from the ROW to improvements on the replacement site
5. Redecoration or replacement of soiled or worn surfaces such as paint, paneling or carpeting at the replacement site
6. Licenses, fees or permits when not paid as part of moving expenses
7. Feasibility surveys, soil tests, and marketing studies
8. Advertising of the replacement location
9. Professional services in connection with the purchase or lease of a replacement site
10. Increased costs of operation during the first two (2) years at the replacement site for:
  - a. Lease or rental charges
  - b. Personal or real property taxes
  - c. Insurance premiums
  - d. Utility charges excluding impact fees
  - e. Impact fees or one-time assessments for anticipated heavy utility usage
  - f. Other items that ORE may consider essential to the re-establishment of the business.

In no event shall the total re-establishment payments claimed under this Section exceed the limits described in Section 709.5.1.

### **709.5.3 INELIGIBLE EXPENSES**

The following is a non-exclusive listing of re-establishment expenditures not considered as reasonable and necessary or otherwise eligible:

1. Purchase of capital assets such as office furniture, filing cabinets, machinery or trade fixtures
2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation
3. Interior or exterior refurbishment at the replacement site which are for aesthetic purposes, except as provided in Section 709.5.2
4. Interest on money borrowed to make the move or purchase the

- replacement property
- 5. Payment to a part-time business in the home which does not contribute materially to the household income
- 6. Any re-establishment costs reimbursed by a parent company or a landlord
- 7. Re-establishment costs for replacement signs determined by ORE to be realty when the replacement cost is less than the acquisition price.

## **709.6 FIXED PAYMENT MOVES**

### **709.6.1 PAYMENT ELIGIBILITY - BUSINESS**

In lieu of a payment for actual moving related and re-establishment expenses, a displaced business is eligible for a fixed payment between \$1,000 and the Federal statutory limit of \$40,000. However, the State of Maryland's statutory limit for this payment cannot exceed \$60,000, as computed in Section 709.6.3, if ORE determines that:

1. The business owns or rents personal property which must be moved in connection with the displacement and for which an expense would be incurred in such move
2. The business vacates or relocates from the displacement site
3. The business cannot be relocated without a substantial loss of its existing patronage (clientele or earnings)
4. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the MDOT SHA and which are engaged in the same or similar business activities under the same ownership
5. The business is not operating at the displacement site solely for renting the site to others
6. The business contributed materially to the income of the displaced person during the two (2) taxable years immediately prior to displacement as described in Section 709.6.3.

### **709.6.2 LOSS OF PATRONAGE**

When evaluating whether the displaced business can relocate without suffering a substantial loss in existing patronage, the District ROW Office must consider factors such as:

1. The type of business operation
2. The nature, location and mobility of the clientele
3. The projected costs of doing business in both the displacement and replacement location

4. The relative proximity of the displacement and the available replacement site(s), particularly in the case of elderly, disabled or handicapped owner/operators for whom travel can be difficult or expensive
5. The amount contributed by the business to the owner's or operator's average annual gross income. Part-time occupations may not contribute sufficiently to qualify for payment.

After taking these factors into consideration, ORE shall determine the eligibility of the business for the fixed payment and shall so advise the displaced owner/operator in writing.

### **709.6.3 CALCULATION OF FIXED PAYMENTS**

The fixed payment to be made to an eligible business or farm operation equals the average annual net earnings of the business or farm. The "average annual net earnings" are one half (1/2) of the net earnings before Federal, State and Local taxes for the two taxable years immediately preceding the taxable year in which the displacement occurs. If this 2-year period is determined by the District ROW Office to be a misrepresentation of the displacee's normal earnings due to special circumstances, the District ROW Office may use a different time period as the basis for payment calculation.

If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years projected to an annual rate.

Average annual net earnings include any compensation paid by the business to the owner, owner's spouse or dependents during the two-year period. Average annual net earnings shall not include any compensation paid to corporate officers or non-owners of a business that have been included as a deduction to arrive at net income.

The fixed payment based on average annual net earnings may not be less than \$1,000 but must be within the statutory limit set forth in Section 709.6.1.

### **709.6.4 PAYMENT ELIGIBILITY - NON-PROFIT ORGANIZATION**

A displaced nonprofit organization may choose a fixed payment in lieu of actual, reasonable moving and re-establishment expenses if the District ROW Office determines that it cannot be relocated without a substantial loss of its existing patronage.

The fixed payment may be between \$1,000 and \$40,000 (State limit is \$60,000) based on the average of two (2) year's annual gross revenues less administrative expenses. Any payment in excess of \$1,000 must be supported with detailed financial statements for the two twelve-month periods prior to the acquisition.

#### **709.6.5 PAYMENT ELIGIBILITY – FARM**

An owner of a displaced farm operation may choose a fixed payment in lieu of actual, reasonable moving and re-establishment expenses in an amount equal to its average annual net earnings as calculated in Section 709.6.3. The payment may be between \$1,000 and \$40,000 (State limit is \$60,000).

In the case of a partial acquisition from the farm's land, the fixed payment shall only be made if ORE determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land
2. The partial acquisition caused a substantial change in the nature of the farm operation.

#### **709.6.6 NUMBER OF PAYMENT ELIGIBILITES**

In determining whether two or more displaced legal entities should be considered as a single business entitled to only one fixed payment, the District ROW Office shall consider the extent to which:

1. The same premises and equipment are shared
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled
3. The entities are held out to the public and to those customarily dealing with them as one business
4. The same person or closely related persons own, control or manage the entities' affairs.

#### **709.6.7 PAYMENT DOCUMENTATION**

The owner of a displaced business or farm operation must provide the District ROW Office with written documentation to support its net earnings. Federal or State income tax returns are the preferred sources for this information; however, certified financial statements may also be used to support the payments.

All tax return or financial statements must be signed and dated by the business owner or responsible corporation officer unless accompanied by a signed certification that the information provided reflects the actual income reported for the business to the IRS or State of Maryland Department of Taxation during the period in question.

## **709.7 DISCRETIONARY UTILITY RELOCATION PAYMENTS**

Whenever a construction project causes the relocation of a utility facility and the relocation creates extraordinary expense for its owner, payment may be made to the owner for all or part of such expense if the following are met:

1. The facility legally occupies State or publicly owned property or property over which the State has an easement
2. The facility's right of occupancy is pursuant to State law or local ordinance specifically authorizing such use or where such use has been granted through a franchise, use and occupancy permit, or other similar agreement
3. Relocation of the utility facility is required by and is incidental to the project
4. There is no Federal law other than the Uniform Act, which clearly establishes a policy for payment of utility moving costs that is applicable to the project
5. State or local government reimbursement for utility moving costs or payment of such costs by ORE is in accordance with State law.

## **710 LAST RESORT HOUSING**

### **710.1 GENERAL PROVISIONS**

#### **710.1.1 RIGHTS OF THE DISPLACED PERSON**

ORE may not require that a displaced person move from an acquired dwelling until it has made available at least one comparable replacement dwelling to the displacee.

When the District ROW Office determines that the payments calculated under Sections 705 and 706 are insufficient to provide the displacee with affordable replacement housing, the District ROW Office is authorized to take additional measures so that its project may be completed in a timely manner. These additional measures are known collectively as "last resort housing".

The use of last resort housing does not deprive a displaced person of any

rights that he or she may have under the Uniform Act or any of its implementing regulations. No displacee shall be required, without the his or her written consent, to accept a dwelling provided under the last resort housing procedures in lieu of any acquisition payment or other relocation assistance for which that person is otherwise eligible.

Last resort housing will only be used on a case-by-case basis under the conditions outlined in Section 710.2.

### **710.1.2 EXEMPTIONS**

Last resort housing provisions shall not be used when:

1. An owner-occupant voluntarily, without threat of acquisition or condemnation by ORE, offers his or her property for sale; however, the right of any tenants to receive assistance may not be abrogated by either the owner or ORE in such cases
2. The displaced person is an absentee owner of the acquired property
3. The District ROW Office determines that the person is not permanently displaced.

## **710.2 UTILIZATION OF LAST RESORT HOUSING**

### **710.2.1 ELIGIBILITY FOR LAST RESORT HOUSING**

Last resort housing may be provided to a displaced person when:

1. Comparable replacement housing is not available
2. Comparable replacement housing is available within the person's financial means, but the replacement housing payment exceeds the \$31,000 (State of Maryland limit is \$45,000) statutory limit
3. The rental replacement housing payment exceeds the \$7,200 (State of Maryland limit is \$10,500) statutory limit
4. The displacee is denied eligibility because of a failure to meet the length of occupancy requirements but cannot obtain comparable replacement housing within thirty percent (30%) of his or her gross monthly household income.

### **710.2.2 LAST RESORT HOUSING METHODS**

ORE shall have broad latitude in implementing this section provided it does so on a reasonable and cost-effective basis. The methods of providing last resort housing assistance may include, but are not limited to:

1. A replacement housing payment or rental replacement housing payment in excess of the statutory limit
2. The rehabilitation or reconstruction of an existing dwelling, including modifications or additions to adapt the dwelling for use by persons with disabilities. This provision may not be used if barrier-free comparables are available on the market at a lower cost to MDOT SHA
3. The construction of a new replacement dwelling
4. The moving and, if necessary, rehabilitation of the displacement dwelling
5. The purchase of land and/or a replacement dwelling by ORE for subsequent sale, exchange or lease to the displaced person at an affordable price. A contractual agreement shall be executed between the displacee and MDOT SHA prior to such purchase. Should the displaced person subsequently refuse this alternative after execution of the agreement, MDOT SHA shall be considered to have met its obligation to provide housing under this section
6. The change in occupancy status of the person as set forth in Section 710.2.4.

In providing comparable replacement housing under this section, the District ROW Office may utilize dwellings with dissimilar though not inferior features from the displacement dwelling such as reduced living area or number of rooms. However, the replacement must always be DS&S and be functionally equivalent in meeting the displacee's housing needs.

### **710.2.3 DIRECT PAYMENTS**

Payments made under the last resort housing provisions shall be paid directly to the displaced person unless the District ROW Office considers such a direct payment to be imprudent and not in the displacee's or the public's best interest. In such instances, the District ROW Office must fully explain its reason in writing for denying direct payment to the displaced person.

### **710.2.4 CHANGE OF STATUS**

Under these provisions, the District ROW Office must provide the displaced person with a dwelling that preserves the same occupancy status (owner or tenant) that existed prior to displacement. In extraordinary circumstances, the District ROW Office may provide a dwelling as replacement housing which would change the displacee's occupancy status. Such a change is allowable when:

1. Comparable replacement housing, with respect to status, is not available
2. Comparable replacement housing is available but at such exorbitant prices that it does not represent a cost-effective solution
3. The dwelling provided will allow the displacee to enjoy a similar life style in the replacement location.

#### **710.2.5 COOPERATIVE AGREEMENTS**

ORE may enter into agreements with any other governmental agency or with private individuals, firms, corporations or associations for services to provide last resort housing assistance. ORE should, to the greatest extent possible, also utilize the knowledge and expertise of Federal, State and local housing agencies to provide innovative and cost-effective housing solutions.

#### **710.2.6 ELIGIBLE AGENCY COSTS**

The District ROW Office may incur the following costs in providing last resort housing assistance:

1. The cost of acquiring replacement dwellings and/or dwelling sites including incidental expenses
2. The cost of moving and/or rehabilitating dwellings used as replacement housing
3. Site development costs
4. Architectural and engineering fees
5. Landscaping costs
6. New housing construction costs
7. Legal fees and expenses
8. Other direct or indirect costs necessary to provide a dwelling unit which is compatible with other dwellings in its neighborhood and is acceptable in the general real estate market.

All expenses incurred by ORE in providing last resort housing shall be fully documented in the case file to ensure the full Federal funding participation where applicable.

#### **710.3 LAST RESORT HOUSING PLAN**

##### **710.3.1 PLAN REQUIREMENTS**

Whenever the District ROW Office determines that last resort housing will be required, it must prepare a plan which defines the housing needs of the displaced person and examines the methods that may be used to provide

comparable replacement housing. The plan should make use of innovative and cost-effective approaches wherever possible, on a case-by-case basis and shall include:

1. A statement justifying the need for last resort housing
2. A detailed description of the displaced person's housing needs including any unique or unusual problems or requirements such as the need for barrier free or single level housing for medical reasons
3. A detailed analysis of the availability and cost of comparable replacement housing in the area
4. An explanation, where applicable, for any lack of comparable replacement housing in the area and a full analysis of the practicality and cost effectiveness of available alternate housing resources
5. A recommendation of the preferred housing solution with a projected time schedule and cost to the MDOT SHA.

The last resort housing plan shall be prepared by the ROW District Office and approved by the RPM of PRD prior to the initiation of any further effort to relocate the displacee.

#### **710.3.2 CONSULTATION**

ORE shall consult, as necessary, with HUD, Farmer's Home Administration or other appropriate agencies and the displacee throughout the development and implementation phases of the last resort housing plan.

#### **710.3.3 INSPECTION OF NEW CONSTRUCTION**

When the District ROW Office recommends and utilizes new construction to provide replacement housing, the relocation assistance counselor shall monitor the builder's progress to completion. A final DS&S inspection of the finished dwelling shall be made by the relocation assistance counselor and a written certification of acceptability shall be signed and placed in the case file.

#### **710.3.4 CONTRACTOR SELECTION**

Whenever MDOT SHA contracts directly to construct or renovate housing for use as a last resort housing solution, the selection of prime contractors or subcontractors shall be made on a nondiscriminatory basis in accordance with the requirements of COMAR and Title VI of the Civil Rights Act of 1964 and Executive Order 11246 and 11625.

If another State agency will take title to the property after the completion of housing construction, all contractual work must be accomplished under the applicable State procurement regulations.

Wherever possible, MDOT SHA shall encourage the use of qualified minority firms and small businesses located in the project area for the rehabilitation or construction work under the last resort housing provisions.

## **711 APPEALS**

### **711.1 GENERAL PROVISIONS**

#### **711.1.1 DISPLACED PERSON'S RIGHTS**

A displaced person has the right to appeal any unfavorable decision made by ORE regarding his or her relocation assistance eligibility or payment amount.

An explanation of this right must be given to the displacee in writing at the earliest opportunity and should be verbally reinforced by ORE staff during the relocation process. ORE has established these procedures for handling appeals in a prompt and equitable manner and the final determination of any hearing shall be presented to the aggrieved person in writing.

#### **711.1.2 APPEAL PREPARATION**

Whenever a displaced person expresses dissatisfaction with an eligibility determination or relocation payment amount, the District ROW Office shall personally advise the displaced person of his or her rights and the procedures for filing an appeal. When circumstances prevent personal contact, a written explanation must be sent to the displacee by certified mail.

The relocation assistance counselor shall assist the person, if requested, in preparing the written appeal and shall furnish the person with ORE forms applicable for that purpose; however, appeals need not be written on official forms to be considered valid.

The displaced person shall be given the opportunity to inspect and copy all pertinent information or material from the case file in support of the appeal, subject to applicable freedom of information regulations.

The displaced person has the right to legal counsel or other representation during the preparation and hearing of his or her appeal. Such assistance

shall be at the displacee's own expense.

### **711.1.3 TIME LIMITATIONS**

An appeal must be submitted in writing within sixty (60) calendar days from the date that the displaced person receives written notification of the denial of eligibility for, or amount of a relocation assistance payment or claim. The District ROW Office shall inform the displaced person of this time limitation in writing at the earliest opportunity.

Upon receiving an appeal, the District ROW Office shall forward the request to the ORE Director or his or her designee for the prompt scheduling of a hearing.

## **711.2 APPEAL PROCEDURES**

### **711.2.1 FIRST LEVEL APPEAL**

The first level appeal hearing shall be presented to the ORE Director or his or her designated representative via written appeal or electronic communication with the assistance of the relocation assistance counselor as needed.

The ORE Director shall make a determination or schedule a hearing with the appellant. The ORE Director shall review all relocation data in the case file, as well as the dissatisfied displacee's written appeal. The ORE Director may also question other ORE staff having knowledge or experience with the case to be fully acquainted with the appellant's situation.

During the hearing, the displaced person or his or her representative shall be given the opportunity to explain the basis for their appeal of ORE's original decision and present their solutions or request further action by ORE.

Following the appeal, if a hearing is held, the ORE Director shall consider all the testimony and render a written decision to the displacee within a reasonable period of time. If a hearing was not held but a determination was rendered, a written explanation shall be provided to the appellant. All decisions must be consistent with current applicable relocation assistance regulations and procedures. Any change in payment eligibility or amount as a result of the hearing shall be fully explained in the case file.

If the appeal decision is adverse to the displaced person's position, the ORE Director shall inform the displacee of the right to a second level of

appeal. The displaced person has thirty (30) days after receipt of the first level decision in which to file a second level appeal. The displacee shall be informed of this limitation in writing as part of the decision.

#### **711.2.2 SECOND LEVEL APPEAL**

The displaced person's request for a second level appeal hearing must be in writing and should contain any additional facts or concerns resulting from the first hearing which the displacee feels are pertinent.

The second level appeal shall be presided over by the Deputy Administrator of MDOT SHA or his or her designated representative.

The procedures for scheduling, preparing and conducting the second level appeal are the same as those for the first level appeal. A written explanation of the decision resulting from the second level hearing shall be provided by the Deputy Administrator to the displaced person and the case file shall be further documented.

#### **711.2.3 JUDICIAL REVIEW**

If MDOT SHA's position remains adverse to the displaced person following the second appeal, the Deputy Administrator shall inform the displacee in writing of his or her right to seek judicial review of the claim through the Circuit Court System of Maryland.

#### **712 PUBLIC LAW 105-117**

On November 21, 1997, President William J. Clinton signed Public Law 105-117, amending the Uniform Relocation Assistance and Real Property Acquisition Policies Act, otherwise known as the Uniform Act. The law became effective on the same day that it was signed.

Public Law 105-117 provides that a person who is an alien and is not lawfully present in the United States shall not be eligible for relocation payments or other assistance under the Uniform Act. It also directed any State displacing agency that utilizes Federal funds in its projects to implement procedures for compliance with the 1997 amendments, to safeguard that funding.

MDOT SHA has complied with the provisions of Public Law 105-117 in the following manner:

1. By inserting an explanation of Public Law 105-117 and its impacts in each copy of RELOCATION ASSISTANCE: YOUR RIGHTS

AND BENEFITS. This informational brochure is provided by ORE's staff to every displaced person at their initial relocation assistance interview

2. By having the displaced individual, head of household or business owner complete a written certification that attests to the citizenship or alien status of the person displaced
3. By including the statement "I further certify that I am a United States Citizen, or that I am an alien lawfully present in the United States, as defined by the provisions of Public Law 105-117" to all relocation claim forms that are signed by the displaced person prior to payment
4. By obtaining verification from the Immigration and Naturalization Service in cases where ORE has reason to believe that a person to be displaced is an alien who is not lawfully present in the United States.

**OFFICE OF REAL ESTATE  
OPERATIONAL GUIDELINES  
CHAPTER 8  
PROPERTY SALES AND RENTALS**

**CHAPTER 8**  
**PROPERTY SALES AND RENTALS**

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## **800 PURPOSE**

This chapter is devoted to the establishment of criteria and procedures that govern the property management function in ORE. It is not intended as a detailed guide for instruction in the property management process but as an overall administrative guideline.

## **801 POLICY**

ORE will adhere to all applicable State and Federal laws and regulations governing the property management process.

When land and/or improvements are acquired that may not be immediately needed for a highway project, it is PAM's dual mission to effectively manage and to dispose of these holdings at the appropriate time.

### **801.1 NOTIFICATION OF SALES TO STATE DEPARTMENT OF ASSESSMENT AND TAXATION**

The following paragraph shall be added to the bid forms for all out-conveyances from MDOT SHA properties and it shall also to be added to the cover letter signed by the grantee at settlement acknowledging receipt of the deed to ensure properties sold by MDOT SHA are returned to the tax rolls in a timely manner:

*“Grantor, not later than 7 days after settlement, shall send written notice of the transfer to the State Supervisor of Real Property Assessments, in order that the property be promptly restored to the real property tax rolls. Grantee acknowledges its liability for payment of real property taxes from the date of settlement and agrees to record the deed in the County Land Records not later than 30 days after settlement. The terms of this paragraph shall survive the execution of the deed and shall not merge thereinto.”*

## **802 EXTRA LAND INVENTORY**

PAM maintains records of MDOT SHA's extra land. Extra land is defined as real property interests owned by MDOT SHA that lies outside of the ROW. Excess land is defined as extra land that has been determined by MDOT SHA that it could be disposed of. PAM shall maintain records of MDOT SHA's extra or excess land that are in the sales process and of those properties that have been sold.

### **802.1 EXTRA LAND AND IMPROVEMENTS**

PAM maintains the MDOT SHA's inventory of extra land and

improvements acquired by the ORE for highway rights of way. The District ROW Offices through PRD shall notify PAM of the acquisition of extra land and/or whole takes. A copy of the recorded deed shall be forwarded to PAM upon settlement.

## **802.2 RENTAL INVENTORY**

PAM maintains an inventory of any land or improvements that MDOT SHA leases to others. The purpose of this rental inventory is to have information on both the property and the tenants.

## **802.3 INVENTORY RECORDS**

Upon receipt of a Real Estate Inventory Form or a Notification of Possession of Improvements, the necessary information shall be entered into the Extra Land inventory in OREMS. The following procedures shall be used to create extra land inventory records for MDOT SHA owned land lying outside of the ROW:

1. At the time of acquisition, the acquiring District ROW Office shall accurately complete either the Real Estate Inventory form (Form 91) or a Notification of Possession of Improvements form. In addition to including the form as part of the option assembly, a copy shall be submitted directly to the PAM
2. Upon receipt of the appropriate form, the descriptive information shall be entered into OREMS
3. At the same time the electronic record is created, a hard copy file should be prepared and maintained by PAM. All appropriate documentation and correspondence shall be included as part of the hard copy file
4. The status of all parcels entered into OREMS for the first time shall be classified as "Extra Land" or "Future ROW"
5. PAM shall review the status of each parcel in the database at a minimum every two years
6. During the bi-annual review process, if a parcel is found to no longer lie adjacent to a project either in construction, in the Highway Needs Inventory or in the CTP, the status shall be classified as "Extra Land"
7. When ROW is being considered for un-incorporation and sale, the information pertaining to that ROW shall be entered into OREMS as extra land
8. When extra land parcels are incorporated into the ROW, they shall be classified as "ROW" in OREMS and shall no longer be considered part of the extra land inventory.

## **803 MAINTENANCE OF REAL ESTATE ASSETS**

### **803.1 PHYSICAL POSSESSION AND INSPECTION**

The acquiring District ROW Office is responsible for obtaining the physical possession of improvements upon settlement with the property owner and forwarding the Notification of Possession of Improvements form to PRD. The Notification of Possession of Improvements should include an inventory of fixtures and the acquiring RPS's certification. The purpose of the inventory is to assist the PAM in maintaining their property inventory.

The RPS from the acquiring District ROW Office shall inspect the property when vacated by the former property owner to ensure compliance with the provisions of the option contract regarding the condition of the improvements and the fixtures. If items of value are missing, they should be listed on the "Notification of Possession of Improvements" form and OAG should be notified by the acquiring District ROW Office to recover their value through legal means, if necessary.

### **803.2 MAINTENANCE OF FUTURE RIGHT OF WAY AND EXTRA LAND**

The maintenance of future ROW and extra land shall be coordinated between the District Engineer's Office and PAM. When a complaint is received, or an observation is made by any person that an objectionable or dangerous condition exists on MDOT SHA owned property, an investigation shall be conducted to determine the corrective action to be taken.

### **803.3 PERFORMANCE OF MAINTENANCE**

An independent contractor may be contracted to perform maintenance in accordance with the State of Maryland procurement regulations. The District Office of Maintenance staff may also perform maintenance on future ROW and extra land. When the District maintenance staff performs maintenance, the District Engineer may notify PAM of the cost of performing such maintenance work and receives approval from PAM to charge the work to its special account if the ROW Project has been closed or to the active ROW project.

### **803.4 WINTERIZATION**

At the time of acquisition, the acquiring District ROW Office may request the District Engineer to winterize the property.

**803.5 PROTECTION AGAINST VANDALISM**

The acquiring District ROW Office may request the District Engineer to secure the improvements that are not immediately rented and notify the local police authority to keep watch on vacant improvements. If a number of vacant improvements are near each other or if an improvement is of historic significance, precautionary measures should be taken to protect against vandalism.

**803.6 RODENT AND INSECT INFESTATION CONTROL**

Vacant properties shall be maintained in such a manner as to prevent and/or correct rodent or insect infestations. Rodent and insect infestations shall be investigated by PAM, the District ROW Office or the District Engineer's Office. If the condition warrants action, a pest control company may be contracted to perform the necessary work in accordance with procurement regulations.

The purchaser of an improvement as specified in the bidding form shall be responsible for rodent control.

**804 DEMOLITION OF IMPROVEMENTS**

ORE has an obligation to the public to remove vacant improvements it owns that are of no further use for rental, sale or use by MDOT SHA. This is to prevent the development of objectionable appearance, dangerous condition or an attractive nuisance.

If an improvement must be demolished for safety reasons and the construction project is not imminent, ORE shall take the appropriate steps to demolish the improvement.

**804.1 DECISION TO DEMOLISH**

To promote the effective management of real estate improvements acquired for MDOT SHA, the RPM of the acquiring District ROW Office and the ORE Deputy Director may meet on site as soon as possession of an improvement is taken. At that meeting they are to determine the disposition to be made for the improvements, such as leasing, removal by demolition etc.

All improvements acquired on a construction project with a known Ad date shall not be considered for lease. If the improvement does not meet the standards of being DS&S, it should be demolished.

This entire process is the responsibility of the acquiring District ROW Office if the NTP for the construction project is imminent.

## **804.2 HAZARDOUS MATERIAL ASSESSMENT**

### **804.2.1 STUDY**

Before any improvements can be demolished, there must be a study conducted to determine if there are any hazardous material such as asbestos present. If the study indicates the presence of hazardous materials, it must be removed prior to the improvement being demolished.

### **804.2.2 REMOVAL**

The acquiring District ROW Office shall contract with a reputable contractor for the removal of the hazardous material in accordance with the State of Maryland's procurement regulations. A copy of the study shall be sent with the demolition specifications to prospective bidders for the demolition of the improvement.

## **804.3 DISPOSAL OF IMPROVEMENTS BY AUCTION, SEALED BID OR INFORMAL BID**

### **804.3.1 ADVERTISING**

Improvements may be advertised for sale by "removal and/or salvage" or for "demolition" once a week for two consecutive weeks in a newspaper of general circulation in the area where the property is located. For improvements being auctioned, the property shall be posted with an appropriate auction sign at least fifteen days prior to the date of auction.

### **804.3.2 BIDDING**

Individuals or contractors may place their bids either competitively at an auction, by sealed bid, or through an informal bid process. The highest qualified bidder shall be awarded the contract. In each case, the highest bidder must have a guarantee check (Certified or cashier's) for the amount specified at the time of auction or bid opening.

The successful bidder must sign a bid form, which requires him to remove the building in accordance with the specifications in the form. The purchase price for the improvements must be paid within three working days of the date of the auction or bid opening.

### **804.3.3 ACCEPTANCE OF BID**

The RPM of the acquiring District ROW Office or PAM handling the disposal action as described in Section 804.3.1 shall submit the result of

the auction, sealed bidding or informal bidding to the ORE Director or Deputy Director recommending acceptance or rejection of the bid.

#### **804.3.4 COMPLETION OF REMOVAL BY BIDDER**

If the ORE Director or Deputy Director accepts the bid, the successful bidder shall be notified in writing to contact the District Engineer having jurisdiction before proceeding with the removal of the improvement. The successful bidder should be further informed to notify the District Engineer upon completion of the work so an inspection can be made to ensure that work has been completed in accordance with the bid form. Upon receipt of a memo from the District Engineer that the purchaser has satisfactorily removed the improvement in accordance with the bid form specifications, PAM or the District ROW Office shall facilitate the release of the guarantee check.

#### **804.3.5 SALE PROHIBITED TO MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ADMINISTRATION EMPLOYEES**

Sale of improvements for removal and/or salvage is always prohibited to MDOT SHA employees and their immediate families.

#### **804.3.6 RECEIPT FOR PURCHASE FUNDS**

The District ROW Office or PAM shall turn over funds received for the purchase of improvements for removal to MDOT SHA. The appropriate office must receive a receipt from the Cashier's Office.

#### **804.3.7 REMOVAL BY ROAD CONTRACTOR**

The RPM of the acquiring District ROW Office may notify the Project Manager for the construction project or the District Engineer that he or she is unable to demolish of the improvements and request that the demolition be included in the scope of work for the construction project if the road construction is imminent.

#### **804.3.8 CHARGING OF DEMOLITION COSTS - ACTIVE OR CLOSED PROJECTS**

If the project is active, the RPM of the acquiring District ROW Office or PAM must charge the amount of the approved demolition bid to the appropriate project. If the project is closed, funds for payment of the demolition contractor should be obtained from a special account set up for that purpose.

### **804.3.9 WORK COMPLETION AND PAYMENT**

When PAM or the District ROW Office handling the demolition contract is notified by the District Engineer that the demolition contractor has completed the work in accordance with the specifications of the bidding form, it must process the contractor's approved bill for payment.

### **805 DISPOSAL OF EXCESS LAND**

ORE's practice and procedure to determine whether MDOT SHA's extra land could be disposed of is to conduct an internal clearance requiring all the engineering offices and the District Engineer with jurisdiction provide comments if the property could be disposed of.

The OHD Director or his or her designee is responsible for the final determination, through the Determination of Extra Land Memorandum, if the extra land could be disposed of. This memorandum declares the extra land to be termed excess land if it has been determined the property could be disposed of.

A standalone property is an excess land with enough size and features capable of development. MDOT Office of Real Estate and Economic Development (ORED) is responsible for the disposal of Standalone properties with support from PAM.

PAM shall be responsible for the disposal of non-standalone properties.

All disposal actions shall be in compliance with procedures and guidelines described in Section 805.1.

### **805.1 POLICY**

The disposal of any land that is excess to the needs of MDOT SHA shall be in accordance with the Maryland Annotated Code, Transportation Article, Section 8-309, the Code of Federal Regulations 23 CFR 710.409 and any other applicable state or federal laws or ORE Directives, MDOT SHA and Federal stewardship and oversight agreement, and MDOT policy on disposal actions.

### **805.2 TYPES OF DISPOSAL**

Excess land is disposed of to either another government agency, the former owner from whom MDOT SHA acquired it, or to the public. Sale of land to another government agency or the former owner is governed by law which defines the purchase price. Sale of land to the public is governed by law and is by either auction or negotiation. The requirements for land sales, auctions and negotiated sales are

enumerated in the Maryland Annotated Code, Transportation Article, Section 8-309.

**805.3 SCHEDULE OF ADMINISTRATIVE CHARGES**

The following Schedule of Administrative Charges and policy statements are to be followed as applicable:

- |    |  |   |
|----|--|---|
| 1. | Release of Snow Fence Easement   | \$ 500  |
| 2. | Release of Revertible Slope Easement   | \$ 500  |
| 3. | Sale of undevelopable land under Sections of 8-309   | FMV   |
| 4. | Replacement of deed at grantee's request   | \$1000  |
| 5. | Release of Perpetual Easement  | FMV   |
| 6. | Sale of developable land to former owner or public agencies shall comply with the requirements of Section 8-309. |   |
|    | a. Former Owner  | Within 5 years at Acquisition Cost.                       |
|    |  | More than 5 years at FMV.                                 |
|    | b. Public Agencies   | Acquisition Cost plus interest plus Administrative Costs. |

Where the proposed sale is to another state agency or political subdivision and extraordinary costs are encountered in the preparations (e.g. appraisal costs, survey costs) the agency or subdivisions will be asked to either perform the task at their own expense or reimburse MDOT SHA for the costs involved.

**805.4 UTILITY CUTOFFS UPON SALE OF EXCESS LAND**

To clarify responsibilities and ensure that all the appropriate utilities are notified when excess land is sold the following policy is adopted:

PAM is responsible for the sale of an excess land parcel and must confirm that all utilities are notified after settlement with the purchaser of the change in ownership.

As soon as the settlement is complete, PAM shall take whatever actions are necessary to cut-off or stop utility service in MDOT SHA's name.

Under extraordinary circumstances, such as below freezing temperatures, actions taken to ensure utilities are not damaged should be coordinated with the purchaser. ORE's obligation should cease upon settlement with purchaser.

**805.5 SALE TO STATE HIGHWAY ADMINISTRATION EMPLOYEE OR FAMILY**

Only under the following circumstances may disposal of excess land be made to a MDOT SHA employee or his or her immediate family (wife, husband, and children):

1. When such persons are the former owners.
2. In certain cases, when such persons are the adjoining owners.
3. When the property is publicly offered on the open market at a published price available to everyone and such persons tender the highest and best offer or at a public auction.

**805.6 DEED CONVEYANCES TO GOVERNMENT AGENCIES**

If a government agency acquires a parcel of land from MDOT SHA, the deed shall contain a reverter clause limiting its use as stated in the Maryland Annotated Code, Transportation Article, Section 8-309. The exception to this is if a government agency acquires the parcel by being the successful bidder in a public auction held after the former owner has failed to exercise his or her right to repurchase the parcel or is paying the full appraised market value of the property.

**805.7 FAILURE OF EFFORT TO SELL EXCESS LAND**

If all means to dispose of the excess land as enumerated in the Maryland Annotated Code, Transportation Article, Section 8-309 have been exhausted, PAM may, at its discretion, request the Deputy Administrator (Planning, Engineering, Real Estate and the Environment) or his/her designee to incorporate the parcel into the ROW.

**805.8 ACQUISITION OF ACCESS RIGHTS FOR LANDLOCKED PARCELS**

If it is deemed feasible to acquire access rights to landlocked parcels, PAM may request the RPM of the District ROW Office of jurisdiction to prepare an estimate of the cost and inquire the willingness of the adjoining owner to sell MDOT SHA a ROW through their property. This shall then be presented through the ORE Director, to the Administrator, requesting authority to purchase the necessary ROW to provide access to landlocked parcels.

**805.9 RECEIPT OF CHECKS FOR INITIAL DEPOSIT AND PURCHASE PAYMENT**

All checks shall be made payable to the MDOT SHA. They shall be handled in accordance with the existing MDOT SHA policy.

## 805.10 BREAK IN ACCESS CONTROL

Access controls to MDOT SHA's highways are typically restricted by the ROW Line of Through Highway or Denial of Vehicular Access designation shown on a ROW plat. The access controls are real property interests acquired by MDOT SHA for a construction project. ORE may dispose of access control rights if the District Engineer with authority and the MDOT SHA Administrator authorize the break in access control.

The break in access control shall be conducted in compliance with 23 CFR 710.403, Maryland Annotated Code, Transportation Article, 8-309 and other applicable Federal and State laws and regulations and ORE Directives. Further coordination may be required with FHWA as stipulated in the MDOT SHA's Stewardship and Oversight Agreement with FHWA.

PAM must receive the written authorization of the MDOT SHA Administrator before any action is taken. The issuance of the DELM by the OHD Director may not be required if disposal is only for a break in access control. If the disposal action involves excess land and a break in access control, a DELM must be issued by the OHD Director or his/her designee.

Upon receipt of the MDOT SHA's Administrator's approval for the break in access controls, PAM shall ensure that the following procedures are conducted:

1. The requesting entity for the access break shall prepare a plat in accordance with PSD's requirements. The plat must identify the location and limit of the access break
2. Obtain an appraisal to determine FMV for the access break as set forth in Chapter 5 and ORE Directives
3. Upon receipt of appraisal, PAM shall submit the appraisal report to ARD for review
4. Upon approval of the appraisal, PAM shall notify the requesting entity of the FMV of the access break
5. If an agreement is reached with the requesting entity, PAM shall send a bid form to the requesting entity for completion. The bid form shall state the agreed upon price and how the requesting entity intends to take title
6. The requesting entity must return the bid form to PAM, along with a down payment that has been determined by PAM
7. PAM shall request OAG to prepare a Break in Access Control Deed
8. PAM shall make all necessary steps and coordination necessary to secure the approval of the BPW
9. Upon receipt of the signed deed from the BPW, PAM shall

- schedule settlement with the requesting entity and obtain payment of the remaining balance of the agreed upon purchase price
10. The requesting entity is responsible for recordation of the deed.

#### **805.10.1 ADJUSTMENTS TO FAIR MARKET VALUE**

The FMV for break in access control must be based on the approved appraisal. The RPM of PAM has the flexibility to reach a negotiated settlement with the requesting entity subject to the approval of the BPW.

If as a condition of granting the break in access control, the District Engineer's Office responsible for access management requires offsite improvements to be constructed by the requesting entity and the improvements are directly related to the access break, then the RPM of PAM may consider offsetting the cost of these improvements if it was not addressed in the appraisal. The offsite improvements attributable to the access break are separate and distinct from the improvements required for a development determined from the outcome of a Traffic Impact Study. These are development costs and should not be considered in the adjustment of the FMV.

#### **805.10.2 WAIVER OF FAIR MARKET VALUE**

Waiver of FMV claimed by a requesting entity based on job creation and economic development should only be considered if there is a demonstrated public benefit based on social, environment or economic benefits. In such cases, the benefit must have a regional impact determined by the local planning department or a public agency performing a similar function. PAM shall be responsible for obtaining documentation from the public agency providing the evaluation.

PAM must obtain FHWA's authorization, as stipulated in the Stewardship and Oversight Agreement and ORE Directives, prior to entering into an agreement with the requesting entity.

#### **805.10.3 PUBLIC ROAD CONNECTION BY A LOCAL GOVERNMENT**

PAM may not be required to take any action for break in access control for a public road connection. There is no fee involved for a public road connection by local government if the District Engineer's Office responsible for access management determines that the road connection has a regional benefit. The public road connection described in this section must be on the local government's approved TIP.

## **806 OPTION CONVEYANCES**

### **806.1 POLICY**

The Annotated Code of Maryland, Transportation Article, Section 8-309 permits MDOT SHA to convey extra land to an adjacent property owner in total or partial consideration as part as a ROW transaction.

All option agreements approved by ORE requiring the conveyance of extra land to an option grantor should be processed in the following manner:

1. The negotiating District ROW Office RPS shall secure the option contract and order any plat or deed descriptions and extra land appraisals/approvals that may be needed
2. PRD shall review the option contract and secures approval from the ORE Director and/or OHD
3. Upon approval, PRD forwards the Option Assembly package to PAM includes: a copy of the option contract, Form 21, Plat, deed description if required and the approved appraisal with the appraisal review report. PAM shall order the conveyance deed and prepares the Action Agenda package for the Board of Public Works (BPW)
4. After approval by the BPW, the appropriate party settles the acquisition and the conveyance is completed.

Existing MDOT SHA policies determine all guidelines not specified by law.

## **807 RENTAL OF LAND AND IMPROVEMENTS**

The ORE Director/Deputy Director are responsible for developing policies for the rental of land and improvements. These policies shall be in accordance with existing federal, state, and local laws, including BPW Advisory No. 2006-3.

### **807.1 RENTAL POLICY**

ORE, with the approval of the BPW, may lease real property owned by the MDOT SHA within a reasonable period prior to the beginning of road construction or if the property is not needed for the project until it has been disposed of as described in Sections 805 and 807.3.

### **807.2 LEASING RESTRICTIONS**

Leases with MDOT SHA shall not consider race, color, religion, or sex. Previous owners and existing tenants may be given priority if approval is

granted by the ORE Director.  
Employees of SHA may not lease such property.

### **807.3 DETERMINATION TO LEASE A PROPERTY**

If arrangements to lease a property were not previously made, the ORE Director, upon knowledge that the “Notification of Possession of Improvements” or “Notification of Possession of Extra Land” has been received by PAM, shall determine if a property is to be rented. If the construction is not scheduled within the following 12-month period and the improvement meets normal standards of being DS&S, an improved property may be leased.

#### **807.3.1 LEASING OF PROPERTY FOR HUNTING PURPOSES**

ORE shall not lease any ROW, excess land, extra land or any other land for the purpose of allowing hunting on it. Nor will any clause be added to a lease to allow hunting on any land under its control.

### **807.4 RENTAL PROGRAM JURISDICTION**

PAM is responsible for the coordination of the program and compliance with the program policies and ORE Directives.

PAM is responsible for the leasing of MDOT SHA owned properties.

#### **807.4.1 GUIDANCE AND DIRECTION FOR THE RENTAL PROGRAM**

Guidance and direction for the rental program shall be provided by PAM.

### **807.5 RENTAL PROCEDURES**

#### **807.5.1 RENTAL RATES**

All rental rates are established by ARD or PAM and are reviewed and approved by ARD through the established process for determining the Economic Rental Rate. Consideration may be given to the following when establishing a rental rate for a property which differs from the Economic Rental Rate:

1. Area where property is located
2. Ability to expeditiously rent to prevent vandalism
3. Available comparable rentals on the market
4. Available tenants
5. General economic conditions
6. ORE standard lease terms
7. Other rental rates for comparable properties.

## **807.5.2 ADVERTISING**

Any existing applications to rent on file with PAM are to be reviewed to determine if there are satisfactory prospective tenants for the rental of the property. If so, the prospective tenants should be contacted and notified of the availability of the property for rent. If there are no prospective tenants, PAM should post on the property with a rental sign and advertise in a local newspaper in that area of the property's availability for rent.

## **807.5.3 RENTAL PERIODS**

### **807.5.3.1 PROPERTY WITHIN THE RIGHT OF WAY ON ACTIVE PROJECTS**

Property within the ROW on active projects shall be leased on a 30-day basis. Longer terms must have prior approval in accordance with ORE Directives.

### **807.5.3.2 PROPERTY LOCATED OUTSIDE OF THE RIGHT OF WAY OR ON INACTIVE PROJECTS**

Property located outside of the ROW or on inactive projects may be leased for longer periods as determined by the ORE Director/Deputy Director in accordance with ORE Directives and Section 807.

## **807.5.4 APPLICATIONS TO RENT**

Applications to rent from interested parties should be kept on record in the event a vacancy occurs.

If no applications are on record for a property, then appropriate advertisements for tenant are to be made in accordance with ORE Directives and as described in Section 807.5.2.

All applications to rent are to be vetted in accordance with the ORE Directives before being accepted for a lease.

Arrangements are made to provide all prospective tenants with the opportunity to view the rental property. At this time a rental application should be obtained from the prospective tenants and they should also be informed of the rental rate and the terms of the lease.

## **807.6 LEASE AGREEMENT AND SECURITY DEPOSIT**

When a prospective tenant leases a property, they are required to sign two (2) copies of a Standard Lease Agreement as well as the Rental

Information Sheet (SHA Form 42) which should be filled out completely. Areas which do not apply should have a "N/A" placed in them. The tenant keeps one copy of the lease for his records. PAM must keep the other copy for their records with a copy of the SHA Form 42 and copies of the deposit slips further described in this section.

For residential properties, a security deposit equivalent to one month's rent as well as one month's rent in advance should be paid by the tenant. The tenant should be given a copy of the SHA Form 42 in return for this payment as a receipt and a date to take possession of the property. All property located within the ROW line of an active project shall be leased "as is" on a 30-day basis. Leases for a longer term must be approved by the ORE Director prior to the tenant taking possession of the property. Any property located outside of the ROW lines of any MDOT SHA project may be leased for longer periods. The duration of these leases shall be determined by the ORE Director after a recommendation from the RPM of PAM.

The security deposit, the first month's rent and a copy of the MDOT SHA Form 42 shall be submitted to OOF for processing.

The new tenants are then sent a letter of acknowledgement by the RPS responsible for renting the property stating that their rent and security deposit have been deposited and that they shall be responsible for ensuring that their rental payments are received by MDOT SHA by the first of each month (or in the case of annual rentals by a specified date). The tenants should also be given any other information that must be included with their payment to ensure it being property credited. The tenants should also be informed that the lease will be presented to the Deputy Administrator for his or her execution and that at the end of one year if the tenant is still renting the property, a new lease shall be obtained and sent to the BPW for its approval.

#### **807.6.1 LEASE AGREEMENT APPROVAL**

All lease agreements should be sent to OAG for approval for legal sufficiency and should be returned to PAM. PAM updates OREMS and is responsible for having either the Deputy Administrator sign the lease or present it to the BPW for their approval. PAM forwards a copy of the signed and approved lease back to the tenant.

#### **807.7 NOTIFICATION OF INTENTION TO VACATE**

The tenants may continue to occupy the property until they provide PAM with a 30-day notification of their intention to vacate the property and terminate their lease. If a highway construction is imminent, PAM shall provide the tenant a 30-day notice of termination of lease on MDOT SHA

Form 63.13-48. A similar notification should be provided to the tenant by PAM for an infraction of the terms of the lease.

## **807.8 CANCELLATION OF RENTAL AGREEMENT**

When any of the three vacation scenarios occur as described in Section 807.7, PAM should notification to OOF. This should ensure that inaccurate delinquency notices on the property will not be circulated and accurate records are maintained.

## **807.9 INSPECTION OF LEASED DWELLINGS**

### **807.9.1 INSPECTION DURING TENANCY**

The properties shall be inspected at least one time during any 365-day period. This inspection shall include both the exterior and interior of the premises. The completed, signed and dated ORE Rental Inspection Form shall be kept in PAM's rental file. Unimproved rental properties must also be inspected once a year.

### **807.9.2 INSPECTION AFTER TENANCY**

When the tenants vacate, the RPS responsible for renting the property and the tenants should inspect the improvement together. The tenant's keys should be returned to PAM and the dwelling kept secure.

## **807.10 LEASE TERMS AND COLLECTION OF RENTS**

1. All rent is due as of the date indicated on the lease
2. If the rent due is not collected within 5 days of the date it is due, the tenant should be assessed a 5% late fee based on the rental amount. A letter should be sent by the OOF informing the tenant(s) of the assessment of a late fee
3. If payment is not received within 15 days of the date it is due, a letter should be sent by the OOF warning the tenant that if payment is not received by the 30<sup>th</sup> day MDOT SHA shall terminate the lease and begin eviction proceedings, if necessary
4. If payment is not received within 30 days, OAG shall be notified to terminate the lease and begin eviction proceedings, if necessary
5. If there are extraordinary circumstances ORE, OOF and OAG may waive these procedures.

A letter is to be sent to delinquent MDOT SHA tenant explaining the rental policy. This letter should be signed by the RPM of PAM and the contact should be the RPS managing the lease. The letter shall include the following:

*Pursuant to the Rental Lease issued and signed by MDOT SHA and you, the tenant, you have the responsibility to make your monthly/yearly rental payment by the due date noted on page one. Effective immediately, if your payment is not received in the Cashier's Office by the due date, a late fee of 5% of your rental amount will be added to the balance.*

*According to the Lease, this penalty for late payment shall be due and payable immediately in addition to the monthly/yearly rental payment. Furthermore, failure to pay required rent with the late fee will constitute a breach of this lease and will be considered a default hereunder. At that time, your case will be forwarded to MDOT SHA's Legal Department.*

*To prevent the additional fees and possible termination of your lease, please remit your rent payment by the due date. If you have any questions or need additional information, please contact \_\_\_\_\_ at \_\_\_\_\_.*

## **807.11 PROCEDURE FOR HANDLING DELINQUENT RENTAL ACCOUNTS**

### **807.11.1 FIRST DELINQUENT RENTAL NOTICE**

On the 6<sup>th</sup> of each month, the ORE Deputy Director receives an accounting of all delinquent rental accounts. The ORE Deputy Director reviews the accounting and may contact the RPM of PAM if the conditions warrant.

### **807.11.2 SECOND DELINQUENT RENTAL NOTICE**

On or around the 13<sup>th</sup> of each month, the OOF sends a list of delinquent rentals to PAM. PAM is responsible for addressing each delinquency and for sending the ORE Deputy Director documentation of its actions to address the delinquency.

### **807.11.3 WARNING TO DELINQUENT TENANT**

For those accounts where the aggregate amount of the delinquency exceeds one month's rent, a letter should be written to the tenant(s) calling the delinquency to their attention and informing them that if their account is not brought up to date, court action will be taken to collect the unpaid rent as described in Section 807.10 and if necessary, evict the tenant(s).

#### **807.11.4 EVICTION PROCEEDINGS**

In the event a tenant does not bring his or her rental account to date within 30 days after the receipt of the letter described in Sections 807.10 and 807.11.3, eviction proceedings shall be initiated by PAM with the guidance of OAG. Copies of all documents produced during the eviction process should be sent to OAG.

##### **807.11.4.1 OFFICE OF COUNSEL**

When a judgment for eviction has been obtained and if the tenant has made no attempt to cooperate in paying the rent arrears due, a letter should be written to the OAG requesting the eviction of the tenant from the property.

##### **807.11.4.2 COLLECTION AGENCY**

If a judgment is obtained and the tenants are evicted or if the tenants vacate the property owing more than one month's rent, it is the responsibility of OOF to write a memorandum to the Central Collection Agency to collect the outstanding amount owed by the tenant.

#### **807.12 PROCEDURE FOR HANDLING MAJOR REPAIRS & REPLACEMENTS**

Three (3) bids shall be solicited from qualified vendors in the event of a need for repairs in a leased property. For emergencies, such as a broken furnace during the winter season, the RPM of PAM may permit the tenant to contact a vendor to perform the emergency repair and submit the invoice to PAM for payment.

##### **807.12.1 RESPONSIBILITY FOR REPAIRS**

PAM is responsible for making repairs upon request of the tenant. During the annual inspection of the leased property, the assigned RPS shall ensure that all fixtures are in good working order and any defects be brought to the attention of the RPM for PAM to determine the appropriate corrective measures, if warranted.

##### **807.12.2 INVESTIGATION TO DETERMINE FEASIBILITY**

At the discretion of the RPM of PAM, investigation of the feasibility to make repairs may be deferred to the tenant. If PAM conducts the investigation, it should do so in coordination with the tenant.

**807.12.3 COST ESTIMATES FOR MAJOR REPAIR**

Cost estimates for repairs may be obtained by soliciting for bids from qualified vendors. The vendor with the lowest bid amount shall be selected to perform the repairs in accordance with State of Maryland procurement regulations.

**807.12.4 NOTICE TO PROCEED WITH REPAIR**

The successful vendor shall be notified by any form of written communication to proceed with the repair as bid. The assigned RPS shall be responsible for issuing the NTP to the vendor.

**807.12.5 RENT INCREASE AFTER MAJOR REPAIR**

The rent of the property may be increased after a major repair at the discretion of the RPM of PAM. A market rent study should be conducted to ensure that the actual rent being paid by the tenant is comparable to the fair market rent for similar properties in the area.

**807.12.6 COST OF REPAIR EXCEEDS EXPECTED RETURN IN RENT**

The RPM of PAM has the discretion to decide if it is financially prudent and in ORE's best interest to proceed with such a repair of the leased property. If the construction of a project is imminent, RPM shall not proceed with such repairs and must take appropriate measures to ensure the property is available for the construction project.

**808 HANDLING UNUSUAL CONDITIONS IN LEASE AGREEMENTS**

Unusual conditions in a lease agreement must be handled by ensuring a descriptive clause for the unique circumstance effectively protects MDOT SHA's interest and is in accordance with all the applicable Federal and State laws and regulations. In addition, any non-standard term shall be submitted to OAG for review and approval for legal sufficiency.

**808.1 ONE DOLLAR PER ANNUM AND/OR ONE DOLLAR PER MONTH LEASE**

Leases with this term are typical grandfathered agreements with public agencies where the property is being used for a public purpose. Any lease with financial terms being proposed to be less than fair market rent shall be reviewed by the ORE Director and forwarded to FHWA for approval in accordance with the stewardship and oversight agreement.

**808.2 SUBLEASING**

Subleasing of MDOT SHA property by tenants shall not be permitted. If PAM becomes aware of this violation, the RPM shall take appropriate and pertinent corrective measures as described in Sections 807.7, 807.8 and 807.10.

**808.3 LONG-TERM LEASE**

Leases with terms exceeding one (1) year shall be approved by the BPW.

**808.4 OTHER LEASES WITH UNUSUAL CONDITIONS**

Lease agreement that require non-standard conditions be addressed shall be submitted to OAG develop the appropriate language that protects MDOT SHA's interest and complies with all applicable Federal and State laws and regulations and ORE Directives. The lease agreement must be approved by OAG for form and legal sufficiency.

**809 AIRSPACE AND RIGHT OF WAY USE AGREEMENTS**

**809.1 POLICY**

Airspace and ROW Use agreements shall be entered by MDOT SHA in accordance with 23 CFR 710.403, 23 CFR 710.405, Maryland Annotated Code, Transportation Article, Section 8-309 and other applicable Federal and State laws and regulations and ORE Directives.

**809.2 REQUIREMENTS**

Lease/rental rates shall be established at the current fair market rent by analyzing rental rates on similar properties in comparable areas. The rental rate shall reflect considerations such as the location of the premises, the quality of the improvements, competition and the terms of the lease. The use of AD staff can be useful in establishing fair market rent.

A rental file shall be established to contain, at a minimum, the recommendation to lease and approval of the rental application and a signature copy of the lease agreement. The file shall be assigned the ROW acquisition Item Number. All active lease agreements shall be managed by PAM and maintained in OREMS.

Title VI assurance requirements shall be made a condition of all leases. All leases, airspace and ROW Use agreements on property acquired

with Federal funds at less than market rent must be approved by FHWA. Each agreement/lease must contain:

1. Provision to prohibit the transfer, assignment, or conveyance of the airspace/lease rights to another party without prior approval with FHWA concurrence on Interstates
2. Provision to prohibit the transfer, assignment, or conveyance of the airspace
3. Provision to revoke the agreement if the airspace or ROW use facility ceases to be used or is abandoned or becomes necessary for highway purposes at no cost to MDOT SHA and FHWA
4. Provision to revoke the agreement if the terms of the lease are breached and such breach is not corrected within 60 days after written notice of noncompliance has been given. In the event the agreement is revoked, MDOT SHA may request the removal of the facility occupying the airspace/lease. The removal shall be accomplished by the responsible party in a manner prescribed by the ORE at no cost to MDOT SHA or FHWA
5. Provision for termination of the agreement and the conditions under which MDOT SHA should accept or exercise them
6. Provision to allow MDOT SHA and authorized FHWA representatives to enter the airspace/lease facility for inspection, maintenance, or reconstruction of the highway facility when necessary. The manner of when and how these inspections are to be made should be specified in the airspace agreement
7. Provision that the facility to occupy the airspace/lease shall be maintained to ensure that the structures and the area within the highway ROW boundaries shall protect the highway's safety and appearance and that such maintenance will cause no unreasonable interference with highway use
8. Provisions ensuring that the airspace, ROW user or lessee shall be responsible for any resulting hazardous waste contamination without liability to MDOT SHA and FHWA
9. Provisions to ensure full understanding that the ROW user or or lessee shall not qualify for relocation benefits under the Uniform Act.

**OFFICE OF REAL ESTATE**  
**OPERATIONAL GUIDELINES**  
**CHAPTER 9**  
**ROAD TRANSFER AND ROAD CONVEYANCES**

**CHAPTER 9**  
**ROAD TRANSFER/ROAD CONVEYANCES**

	<b>SECTION</b>
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**900 PURPOSE**

This chapter is devoted to the establishment of criteria and procedures that govern the overall road transfer function. It is not intended as a detailed guide for instruction in the road transfer process but as an overall administrative guideline.

**901 POLICY**

ORE shall adhere to all applicable State and Federal laws and regulations governing the road transfer agreement (RTA) and conveyance process.

Roads shall only be transferred upon mutual agreement between MDOT SHA and the local political subdivisions.

The agreement process defines a leadership role for ORE in the road transfer and conveyance process.

**902 LAW**

The RTA and conveyance process are governed by Section 8-304 of the Transportation Article, Annotated Code of Maryland.

Under this article, road transfers occur because of a mutual desire between the State and a county or local municipality to change the jurisdictional control of a roadway(s) because of a change in its functional nature or when new construction warrants such changes. The process may be reciprocal, (i.e. State to County; County to State, etc.) involving the exchange of roads. The law also permits MDOT SHA to be the sole grantee.

The road transfer and conveyance process reduces MDOT SHA's maintenance costs and liability by conveying roadway segments that no longer serve the State's highway system.

**903 TERMINOLOGY**

The term road transfer refers to the transfer of maintenance responsibilities on a roadway segment to a local political subdivision or from a local political subdivision to MDOT SHA.

The term road conveyance refers to the process and/or legal instrument by which underlying ownership and all real property rights of, or to the roadway or roadway segment are conveyed to the local political subdivision after approval by the BPW.

**ROAD TRANSFER PROCEDURES – THE AGREEMENT PHASE**

It is the responsibility of the District Engineer to identify the road segment, contact the local jurisdiction, and determine the conditions under which a road transfers would be made. The District Engineer is also responsible for forwarding requests for a road transfer to PAM's Road Conveyance Team.

The Road Conveyance Team shall request OPPE's Data Services Engineering Division (DSED) to address State route numbering re-assignment or revisions for the roadway segment intended to be transferred. Route numbering assignments are the responsibility of DSED.

There are other engineering offices that could also initiate a road transfer, however it is advisable that the District Engineer's Office be consulted prior to the Road Conveyance Team beginning processing the request.

The following processes and procedures should be followed in the development and execution of a RTA:

1. In selecting potential roadway segment to be transferred from the MDOT SHA highway system, the Road Transfer Study document should always be used as a guide
2. During the project planning process, projects in the development and evaluation phase with roadway segments for possible transfer should be identified following the alternatives meeting
3. Major projects under construction should be researched by the OPPE's Program Development Division (PDD) to determine if any prior road transfer commitments have been made by MDOT SHA to local political subdivisions. If such a commitment was made, PDD should summarize its findings and prepare a recommendation to the District Engineer. It is the responsibility of the District Engineer to initiate the road transfer by requesting the Road Conveyance Team to begin the process
4. The Road Conveyance Team should be represented on the Agreements Committee chaired by the OPPE Director or his designee. All agreements or Memorandum of Understanding (MOU) should be provided to the Road Conveyance Team by the Agreements Coordinator as part of MDOT SHA's review process. All agreements should be reviewed to determine whether they contain a road transfer component. For agreements having road transfer commitments, the appropriate RTA would be developed and forwarded to the both District Engineer having jurisdiction and the OPPE Director. After identifying potential road transfer

candidates from the four (4) major sources listed, the District Engineer should forward the road transfer request to the Road Conveyance Team for processing.

**905 THE ENGINEERING CLEARANCE**

The Road Conveyance Team shall review proposed road transfer and prepare maps/exhibits that depict the roadway segment and provide a general description of the transaction proposed. The proposal must be sent by the Road Conveyance Team to the appropriate engineering divisions for concurrence (i.e. to proceed with the road transfer). This process is known as the engineering clearance review.

DSED must review the proposed transfers for route number logic, terminus and roadway segment length.

When concurrences to the transfer are received, the Road Conveyance Team shall proceed with the preparation of the RTA.

If conflicting or dissenting comments to the road transfer are received, the Road Conveyance Team should refer the matter to the OPPE Director, his or her designee, and the District Engineer having jurisdiction for resolution. They should decide whether to continue the transfer process, modify the proposed transfer or discontinue it. If the transfer is modified or discontinued, the Road Conveyance Team shall notify all parties involved accordingly.

**906 EXISTING RIGHT OF WAY RESEARCH**

The Road Conveyance Team shall determine MDOT SHA's existing ROW or real property rights. This can either be performed by the RPS on the Road Conveyance Team or by R&R. Generally, the ROW plat should contain information of existing MDOT SHA's acquisition deeds. In the absence of plats, written documentation shall be made as to the existing rights of way claimed by MDOT SHA.

**907 ROAD TRANSFER AGREEMENT PREPARATION**

When concurring comments are received, an RTA shall be developed by the Road Conveyance Team. A draft of the RTA should be sent to the proposed grantee and the District Engineer for review before it is sent to OAG. This ensures that disputes or other concerns are worked out before the RTA is sent to OAG. When the draft RTA is acceptable to all the parties, the agreement shall be reviewed by OAG for form and legal sufficiency. If approved, OAG executes two (2) copies of the RTA and return to the Road Conveyance Team. The agreement should include an

exhibit or plat that depicts the proposed roadway segment to be transferred:

1. The Road Conveyance Team should forward a set of plats, if any, to the District Engineer for his or her comments and identification of the exact limits of the roadway segment and adjoining land (spike strips) to be transferred or conveyed
2. The District Engineer should submit to the Road Conveyance Team a plat or complete set of plats identifying the limits of the proposed transfer.

The Road Conveyance Team sends the RTA directly to the grantee to sign. In some cases, the RTA may be sent to the District Engineer's Office to assist in obtaining the local political subdivision grantee's signature(s). It is advisable to have 2 copies of the RTA signed to provide both MDOT SHA and the grantee an original executed document for their records.

The RTA should be returned to the Road Conveyance Team to obtain the signature of the RPM of PAM and recommending to the OPPE Director to approve and execute the agreement. The transmittal to the OPPE Director should include the signed RTA and a Memorandum of Action (MOA).

**908**

## **PREPARATION AND DISTRIBUTION OF THE MEMORANDUM OF ACTION**

The Road Conveyance Team shall prepare a MOA for the OPPE Director to initial and date simultaneously with the execution of the RTA. The MOA shall be circulated to notify all interested parties, both internally (same divisions the clearance was sent to) and externally (the grantee), of the jurisdictional change of a road or road segments. The MOA shall state the detailed description of the road(s) exactly the way it was stated in the RTA. DSED shall be given a copy of the MOA to close their file.

The MOA should include a statement as to the effective date of transfer of road maintenance to the political subdivision. More detailed conditions of the road transfer are specifically set forth in the provisions of the RTA. This constitutes the completion of the agreement phase of the road transfer process and the Road Conveyance Team should begin process of conveying the roadway segment by deed.

The road transfer information must be entered into OREMS as the work proceeds including the conveyance process.

**909 ROAD TRANSFER PROCEDURES - THE DEED PHASE**

The Road Conveyance Team shall send a Request for a Conveyance Plat and/or Legal Description to PSD. This request should demarcate plats, or written documentation in place thereof, copies of acquisition deeds, a copy of the executed RTA/MOA and a location map. PSD may use this information to prepare descriptions of the roadbeds.

1. PSD may conduct an on-site review of the roadways and areas to be conveyed
2. PSD shall forward the plats with written descriptions, if required, to the Road Conveyance Team who will prepare the necessary deed of conveyance.

**910 ROAD CONVEYANCE DEED PREPARATION**

The Road Conveyance Team shall proceed with the preparation of the Road Conveyance Deed upon receipt of the plat(s) and/or legal description from PSD.

1. The Road Conveyance Team prepares the deed and forwards it to OAG for review and signature upon approval
2. After the deed is signed by OAG, it is signed by the ORE Director and the MDOT SHA's Administrator. The Administrator's signature is always notarized.

**911 BOARD OF PUBLIC WORKS APPROVAL**

The Road Conveyance Deed along with an appropriate assembly shall be sent to the BPW for approval.

1. The deed should be placed on the agenda of the BPW via MDOT's ORED
2. The presentation of the deed to the BPW is the responsibility of ORE. Upon approval by the BPW, the deed is signed.

**912 DEED RECORDATION PHASE**

The Road Conveyance Team shall take the fully approved and executed deed to the appropriate county for recordation in its Land Records Office. A State of Maryland Land Intake Sheet must be completed and filed with the deed. Within the intake sheet, the RPS recording the deed should list his or her name as the contact person with all the pertinent information completed so the deed could be returned by the Land Records Office to

PAM.

Upon receipt of the recorded deed, the responsible RPS shall distribute the deed as follows:

1. The original recorded deed should be sent to the grantee
2. A copy of the recorded deed should be sent to the District Engineer's Office and to the appropriate District ROW Office for their records
3. A copy of the recorded deed should be sent to the Records and Research Division and a copy is placed in the road conveyance file.

**913 CONCLUSION OF THE CONVEYANCE PROCESS**

The road transfer case recordation information must be entered into OREMS and the case is closed.

**OFFICE OF REAL ESTATE**  
**OPERATIONAL GUIDELINES**  
**CHAPTER 10**  
**LOCAL PUBLIC AGENCIES**

**CHAPTER 10**  
**LOCAL PUBLIC AGENCIES**

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**1000 PURPOSE**

This chapter is devoted to the establishment of criteria and procedures that govern the LPA's ROW activities. It is not intended for detailed instruction on the process but as a general administrative guide.

**1001 POLICY**

MDOT SHA shall provide oversight and guidance to LPA's on federal aid or federally funded transportation projects in the State of Maryland requiring the acquisition of ROW. A transportation project that use federal funds or require federal action is a federal transportation project. ROW needed for a federal transportation project must be acquired in accordance with the requirements of the Uniform Act.

Prior to commencing ROW activities, the LPA must complete the following:

1. An executed LPA agreement with MDOT SHA
2. NEPA document for the Federal transportation project
3. Receipt of the NTP or authorization from MDOT SHA for ROW activities to begin.

ORE shall certify that the ROW needed to construct the project by the LPA is in its legal and/or physical possession and utility relocation and railroad work has been completed or arrangements have been made to coordinate the efforts with the construction of the project before any federally funded transportation project can be authorized by MDOT SHA for advertisement.

**1002 LOCAL PUBLIC AGENCY COORDINATOR**

The RPS functioning as the LPA Coordinator shall be the liaison between MDOT SHA, the LPA and property owners impacted by a federal transportation project being constructed by the LPA. The LPA Coordinator shall be responsible for coordinating with the LPA on their ROW activities, assessing and reporting on their ROW acquisition progress, and the providing input and assistance to resolve any ROW issue that may arise.

The LPA Coordinator is responsible for providing oversight on all LPA ROW activities. The LPA shall use ORE's Operational Guidelines and ORE Directives as guidance for their ROW activities. The LPA Coordinator shall provide the LPA current copies of the guidelines and directives.

### **1003 LOCAL PUBLIC AGENCY PROGRAM OVERSIGHT**

PRD shall be responsible for the overall ROW practices oversight of MDOT SHA's LPA Program.

The LPA Coordinator shall provide oversight on all LPA construction projects requiring ROW as described in Sections 1001 and 1002. The ROW project oversight includes, but is not limited to the following:

1. Ensuring all rights of way and legal rights of entry have been acquired
2. Ensuring that there are no encroachments
3. Providing support to LPAs as needed.

### **1004 PROJECTS WITHOUT RIGHT OF WAY ACQUISITIONS**

#### **1004.1 PROJECTS WITHIN MDOT SHA'S RIGHT OF WAY**

When a LPA project is proposed to be located within MDOT SHA's ROW, the LPA Coordinator shall request ROW verification from R&R. Upon receipt of the ROW verification, the LPA Coordinator shall provide the result to the LPA.

The LPA must verify that the all construction activities to be performed lie within the ROW limit. In addition, the LPA shall make the LPA Coordinator aware of any potential impact to improvements lying within the ROW having permits issued by MDOT SHA. The LPA shall display the ROW limit on the construction plan sheets. If it appears that construction activities will extend beyond the MDOT SHA's ROW limit, the LPA must notify the LPA Coordinator to resolve the ROW issue which may require acquiring the necessary ROW to construct the project.

#### **1004.2 PROJECTS WITHIN LOCAL PUBLIC AGENCY'S ROW**

The LPA must provide the LPA Coordinator with documentation on its existing ROW limit for the project. The documentation may consist of acquisition deeds, plat maps of dedication showing acceptance by the LPA, record of survey showing acceptance by the LPA or a town plat. **Copies of assessor's maps are not acceptable.**

R&R shall determine if the documentation provided by the LPA properly identifies its ownership or the legal right to occupy the ROW. The LPA shall display the ROW limits on the construction plan sheets.

**1005****PROJECTS WITH ROW ACQUISITIONS**

Not all projects can be constructed within the limit of the existing ROW owned by either the LPA or MDOT SHA. In these cases, the necessary ROW must be acquired to accommodate the project. In determining the ROW requirements for the project, the Americans with Disabilities (ADA) guidelines must be considered. Costs associated with acquiring the ROW shall be considered a project related cost. The LPA shall provide MDOT SHA the following:

1. Identification of the LPA official with the responsibility for setting the just compensation. They must also provide MDOT SHA with the appraisal, appraisal review report, negotiation records, relocation assistance and property management information, if applicable
2. A description of any ROW procedure proposed as an alternative to MDOT SHA's ROW acquisition process
3. A description of the ROW activities required for the project which may include:
  - a. A set of ROW plats or maps
  - b. The number of parcels needed for the project, categorized by use, such as residential, commercial, industrial, etc.
  - c. The type of ROW acquisition, such as fee acquisitions, permanent easements, temporary easements, etc.

The LPA shall coordinate with the LPA Coordinator to ensure compliance with all applicable Federal and State laws and regulations. ROW acquisitions, regardless of who acquires, shall be completed in accordance with the Uniform Act and ORE Operational Guidelines.

**1006****INITIAL RIGHT OF WAY NEEDS MEETING**

An initial ROW needs meeting shall be held once the NEPA process has been completed and the LPA has identified the ROW needed for the project. The purpose of the meeting is to discuss the ROW needs identified by the completed design and any additional ROW needs for the construction of the project. Impacts to existing utilities and the possible resolution to those impacts are discussed at the meeting.

MDOT SHA schedules the initial project needs meeting with representatives from the LPA and MDOT SHA. MDOT SHA invites its staff including the LPA Coordinator, the Statewide Utility Coordinator, appropriate staff of OPPE, the FHWA's Realty Officer and the FHWA's Area Engineer to attend.

The LPA should be prepared to discuss why ROW is needed for the

project and possible alternatives to avoid or minimize ROW impacts. The LPA should also provide exhibits showing the limit of the existing ROW and the limit of the additional ROW needed for the project. The limit of the proposed ROW must be delineated with stations and offsets to the construction centerline. The exhibit must also identify the type of acquisition needed.

#### **1007 FINAL ROW NEEDS MEETING**

It is determined at the end of the initial ROW needs meeting if another meeting is required. If there are no or only minor changes to the ROW needed for the project, a second meeting may not be required and the initial meeting shall be the final meeting. Otherwise additional meetings may be required to set the final ROW needs for the project.

#### **1008 ROW SETTING MEMO**

Once the ROW needs for the project are set, the LPA Coordinator, with input from the LPA, shall prepare a ROW Setting Memo. This memo documents the discussion at the ROW setting meeting(s).

The memo must include:

1. An exhibit that identifies and displays the areas and parcels to be acquired. The exhibit must show the limit and type of acquisitions and includes offsets to the project alignment at parcel breaks. Project alignments for MDOT SHA highways must be approved by MDOT SHA's District Engineer
2. The county the project is located
3. The ultimate titleholder
4. Number and type of acquisition as described in Section 1005
5. Alternatives explored including the justification for the ROW acquisition versus the alternative
6. Recommendation for approval signature blocks for the following or their equivalent in function:
  - a. Chief Design Engineer
  - b. Chief Hydraulics Engineer
  - c. Chief Environmental Services Engineer
  - d. RPM of PRD or his/her designee
7. An approval block for the Assistant Director of Engineering or his/her equivalent in function
8. Changes from the information outlined in the ROW Setting Memo, such as the deletion of a parcel, require an amended ROW Setting Memo

## **1009 AUTHORIZATION FOR RIGHT OF WAY ACQUISITION**

After the ROW Setting Memo has been approved, MDOT SHA shall complete a Scope/Budget Change and Programming/STIP Revision Request, if needed. This document is used to request funding from FHWA to authorize ROW acquisition, relocation assistance, and utility relocation or adjustment. The request shall be based on estimates provided by the LPA and verified by MDOT SHA.

Once the funding authorization from FHWA has been received, the ROW phase of the project can begin. If the LPA is delegated the authority to acquire ROW for the project, the LPA Coordinator shall issue the NTP for ROW engineering, appraisal, and appraisal review activities. The LPA must establish the just compensation for the parcels before it can begin making offers to the property owners.

## **10010 RIGHT OF WAY ACQUISITIONS**

### **10010.1 LOCAL PUBLIC AGENCY APPRAISALS**

Appraisals shall be performed by State licensed appraisers under contract with the LPA. Contract appraisers must be on MDOT SHA's Approved Appraiser List maintained by ARD. Appraisals of ROW needed for the LPA project must comply with USPAP and ORE appraisal standards as set forth in Chapter 5 of this Operational Guidelines, ORE Appraisal Guidelines and ORE Directives. When differences occur between these standards, ORE Appraisal Guidelines shall be considered the prevailing authority.

Where ROW acquisition is uncomplicated and the value is estimated to be less than \$15,000, the LPA may prepare a waiver valuation according to the procedures described in Chapter 5 of this Operation Guidelines and ORE Directives. The property owner shall be given the opportunity to accompany the appraiser on their field review as required under 49 CFR 24.102.

Appraisals shall be reviewed by appraisers on MDOT SHA's Approved Appraisers List or may be reviewed by ARD and just compensation must be set before the LPA can begin making offers to the property owners.

### **10010.2 ACQUISITIONS ON MDOT SHA CONTROLLED HIGHWAYS**

When an LPA's acquires the ROW on MDOT SHA controlled highway, the LPA's ROW Office shall prepare the title reports, ROW maps or plats, appraisals, appraisal reviews and property transfer documents in accordance with MDOT SHA procedures. The ROW shall be acquired

in the name of the LPA or State. If the Cooperative LPA Agreement establishes or perpetuates MDOT SHA maintenance responsibilities, the acquired ROW will be transferred to the State. MDOT SHA may, by relinquishment, recommend the disposal of or transfer of property to the LPA.

### **10010.3 LOCAL PUBLIC AGENCY RIGHT OF WAY ACQUISITION**

If the LPA acquires the ROW for a project, the LPA shall comply with the Uniform Act and ORE's Operational Guidelines and ORE Directives. ORE's Operational Guidelines has been approved by FHWA and it ensures compliance with the Uniform Act.

The LPA Coordinator shall coordinate with the LPA during the acquisition process to ensure that all applicable Federal and State requirements are met. ROW plans or plats must meet MDOT SHA standards. An MDOT SHA approved independent appraiser must be used to prepare the appraisal reports for the LPA. In addition, an MDOT SHA approved independent appraiser must review the appraisal report or ARD can review the appraisal reports and set just compensation before the LPA can begin making offers.

The LPA shall obtain a copy of the approved appraiser list from the ARD. PRD reviews the LPA's negotiations for property settlements with the affected property owners.

### **10010.4 DEDICATIONS AND DONATIONS**

The LPA may accept, as part of a federal or federally assisted project, a parcel that a developer has dedicated or proposes to dedicate. Dedication is the process of reserving a parcel of land for future public use. A dedication is usually made as part of the subdivision or zoning approval process. The LPA may accept land dedicated pursuant to the local planning process or at the request of the property owner for land use concessions that are consistent with the local, federal, and environmental regulations.

Real property interests obtained through normal zoning or subdivision procedures requiring dedication of strips of land in the normal exercise of local municipality's police power is not considered to be a taking constitutionally. Therefore, it does not require payment of just compensation or compliance with the Uniform Act. Real property interests acquired in this manner may be incorporated into a federally assisted project without jeopardizing federal participation in other project costs. However, dedication undertaken to circumvent federal requirements is unacceptable.

Property owners whose real property is to be acquired for a project may make a gift or donation to the LPA, for any part of it, or for any of the compensation paid for it. The owner-donors must be informed of their right to receive just compensation for the acquisition if it is desired. The property owners must also be informed that they are entitled to have an appraisal made of their property along with an offer of just compensation.

The property owners may release the LPA from these obligations and waive the appraisal and compensation. This release must be in writing and comply with ORE's Operational Guidelines. The complete donation process is further explained in the Uniform Act.

#### **10011 RIGHT OF WAY CERTIFICATION**

The ORE Director is responsible for certifying to FHWA that the LPA has complied with all applicable Federal and State laws and regulations and that the LPA has acquired or obtained legal possession of all the real property interests needed for the project and that relocation assistance of displaced persons are complete, if applicable.

The LPA must provide the required documentation to the LPA Coordinator a minimum 45 days prior to the Ad date or NTP date for the project. This allows enough time for the LPA Coordinator to perform the necessary due diligence before the ROW certification can be issued.

The ROW certification procedures are further described in Section 201.4 of this Operational Guidelines.

#### **10012 RIGHT OF WAY REIMBURSEMENT PROCESS**

If the LPA was delegated the authority to acquire the ROW needed for a federal aid or federally funded project, the LPA should invoice MDOT SHA through the LPA Coordinator in accordance with the Cooperative LPA Agreement. The LPA should submit an invoice to the LPA Coordinator for 100% of the eligible costs, noting the percentage of the LPA's funding share. In addition, the invoice should have the following information:

1. The name of the LPA submitting the invoice
2. The name of a contact person within the LPA
3. The address of the LPA
4. The name of the contact person within MDOT SHA
5. MDOT SHA's project number provided in the NTP
6. The agreement number provided in the NTP
7. A brief description of the project (e.g., installing lighting on US

Route 50)

8. A description of the work, (e.g., Preliminary design, Construction engineering and/or Construction)
9. Auditable support documentation such as copies of LPA's employee time sheets or consultant invoices and acquisition deeds.

**CHAPTER 11**  
**OUTDOOR ADVERTISING AND**  
**JUNKYARD LICENSING AND CONTROL**

**CHAPTER 11**  
**OUTDOOR ADVERTISING AND**  
**JUNKYARD LICENSING AND CONTROL**

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## 1100 OUTDOOR ADVERTISING

### 1101 PURPOSE

This chapter prescribes MDOT SHA's policies and requirements relating to OA. It intends to establish guidelines to effectively control OA signs and their surveillance in the State of Maryland and comply with the Federal requirements of controlling OA in areas adjacent to the Interstate, Federal Aid Primary Highways (FAP), and the National Highway System (NHS).

#### 1101.1 DEFINITIONS USED IN OUTDOOR ADVERTISING

1. Abandoned Signs may be one of the following:
  - a. Any off-premise sign for which the permit fees were not renewed
  - b. An off-premise sign once owned by a sign company which is out of business (dissolved)
  - c. A blank sign which has been declared abandoned by the OAJC Section and has had its permit revoked
  - d. When reasonable maintenance has obviously ceased. These signs are illegal and therefore not compensable in accordance with the Highway Beautification Act (HBA) (see "Illegal Signs"). A special fund may exist in FHWA for the removal of such signs by MDOT SHA
2. Blank Sign: Any commercial advertising sign which is devoid of all advertising matter or any commercial advertising sign whose advertising matter has been partially obliterated wherein the subject advertising matter is no longer recognizable or the particular product, service or facility is not identifiable
3. Center Line of Highway: Means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate or other limited access highway, or the center line of the main-traveled way of a non-divided highway
4. Commercial or Industrial Activities in Unzoned Areas: Those activities generally recognized as commercial or industrial by local zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:
  - a. OA structures
  - b. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands
  - c. Activities normally or regularly in operation less than three (3) months of the year
  - d. Transient or temporary activities
  - e. Activities conducted in a building principally used as a residence

- f. Railroad tracks and minor sidings
5. Commercial and Industrial Zoning: This refers to an area zoned primarily, and neither by means of exceptions nor special zones, for commercial and industrial use in a comprehensive zoning plan according to the statutory authority of a unit of government to enact zoning laws. OA under this type of zoning constitutes an exception to the requirements of sign removal under the Federal HBA
  6. Conforming Signs: Legally erected signs conforming to existing zoning and other laws and regulations of authorized units of government
  7. Commercial OA Sign: Any OA sign or structure on which the display is rented for profit or is used by an advertising company, person, etc., to advertise and is not an on-premise sign
  8. Destroyed Sign: A non-conforming sign which has had 50% or more of its structure destroyed by an accident or an act of God
  9. Erect: To construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign or sign structure
  10. Expressway: Any highway constructed as an expressway and includes an Interstate highway
  11. Federal Aid Primary Highway: Any highway within that portion of the MDOT SHA system as designated, or as may hereafter be so designated by the MDOT SHA which has been approved by the Secretary of Transportation pursuant to Subsection (b) of Section 103, Title 23, United States Code
  12. Illegal Signs: Signs which are erected illegally in terms of laws and regulations of authorized units of government or signs which have become abandoned or signs whose permit has not been renewed by October 1 of the renewal period
  13. Interstate Highway: Any highway within that portion of the State of Maryland highway system so designated or as may hereafter be so designated by MDOT SHA which has been approved by the Secretary of Transportation pursuant to Section 103 of Title 23, United States Code
  14. Jumbo Signs: Signs erected beyond 660 feet of the ROW outside of urban areas on the Interstate system visible from the main traveled way and erected with the purpose of their message being read from the highway. These signs are “non-conforming signs” (see above) as defined by Maryland Law specifically introduced to the Federal HBA
  15. Landmark Signs: A sign determined by the State to be of historic or artistic significance (including signs on buildings and natural surfaces) in existence on October 22, 1965 and approved by the

- Secretary, FHWA, as worthy of preservation. A landmark sign constitutes an exception to the removal requirements of the HBA
16. Legal Sign: An on-premise sign or an off-premise sign which was erected by permit and is in conformance with zoning regulations. These signs are compensable under the HBA
  17. Maintenance: Normal upkeep and repair – routine maintenance. Does not include upgrading or enhancing of the structure or the type of display
  18. Main-Traveled: The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for the traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas
  19. National Highway System: Consists of roadways important to the nation's economy, which includes the Interstate system
  20. Non-conforming Signs: A sign which was erected in accordance with State and local laws or regulations at that time, which is not in compliance with present law (for example, sign affected by classifications of highways, land use, or specifications for the structure of signs), but is compensable under the HBA. A non-conforming sign may not be changed from a poster panel to a painted bulletin or vice-versa and the sign and/or structure may not be upgraded or enhanced in any way
  21. Off-Premise Signs: All signs not included in the definition of on-premise signs (See "On-Premise Signs")
  22. On-Premise Signs: Any outdoor sign, display, light, device, structure, figure, painting, drawing, message, plaque, placard, poster, billboard, or other thing regardless of content, which is designed, intended or used to advertise or inform the traveling public of the sale or lease of the property, a product grown, produced or manufactured therein or thereon of products for sale therein or thereon from or a service performed therein or thereon, advertise the name of the property owner, agent, assignee, or lessee of the property
  23. On-Premise Sign: Signs advertising products and services (or sale or lease of the property itself), which are erected on the property of the establishment offering the products and services. In this situation, neither the sign space nor the land on which the sign stands may be leased or sold for the purpose of advertising concerns other than that represented by the use of the property
  24. Outdoor Advertising: Any outdoor sign, display device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to advertise or inform
  25. Routine Maintenance: See "Maintenance"
  26. Sign: Any outdoor sign, display device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to advertise or inform

27. State Scenic Byway – A State maintained highway or portion of that highway, which is designated as a scenic byway
28. Traveled Way: The portion of a roadway for the movement of vehicles, exclusive of shoulders
29. Unzoned Commercial or Industrial Areas: Those areas which are not zoned and on which there is located one or more permanent structures devoted to a business or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 660 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used building, parking lots, storage or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of pavement of the highway
30. Urban Areas: That portion of the Federal Aid System of highways that has been designated as urban areas on County and urban area maps by the MDOT SHA and approved in accordance with the Federal Aid Highway Act of 1971
31. Visible: Capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity
32. Zoned Commercial or Industrial Areas: Those areas which are reserved for business, commerce, or trade pursuant to local zoning ordinance or regulation.

## **1102 POLICY**

SAD shall supervise the control, licensing and surveillance of OA signs and the enforcement of the laws and regulations pertaining thereto.

SAD shall also determine the legality of all signs relating to OA. This division is responsible for the removal of all illegal or abandoned signs. All legal non-conforming signs and site acquisitions are the responsibility of the RPM who will program them for removal.

## **1103 AUTHORITY**

Title 23 USC, Section 131, provides authority for the Federal Program. The FHWA Policy and Regulations are found in Federal Highway Program Manual (FHPM) Volume 7, Chapter 6, Section 2.

MDOT SHA's authority is contained in Title 8 of the Transportation Article of the Annotated Code of Maryland, Subtitle 7. Regulation of OA, Sections 8-701 through 8-749.

## **1104 OUTDOOR ADVERTISING LICENSE AND SIGN PERMITS**

The RPM of SAD is responsible for the licensing of persons and firms engaged in OA activities and the issuance of sign permits. The RPM will ascertain that all applications for an OA license and sign permit are submitted for approval in accordance with State and Federal laws and regulations.

### **1104.1 LICENSE REQUIREMENTS**

Annotated Code of Maryland, Transportation Article, Section 8-708 states that:

*A person may not engage in the business generally known as OA for profit gained from rentals or other compensation received for the erection, use, or maintenance on real property of any OA sign, unless the person is licensed by the Administration under this part.*

#### **1104.1.1 FORM OF APPLICATION**

Every application for a license shall be made on a form furnished by MDOT SHA and shall include the full name and post office address of the applicant, as well as other relevant information required by MDOT SHA during consideration of the license application.

#### **1104.1.2 BOND REQUIREMENTS FOR NON-RESIDENT**

Before any license or permit or renewal required by these regulations shall be issued to any non-resident person, firm or corporation, such person, firm or corporation shall execute and file with MDOT SHA a bond to the State of Maryland, with surety to be approved by MDOT SHA in the amount of \$1,000.00. The condition shall be that the obligator shall pay to the State all sums as shall become due it under these regulations and shall comply with all the provisions. (Note: Bonds are valid for one year or more.)

#### **1104.1.3 INITIAL LICENSE**

Upon approval of the application containing the information and data described in Section 1104.1.3, MDOT SHA shall issue the license applied for upon payment by the applicant of the amount of the current fee and bond requirement for non-residents.

Any initial license may be issued at any time during the year and will expire on the following April 30<sup>th</sup>. If the initial license is issued after May, the fee is prorated in accordance with the month of issuance.

#### **1104.1.4 RENEWAL OF LICENSE**

A license may be renewed for a term of one year upon the submission of an application and payment of the fee due and it will be effective from the first day of May to the last day of April of the following year.

#### **1104.2 SIGN PERMITS**

##### **1104.2.1 FEDERAL AID PRIMARY HIGHWAYS, NATIONAL HIGHWAY SYSTEM AND EXPRESSWAY – INTERSTATE SYSTEMS**

1. A permit must be obtained from MDOT SHA prior to the erection of any OA sign in zoned or unzoned commercial and industrial areas within 660 feet of the nearest edge of the ROW of a FAP. This permit requirement also applies to the erection of any OA sign in an unzoned area so long as the sign is within 660 feet of a building used for commercial or industrial activity
2. Specific and detailed requirements regarding the type, size, spacing and lighting of OA signs shall be as specified in Section 1108.

##### **1104.2.2 EXCEPTIONS**

A permit is not required to erect or maintain any OA sign:

1. That is used only to advertise the sale or lease of the property on which it is located
2. That is on or within 100 feet of any building or the entrance to any building in which the business advertised is carried on
3. That is used only to advertise:
  - a. A Maryland historic shrine or institution
  - b. A county or church fair held in the State of Maryland.

##### **1104.2.3 PERMIT RESTRICTIONS**

Permits may not be issued for OA signs in the following circumstances:

1. No sign permits will be issued for any signs on State owned property
2. Signs exceeding 1,000 square feet in area
3. Signs endangering the travelling public by obstructing the view of drivers
4. In areas conferred to local zoning authority unless proof of approval of the sign by local zoning authority is provided to MDOT SHA
5. A structure that would obstruct the view or be dangerous in any manner

6. Structures illuminated in a manner that would create a hazard
7. If the property owner's signature is not on the permit application authorizing MDOT SHA's removal of abandoned and illegal signs from the property
8. Is along or near a designated scenic byway located on the FAP or the NHS.

#### **1104.2.4 FORM OF APPLICATION**

1. Every application for permit shall be made on a form to be furnished by the MDOT SHA and it shall include the full name, post office address, and signature of the applicant, as well as other relevant information required by MDOT during consideration of the permit application
2. The property owner must sign the permit application authorizing removal by MDOT SHA of abandoned and illegal signs from the property
3. In addition, the following information, data and/or drawings shall accompany the application:
  - a. A sign permit from the local zoning office where the OA sign(s) is proposed to be placed and submitted with the MDOT SHA sign application
  - b. The area in square feet, height, and length of the advertising sign inclusive of any border and trim, but excluding ornamental base or apron supports and other structural members
  - c. A detailed statement indicating the lighting specifications, if any, of the OA sign
  - d. The proposed location of the advertising sign in relation to a FAP and the NHS, if applicable
  - e. Any additional drawings, information or data deemed necessary by MDOT SHA.

#### **1104.2.5 BOND REQUIREMENTS FOR NON-RESIDENT – PERMIT**

Before any license, permit or renewal described in this chapter shall be issued to any non-resident person, firm or corporation, such person, firm or corporation shall execute and file with and approved by MDOT SHA a bond to the State of Maryland with surety in the amount of \$1,000.00. The condition shall be that the obligator shall pay to the State all sums as shall become due it under these guidelines and shall comply with all its provisions. Bonds are valid for one year or more.

#### **1104.2.6 INITIAL PERMIT**

Upon approval of the application containing the information and data hereinbefore described, MDOT SHA shall issue the permit applied for

upon payment by the applicant in the amount of the current fee and bond requirement for non-residents. Double-faced signs shall require the procurement of two (2) permit tags. Each face requires a permit.

An initial permit may be issued at any time during the year and will expire on the following April 30<sup>th</sup>.

If the initial permit is issued after May, the fee should be prorated in accordance with the month of issuance but may not be less than **\$1.00**.

#### **1104.2.7 RENEWAL OF PERMITS**

Upon payment of the prescribed fee, renewal permits will be issued and dated May 1 and will expire on April 30<sup>th</sup> of the following year.

#### **1104.2.8 LATE CHARGE**

There is currently no late charge; however, this is subject to change based on the MDOT SHA administrative review.

#### **1104.2.9 FAILURE TO RENEW**

If the renewal fee or the late charge, as described in Section 1104.2.8, are not paid by October 1, the sign will be declared illegal and may be removed by MDOT SHA.

#### **1104.2.10 DISPLAY OF PERMIT AND INFORMATION TO BE PLACED ON ADVERTISING SIGNS**

Each OA sign shall display a valid permit tag issued by MDOT SHA. In addition, the name and post office address of the person, firm or corporation owning or controlling the sign for advertising purposes shall be plainly inscribed thereon.

#### **1104.2.11 PLACEMENT OF PERMIT TAG BY SIGN OWNER**

The RPS of SAD is responsible to ensure that all permit tags have been placed on the OA signs. The actual placement of the permit tag is the responsibility of the owner or controller of the sign and must be attached in clear view of the road side of the sign so that it may be observed from the road.

#### **1104.3 LICENSE AND PERMIT FEES**

There is no fee for an OA license. Sign permit fees are **\$1.00** per advertising face. The license and permit fees are subject to administrative change by MDOT SHA.

**1104.3.1 LICENSE FEE**

**1104.3.1.1 INITIAL LICENSE**

There is no charge for an OA initial license.

**1104.3.1.2 RENEWAL LICENSE**

There is no renewal fee for OA license. A renewal license is issued for one (1) year.

**1104.3.2 PERMIT FEES**

Sign permit fees are \$1.00 per advertising face.

**1104.3.2.1 INITIAL FEES**

Sign OA permit initial fees are \$1.00 per each advertising face.

**1104.3.2.2 RENEWAL PERMIT**

Payment of annual fee is required.

**1104.3.2.3 REPLACEMENT OF PERMIT TAG**

There is no charge for replacement tags.

**1105 CONTROLS AND ENFORCEMENT**

**1105.1 CONTROLS**

**1105.1.1 SURVEILLANCE**

Surveillance and reporting of OA signs shall be performed on a regular basis as established by the RPM of SAD. The responsible RPS must review all major controlled routes as directed by the RPM. The condition of each sign observed shall be documented in OAJCMS. The intent of this surveillance guideline is to ensure that MDOT SHA has an accurate and current sign inventory.

**1105.1.2 SIGN INVENTORY**

SAD is responsible for maintaining the Statewide sign inventory in OAJCMS. The assigned RPS and/or other ROW personnel shall perform periodic sign inspections along each route as instructed by the RPM of SAD.

The sign inventory shall contain the approximate location, classification, permit number and other pertinent data relating to each sign on a route.

## **1105.2 ENFORCEMENT**

ORE is charged with the administration and enforcement of the statutory provisions and the rules and regulations promulgated by MDOT SHA and may remove an advertising sign erected or maintained contrary thereto, after 15 days written notice given to the person, firm or corporation owning or controlling the advertising sign. All signs removed by MDOT SHA shall become the property of and be reserved for the use of the State of Maryland.

### **1105.2.1 PENALTY**

In accordance with the Annotated Code of Maryland, Transportation Article, Section 8-749, any person, firm or corporation erecting, maintaining or using any advertising sign without complying with the provisions of the statutory provisions and the rules and regulations shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars (\$500.00).

### **1105.2.2 SIGN REMOVAL PROCEDURES**

OA signs shall be removed as described in Section 1107.1 and in accordance with MDOT SHA Policy/Procedure Manual, Section 63.0-4.

## **1106 DETERMINATION OF SIGN STATUS**

The RPM of SAD is responsible for determining the legal status of all OA signs based on State and Federal laws and regulations.

### **1106.1 CRITERIA TO ASSIST IN THE DETERMINATION OF THE STATUS OF SIGNS**

#### **1106.1.1 NON-CONFORMING SIGNS**

##### **1106.1.1.1 CRITERIA TO ASSIST IN THE DETERMINATION BETWEEN CUSTOMARY MAINTENANCE AND SUBSTANTIAL CHANGE**

1. The sign cannot be enhanced or upgraded in size, type of material or type of display
2. Not more than 50% of the sign may be replaced through normal maintenance during any one-year period.

### **1106.1.1.2 CRITERIA TO DETERMINE THE DESTRUCTION OF A SIGN**

An OA sign may be deemed to have been destroyed when, in the opinion of the RPS, more than 50% of the structure of the sign has been destroyed or needs repair due to an accident or an act of God. The sign owner must also receive approval from their local government office prior to having the sign removed.

### **1106.1.1.3 CRITERIA TO DETERMINE ABANDONMENT OF A SIGN**

1. When the permit fees are not paid
2. When a sign company goes out of business
3. When a sign remains in a blank condition for six (6) months or more
4. When reasonable maintenance has obviously ceased.

### **1106.1.2 LEGAL SIGNS**

#### **1106.1.2.1 CRITERIA TO DETERMINE AN ON-PREMISE SIGN**

1. The on-premise sign must be located on the same parcel of land within the prescribed distances from the buildings, etc., as prescribed by law according to the type of highway it faces
2. The on-premise sign must advertise products or services located on the premises or the sale and lease of those premises.

### **1106.1.3 ILLEGAL SIGNS**

#### **1106.1.3.1 CRITERIA FOR DETERMINING WHICH SIGNS HAVE BEEN ERECTED WITH THE PURPOSE OF THEIR MESSAGE BEING READ FROM THE MAIN TRAVELLED WAY OF A FEDERAL AID PRIMARY HIGHWAY OR THE NATIONAL HIGHWAY SYSTEM**

The following criteria should be considered in determining whether an OA sign have been erected solely for the purpose of its message being read from a FAP or a highway on the NHS:

1. Traffic counts, sign angle and size message content, physical obstructions and similar factors
2. Distance from the highway in relation to the size of the sign
3. Exposure time of the sign's message to the travelling public on said roads
4. The sales value of the sign attributable to advertising circulation under the criteria of an independent circulation audit agency where such is available.

**1106.2 SIGNS WITHIN NEW RIGHT OF WAY OR CONSTRUCTION**

The RPM of the ROW District Office should identify OA signs within the ROW on new construction projects and forward the list to the RPM of SAD for their review and action.

**1107 REMOVAL OF ILLEGAL AND ABANDONED SIGNS**

The first priority of MDOT SHA’s OA Program is the removal of illegal and abandoned signs.

**1107.1 PROCEDURE FOR REMOVAL OF ILLEGAL SIGNS**

The procedural OA sign removal matrix shown in this section describes the MDOT SHA Office the SAD should coordinate with in the removal of illegal or abandoned signs.

These signs either lie within the existing ROW of MDOT SHA or on private property. Prior to any removal action of OA signs on private property, adequate notices as determined by the RPM of SAD, in consultation of the OAG, shall be sent to the property owner and sign owner or controller.

If a sign is too large to be removed by MDOT SHA, the DE and/or RPM of SAD may secure the services of a qualified removal company.

Condition	Action
Outdoor Advertising (Snipe Signs and large OA signs on State property)	When SAD receives a complaint, the RPS or RPM should notify the District Engineer or the local MDOT SHA Resident Maintenance Engineer requesting: <ol style="list-style-type: none"><li>1. The immediate removal by State forces snipe signs or other signs constituting a safety hazard which are located within MDOT SHA ROW</li><li>2. The removal of large legal signs in MDOT SHA’s ROW.</li></ol>

Condition	Action
Outdoor Advertising on Private Property	<ol style="list-style-type: none"> <li data-bbox="906 289 1364 716">1. Illegal Signs Adjacent to MDOT SHA's ROW – A Sign Removal Notice shall be sent by regular mail or certified mail, notifying the owner that he/she has 15 days to comply. After 15 days if the sign owner has not complied with the violation letter, SAD will send out a Property Permission Form to the landowner.</li> <li data-bbox="906 726 1364 1152">2. Illegal Signs Within the ROW – A Sign Removal Notice shall be sent by regular mail or certified mail, notifying the owner that he has 15 days to comply. After 15 days if the sign owner has not complied with the violation letter, SAD should send the original sign violation letter to the local Resident Maintenance Engineer for removal.</li> </ol>

**1108 RULES AND REGULATIONS FOR THE CONTROL OF OUTDOOR ADVERTISING**

**1108.1 EXPRESSWAYS AND FEDERAL INTERSTATE HIGHWAYS**

**1108.1.1 COMMERCIAL OUTDOOR ADVERTISING SIGNS**

The erection of OA signs for profit for the purpose of being visible from the main travelled way of an expressway or Interstate highway is prohibited.

**1108.1.2 CRITERIA FOR DETERMINING WHICH SIGNS HAVE BEEN ERECTED WITH THE PURPOSE OF THEIR MESSAGE BEING READ FROM THE MAIN TRAVELLED WAY**

The criteria under this section shall be determined as described in Section 1106.1.3.1.

### **1108.1.3 SIGNS ON ADJACENT HIGHWAYS**

A sign on a parcel of land visible from an expressway or Interstate highway which faces away from the controlled highway but does face another highway running parallel or partially parallel to the controlled highway is permitted. No advertising may be displayed or read from the Interstate or expressway

### **1108.1.4 ON-PREMISE SIGNS**

On-Premise signs are permitted along expressways and Interstate highways and are regulated by the Local Zoning Authority and may not be placed over 50 feet from the advertised activity.

#### **1108.1.4.1 SIGN REGULATIONS AND REQUIREMENTS – ON-PREMISE SIGNS**

1. General
  - a. No sign may be permitted which attempts to direct the movement of traffic
  - b. No sign which imitates or resembles any official traffic sign, signal, or device will be permitted
  - c. No sign may be erected on trees or painted on rocks or other natural features
  - d. Signs advertising property for sale or lease will carry wording notifying the public that the property is for sale or lease, the name and address and telephone number of the owner or agent, and a description of the area for sale or lease
  - e. Signs erected for the purpose of advertising an on-premise service to the traveling public that displays any trade name which refers to or identifies any service rendered or product sold may not be permitted unless the name of the activity of such sign is displayed as conspicuously as such trade name.
  - f. Historical monuments or markers will preferably be placed beyond the limits of the ROW. The location shall be adjacent to the historical point to be described and the design and size must meet with the approval of the MDOT SHA. The contents and/or information to be conveyed thereon will be submitted to the Maryland Historical Society (MHS) for form and historical accuracy
  - g. No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic
  - h. If MDOT SHA determines that any billboard, sign, poster or other advertising structure is so located as to create or cause a traffic hazard or be detrimental to the welfare of

the State, MDOT SHA has the authority to order such billboard, sign, poster, or other advertising structure removed or relocated, subject to the financial interest of the lease

2. Size  
In unzoned areas, the maximum allowable size for a sign along an expressway is 10' X 10' or 100 square feet, based on the letter area
3. Location
  - a. The sign must be located within 100 feet of the advertised activity or service
    - i. When the advertised activity is a business, commercial, or industrial land use, the distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. It shall not be measured from driveways, fences, or similar facilities
    - ii. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the distance shall be measured from the major structures on the property
  - b. No signs shall be permitted to be erected within the limits of the ROW line of an expressway
4. Lighting
  - a. No sign may be permitted which contains, includes or is illuminated by a flashing, intermittent or moving lights
  - b. No unshielded lighting may be used in any way, in connection with a sign
5. Moving Parts - No sign may be permitted which moves or has any animated or moving parts.

## **1108.2 FEDERAL AID PRIMARY HIGHWAYS**

### **1108.2.1 COMMERCIAL OUTDOOR ADVERTISING SIGNS**

OA for profit along a FAP and the NHS is permitted in zoned and unzoned commercial or industrial areas only.

### **1108.2.2 OFF-PREMISE SIGNS**

Commercial and Industrial Areas:

1. Zoned areas visible from the highway and urban areas within 660 feet of the highway
  - a. Advertising signs are regulated by MDOT SHA
  - b. MDOT SHA sign permit must be obtained
2. Unzoned areas visible from the highway and urban areas within

660 feet of the highway

- a. Advertising signs are regulated by MDOT SHA
- b. MDOT SHA sign permit must be obtained.

Other Zoned and Unzoned Areas Outside of Urban Areas:

New signs may not be erected, nor land used or leased for the purpose of having the message read from the main travelled way.

#### **1108.2.2.1 SIGN REGULATIONS AND REQUIREMENTS – OFF-PREMISE SIGNS**

- 1. General
  - a. No sign may be permitted which attempts to direct the movement of traffic
  - b. No sign which imitates or resembles any official traffic sign, signal, or device will be permitted
  - c. No sign may be erected on trees or painted on rocks or other natural features
  - d. Signs advertising property for sale or lease will carry wording notifying the public that the property is for sale or lease, the name and address and telephone number of the owner or agent, and a description of the area for sale or lease
  - e. Signs erected for the purpose of advertising an on-premise service to the traveling public that displays a trade name which refers to or identifies any service rendered or product sold may not be permitted unless the name of the activity of such sign is displayed as conspicuously as such trade name
  - f. Historical monuments or markers will preferably be placed beyond the limits of the ROW. The location shall be adjacent to the historical point to be described and the design and size must meet with the approval of MDOT SHA. The contents and/or information to be conveyed thereon will be submitted to the MHS for form and historical accuracy
  - g. No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic
  - h. If MDOT SHA determines that any billboard, sign, poster or other advertising structure is so located as to create or cause a traffic hazard or be detrimental to the welfare of the State, MDOT SHA has the authority to order such billboard, sign, poster or other advertising structure removed or relocated, subject to the financial interest of the lease
- 2. Size

- a. The maximum allowable size for a sign along a FAP or the NHS is 1,000 square feet and no sign may be higher than 25 feet or longer than 50 feet
  - b. Double-face signs may not exceed 400 square feet for each face
  - c. Back to back and "V" type signs may not exceed 800 square feet for each face
  - d. The area shall be measured including any border and trim but excluding ornamental base or support
3. Location
- a. No sign may be located within 250 feet of a public park, forest, playground or a cemetery
  - b. Signs must be separated by at least 100 feet if they are located between intersections less than 1,000 feet apart
  - c. Signs must be separated by at least 300 feet if they are located between intersections 1,000 feet apart or more
  - d. No sign may be located so as to interfere with the effectiveness of an official traffic sign, signal or device
  - e. On-Premise signs must be located within 100 feet of the advertised activity:
    - i. When the advertised activity is a business, commercial, or industrial land use, the distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of business. It shall not be measured from driveways, fences, or similar facilities
    - ii. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the distance shall be measured from the major structures on the property
  - f. No signs may be permitted to be erected within the limits of the ROW on a FAP or the NHS
  - g. No new signs can be erected along or near a designated State scenic byway
4. Lighting
- a. No sign may contain, include or be illuminated by any flashing, intermittent or moving lights except to give public service information such as time, date, temperature, etc.
  - b. No unshielded lighting may be used in any way in connection with a sign
5. Moving Parts - No sign may be permitted which moves or has any animated or moving parts.

### **1108.2.3 ON-PREMISE SIGNS**

On-Premise signs are permitted along FAP of the State.

On-Premise signs include:

1. Advertising the sale or lease of the property on which it is located
2. Advertising the sale or lease of a product grown, produced, or manufactured on the property or a service performed and is within 100 feet of the advertised activity.

#### **1108.2.3.1 REGULATIONS – ON-PREMISE SIGNS**

1. These signs are not regulated by the MDOT SHA except for the safety and welfare of the traveling public
2. The local zoning authority regulates the signs
3. No MDOT SHA sign permit is required.

### **1108.3 SECONDARY STATE HIGHWAYS**

#### **1108.3.1 COMMERCIAL OUTDOOR ADVERTISING SIGNS**

OA for profit along the secondary State highways is permitted.

#### **1108.3.2 REGULATIONS – OFF-PREMISE SIGNS**

1. Zoned areas within 500 feet of the highway:
  - a. Advertising signs are regulated by MDOT SHA
  - b. MDOT SHA sign permit must be obtained if the sign is located outside an incorporated city or town
2. Unzoned areas within 500 feet of the highway.
  - a. Advertising signs are regulated by the MDOT SHA
  - b. MDOT SHA sign permit must be obtained if the sign is located outside an incorporated city or town.

#### **1108.3.2.1 SIGN REGULATIONS AND REQUIREMENTS**

1. Size
  - a. The maximum allowable size of a sign along a State highway is determined by the local zoning authority if it exists; otherwise, structures may not exceed 1,000 square feet in area
2. Location
  - a. No OA signs may be located within 200 feet of an intersection of 2 highways, a highway and a parkway or a highway and a railway
  - b. No OA signs may be located so as to be dangerous to the public in any manner

- c. On-Premise signs must be located within 100 feet of the building of the entrance where the business is carried on
  - d. No signs may be permitted to be erected within the limits of the ROW on a State highway.
3. Lighting  
No OA signs may be illuminated in such a way so as to create a hazard to a motor vehicle operator on the highway will be permitted.

**1108.3.3 ON-PREMISE SIGNS**

On-Premise signs along secondary State highways do not require an MDOT SHA sign permit, when

- 1. Advertising sale or lease of the premises
- 2. Advertising a business within 100 feet
- 3. Denoting Maryland historical shrines
- 4. Denoting institutions and churches
- 5. Advertising church and county fairs to be held in Maryland.

**1108.3.3.1 REGULATIONS – ON-PREMISE SIGNS**

- 1. If local zoning exists, the local zoning authority may regulate the signs
- 2. In counties where there is no local zoning, On-Premise advertising is regulated by the MDOT SHA.

**1109 HISTORICAL MARKERS**

All requests received by MDOT SHA for the placement of historical markers shall be referred to the Maryland Historical Trust (MHT).

The RPM of SAD is responsible for assisting in the placement of historical markers to ensure that they comply with MDOT SHA regulations.

**1109.1 APPLICATION FOR APPROVAL**

Upon receipt of an application for a historical marker, MHT determines the authenticity and historical significance of the subject event, site or structure. MHT approves or disapproves the request for the marker.

**1109.2 FUNDING RESPONSIBILITY**

- 1. Upon approval of the maker, the funding arrangements for the fabrication and transportation from the factory of the marker will be made between the MHT and the applicant

2. If the approved marker is to be placed on a State maintained highway MDOT SHA shall have no input into marker funding, marking fabrication and transportation of the marker from the factory to the appropriate MDOT SHA field office
3. If the approved marker is to be placed on any highway other than a State maintained highway, MDOT SHA shall have no input into marker funding, marker location approval, marker fabrication, marker transportation from the factory to the site, marker installation and marker maintenance. MDOT SHA shall be responsible; however, for the provision of policy statements and guidelines that ensure the safe location and placement of the marker.

### **1109.3 PLACEMENT**

#### **1109.3.1 STATE MAINTAINED HIGHWAYS**

1. If the approved marker is to be placed on a State maintained highway, MDOT SHA shall approve a location for placement of the marker, assuring that:
  - a. The marker, post and foundation do not constitute a safety hazard
  - b. There exists adequate parking facilities or space at the location of the marker so that a stopped or stopping vehicle, whose occupants are reading or about to read the legend on the marker, does not create a hazard either to its occupants or to other persons or vehicles using the travel way
2. A historical marker shall not be placed within the ROW of any fully controlled access highway, except within the boundaries of an approved rest area
3. A historical marker shall not be placed within the ROW of any partially controlled access highway, except at an approved pull-off area having adequate deceleration and acceleration lanes and parking facilities
4. A historical marker shall not be placed adjacent to any rural highway, unless there are adequate shoulders or unless there is adequate pull-off space.

#### **1109.3.2 GUIDE SIGNS**

To accomplish placement of historical markers as described in Section 1109.3.1, it may be necessary to relocate the marker some distance from the point of historical significance and guide motorists from the point of historical significance to the location of the marker. These guide signs shall be in conformance with the Manual on Uniform Traffic Control Devices. MDOT SHA shall be responsible for the installation of the

marker and all related guide signs.

### **1109.3.3 OTHER HIGHWAYS**

If the approved marker is to be placed on any highway other than a State maintained highway and if MDOT SHA is requested to approve that location, then MDOT SHA shall forward the request along with a copy of recommended guidelines to the appropriate authority having jurisdiction over that highway.

## **1110 JUNKYARD LICENSE AND CONTROL**

### **1110.1 PURPOSE**

The purpose of this section is to prescribe rules and regulations governing the establishment, operation, screening, fencing and maintenance of junkyards as adopted by MDOT SHA.

These procedures provide for effective control of junkyards by MDOT SHA in areas adjacent to the Interstate, FAP and NHS.

### **1110.1.1 DEFINITIONS USED IN JUNKYARD CONTROL**

1. Automobile Graveyard – An establishment or place of business which is maintained, used or operated for storing, keeping buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts and include any collection of 10 or more vehicle and/or trailer hulks
2. Center Line of the Highway – A line equidistant from the edges of the median separating the main traveled ways of a divided Interstate or other limited access highway, or the center line of the main traveled way of a non-divided highway
3. Garbage Dump – Waste dumps of fills of any and all types of material and junk
4. Illegal Junkyard – A junkyard which is established and/or maintained in violation of State law
5. Industrial Activities – In an unzoned industrial area, industrial activities shall be as defined by the nearest zoning authority, except that none of the following shall be considered industrial activities:
  - a. OA structures
  - b. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands
  - c. Activities normally and regularly in operation less than three (3) months of the year
  - d. Transient or temporary activities

- e. Activities not visible from the traffic lanes of the main travelled way
  - f. Activities more than 1,000 feet from the nearest edge of the main travelled way
  - g. Activities conducted in a building principally used as a residence
  - h. Railroad tracks, minor sidings, and passenger depots. Junkyards, as defined in Section 136, Title 23, United States Code
6. Industrial Zoning – this refers to an area zoned primarily, and neither by means of exceptions nor special zones, for industrial use in a comprehensive zoning plan according to the statutory authority of a unit of government to enact zoning laws
  7. Interstate System – That portion of the national system of Interstate and Defense Highways located within this State, as officially designated, or as may be so designated hereafter, by MDOT SHA and approved by the Secretary of Commerce or Transportation, pursuant to the provisions of Title 23, United States Code, “Highways”
  8. Junk – Old or scrap copper, bras, rope, rags, batteries, paper, trash, rubber debris, waste, iron, steel, and other old or scrap ferrous or non-ferrous material, including junked, dismantled, or wrecked automobiles, or parts thereof
  9. Junkyard – An establishment or place or business which is maintained, operated or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills
  10. Junkyard Person or Persons – Any junkyard owner or operator acting as an individual, firm, partnership, association, or corporation or the plural thereof
  11. Main Travelled Way – The travelled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for the traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas
  12. Non-Conforming Junkyard – A junkyard which was lawfully established but does not comply with the provisions of State law or regulations passed at a later date or which later fails to comply with State regulations due to changed conditions
  13. Primary Highway – Any highway within that portion of MDOT SHA designated, or as may hereafter be so designated by MDOT SHA which has been approved by the Secretary of Transportation pursuant to Subsection (b) of Section 103 of Title 23, United States Code

14. Primary System – That portion of connected main highways, as officially designated, or as may be hereafter do designated, by MDOT SHA in accordance with Section 7B of this Article, and approved by the Secretary of Commerce or Transportation, pursuant to the provisions of Title 23, United States Code, “Highways”
15. Sanitary Fills – Includes waste dumps or fills or any and all types of material and junk
16. Scrap Metal Processing Facility – An establishment having facilities for processing iron, steel or non-ferrous scrap metal and whose principal product is scrap iron, steel or non-ferrous scrap for sale for re-melting purposes only
17. Maryland Department of Transportation State Highway Administration – MDOT SHA or its duly appointed representatives authorized to act in its place
18. Statutory Distance – The distances measured on the perpendicular to the centerline of the highway from the nearest edge of the ROW to the nearest edge of the actual junkyard operations
19. Travelled Way – the portion of a roadway for the movement of vehicles, exclusive of shoulders.
20. Unzoned Industrial Area – the land occupied by the regularly used buildings, parking lots, storage or processing areas of an industrial activity, and that land within 1,000 feet thereof which is –
  - a. Located on the same side of the highway as the principal part said activity, and
  - b. Not predominantly used for residential or commercial purposes, and
  - c. Not zoned by State or local law, regulation or ordinance
21. Visible – Capable of being seen without visual aid by a person of normal visual acuity
22. Zoned Industrial Areas – Those areas which are reserved for business, commerce, or trade pursuant to local zoning ordinance or regulation.

## **1110.2 POLICY**

SAD is authorized to promulgate the rules and regulations heretofore adopted by the MDOT SHA and enacted by the General Assembly of Maryland.

New junkyards that are established after January 1, 1968, that are within 1,000 feet of the ROW line of an Interstate, FAP or NHS and visible from the main travelled way must obtain a license from MDOT SHA and are subject to the location and screening regulations.

Junkyards in existence on or before January 1, 1968 are not subject to

licensing requirements unless they expand their area of operation. MDOT SHA will either recycle the junk of existing non-conforming junkyards or will screen them if recycling is not practical or in cases where it is not economical to recycle or screen, the junkyard may be relocated to a new location subject to existing zoning.

### **1110.3 AUTHORITY**

The Federal Program is set forth in Title 23, U.S.C. Section 136 and 315.

The FHWA Policy and Regulations are found in the FHPM Volume 7, Chapter 6, Section 4.

The MDOT SHA junkyard control program is authorized by Title 8 of the Transportation Article of the Annotated Code of Maryland, Subtitle 8 Junk and Scrap Yards, Section 8-801 through 8-812.

### **1110.4 LICENSING**

The RPM of SAD is responsible for the licensing of persons, firms and governmental bodies engaged in the operation and maintenance of junkyards.

#### **1110.4.1 LICENSE REQUIREMENTS**

Any person establishing, operating or maintaining a junkyard on or after January 1, 1968, any portion of which is within 1,000 feet of the ROW of any Interstate, FAP or NHS and visible from the main travelled way of said highway, must obtain a license from MDOT SHA. Junkyards established prior to January 1, 1968 are exempt from securing a license except if they expand the area of operation.

Existing junkyards relocated under the provisions of the law shall constitute and be considered as existing junkyards in their relocated areas subject to the statutory provisions. Junkyards must be inventoried and monitored on a regular basis.

#### **1110.4.2 LOCATION REQUIREMENTS**

A license for a new junkyard or an expansion of an existing junkyard located within 1,000 feet of the nearest edge of the ROW of any highway on the Interstate, FAP or NHS shall be approved only under the following conditions:

1. Those which are screened by natural objects, plantings, fences, or other appropriate means, so as not to be visible from the main travelled way of the system

2. Those located within areas which are zoned for industrial use under authority of local law
3. Those located within areas not zoned industrial, but which are used for industrial activities as determined by MDOT SHA, with the approval of the Secretary of Transportations, in accordance with the HBA of 1965. MDOT SHA may not change, modify or alter any zoning act or ordinance enacted by any political subdivision of the State and if any political subdivision of the State shall zone the areas for a different use, such zoning by the subdivision shall become effective and the determination of MDOT SHA will be void
4. Those which are not visible from the main traveled way of the system.

**1110.4.3 SCREENING, FENCING AND MAINTENANCE REQUIREMENTS FOR DETAILED DESCRIPTION OF THE SCREENING AND FENCING**

**1110.4.3.1 GENERAL**

1. MDOT SHA shall make the determination as to whether a junkyard is effectively and aesthetically screened and continues to be so
2. Plantings and architectural screens must be outside of the highway ROW and located or installed in such a manner as not to be hazardous to the travelling public
3. The cost for plantings and architectural screens shall be paid for by the junkyard owner
4. MDOT SHA reserves the right to require additional planting and/or architectural screening if the junkyard becomes visible to the travelling public.

**1110.4.3.2 SCREENING AND/OR FENCING**

When screening and/or fencing is required, it shall be the responsibility of the junkyard owner to create an aesthetically effective screen by planting, by the use of an architectural screen or by a combination of the two. The screen shall block the view of the junkyard area from the travelling public at all times along all of the travelled way.

1. Planting Screen – Planting shall consist of trees, shrubs, or other vegetation of a size and density that within three (3) years after installation will screen the junkyard from the view of the traveling public. The location, size, and type of plant material and the methods of construction employed to plant them shall be approved by MDOT SHA
2. Architectural Screen – An architectural screen may consist of an earth mound, wall, fence or combination of these with planting.

### **1110.4.3.3 MAINTENANCE**

1. Responsibility – It shall be the responsibility of the junkyard owner to maintain its planting screen or architectural screen
2. Requirements
  - a. Plantings shall be kept in a live, healthy condition and any plants not in a live, healthy condition shall be replaced
  - b. Walls and fences shall be kept in good order and aesthetically acceptable. Advertisement will not be permitted thereon.

### **1110.4.4 FORM OF APPLICATION**

Every application for license shall be in triplicate on a form furnished by MDOT SHA and shall include the full name and post office address of the applicant as well as other relevant information required the MDOT SHA for consideration of the license application.

#### Establishment of new Junkyards

The applicant shall attach to the application the following data and information:

1. Plan drawings of the proposed junkyard prepared on an engineering scale of not less than 1" = 50' showing:
  - a. Location, distances, and property lines with respect to the highway centerline and ROW
  - b. Location and details of proposed screening, if any, in relations to the proposed area of operation
  - c. General location map. (The applicant may request to have his basic plan concept reviewed by and completed by MDOT SHA prior to submission of plan drawings with application)
2. A permit and/or certificate approving the proposed location and indicating the land use classification, if any, from the local governing body having jurisdiction.

#### Expansion of Junkyards

1. The applicant for a license to expand an existing junkyard (one which was in existence prior to January 1, 1968) shall conform to and satisfy the requirements as hereinbefore set forth in the Section, "Establishment of New Junkyards"
2. A new junkyard, licensed by the MDOT SHA after January 1, 1968, that subsequently expands the area of its operations shall, prior to such expansion, submit to the MDOT SHA for approval all

details regarding the expansion and, in particular, the information enumerated in the Section, "Establishment of New Junkyards".

#### **1110.4.5 LICENSE AND FEES**

A license fee in the amount of \$100.00, not pro-ratable, payable to "MDOT SHA" by money order, or certified, cashier's, or treasurer's check, shall accompany the application. In the event a license is not issued, the fee and documents shall be returned to the applicant together with a statement submitting the reasons for not issuing a license.

Any municipality, county, state, public organization or agency applying for a license shall be exempt from the payment of the initial and annual license fee, but public organizations or agencies shall be subject to all other provisions of the law and these rules and regulations.

#### **1110.4.5.1 RENEWAL OF LICENSE**

A license may be renewed for a term of one year upon application and payment of the fee due as described in Section 1110.4.5 and will be effective from the first day of January through the last day in December.

#### **1110.5 CONTROLS AND ENFORCEMENT**

##### **1110.5.1 CONTROLS**

The RPM of SAD is charged with the duty and responsibility of enforcing and administering the provisions of the law and the rules and regulations of MDOT SHA as they apply to junkyard control.

A Statewide inventory of junkyards will be maintained by the SAD for Interstates, FAP, and the NHS.

The RPS will provide information to keep the list up to date as requested by the RPM of SAD. It may also be necessary to coordinate with MDOT Motor Vehicles Administration (MVA) since it also maintains a Statewide inventory.

All non-conforming junkyards and inventories must be monitored on a regular basis. Any expansions, screening issues, or other violations should be reported to the RPM of SAD for follow-up.

##### **1110.5.2 ENFORCEMENT**

As illegal junkyards or other violations are discovered, a written notice of the violation will be prepared by the SAD and sent to the violator by

certified mail, return receipt requested. If the violation continues 31 days after the notice was sent by SAD, the matter will be referred to the Office of Counsel for legal action.

#### **1110.5.2.1 PENALTIES**

1. MDOT SHA may apply to the Circuit Court of Baltimore City or the Circuit Court of the county in which any non-conforming junkyard may be located for an injunction for violation
2. Any violation of the provisions of Subtitle 8 of the Transportation Article or Rules and Regulations of MDOT SHA for the establishment, maintenance, or operation of a junkyard without a license is a misdemeanor and on conviction is subject to a fine not exceeding \$100.00. Whenever MDOT SHA has given written notice that a junkyard is maintained or used in violation, each day that the violation continues after the thirtieth day after the notice is received constitutes a separate offense.

#### **1110.6 DETERMINATION OF JUNKYARD STATUS**

##### **1110.6.1 CRITERIA TO ASSIST IN THE DETERMINATION OF JUNKYARD STATUS**

###### **1110.6.1.1 CRITERIA TO DETERMINE NON-CONFORMING JUNKYARD**

1. In legal operation prior to January 2, 1968
2. Does not comply with the location or screening requirements.

###### **1110.6.1.2 CRITERIA TO DETERMINE AN ABANDONED OR DISCONTINUED NON-CONFORMING JUNKYARD**

1. Failure to renew the license for the junkyard
2. A cessation of the junkyard activities for one year
3. The junkyard owner going out of business.

###### **1110.6.1.3 CRITERIA TO DETERMINE AN ABANDONED JUNKYARD**

A junkyard shall be deemed abandoned when the owner goes out of business and leaves said junk on the property.

#### **1110.7 RULES AND REGULATION FOR THE CONTROL OF JUNKYARDS**

The rules and regulations governing the control of junkyard shall be in accordance with the ANNOTATED CODE OF Maryland, Transportation Article, Sections 8-801 Through 8-812 and other pertinent Federal, State laws and regulations.

**1110.7.1 ESTABLISHMENT AND OPERATION OF NEW JUNKYARDS AND EXPANSION OF EXISTING JUNKYARDS**

MDOT SHA junkyard application must be completed and approved by the local government office before MDOT SHA can review application.

**1110.7.1.1 REGULATION AND ADMINISTRATION**

1. SAD or any other duly appointed representatives of the MDOT SHA, shall be charged with the duty and responsibility of enforcing and administering the provisions of the law and these rules and regulations
2. All applications for a license, accompanied by the fee and supporting documents, shall be submitted to:  
Office of Real Estate  
Special Acquisitions Division  
Outdoor Advertising Section  
MDOT State Highway Administration,  
707 N. Calvert Street, Baltimore MD 21202  
for its review, processing and action
3. SAD shall make all determinations of the issues surrounding the individual junkyard situation, including but not limited to the review of applications as to sufficiency of compliance with the law, rules and regulations, effectiveness of the screening and fencing, visibility of operations, determinations regarding removal, relocation and disposal, and make such recommendations or impose such conditions as are deemed necessary or advisable
4. After approval of an application, SAD shall issue a license.

**1110.7.1.2 ESTABLISHMENT OF NEW JUNKYARDS**

1. No new junkyard shall be established, operated, or maintained on and after January 1, 1968, without a license if any portion of such junkyard is within 1,000 feet of the ROW of any interstate or primary highway. Such license will be granted if the location conforms to the provisions in Title 8 of the Transportation Article of the Annotated Code of Maryland, Subtitle 8, Junk and Scrap Yards, Sections 8-801 through 8-812
2. Application for a license to establish, operate, or maintain a new junkyard shall be made in triplicate to the MDOT SHA and on the form prescribed by the MDOT SHA, and shall be signed by the applicant or his authorized agent furnishing, but not limited to, the name and address of the applicant and business capacity, i.e., whether business is to be conducted as an individual, firm, partnership, corporation, association, or governmental
  - a. A license fee in the amount of \$100.00, payable to "MDOT

SHA” by money order, or certified, cashier’s, or treasurer’s check, shall accompany the application. In the event a license is not issued, the fee and documents shall be returned to the applicant together with a statement submitting the reasons for not issuing a license.

- b. The applicant shall attach to his application the following date and information:
  - i. Location, distances, and property lines with respect to the highway centerline and ROW
  - ii. Location and details of proposed screening, if any, in relationship to the proposed area of operation
  - iii. General location map. (The applicant may request to have his basic plan concept reviewed by and commented on by MDOT SHA prior to submission of plan drawings with application)
  - iv. A permit and/or certificate approving the proposed location and indicating the land use classification, if any, from the local governing body having jurisdiction
3. Any municipality, county, State or public organization or agency applying for such license shall be exempt from the payment of the initial and annual license fees, but such public organizations or agencies shall be subject to all other provisions of the law and these rules and regulations.

### **1110.7.1.3 EXPANSION OF JUNKYARDS**

1. The applicant for a license to expand an existing junkyard (one which was in existence prior to January 1, 1968, shall conform to and satisfy the requirements as hereinbefore set forth in Section 1110.7.1.2, Paragraphs 2 and 3
2. A new junkyard, licensed by MDOT SHA after January 1, 1968, that subsequently expands the area of its operations shall prior to such expansion submit to MDOT SHA for approval all details regarding the expansion and in particular the information enumerated in Section 1110.7.1.2, Paragraph 2.

### **1110.7.2 SCREENING, FENCING AND MAINTENANCE**

When screening and/or fencing is required, it shall be the responsibility of the junkyard owner to create an aesthetically effective screen by planting, by the use of an architectural screen or by a combination of the two. The screen shall block the view of the junkyard area from the traveling public at all times along all of the travelled way.

In addition:

1. MDOT SHA shall make determination as to whether a junkyard is effectively and aesthetically screened and continue to be so
2. The plantings and architectural screen must be outside of the highway ROW and located or installed in such a manner as not be hazardous to the traveling public
3. The cost for plantings and architectural screens shall be paid for by the junkyard owner
4. MDOT SHA reserves the right to require additional planting and/or architectural screening if the junkyard becomes visible to the travelling public.

#### **1110.7.2.1 PLANTING SCREEN**

Planting shall consist of trees, shrubs, or other vegetation of a size and density that within three years after installation will screen the junkyard from the view of the traveling public. The location, size and type of plant material and the methods of construction employed to plant them shall be approved by MDOT SHA.

1. Normally major shade trees (large deciduous) should have a planting size of 2 1/2" to 4" in caliber. Acer in variety (Maple), Quercus in variety (Oak), Fraxinus in variety (Ash), and Celtis Occidentalis (Hackberry) are some of the most desirable
2. Normally minor trees (small deciduous) should have a planting size of 5' to 10' in height. Acer Campestre and Ginnala (Hedge and Armur Maple), Crataegus in variety (Hawthorn), Salix Pentandra (Laurel Willow), and Malus in variety (Crabapple) are some of the most desirable
3. Normally evergreen trees should have a planting size of 5' to 12' in height. Juniperus Virginiana (Red Cedar), Pinus in variety (Pines – White, Japanese Black), Picea Abies (Norway Spruce), and Thuja in variety (Arborvitae) are some of the most desirable
4. Normally shrubs should have a planting size of 4' to 5' in height. Wiburnum in variety, Cornus in variety (Shrub Dogwood) Elaeagnus Angustifolia (Russian Olive), Euonymu Alatus (Winged Euonymus), Forsythia in variety, Ligustrum in variety (Privet), Lonicera in variety (Honeysuckle), Rhamnus Frangula Columnaris (Tallhedge Buckthorn) and Rosa Multiflora (Japanese Rose) are some of the most desirable. In general, spacings for shrubs are from 2' to 5' on centers. Multiple rows are normally required
5. MDOT SHA's Office of Environmental Design may change planting requirements, as needed.

#### **1110.7.2.2 ARCHITECTURAL SCREEN**

An architectural screen may consist of an earth mound, wall, fence or combination of these with planting.

1. Earth mounds shall be designed and constructed so as to screen the junkyard from the view of the traveling public and they shall be graded and rounded to a reasonably natural appearance to blend with the existing landscape and shall be planted with grass, ground cover or other plant material, all as approved by MDOT SHA
2. Walls shall consist of concrete block, brick stone or other acceptable materials and shall be in keeping with the area. They shall be constructed to a height which is sufficient to screen the junkyard from the traveling public and are subject to approval by MDOT SHA
3. Fences shall be constructed of wood, metal or other material approved by MDOT SHA. Fences shall be of a height sufficient to screen the junkyard from the traveling public. Fences shall be uniform in appearance and well-constructed. If the composition is such that painting is required, the paint shall be of such color so as to blend into the surrounding environment. Gates shall be the same height and of the same material as the component fence and shall be kept closed when the junkyard is not in operation.

#### **1110.7.2.3 MAINTENANCE**

1. Responsibility  
It shall be the responsibility of the junkyard owner to maintain its planting screen or architectural screen
2. Requirements
  - a. Plantings shall be kept in a live, healthy condition and any plants not in a live, healthy condition shall be replaced
  - b. Walls and fences shall be kept in good order and aesthetically acceptable. Advertisements will not be permitted thereon.

## APPENDIX

### Definition of Acronyms

<b>American's with Disabilities</b>	<b>ADA</b>
<b>Appraisal Division</b>	<b>AD</b>
<b>Appraisal Review Division</b>	<b>ARD</b>
<b>Before Value</b>	<b>BV</b>
<b>Board of Property Review</b>	<b>BPR</b>
<b>Board of Public Works</b>	<b>BPW</b>
<b>Categorical Exclusion</b>	<b>CE</b>
<b>Code of Federal Regulations</b>	<b>CFR</b>
<b>Consolidated Transportation Program</b>	<b>CTP</b>
<b>Construction Manager/General Contractor</b>	<b>CM/GC</b>
<b>Data Services Engineering Division</b>	<b>DSED</b>
<b>Decent, Safe and Sanitary</b>	<b>DS&amp;S</b>
<b>Department of Housing and Urban Development</b>	<b>HUD</b>
<b>Fair Market Value</b>	<b>FMV</b>
<b>Federal Aid Primary Highway</b>	<b>FAPH</b>
<b>Federal Aid Programming Division</b>	<b>FAPD</b>
<b>Federal Highway Administration</b>	<b>FHWA</b>
<b>Federal Housing Administration</b>	<b>FHA</b>
<b>Federal Highway Program Manual</b>	<b>FHPM</b>
<b>Highest and Best Use</b>	<b>HBU</b>
<b>Highway Beautification Act</b>	<b>HBA</b>

<b>Initiation of Negotiations</b>	<b>ION</b>
<b>Internal Revenue Service</b>	<b>IRS</b>
<b>Local Public Agencies</b>	<b>LPA's</b>
<b>Maryland Department of Transportation</b>	<b>MDOT</b>
<b>Maryland Dept. of Transportation State Highway Administration</b>	<b>MDOT SHA</b>
<b>Maryland Historical Society</b>	<b>MHS</b>
<b>Maryland Historical Trust</b>	<b>MHT</b>
<b>Maryland State Roads Commission</b>	<b>SRC</b>
<b>Memorandum of Action</b>	<b>MOA</b>
<b>Memorandum of Understanding</b>	<b>MOU</b>
<b>National Environmental Policy Protection Act</b>	<b>NEPA</b>
<b>National Highway System</b>	<b>NHS</b>
<b>Notice of Intent to Acquire</b>	<b>NIA</b>
<b>Notice to Proceed</b>	<b>NTP</b>
<b>Office of Finance</b>	<b>OOF</b>
<b>Program Development Division</b>	<b>PDD</b>
<b>Programmatic Categorical Exclusion</b>	<b>PCE</b>
<b>Office of Highway Development</b>	<b>OHD</b>
<b>Office of Planning and Preliminary Engineering</b>	<b>OPPE</b>
<b>Office of Real Estate</b>	<b>ORE</b>
<b>Office of Real Estate and Economic Development</b>	<b>ORED</b>
<b>Office of Real Estate Management System</b>	<b>OREMS</b>
<b>Outdoor Advertising &amp; Junkyard Control Section</b>	<b>OA</b>

<b>Plats and Surveys Division</b>	<b>PSD</b>
<b>Preliminary Investigation</b>	<b>PI</b>
<b>Program Coordination Division</b>	<b>PCD</b>
<b>Property Asset Management Division</b>	<b>PAM</b>
<b>Property Review &amp; Compliance Division</b>	<b>PRD</b>
<b>Real Property Manager</b>	<b>RPM</b>
<b>Real Property Specialist</b>	<b>RPS</b>
<b>Real Property Supervisor</b>	<b>RPSUP</b>
<b>Records &amp; Research Division</b>	<b>R&amp;R</b>
<b>Right of Way</b>	<b>ROW</b>
<b>Road Transfer Agreement</b>	<b>RTA</b>
<b>Special Acquisitions Division</b>	<b>SAD</b>
<b>State Transportation Improvement Plan</b>	<b>STIP</b>
<b>The Secretary's Office</b>	<b>TSO</b>
<b>Transportation Business Unit</b>	<b>TBU</b>
<b>Transportation Improvement Plan</b>	<b>TIP</b>
<b>Uniform Standards of Professional Appraisal Practice</b>	<b>USPAP</b>