

This reference guide is a supplement to the **Real Estate Acquisition Guide for Local Public Agencies (LPA)** which is published by the U.S. Department of Transportation, Federal Highway Administration and MDOT's Real Estate Procedure Manual - LPA Oversight. The guidelines are presented to assist with the acquisition of real estate for any LPA utilizing State or Federal funding or expecting State or Federal participation in any phase of a proposed project. The LPA must follow either their own MDOT approved Procedure Manual or adopt MDOT's Procedure Manual. All records related to the acquisition are the responsibility of the LPA to retain.

OWNERSHIP VERIFICATION

The LPA must determine the correct ownership and interest in the property being acquired.

Temporary Rights – A tax sheet/BS&A printout is required at a minimum. If value is over \$10,000 see permanent rights requirements.

Permanent Rights – A preliminary title commitment completed by a title company is highly recommended for any permanent acquisition to verify the ownership interests, proper legal entity names, legal descriptions, and determine any encumbrances. It should also cite the requirements necessary for proper conveyance and list all encumbrances including those to be satisfied to convey clear title.

- Fee – Preliminary title commitment is required for ALL fee acquisitions and must be provided to MDOT with the review package.
- Easement – A preliminary title commitment is HIGHLY recommended for easements. If an LPA conducts their own title search, the person carrying out this task should possess the knowledge and experience to examine chains of title. The LPA must also understand the business risks associated with not identifying the correct ownership interests. A copy of the preliminary title commitment or the LPA's summary title search with all ownership interests, encumbrances, and requirements to convey clear title must be provided to MDOT with review package.

The LPA summary title search and supporting documentation must be retained by the LPA and must meet the following criteria for the easement purchase:

- 40-year marketable title search and a summary of all ownership interests, encumbrances, and requirements to convey clear title
- Properly executed and recorded conveyance instruments
- Evidence of lien satisfaction/encumbrance clearance and any outstanding encumbrances including but not limited to land contracts, leases, easements, plat restrictions, Master Deed, etc. (note impact of the acquisition and if additional parties must sign).

VALUATION

State and Federal regulations require that a property owner be offered just compensation. This value can be determined by completing either a Waiver Valuation or an Appraisal with an Appraisal Review. The LPA must approve just compensation prior to the initiation of negotiations. Just compensation must be determined regardless of the property right(s), temporary or permanent and cannot be less than valuation amount. A summary breakdown of how the just compensation was calculated should be provided to the owner (can be in the Good Faith Offer).

Waiver Valuation - A Waiver Valuation Report may be used on parcel acquisitions that are uncomplicated and with an estimated value of \$10,000 or less. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to prepare the waiver valuation (49 CFR Part 24, 24.102(c)(iii)(B)). Based on the waiver valuation report (see examples of a Market Study, Broker Price Opinion, and Assessor's Report and the requirements for each), the Agency will set the just compensation. Vacant land sales must be used when determining just compensation. Using the State Equalized Value (SEV)/land value from the tax records is not an acceptable practice.

A waiver valuation also may be used for uncomplicated valuations on properties that are owned by a government entity and whose value is up to \$25,000; however, for property over \$10,000 up to \$25,000, the governmental entity must waive their right to an appraisal in writing.

Appraisal & Appraisal Review - An Appraisal and Appraisal Review must be used on parcel acquisitions where the estimated value is more than \$10,000 (except as described in the above described government-government transaction) or at any value where the acquisition or determination of just compensation is complicated.

- Just compensation cannot be less than the value set by the Appraisal/Appraisal Review.
- The review appraisal shall identify the appraisal as Recommended, Accepted, or Not Accepted.
- The Appraisal and Appraisal Review must be completed by a Michigan Licensed Appraiser.

CONFLICT OF INTEREST – Valuation and Negotiation

The following scenarios are conflicts of interest and are not allowed:

- The appraiser, review appraiser or person preparing the Waiver Valuation shall not have any direct or indirect interest in the property being valued and acquired by LPA.
- Compensation for preparing the Appraisal, Appraisal Review or Waiver Valuation cannot be based on the amount of just compensation determined.
- The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal or Appraisal Review.
- If the property is valued over \$10,000, the person preparing the Appraisal, Appraisal Review cannot act as negotiator.

NEGOTIATION

A property owner must be advised of their rights under the Uniform Act by means of a written statement or brochure. The property owner must also be informed of the acquisition process and their right to receive just compensation. Negotiations should be carried out by personal contact where possible. The negotiator must provide the owner(s) with a written good faith offer and keep notes on the negotiation. Property owners must be given reasonable opportunity (not less than 30 days) to review the offer before condemnation proceedings should begin.

Written Good Faith Offer (see sample)

The property owner(s) must be given a WRITTEN good faith offer to purchase property rights which explains the basis for the offer of just compensation (the conveyance document is not a good faith offer) and must include:

- All parties of interest named
- Description and location of the real property & the interest to be acquired
- Total just compensation offered
- Damages to the remainder, if any, stated separately from the real property compensation
- Identification of any improvements being acquired in the offer
- Whether the Agency reserves or waives its right to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property

Memorandum of Negotiations

Notes of all correspondence and discussions with the property owners must be logged and include:

- Dates, locations, and summary of contacts made or attempted (written and verbal).
- Pertinent items discussed and any property owner concerns (landscaping, counteroffer, etc.) and how they were addressed.
- Date written Good Faith Offer letter was sent/presented.
- How the contact person and the person signing have interest in property (i.e. owner, president of corporation, partner, manager, etc.)

DONATION & SETTLEMENTS

A property owner may choose to donate all or a portion of their property that is needed for a project in lieu of compensation ONLY after they have been provided with the written good faith offer notifying them that they are entitled to just compensation. After being fully informed of their rights, the property owner may then decide to donate their property and waive their right to just compensation.

A donation may be in lieu of compensation or in Exchange for Construction Features or Services. An LPA may accept a property owner's offer to donate all or a portion of their property in exchange for services rendered that shall benefit the property owner. This can be done only after the owner is made aware of their just compensation. If the donation is in Exchange for Construction Features or Services (only for temporary rights), a comparison of the estimated value of the right-of-way against the cost of the construction feature(s) must be made to establish the economic justification for the exchange. The feature/service cost must have supporting documentation.

If the Agency agrees to a payment more than the initial offer (Administrative Settlement) when reasonable efforts to negotiate an agreement at the offered amount have failed, a written justification and approval of the settlement shall be prepared by the Agency, which states what available information supports and justifies such a settlement.

BUILDING ON MUNICIPAL LAND

If the Road Commission is building outside the ROW on property held in the Road Commission's name, no consent/permit is needed. However, if the Road Commission is building on property owned by another entity within the County (e.g. Health Department), then consent from the respective entity authorizing the construction is needed. No compensation needs to be offered.

For participating agencies that are not Act 51 Agencies, and an Act 51 Agency is acting on their behalf and building an improvement on their property, MDOT requires the Act 51 Agency certify they have permission to build on the non-Act 51 Agency's property. An agreement between the Agencies must be executed, where the non-Act 51 Agency grants the Act 51 Agency permission to enter and construct the improvements. The agreement must explain the situation and give the Act 51 Agency the aforementioned rights. It must also contain a declaration of the party responsible for the improvement's maintenance.

COERCION

Federal and State law forbids an Agency from taking any coercive action to compel a property owner to agree to the acquisition (49 CFR 24.102(h) & Uniform Condemnation Procedures Act 213.74). Examples of coercion include but are not limited to:

- Advancing the time of condemnation
- Deferring negotiations or condemnation
- Stating that the project cannot be built because of lack of funding unless the property is donated or that the property right will be condemned if not agreed to at the offered amount.

YOU MUST HAVE POSSESSION OF ALL PROPERTY PRIOR TO SUBMITTING ATTACHMENT B.

Local Public Agency Parcel Checklist

Project Name: _____ Job Number: _____

of Parcel impacted: _____

Rights/Instruments Acquired:

_____ Fee – Permanent
 _____ Easement - Permanent
 _____ Consent/Temporary (Grading, sidewalk, etc.)
 _____ **Total Rights Acquired**

SUBMIT SIGNED ATTACHMENT B & include the following for ALL parcel files:

- List of parcel owners and what was secured from each (consent, easement, etc.)
- Title Evidence
 - Permanent Acquisitions:
 - Fee - Title Commitment
 - Easement - Title Commitment or LPA Title Search
 - Temporary Acquisitions - Tax Search/BS&A Sheet
- Valuation
 - Waiver Valuation (uncomplicated acquisition, \$10,000 or under)
 - Appraisal & Appraisal Review (Over \$10,000 or complicated acquisition at any value)
- Written Good Faith Offer (requirements in LPA Real Estate Document Reference Guide)
- Conveyance Documents & Sketch
 - Permanent Acquisitions – Documents executed & recorded (Fee, Easement)
 - Temporary Acquisitions – Documents executed (Consent, Permit, Municipal Agency Agreement)
- Donation form (if applicable) – Signed by both owner and LPA
- Memos of Negotiation – Detailed log of negotiations with the property owner (Typed notes preferred)
- Administrative Settlement Memo (if applicable)
- Relocation Documentation (if applicable)
 - Relocation Eligibility Notice (MDOT Form 626)
 - Replacement Housing Determination (MDOT Form 625B)
 - Replacement Rental Determination (MDOT Form 625C)
 - Relocation Claims (MDOT Forms 677 or 679)
 - Payment Documentation

Parcel Naming Convention - Consistency for each parcel file submittal assists in a smooth and quick review
Individual documents: Parcel # and/or owner's name & document type
Examples: 1-GFO, 1-Title or Jones-GFO, Jones-Title, or 1 Jones-Title, 1 Jones-GFO, Market Study, etc.
Package format: Parcel # and Owner's name (each package in the same order)
Example: 1-Jones, 2-Smith, etc.