WELCOME!

MODOT-ST. LOUIS DISTRICT
LPA RIGHT OF WAY STAFF

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ST. LOUIS COUNTY
ST. CHARLES COUNTY
FRANKLIN COUNTY
JEFFERSON COUNTY

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The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)

- On January 2, 1971, Public Law 91-646, the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," (Uniform Act) was signed into law. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a result of projects receiving federal funds, will be treated fairly and equitably, and will receive assistance in moving from the property that they occupy.

- U.S. DOT designated Lead Federal Agency

- MoDOT oversees compliance in Missouri
The Uniform Act governs both Property acquisition and Relocation assistance

What does this cover?

- Purchase of new rights-of-way and other property rights
- Purchase of easements- permanent AND temporary
- Purchase of construction licenses
- Total relocation of displaced persons, businesses, etc.
- Partial relocation of personal property items
136.8 Local Public Agency Land Acquisition

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Forms

Acquisition Authority Request (Form 136.8.1) · Adjustment of Value or Just Compensation (Form 136.8.2) · Administrative Settlement Justification (Form 136.8.3) · Appraisal Monitor Checklist (Form 136.8.4) · Appraisal Review (Form 136.8.5) · Assumptions and Limiting Conditions (Form 136.8.6) · Certificate of Appraiser (Form 136.8.7) · Clearance Certification Statement (Form 136.8.8) · Comparable Lease (Form 136.8.9) · Donation in Exchange for Construction Features Letter (Form 136.8.10) · Final Vacancy Notice for Relocation (Form 136.8.11) · Legal Justification for Settlement (Form 136.8.12) · Legal Trial Report (Form 136.8.13) · LPA Right of Way Acquisition Brochure · LPA Negotiator Services Agreement (Form 136.8.14) · Negotiator’s Report (Form 136.8.15) · Nonresidential Sale (Form 136.8.16) · Parcel File Checklist (Form 136.8.17) · Plan Review Checklist (Form 136.8.18) · Privately Donated Land as Credit to Matching Share of Project Costs (Soft Match) (Form 136.8.19)
FREQUENTLY ASKED QUESTIONS

What is “Right of Way”?  

- As a CATEGORY in a Federal Aid project, includes acquisition of all types of property rights needed to build a project.  
- Also refers to a specific TYPE of legal property right.  
- Temporary Easements and relocation fall within this category, even if no permanent rights acquired.
PROPERTY RIGHTS

Real Estate:
Physical land and the objects that are permanently affixed to the land.

Real Property:
All the rights, title, and interests associated with real estate ownership.


- Real Property includes “Bundle of Rights”
PROPERTY RIGHTS

**Right of Way:**

1. The right to pass across the lands of another.
2. Land or property, or an interest in land or property for transportation purposes (for example, roads, public transport, utilities, and so forth).


- Permanent conveyance
PROPERTY RIGHTS

**Easement:**

A nonpossessory interest held by one person in property of another where the first person is accorded partial use of the property for a specific purpose. An easement restricts but does not abrogate the fee owner’s rights to the use and enjoyment of the property.


- May be permanent or temporary
- If an owner cannot remove what is built, it should be permanent
- May apply to surface, overhead and/or subterranean areas
License:

A *license* is permission, either expressed or implied, given by a property owner to another to allow the performance of some activity on the owner’s property.


- Not interchangeable with easements
LPA RIGHT OF WAY
PROCESS
1. NEPA Approval

**RULE:** Now must clear more environmental categories before receiving approvals
2. Design Preliminary Plan Approval

- Going forward, district design liaisons will not approve preliminary plans without NEPA.
- Findings in these categories could have significant impact on project design and areas of RW acquisition (The WHY).
- Should be complete before RW plans sent.
3. **Submit RW Plans**

- Should incorporate changes requested during preliminary design review
- Plans will not capture these revisions when submitted concurrently
- Must have details needed to appraise and write descriptions for acquisitions
- Send directly to RW staff
LPA PROJECTS - R/W PLAN REVIEW - CHECKLIST

a. □ Existing right of way line;

b. □ Beginning and ending right of way project limits by station; *Easements must fall within termini

c. □ Proposed right of way and easements; *Permanent easements should specify use

d. □ Dimensions of proposed acquisition;

e. □ Names of property owners from title report or assessor’s records;

f. □ Land survey lines (including quarter and quarter-quarter section lines with notated reference to quarter-quarter Section, Township, and Range), all property lines, and at least one witnessed land corner tied to the project centerline. For platted areas, plans can alternatively show Lot, Block (if applicable) and Subdivision for each parcel, and one tie to any corner of record. Land ties/corners of record are not required for projects requiring temporary easements only.

g. □ Parcel identification numbers; *1,2,3- NOT Assessor’s Parcel ID

h. □ Areas of new land, permanent and temporary easements;

i. □ Remainder of land holdings on each side of road;

j. □ All improvements/structures acquired or in proximity to the project; *#1 cause of revisions- MUST show impacts to property

k. □ Grading and slope lines;

l. □ Entrances (station location, type and surface material); *Also commonly missed

m. □ Federal-aid project number on each sheet.

Approved on (date) _______________ Approved by ____________________
LEGEND:
- Proposed Temporary Construction Easement
- Proposed Permanent Drainage Easement
- Proposed New Right of Way

City of Colorville
Main Street
Improvements
STP-1234(567)

RW Plans
Sheet 1 of 1

Prepared by:
Jane Smith, PE
Smith Design Firm

1/21/20
4. Request Acquisition Authority

- A-Date: obligation of federal RW funds
- Notice to Proceed: local RW funds
- Identical submittal form/procedure, processing differs
- Requires schedule and MoDOT conversation with negotiator before moving forward
RIGHT OF WAY ACQUISITION SCHEDULING TOOL

County/City:  
Route:  
Job Number:  
Letting Date:  Don’t forget this, also must work with clearance date  
No. of Parcels:  

A-Date/Notice to Proceed

Securing appraisal contracts
Appraisers developing reports
Securing review appraisal contracts
Will take longer if hiring appraisers, window can be shorter for payment estimates

Appraisals/Payment Estimates Complete

Appraisals being reviewed
May put N/A, expect payment estimates/waiver valuations only

Appraisal Reviews Complete

Preparing negotiation packets
(deeds, offer letters, brochures, prorate tax claim forms, etc.)
Do not need a large window, may send as soon as values are ready

Written Offers Made

Negotiation period
May be prior to offer date if you choose

60-Day Notices Sent

Negotiations continue
MUST be 60 days after above date.

File Condemnation Petition or Cancel Project

Condemnation Hearing
Condemnation Commissioners’ Viewing
Condemnation Commissioners’ Award
ALLOW TIME
Courts/Commissioners can be unpredictable must have paid award to clear

Submit Clearance Certification

NOTE:  Complete the schedule as if no donations are expected.
NOTE:  If relocation/personal property is involved, contact MoDOT for additional information regarding scheduling.

EPG 136.8.2.2  Page 1 of 1  Form 136.8.2.2  02/2015

* Please see “Right of Way Acquisition Schedule Instructions” (136.8.2.2.A) for further help.
5. Acquisition and Relocation

- Appraisal, negotiation and relocation—contact MoDOT with questions that arise
- Consultants must be on MoDOT roster in EPG (Section 236, MoDOT Right of Way Manual)
- Must have legal and physical possession of property in order to request clearance
6. Submit Clearance Certification

- Must accompany completed parcel files
- MoDOT reviews content for Uniform Act compliance
- Donation files **must** include signed waiver letters
ACQUISITION
FREQUENTLY ASKED QUESTIONS

Can I ask owners for property donations?

- Can I trade some extra driveway concrete for the easement I need?
  - Yes, but both must be valued and the owner must be made aware of the details

- Can I trade some new rose bushes and a city sign permit?
  - Property must be valued and an offer made, then owner can agree via administrative settlement

When owners won’t agree to donate, what comes next?
Sponsors may request donations. When owners are not agreeable to a true donation, you MUST determine a value for land and/or rights to be acquired.

- ALL Valuation documents must be signed by an agency employee to establish approval of just compensation
- Contract review appraiser signatures are not sufficient, the agency must approve in writing as well
1. **Waiver Valuation/Payment Estimate**

- May be developed by non-appraisers
- *Acquisition is simple* and worth $10,000 or less
- Land value is easily determined
- Only nominal structural improvements and/or access rights
- Other than fencing, costs to cure cannot make the total compensation exceed $10,000
- No apparent damages to the remainder (Beyond Easements)
**WAIVER VALUATION – PAYMENT ESTIMATE**

1. **Owner:**
   - **Owner Name:**

2. **Identification of the Property:**
   - **Address:**

3. **Description of Acquisition:**
   - **Land, permanent and temporary easements:**

4. **Calculation of Value of Land to be Acquired:**
   - **Land:**
     - 20 acres @ $1,000/acre = $20,000

   - Basis for Value: Sale of 1234 West Johnson St. on 2/4/18, land value $2,500/acre

5. **Summary:**
   - **Value of Land Acquired:** $20,000
   - **Value of Improvements to be Acquired:**
     - **Fee Owner:**
       - **Salvage Value:**
         - **Tenant Owner:**
           - **Salvage Value:**

   - **Tenant Owner:**
     - **Salvage Value:**

   - **Damages to the Remainder:**
     - **Permanant Easement:**
       - **Temporary Easement:**

   - **Other Damages:**
     - **Bush @ $30 per attached bd:**

   - **Subtotal:** (Maximum $10,000)

   - **Fencing:**
     - **of:**

   - **Total Fencing:** $35,000

   - **Total Just Compensation:**
     - $100,000

6. **Uneconomic Remnant:**
   - **Area:**
     - **acres:**

   - **Prepared by:**
     - **Name of preparer:**

   - **Approved by:**
     - **Date:**

   - **I am a government agency official and hereby approve just compensation as noted in the above Section 5:**

   - **Signature:**
     - **MUST BE STAMPED/CANNOT BE PREPAREER**

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**NEED SECOND PAGE AND ATTACHMENTS**

**USPAP Compliance Statement:** This waiver valuation was prepared according to the contract/assignment form the agency. The intended use of the waiver valuation is for eminent domain related acquisition and the agency is the only intended user. The agency bears responsibility for contract/assignment requirements that meet its needs and are not misleading. In combination with the Scope of Assignment and administrative approval functions, all waiver valuation reports assigned by the agency identify the problem to be solved, determine the scope of work necessary to solve the problem and correctly complete research and analysis necessary to produce a reliable waiver valuation and are therefore in compliance with USPAP Standard 1. In that the agency is the only intended user of the report and others may only be provided copies for informational purposes, the agency has determined that reports prepared in conformance with these procedures fulfill the agency’s needs. Any inconsistencies with USPAP are cured by the USPAP Jurisdictional Exception provision.

**Required Attachments:**
- **Site Plan**
- **Photograph of Acquisition Area**
- **Comparable Sales or Other Value Support**

**Optional Attachments:**
- **Cover letters**
- **Tables of Contents**
- **Qualifications**
- **Engagement Letter or Notice to Proceed**

Acquisitions should be SIMPLE, be careful when impacting businesses or irregular properties. Comparable land values should be easily available, as with standard residential lots. Look at highest and best possible use of the site, not only the owner’s current function.
2. Value Finding Appraisal

- Must be developed by a state-certified residential or general appraiser, as appropriate
- Acquisition is simple
- Sales comparison approach with only minor adjustments
- Damage can be measured by the cost to cure, or is consequential and not exceeding $10,000 per element
- Simple strip easements, and cost to cure items when valued by cost manual or contractors’ estimate are not subject to the $10,000 damage limit
- Highest and best use stays the same
VALUATION

3. Standard Appraisal

- Must be developed by a state-certified residential or general appraiser, as appropriate
- Appraisal problems are judged to be complex
- Highest and best use of a property as improved is different than the highest and best use as if vacant
- Residential or other major improvements are acquired
- Change in highest and best use after the acquisition
VALUATION

- Each parcel must be valued independently, and a specific report or document must be prepared for each parcel.
- Property owners must be provided a copy of this document when offers are presented.
- Mutually agreed-upon deals, without valuation = Violation
- Use of minimum/nominal payments, without valuation = Violation
NEGOTIATION

Owners must promptly be provided with a written offer letter for the amount of approved just compensation for the acquisition.

- Offers not presented in person must be sent via certified mail with return receipt in order to establish the required notification period for condemnation
- FHWA: expects personal contact if at all possible
- Owners must be presented with a copy of a brochure explaining the acquisition process
- Owners must be provided a copy of the valuation document and plan sheet
- Owners who agree to a true donation must sign a letter waiving their right to compensation

Follow up on this if the owner returns deed without it
NEGOTIATION

- Appraisers may not participate in negotiations if they have produced an appraisal or review appraisal for the parcel.
- For waiver valuations/payment estimates, the writer may also negotiate.
- Negotiators may not use coercion to reach settlements.
- Owners shall not be required to surrender possession of real property before receiving payment, or for condemnations, having payment deposited into the court system.
- All negotiated settlements must include a written Justification for Administrative Settlement signed by an agency official as per local regulations.
- Administrative settlements are not new “offers.”
- Sponsors are responsible for reporting payments to owners for real estate purchases to the Internal Revenue Service.
NEGOTIATION

Reimbursement-eligible owner expenses:

- **Property Transfer Costs**: Recording fees, transfer taxes and similar expenses incidental to conveying the property. (Normally paid directly)
- **Proration of Taxes**: Owners will be reimbursed for a pro-rata portion of the state, county and city real estate taxes paid for the current taxable year.
- **Mortgage Penalties**: Owners will be reimbursed for actual penalty costs for prepayment of a pre-existing mortgage.
- **Appeal for Expense Eligibility**: Property owners may file a written appeal if they believe that the agency has failed to properly consider their reimbursement request.
CONDEMNATION

- Owners must be provided at least 60 days’ notice of their rights under Missouri law prior to filing condemnation.

- An offer must be held open for 30 days prior to filing condemnation; revisions to offers (such as when plans are altered) start a new 30-day “clock”

- Certified mail receipts may be used for establishing these dates when this correspondence is mailed

- 50-year owners and owners affected by close project proximity (300 feet of primary residence) may fall under the Heritage and Homestead provisions of Missouri condemnation law, consider this when attempting to reach settlements
RELOCATION
RELOCATION

The Uniform Act and Missouri law are very detailed with regard to relocation procedures. Please contact your MoDOT RW liaison as early as possible to develop a relocation plan.

Generally speaking:

► Acquisition and relocation payments must be separate
► FHWA does not allow for “global settlements,” please be aware that your attorney should not make such deals
► Expenses to be reimbursed must be actual, reasonable, and necessary
► Please allow for adequate relocatee notification time (no less than 90 days after payment) when developing a project schedule
CLEARANCE CERTIFICATION

This document is required for all federally assisted projects (in any phase of the job), but only if any right of way acquisition was necessary. Acquisition must be complete before submitting.

- Publish on agency letterhead
- Use the current EPG version every time, it has been recently revised
- READ the document and ensure that the correct options are selected
- Must list voided parcels with explanation
- Document should not pre-date file submittal
FILE REVIEW

Each parcel file must contain the following documentation:

- Recorded conveyance documents
- **Detailed** Negotiator’s Report/log
- Title/proof of ownership
- Copies of offer letters, 60-day notices, donation letters, and any other correspondence
- Appraisal or other valuation document
- Any applicable agreements
- Justification for Administrative Settlement
- Proof of Payment to owner prior to sponsor possession
PARTIAL/CONDITIONAL CLEARANCES

They theoretically exist, but pretend they don’t.

Really.

If you are having problems with negotiation, please contact MoDOT well in advance of the end of the fiscal year.
If realty rights were acquired more than 5 years prior to the first request for federal funds, the local agency shall submit a statement certifying that no new realty rights are needed and the dates the existing realty rights were acquired.

If the realty rights were acquired less than 5 years prior to the first request for federal funds, the acquisition must comply with the Uniform Act in order for any portion of the project to receive federal funds.
FINANCE AND RECORDS
FREQUENTLY ASKED QUESTIONS

What documentation do I need to include with my RW invoice?

- Should I include deeds, appraisals, purchase agreements, contracts, etc.?

What items do I need to hang on to after the project, and for how long?
Requests for reimbursement of RW expenses should include the following support items

- Plan sheet showing authorized and actual acquisition areas
- Statement of cost of right of way showing:
  - parcel number
  - cost of parcel
  - cost of excess land, if any
  - credits by parcel or project
  - incidental expenses by parcel or project
  - cost of construction performed in mitigation of damages on a parcel basis if claimed as a right of way item. (Refer to 23 CFR 710.203(a)(1))
REIMBURSEMENT

Eligible RW expenses prior to Acquisition Authority (Under PE if in scope)

- Cost estimates prior to appraisal phase
- Title work
- Description writing
Eligible RW expenses after Acquisition Authority

- Real property acquisition
- Incidental costs to the acquisition.
- Pro rata taxes and/or special assessments.
- Cost of acquisition through condemnation, interest on legal settlement or court awards, and court commissioner fees.
- Tenant-owned improvements.
- Construction in exchange for donation, or mitigation of damages.
- Relocation payments and expenses.
RECORDKEEPING

- All documents relating to acquisition of right of way shall be available for inspection at reasonable times by authorized representatives of MoDOT and FHWA.
- All plans, contracts, deeds, appraisals, options, vouchers, correspondence and all other documents and papers shall carry the federal-aid project number for identification.
- Sponsors must maintain a project file (i.e. appraisal data book(s), title services contract, public hearing record, etc.)
Sponsors must maintain an inventory of all improvements acquired; how these improvements are disposed of; an accounting of management expenses (i.e. advertising for disposal, preparing demolition contracts, etc.), rental receipts received, and recovery payments for disposition of improvements; and rodent control costs.

All documentation shall be kept a minimum of three years after the final invoice is submitted.
THANK YOU!

Please feel free to ask questions.