Property Acquisition Guide for Multimodal Transportation Projects Undertaken by PennDOT
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# Table of Contents

1. General Provisions .......................................................................................................................... 1
   1.1 Introduction .................................................................................................................................. 1
   1.2 Document Objectives .................................................................................................................... 2
   1.3 Applicability ................................................................................................................................ 2
   1.4 Authority and Responsibilities ...................................................................................................... 2
   1.5 Roles and Responsibilities ............................................................................................................. 3
   1.6 Right-of-Way Files and Recordkeeping ......................................................................................... 3
   1.7 Resources .................................................................................................................................... 5

2. Multimodal Property Acquisition Process ......................................................................................... 7
   2.1 Process .......................................................................................................................................... 7
   2.2 Timeframes ................................................................................................................................... 8

3. Project Planning and Funding .............................................................................................................. 9
   3.1 Funding Sources ............................................................................................................................. 9
   3.2 Project Purpose and Need ............................................................................................................. 10
   3.3 Project Scope ............................................................................................................................... 10
   3.4 Environmental Compliance ......................................................................................................... 11
   3.5 Property Acquisition Plan ........................................................................................................... 15
   3.6 Property Acquisition Methods .................................................................................................... 15
   3.7 Right-of-Way Plan ........................................................................................................................ 17
   3.8 Right-of-Way Payment Process .................................................................................................... 17

4. Right-of-Way Plans ........................................................................................................................... 19
   4.1 Right-of-Way Plan Preparation ...................................................................................................... 19
   4.2 Review of Preliminary Right-of-Way Plan .................................................................................... 19
   4.3 Approval of Final Right-of-Way Plan ............................................................................................ 19
   4.4 Authorization to Acquire .............................................................................................................. 20

5. Appraisal, Appraisal Review, and Appraisal Waiver ...................................................................... 21
   5.1 Contracting for Appraisal and Right-of-Way Services ................................................................. 21
   5.2 Appraiser Certification ................................................................................................................ 22
   5.3 Project Damage Estimate .............................................................................................................. 22
   5.4 Appraisal Problem Analysis ......................................................................................................... 22
   5.5 Appraisal Process, Forms, and Reports ......................................................................................... 22
   5.6 Revising and Updating Appraisals ............................................................................................... 23
   5.7 Appraisal Review .......................................................................................................................... 23
   5.8 Waiver Valuation .......................................................................................................................... 23

6. Acquisition ........................................................................................................................................ 25
   6.1 Personal Pre-Negotiation Contact ............................................................................................... 25
   6.2 Prompt Written Offer .................................................................................................................... 25
   6.3 Negotiations ................................................................................................................................. 26
   6.4 Condemnation ............................................................................................................................. 26
   6.5 Other Types of Acquisitions ........................................................................................................ 27
7. Relocation Assistance and Payments ................................................................. 29
   7.1 Pre-Acquisition Survey and Relocation Plan .................................................. 29
   7.2 Relocation Notices ...................................................................................... 30
   7.3 Residential Relocation Payments ................................................................. 31
   7.4 Replacement Housing of Last Resort ......................................................... 32
   7.5 Business Relocation Payments ................................................................. 32
   7.6 Relocation Advisory Services ................................................................. 32

8. Right-of-Way Clearance Certificate ............................................................... 34

Appendix A: Sample Real Estate Purchase Option Agreement .......................... 35
Property Acquisition Guide for Multimodal Transportation Projects Undertaken by PennDOT


1.1 Introduction

Transportation projects often require the acquisition of property to accommodate the constructed improvement. For highway projects, this process occurs frequently and has become standardized over time. The acquisition of property for multimodal projects occurs much less frequently than for highway projects and can differ from the standard highway process in important ways. Therefore, this guide is intended to provide an overview of the property acquisition process for multimodal projects undertaken by PennDOT. This guide is not intended to control the acquisition of right-of-way when multimodal grants are awarded to third parties.

The intended audience for this document includes project managers within the bureaus of PennDOT’s Multimodal Transportation Deputate as well as PennDOT right-of-way staff at the Districts and Central Office.

Projects receiving federal funds may involve coordination with the appropriate modal agency of the U.S. Department of Transportation (US DOT):

- Federal Transit Administration (FTA)
- Federal Aviation Administration (FAA)
- Federal Railroad Administration (FRA)
- Maritime Administration (MARAD)

Projects with a highway component may also include coordination with the Federal Highway Administration (FHWA).
1.2 **Document Objectives**

This document has the following objectives:

- Explain the property acquisition process in sufficient detail for project managers in PennDOT's Multimodal Transportation Deputate that are not typically involved in property acquisition.
- Establish a process for multimodal property acquisition that uses as many of the long-established PennDOT right-of-way processes, policies, and forms as possible.
- Document specific differences between highway and multimodal property acquisition for PennDOT Right-of-Way staff.
- Provide references to controlling documents, such as the Code of Federal Regulations and the PennDOT Right-of-Way Manual, where applicable.

1.3 **Applicability**

The laws, regulations, policies, and procedures for the acquisition of property identified in this guide apply to any multimodal project for which PennDOT is acquiring property and that uses state and/or federal funding in any phase of the project. This applies even when state or federal dollars are not used specifically for property acquisition or relocation activities but are used elsewhere in the project, such as for planning, environmental assessments, design, and/or construction. All applicable state and federal requirements must be followed to ensure funding is not jeopardized.

This guide is applicable to the following non-exclusive list of multimodal projects: public transit, rail freight, aviation, ports and waterways, intermodal, and non-motorized facilities. Because these projects are not as common as highway projects, they may often present special issues. Therefore, the Multimodal Project Manager should begin coordinating with the District Right-of-Way Administrator (or delegate) as early as possible in the project development process to ensure that the project will proceed efficiently and that federal funding will not be jeopardized or delayed.

1.4 **Authority and Responsibilities**

Several federal and state laws govern the acquisition of private property for transportation improvements. These laws are further supplemented by the professional standards for real property valuation. Noted below are the most important laws and standards governing property acquisition.

- Federal Public Law 91-646, **The Uniform Relocation Assistance and Real Property Acquisition Policies Act** of 1970, as amended, commonly called the Uniform Act, is the primary federal law for right-of-way and property acquisition and relocation activities on federally assisted projects.
- The Uniform Act is implemented in federal regulations by **Code of Federal Regulations 49, Part 24** (49 CFR 24).
- Pennsylvania Act 58 of 2010, the **Sale of Transportation Lands Act** establishes procedures for the sale of land acquired by PennDOT.
• PennDOT Publication 378, the **Right-of-Way Manual** has been written to comply with the Uniform Act and the Pennsylvania Eminent Domain Code. The **Right-of-Way Manual** provides detailed procedures to follow to acquire property for transportation projects.

• The **Real Estate Appraisers Certification Act** (REACA), Pennsylvania Act 98 of 1990, establishes standards to be followed by appraisers performing appraisal work in Pennsylvania.

The PennDOT District Right-of-Way Unit in the geographic location of the project is the primary source of information concerning property acquisition matters. The Multimodal Project Manager should be in constant contact with the PennDOT District Right-of-Way Unit before, during, and after the project, but particularly when in doubt concerning proper acquisition policies and procedures.

### 1.5 Roles and Responsibilities

Property acquisition for multimodal projects is a complex process with varying roles and responsibilities. In general, it will be the District Right-of-Way Unit’s responsibility to manage the acquisition of property for the project. The District’s efforts will be overseen and supplemented by the Multimodal Transportation Deputate, the Central Office Utilities and Right-of-Way Section, and the PennDOT Office of Chief Counsel. Table 1 summarizes the key property acquisition tasks and the group responsible for leading that task.

### 1.6 Right-of-Way Files and Recordkeeping

#### A. Requirements

The Uniform Act and PennDOT policy require property acquisition records and files to be maintained in sufficient detail to enable a reviewer to determine compliance with federal and state requirements. General project files and individual claim files must be set up to give a chronological listing of the events pertaining to the project and each individual acquisition.

Individual claim files must be set up to show all of the events and records pertaining to the different aspects of the acquisition. Claim files should include a chronology of correspondence to the claimant and documents and records of the different property acquisition processes: appraisal, acquisition, relocation, settlement, and payment(s).

Each claim file should also contain a negotiations record, which chronologically documents events and verbal discussions with the claimant. An accurate record of all contacts and actions pertaining to every claim must be maintained. This report should be a logical, legible, chronological account of information such as names, meeting places, dates, discussions, and claimant counter demands. Every entry should be signed and dated by the person making the entry.
<table>
<thead>
<tr>
<th>Property Acquisition Tasks</th>
<th>Multimodal Transportation Deputate</th>
<th>District Right-of-Way Unit</th>
<th>Central Office Right-of-Way Section</th>
<th>PennDOT Office of Chief Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Create right-of-way plan</td>
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<tr>
<td></td>
<td>(design consultant)</td>
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<tr>
<td>Perform DM-3 right-of-way plan review and approval</td>
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<td>(2nd design consult.)</td>
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<td>Sign right-of-way plan</td>
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<tr>
<td>Authorization to acquire</td>
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<tr>
<td>Execute fee appraiser contract</td>
<td>●</td>
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<tr>
<td>Initiate project and oversee fee appraiser</td>
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<td>Execute review appraiser purchase order</td>
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<td>Initiate project with review appraiser</td>
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<tr>
<td>Overseer review appraiser</td>
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<td>Review Declaration of Taking and deposits</td>
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<td>(R/W consultant)</td>
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<tr>
<td>Execute right-of-way consultant contract</td>
<td>●</td>
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<tr>
<td>Oversee right-of-way consultant and relocation process</td>
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<tr>
<td>Approve payments</td>
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<tr>
<td>Issue right-of-way clearance</td>
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<td>●</td>
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<tr>
<td>Disposition of excess lands</td>
<td>●</td>
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</tr>
</tbody>
</table>
B. ROW Office Database Application
In order to track and maintain information for property acquisition, PennDOT implemented the Right-of-Way Office application (ROW Office). This computer application is a statewide, web-based database that serves as PennDOT’s official record of all property acquisition activities. ROW Office tracks project information, establishes parcel and claim numbers, records parcel take area and valuation data, controls claim payment activities through system edits, details property management and relocation assistance events, and serves as a historical database for all claimant contacts. Multimodal projects will be tracked in ROW Office in the same manner as highway projects.

C. Timeframe
Publication 378, Right-of-Way Manual requires records to be retained for at least 21 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under state and federal laws and regulations. The Bureau of Public Transportation’s retention policy requires records related to the acquisition and/or transference of land be retained for 100 years. For multimodal projects, any records not contained within ROW Office will be maintained by the Multimodal Transportation Deputate consistent with these timeframes.

1.7 Resources
The following resources provide additional information applicable to property acquisition.

A. PennDOT
The information, policies and procedures contained in PennDOT’s Publication 378, Right-of-Way Manual have been written to comply with the Uniform Act and the Pennsylvania Eminent Domain Code. The Multimodal Project Manager can ensure consistency with federal funding requirements by following procedures described in the Right-of-Way Manual. Electronic copies of the most frequently used forms are also available through the District Office.

B. Federal Transit Administration (FTA)
FTA website
http://www.fta.dot.gov/

Grant Management Requirements (FTA C 5010.1D dated 11/01/08 (rev. 1 08/27/12))

Transit and Real Estate
http://www.fta.dot.gov/12304_5937.html
C. Federal Aviation Administration (FAA)

FAA website
http://www.faa.gov/

Acquiring Land for Airports and Relocation Assistance
http://www.faa.gov/airports/environmental/relocation_assistance/

Land Acquisition and Relocation Assistance for Airport Projects
tNumber/5100.37

D. Federal Highway Administration (FHWA)

FHWA website
http://www.fhwa.dot.gov/

FHWA Office of Real Estate Services
https://www.fhwa.dot.gov/real_estate/

Acquiring Real Property for Federal and Federal-aid Programs and Projects
https://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/acquisition/real_property.cfm

E. Federal Railroad Administration (FRA)

FRA website
http://www.fra.dot.gov/

F. Maritime Administration (MARAD)

MARAD website
http://www.marad.dot.gov/
2. Multimodal Property Acquisition Process

2.1 Process
The major steps in the Property Acquisition Process are Planning, Appraisal, Acquisition, and Relocation. They are detailed below in Figure 1.

Figure 1 - Property Acquisition Flowchart

1 Typically the right-of-way plan is included with Preliminary Engineering, and Appraisal/Acquisition with Final Design.
2 The Final Right-of-Way Plan can be prepared prior to Environmental Clearance but can only be submitted for approval after Environmental Clearance.
3 PennDOT's Waiver Valuation Process for small claims may be used in Multimodal Transportation Projects where applicable.
2.2 Timeframes

Property acquisition can be a very time-intensive process. Early involvement of the District Right-of-Way Unit will allow them to provide an estimated timeframe for the property appraisal and acquisition process for a specific project. The acquisition process can take anywhere from six to 18 months or longer, depending on the project. If relocation is involved, it can take at least six months after negotiations are completed. If any properties are condemned, rather than settled amicably, additional time will also be required. See Appendix G.01, Expedited Right-of-Way Procedures, Publication 378, Right-of-Way Manual for information which can help to reduce property acquisition times.
3. Project Planning and Funding

Project planning is the foundation for project decisions and successful project implementation. If factors such as, but not limited to, public involvement, consideration of the environment, and a clear cut funding strategy are not addressed early in the planning process, a multimodal transportation project will not be completed on time and within budget. Key to project planning is the determination of which federal agency has jurisdiction over real property acquisition procedures. Upfront project planning results in an acquisition process that is efficient and will reduce costs and project delays.

3.1 Funding Sources

The use of state or federal funding is an important variable in determining how project planning is accomplished. As noted in Section 3.4, the approval process and level of environmental clearance for the acquisition of property for multimodal projects differs depending on the funding source used.

A. Federal and State

Federal funding for multimodal projects is made available from:

- Federal Transit Administration (FTA)
- Federal Aviation Administration (FAA)
- Federal Highway Administration (FHWA)
- Federal Railroad Administration (FRA)
- Maritime Administration (MARAD)

Several state funding sources are available for the implementation of multimodal projects through the Multimodal Transportation Deputate. In addition, Pennsylvania state agencies such as the Department of Community and Economic Development, the Commonwealth Financing Authority, and Department of Conservation and Natural Resources, have provided funding for multimodal projects.

Multimodal projects may be funded through a variety of public funding sources, some of which are not typical transportation sources. If public funds anticipated as part of a project’s development pro forma are not received, the resultant funding gap could seriously jeopardize project implementation, resulting in lost time, money, and construction delays, at a minimum. Therefore, a commitment of public funds needs to be secured in writing from each public funding agency in the planning phase.

B. Public-Private Partnerships

A public-private partnership is a contractual agreement formed between a public agency and a private sector entity allowing for greater private sector participation in the delivery and financing of transportation projects. Involving the private sector early in transportation projects can leverage creativity, efficiency, and capital to implement transportation projects.

Pennsylvania Act 88 of 2012 authorizes formal public-private transportation projects in Pennsylvania. The Act allows for PennDOT and other transportation authorities and commissions in the Commonwealth to enter into agreements with the private sector to participate in the delivery, maintenance, and financing of transportation-related projects. If a transportation project is being
developed through a public-private partnership, it is essential to ensure contractual agreements are in place to hold each partner accountable.

Additional information on the formation of public-private partnerships can be obtained through PennDOT’s Office of Policy & Public Private Partnerships (http://www.dot.state.pa.us/Internet/P3info.nsf/P3Home?OpenFrameset) and through FHWA’s Office of Innovative Program Delivery (http://www fhwa dot gov/ipd/p3/index.htm).

In addition to formal public-private partnerships authorized by Act 88 of 2012, informal partnerships are sometimes undertaken. The nature and structure of these partnerships can vary widely, but do not require the formal approval of the Public Private Transportation Partnership Board.

### 3.2 Project Purpose and Need

Purpose and need are critical components of the transportation planning process and identify what problems exist and what a project is intended to accomplish. Purpose and need help to explain the reason for the proposed use of public funds to agency decision makers and the public, drive the alternatives consideration process, and influence environmental analysis.

A need is a tangible, fact-based problem or issue (such as some type of transportation deficiency like lack of public rail access) that will be addressed by the transportation project. A project’s need justifies a commitment of resources, including public funding, and potential impacts to the environment and public.

The project purpose is a statement of why a project is being pursued or what the project intends to accomplish by addressing the transportation need (such as to provide transportation mobility and safety improvements through property acquisition).

Involving the public and federal, state, and local regulatory, environmental, and resource agencies during the transportation planning process will help define and refine the purpose and need.

### 3.3 Project Scope

Project scoping identifies what transportation improvements and associated improvements are included in the project scope and addresses factors such as:

- What the project will accomplish.
- The funding source(s) required to implement the project which will in turn help determine which agency has jurisdiction over project review.
- The planning and environmental studies required to move the project forward.

Comprehensive project scoping will lead to the eventual preparation of several planning studies such as, but not limited to, the following: functional studies to define the end users’ requirements; site selection including properties identified for acquisition; technical studies such as geotechnical, soil and water, and land use and zoning; utility investigations; environmental studies; and preacquisition surveys and relocation plans.
The checklist to the right includes factors that should be considered during scoping for the multimodal project. Each federal agency has its own scoping requirements under the National Environmental Policy Act (NEPA) (see Section 3.4). Therefore, the checklist is meant to summarize factors which could be identified depending on the nature of the transportation project. The checklist emphasizes those factors considered through PennDOT’s Linking Planning and NEPA initiative.

### 3.4 Environmental Compliance

During project planning when federal agency funding is programmed, the project team must ensure that the project addresses any environmental impacts in accordance with NEPA and receive clearance through an agency action.

Each agency of the US DOT has specific review procedures to meet NEPA requirements. Within NEPA, there are three tracks (each called a “class of action”) for a project to follow, depending on project complexity (40 CFR 1500-1509 and 23 CFR 771):

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

PennDOT must consult with the lead federal agency (FTA, FAA, FRA, FHWA, or MARAD) to determine the appropriate level of action. Obtaining NEPA clearance can potentially require significant time and expense; therefore, it is critically important to identify the type of NEPA class of action required for multimodal property acquisition projects.

In general, property **cannot** be acquired prior to a NEPA finding, i.e., the project has been approved as a CE, a Finding of No Significant Impact (FONSI) has been issued, or a Record of Decision has been issued for a final EIS (23 CFR 771.113). Exceptions to this rule exist and are noted in Section 3.6.C.

#### A. NEPA Process

The NEPA class of action that a project must follow is dependent on the number and extent of environmental impacts resulting from the project. Figure 2 shows how a project may proceed through

<table>
<thead>
<tr>
<th>Scoping Checklist</th>
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<tbody>
<tr>
<td>- Land use linkage to transportation</td>
</tr>
<tr>
<td>- Existing and future land use context</td>
</tr>
<tr>
<td>- Land use/economic development opportunities</td>
</tr>
<tr>
<td>- Planned public or private development</td>
</tr>
<tr>
<td>- Public-private partnerships</td>
</tr>
<tr>
<td>- Regional transportation/land use implications</td>
</tr>
<tr>
<td>- Planned federal, state, local, and private projects</td>
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<tr>
<td>- Community issues and opportunities</td>
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<tr>
<td>- Transportation context</td>
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<tr>
<td>- National context</td>
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<tr>
<td>- Air quality conformity</td>
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<tr>
<td>- Public and agency involvement</td>
</tr>
<tr>
<td>- Potential impacts to wild or stocked trout streams</td>
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<tr>
<td>- Potential impacts to High Quality/EV Streams</td>
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<tr>
<td>- Potential impacts to wetlands</td>
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<tr>
<td>- Potential impacts to federally proposed, candidate, or listed, or state listed threatened and endangered species</td>
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<tr>
<td>- Potential impacts to historic properties or archaeological resources</td>
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<tr>
<td>- Potential temporary or permanent impacts to Section 4(f) resources</td>
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<tr>
<td>- Public controversy on environmental grounds</td>
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<tr>
<td>- Potential temporary/ permanent impacts to water trail</td>
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<tr>
<td>- Potential temporary/permanent impacts to hazardous/residual waste sites</td>
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<tr>
<td>- Potential impact on regulated floodplain</td>
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<tr>
<td>- Potential impacts to agriculture</td>
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<tr>
<td>- Potential impacts to navigable watercourse involving U.S. Coast Guard</td>
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<tr>
<td>- Potential impacts to properties protected under Section 6(f)</td>
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<tr>
<td>- Potential impacts to hazard mitigation lands under the Stafford Act</td>
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<tr>
<td>- Potential Utility impacts</td>
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<tr>
<td>- Within a PA Act 167 watershed</td>
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<tr>
<td>- Funding sources</td>
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</table>
one of the three classes of action. PennDOT Publication 10B, *Design Manual 1B*, provides detailed requirements for NEPA compliance.

If there are no impacts or very limited impacts, the project will follow the path of a CE. The two types of CEs are listed and documented. Listed CEs are types of projects that the US DOT agency has identified ahead of time as having no significant impacts. Documented CEs require the project to undertake necessary research and studies to prove that the project will not cause any significant environmental impact.

In cases where the significance of impacts or actions is not known, an EA is performed. The purpose of an EA is to determine whether the proposed project has the potential for significant adverse social, economic, or environmental impact. The significance of impacts is judged on a case-by-case basis and measured in terms of the impacts’ context and intensity (40 CFR 1508.27). The EA process may also facilitate identification of alternatives and measures which might mitigate adverse environmental impacts. If the EA concludes that no significant impacts are created by the project, the lead federal agency will issue a Finding of No Significant Impact (FONSI). If significant impacts are identified either before the EA is completed or at its completion, then the lead federal agency will expand the study to a full EIS.

An EIS is conducted when a project will significantly affect the quality of the environment. An EIS will include detailed environmental studies, related engineering studies, agency coordination, and public involvement. Following the circulation and approval of a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS), the agency may issue a Record of Decision (ROD) documenting the work performed, decisions made, and mitigation commitments to be honored during the final design and construction. If new information is found, conditions change, or three or more years have elapsed, a reevaluation may be required. In some cases, if the conditions change the project significantly, a supplemental EIS will be required.
B. Federal Agency NEPA Compliance

Each federal agency with jurisdiction over a multimodal project has developed agency-specific checklists, worksheets, and guidance to help evaluate the significance of potential environmental impacts to determine what class of action is appropriate for a project. Below are listed online resources for environmental compliance from each of the federal modal agencies.

**Federal Aviation Administration**

General Environmental Information
http://www.faa.gov/airports/environmental/

National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects

FAA Order 1050.1E - Environmental Impacts: Policies and Procedures
Environmental Desk Reference for Airport Actions
http://www.faa.gov/airports/environmental/environmental_desk_ref/media/desk_ref.pdf

Categorical Exclusions

**Federal Transit Administration**
General Environmental Information
http://www.fta.dot.gov/about/12347.html

NEPA and Early Real Estate Activities
http://www.fta.dot.gov/documents/NEPA_and_Early_Real_Estate_Activities.pdf

Categorical Exclusions
http://www.fta.dot.gov/12347_15129.html

**Federal Railroad Administration (FRA)**
General Environmental Information
http://www.fra.dot.gov/Page/P0183

FRA Procedures for Considering Environmental Impacts
http://www.fra.dot.gov/eLib/details/L02561

Categorical Exclusion Guidance
http://www.fra.dot.gov/Page/P0550

**Maritime Administration**
General Environmental Information

Categorical Exclusions
http://www.marad.dot.gov/documents/mao_600-001-0.pdf

C. Compliance with Other Environmental Requirements

In addition to NEPA, there are several federal and state requirements and laws governing environmental protection. At the federal level these include: the Threatened Species Act (Title 7 of the U.S. Code) regulated by the United States Fish and Wildlife Service, Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act, and Section 404 of the Clean Water Act. At the state level, requirements include: the PA Clean Streams Law (25 Pa Code Chapter 102), the Dam, Safety, and Encroachment Act (25 Pa Code Chapter 105), the Floodplain Management Act (25 Pa Code 106), and the History Code and state regulations governing threatened and endangered species.
In addition, projects with no federal funding must provide environmental documentation in accordance with Pennsylvania Act 120 of 1970. Section 2002 of this act states in part:

“No highway, transit line, highway interchange, airport or other transportation corridor or facility shall be built or expanded in such a way as to use any land from any recreation area, wildlife and/or waterfowl refuge, historic site, state forest land, state game land, wilderness area, or public park unless: (i) there is no feasible and prudent alternative to the use of such land, and (ii) such corridor or facility is planned and constructed as to minimize harm to such recreation area, wildlife and/or waterfowl refuge, historic site, state forest land, state game land, wilderness area, or public park.”

3.5 Property Acquisition Plan

Property acquisition is an involved process and may be accomplished in several ways. Therefore, an acquisition plan could be a helpful part of project planning.

For major capital transit projects, which generally involve a new or expanded fixed guideway system or meet other criteria, an acquisition plan called the Real Estate Acquisition Management Plan (RAMP) is required. A RAMP is required for major capital projects as a part of the Project Management Plan (PMP) under 49 CFR 633.25 and in accordance with the Uniform Act. A full RAMP is not required for other capital projects with real estate acquisition; however, all capital projects must be in compliance with the Uniform Act if property acquisition or relocation assistance is involved. The RAMP is a planning document for the acquiring agency and is a control document for FTA that includes real estate goals and methodology from the perspective of timing, staffing, statutory, and policy issues. Refer to FTA Grant Management Requirements in FTA Circular 5010.1D and the sample RAMP plan outline at http://www.fta.dot.gov/documents/RAMP_Outline_Revised/doc.

3.6 Property Acquisition Methods

As noted in the flowchart in Section 2.1, property acquisition in most instances can only be undertaken after appropriate environmental clearance. However, options do exist for acquiring property earlier in the project development process (Section 3.6.C). These instances involve acquiring property prior to the completion of environmental studies and, therefore, require coordination with the appropriate modal agency at the US DOT.

The following sections discuss the various methods of property acquisition.

A. Amicable Property Transfer

The Uniform Act requires every reasonable effort be made to acquire property amicably, or by the mutual agreement of the property owner and PennDOT.

1. Negotiated Purchase Price

Most amicable property acquisition happens through the negotiation process. This occurs when the seller and PennDOT negotiate and eventually agree on a purchase price and conditions of sale and ultimately consummate the sale of the property. See Section 6 for the negotiation process.

2. Donation

In some cases, a transportation project may be developed in conjunction with a commercial project, such as a transit station and adjacent housing. In these instances, a developer may purchase the land to be used for a transportation project and donate it to PennDOT. See
Section 3.03.1, *Donations of Real Property by a Property Owner*, of Publication 378, *Right-of-Way Manual*.

**B. Condemnation**

As noted above, every reasonable effort must be made to proceed to an amicable settlement. However, when irreconcilable differences between a property owner and PennDOT exist, condemnation proceedings can be initiated. Condemnation involves PennDOT’s use of its powers of eminent domain to take private property for public use without the property owner’s consent upon payment of just compensation. See Section 6.4 for additional information on condemnation.

**C. Advanced Acquisition**

Advanced acquisition is done prior to environmental clearance to ensure corridor or property preservation, access management, or other critical purposes. Use of this process requires careful consideration and close coordination with the appropriate modal agency of the US DOT. Advanced acquisition is discussed in Section 3.12, *Early Acquisition*, of Publication 378, *Right-of-Way Manual*. There are several types of advanced acquisition.

1. **Hardship Acquisitions**

   Property may be purchased early in the project development process when the current property owner experiences a unique hardship. In these instances, the property owner must demonstrate an inability to sell the property and demonstrate a particular medical or financial hardship. Detailed requirements are contained in Section 3.11.B, *Hardship Acquisitions*, of Publication 378, *Right-of-Way Manual*.

2. **Protective Buying**

   Property may also be purchased early in instances where a parcel which may be necessary for the project is about to be further developed, raising the future purchase price of the property to a point where it restricts the ability to complete the project. The procedures for this process are detailed in Section 3.11.D, *Protective Buying*, of Publication 378, *Right-of-Way Manual*. Pennsylvania courts have established legal limits on the use of condemnation procedures for protective buying purposes.

3. **Advanced Acquisition Using Established Categorical Exclusions**

   In some cases, categorical exclusions (CE) for specific instances have been established. The most notable of these was instituted in February 2013 when FTA and FHWA issued a final rule on CEs under NEPA that apply to FTA and FHWA actions. 23 CFR 771.118(c) (6) addresses CEs for the acquisition or transfer of real property interest. According to the guidance, this CE covers cases where the property is acquired and remains essentially unchanged from its previous use until NEPA is completed for a future federally-assisted project that may make use of the property.

   In order to purchase property using this CE, an agency must make a request to FTA and receive subsequent approval. There are also several stipulations for its use. The property cannot be within or adjacent to recognized environmentally sensitive areas. In addition, the purchase must not result in a substantial change in the functional use of the property or substantial displacements, or limit the evaluation of alternatives for future FTA-assisted projects on the acquired property. The purchase must also comply with Uniform Act requirements. Guidance

Other federal agencies funding multimodal property acquisition projects do not have directives as clear as that of FTA and FHWA regarding early land acquisition. However, MARAD provides some guidance on CEs. Administrative Order 600-1, Procedures for Considering Environmental Impacts, dated July 23, 1985, states that a CE may potentially be issued for the acquisition of land in which the property will not be modified, its use will not be changed, and displacements will not occur. Maritime Administrative Order 600-1, Procedures for Considering Environmental Impacts, is located at http://www.marad.dot.gov/documents/mao_600-001-0.pdf

4. **Real Estate Purchase Option Agreement**

   Acquiring property in advance of the actual need for the property can also be accomplished by the use of a purchase option agreement (see sample in Appendix A). A real estate purchase option agreement is a contract that allows the buyer the exclusive right to buy a property from the property owner at a later date at a price agreeable to both parties. The buyer pays for this option contract and the seller retains this option fee even if the buyer decides not to purchase the property. Options are used to provide PennDOT the right to acquire land and may be used to secure a purchase price in advance or attach other conditions to the negotiations. These may include reference to an eventual appraisal or the establishment of a range of value for the purchase.

   The option may be implemented either before or after the NEPA process. However, the exercise of the option (i.e., the actual purchase) cannot occur until after NEPA clearance. In addition, the Uniform Act still applies to options to purchase to ensure land owners are treated fairly and receive just compensation for their property.

3.7 **Right-of-Way Plan**

   Preparation of a right-of-way plan is required for all multimodal property acquisitions during project planning. The plan must prepared in conformance with Publication 14M, Design Manual Part 3 (DM-3) and contain the name of current property owners, property line descriptions, and additional information needed to accurately portray the land to be acquired. The plan becomes the legal record of the location, extent, and character of acquired land. The right-of-way plan is discussed in greater detail in Section 4.

3.8 **Right-of-Way Payment Process**

   Establishing project funding and issuing claim payments requires coordination between the Multimodal Bureau that is managing the project (Managing Bureau), Bureau of Fiscal Management, District Fiscal Officer, and District Right-of-Way Unit. The following funding and payment procedures are to be followed for all property acquisition for multimodal projects by PennDOT:

   1. The District Right-of-Way Unit creates the project damage estimate. The District Right-of-Way Administrator (or delegate) forwards the project damage estimate to the Bureau of Fiscal Management and to the Managing Bureau.

   2. The Center for Program Development and Management sets up the project in MPMS.
3. The Managing Bureau requests that the Bureau of Fiscal Management reserve funding for the project and provides the MPMS number, the WBS Elements, the project timeline, and the estimated cost of acquisition.

4. The Bureau of Fiscal Management grants the District budget authority for the estimated amount.

5. The District Fiscal Officer submits an SAP-7 to encumber funds. The project will be set up as a 100% State funded highway project using Program Code 341.

6. The District Right-of-Way Administrator (or delegate) sets up the project in ROW Office.

7. The District Right-of-Way Unit will submit payments and generate invoices via the normal Right-of-Way Office payment process.

8. On a quarterly basis, the District Fiscal Officer will notify the Bureau of Fiscal Management and the Managing Bureau of the amount invoiced during the quarter.

9. The Bureau of Fiscal Management will transfer the quarterly invoice amount from the multimodal funding reserved for the acquisition to Highway funds.
4. Right-of-Way Plans

A right-of-way plan is a drawing showing a combination of real property data, survey data, and design engineering related to property that must be acquired in order to complete a transportation project. Right-of-way plans are the basis for determining all property damages that may be involved in the construction of a transportation project. Right-of-Way plans are also the legal record indicating the location, the extent, and the character of any acquisition of property.

A right-of-way plan is required for all multimodal property acquisitions. When acquiring property through condemnation, a right-of-way plan is required by law. Preparing a right-of-way plan, therefore, serves as insurance in case property negotiations fail and the property must be condemned.

4.1 Right-of-Way Plan Preparation

A right-of-way plan is generally initiated during preliminary engineering and finalized at the beginning of final design. The plan must be prepared showing the relevant property or properties and must contain the names of the owners or reputed owners, an indication of the estate or interest to be acquired, survey data associated with the property, and relevant design engineering. A detailed discussion of right-of-way plan preparation is contained in Publication 14M, Design Manual Part 3 (DM-3), Plans Presentation, Chapter 3, Right-of-Way Plans. In addition, Subsection G of Chapter 3 describes Simplified Right-of-Way Plans and may be especially relevant to many multimodal projects.

4.2 Review of Preliminary Right-of-Way Plan

Preliminary right-of-way plans must be reviewed for completeness and accuracy. Reviewers for multimodal projects typically include the acquisition consultant (if used), and the Multimodal Project Manager. Reviewers should note any plan deficiencies or acquisition issues.

All recommended changes arising from the review will be discussed fully with the design engineer and with the professional land surveyor in control of the plan. Any problems must be resolved prior to the submission of the right-of-way plans to the DM-3 plan reviewer.

4.3 Approval of Final Right-of-Way Plan

Once a final right-of-way plan is issued, it must be independently reviewed for compliance with DM-3. The Multimodal Project Manager must coordinate the DM-3 plan review of the multimodal right-of-way plan and issue approval of the plan. If a design consultant is hired to review the plan, this design consultant must be independent of the design consultant who prepared the plans. The DM-3 plan reviewer will review the plan and request any necessary changes. When the review is complete and Environmental Clearance has been obtained, the right-of-way plan may be approved and executed. The right-of-way plan must be executed by the Secretary of Transportation.

State Funding for Airport Acquisitions

All airport property acquisitions using state funds must have title to the property along with the associated PennDOT grant assurances recorded with the recorder of deeds of the county in which the airport is located.
4.4 Authorization to Acquire

Once the final right-of-way plan is approved and signed, the project can enter the acquisition phase. If there is federal funding in the acquisition phase, federal approval must be received prior to proceeding with property acquisition.

If any land is being taken by condemnation, the signed right-of-way plan constitutes authority for the filing of a declaration of taking in accordance with the Eminent Domain Code, 26 Pa.C.S. §101 et. seq. In this case, the plan must be filed as a public record in the county courthouse.

FAA Advisory

Property acquisition plans and plats will have to be incorporated in the airport’s Exhibit “A” Property Map for reimbursement as well as be included on the Airport Layout Plan/Property Plan as an eligible/needed land acquisition. Proactive coordination with FAA should be undertaken to ensure compliance.
5. Appraisal, Appraisal Review, and Waiver Valuation

The Constitutions of the United States and Pennsylvania provide that private property shall not be taken for public use without the payment of just compensation. The calculation of a dollar amount that satisfies the requirement of just compensation is accomplished through an appraisal or, where appropriate, a waiver valuation (See Section 5.8). The appraisal or waiver valuation is used to provide PennDOT with an estimate of just compensation to be offered to each property owner for the taking of their private property for public purposes.

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property at a specific date, supported by the presentation and analysis of relevant market information. The basic requirements for an appraisal include the following:

- A property to be acquired must be appraised and the appraisal must be in writing.
- The appraisal must be reviewed by a separate and independent review appraiser.
- The property owner (or the owner’s designated representative) must be given the opportunity to accompany the appraiser during the inspection of the property. This gives the owner the opportunity to advise the appraiser of features of the property that might impact the valuation of the property and allow the disclosure of features that might not be obvious to the appraiser such as wells, septic systems, and storage tanks.
- The recommended amount of estimated just compensation must be the basis of the offer to the property owner.

Just compensation is defined under Pennsylvania law as the difference between the fair market value of the property owner’s entire property interest immediately before the acquisition and the fair market value of the owner’s property interest remaining immediately after the acquisition and other damages as provided in the Pennsylvania Eminent Domain Code (26 Pa.C.S. § 101 et seq., Section 702(a)).

Appraisal and appraisal review procedures are detailed in Chapter 2, Appraisals, of PennDOT’s Publication 378, Right-of-Way Manual, and that manual’s Appendix A, the Appraisal Guide.

The first step in the appraisal process is the Project Damage Estimate, which is followed by the Appraisal Problem Analysis, the Appraisal, and the Appraisal Review.

5.1 Contracting for Appraisal and Right-of-Way Services

PennDOT makes use of both staff appraisers that are PennDOT employees and fee appraisers that are consultants under contract with PennDOT.
Section 2.11.J.1.a of Publication 378, Right-of-Way Manual specifies the accepted contracting methods for consultants to assist with property acquisition. The methods are briefly described below.

- Appraisal services must be procured using the ITQ process specified in Section 2.13.
- Appraisal review services must be procured via the current Appraisal Review Services Contract.
- Right-of-Way Acquisition Services can be procured using the consultant engineering selection process in ECMS, as detailed in Section 3.01.E. The right-of-way acquisition consultant on a project may not perform appraisal or appraisal review services for that project.

It is expected that fiscal procedures will be in place to allow consultant expenses to be charged directly to the multimodal project.

5.2 Appraiser Certification

The State Board of Certified Real Estate Appraisers governs all appraisers working in the Commonwealth. All appraisers must maintain a current and valid certification and all appraisals completed for any PennDOT project must be completed by a certified professional appraiser. PennDOT right-of-way personnel will monitor the certification of appraisers.

5.3 Project Damage Estimate

A Project Damage Estimate consisting of an estimated acquisition cost for each claim identified on an approved right-of-way plan must be completed for each project. Refer to Section 2.11.D, of Publication 378, Right-of-Way Manual for more information. At a minimum, the estimate must include the best estimate of the cost of the acquisition of real property, real estate tax payments, indirect costs, moving expense payments for businesses and residences, supplemental payments for residences, business reestablishment payments, demolition payments, and other administrative or overhead costs. If there are no relocation activities, it should be noted on the Project Damage Estimate.

5.4 Appraisal Problem Analysis

The Appraisal Problem Analysis (APA) is used to establish a scope of work for the appraisal. The APA defines general parameters of the work to be performed before the appraiser starts the assignment, and may be updated as needed. The APA will also identify any personal property that should or should not be included in the value conclusions, and identify the need for specialty reports needed to complete the assignment. An APA is required for all fee appraiser assignments. For staff appraisals, an APA is required for complex appraisal problems, as defined by Publication 378, Right-of-Way Manual. An APA is not required for a waiver valuation (see Section 5.8).

An APA may only be written by experienced and competent personnel familiar with eminent domain appraising. The District Right-of-Way Unit determines competency. The Review Appraiser must review, approve and sign all APAs. A copy of the APA must be included in the claim file for the project.

5.5 Appraisal Process, Forms, and Reports

The appraiser assigned to the project will field inspect each property to be acquired and conduct associated research. Data collection will likely include sources such as public records, various real estate...
sale data reporting services, real estate agents and multiple listing services, appraisers, owners and tenants, and internal PennDOT appraisals and files. The results of the data collection and appraisal are captured on one or more of the many standard forms and report formats PennDOT has prepared to be used in the appraisal process.

Forms have been updated to use language that is general enough so that they can be used for all projects, both highway and multimodal. The forms used for the appraisal process are described in Chapter 2, Appraisals, of Publication 378, Right-of-Way Manual. The most commonly used forms include:

- Form RW-270 Strip Appraisal - Partial Take
- Form RW-270A Before-and-After Appraisal Report
- Form RW-270B Total Take Appraisal Report
- Form RW-277 Machinery & Equipment Valuation Report

Some appraisal assignments require specialty reports, such as machinery and equipment (M&E), coal, oil, gas, timber, liquor licenses, engineering studies, and cost of adjustment analyses. The District may require the appraiser to obtain and incorporate the report in their appraisal or the District may obtain the report and provide a copy to the appraiser. If the appraiser obtains an M&E report, it must be delivered to PennDOT separate from the appraisal report.

5.6 Revising and Updating Appraisals

Appraisal revisions may be necessary due to changing circumstances. These may include plan changes, a property owner selling or acquiring property during the appraisal process, a legal decision that impacts the appraisal problem, or a change in local land use or market conditions. Updates within six months to one year and/or minor revisions to the appraisal may be requested as part of the fee proposal if the District so chooses. The RW-218 Real Estate Appraisal Fee Proposal allows for this provision.

5.7 Appraisal Review

To ensure that offers to property owners are based upon properly prepared and well-documented real estate appraisal reports, an independent professional staff or fee review appraiser must review all appraisals. The reviewer will perform an examination of the appraisal to assure that it conforms to approved appraisal practices and techniques and to establish the amount of just compensation to be offered to the property owner. Reviewers must be certified for the classification of appraisal they will be reviewing.

As needed, the review appraiser will seek necessary corrections or revisions to an appraisal. The reviewer will prepare a written report, Form RW-273, Appraisal Review Report, that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal. As per 49 CFR 24.104(a), the review appraiser must identify each appraisal report as one of the following:
• **Recommended** - Recommended as the basis for the establishment of the amount believed to be just compensation.

• **Accepted** - Meets all requirements, but not selected as recommended.

• **Not accepted** - Reasons for not accepting the appraisal should be included.

The review appraiser will recommend the appraisal as the basis for the establishment of the amount believed to be just compensation and report this amount.

### 5.8 Waiver Valuation

There are instances where an appraisal is not required and the property is instead valued using a Waiver Valuation. The use of the Waiver Valuation process for multimodal projects shall be governed by Section 2.12 of Publication 378, *Right-of-Way Manual*, in the same manner as a standard highway project.
6. Acquisition

Acquisition involves direct personal contact with the people affected by a project. The primary goal is to acquire property interests through negotiation rather than through the use of condemnation. Negotiations must be conducted by either PennDOT District staff negotiators or right-of-way consultants hired to perform acquisition services for the project (See Section 5.1 of this guide and Section 3.01.E of Publication 378, Right-of-Way Manual).

The following is a list of the basic acquisition requirements:

- **Personally contact** each property owner or the owner’s designated representative in order to explain the acquisition process, including the owner’s right to accompany the appraiser during inspection of the property.

- Provide the owner with a **prompt, written offer** of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.

- Give the property owner an **opportunity to consider the offer**.

- Conduct negotiations **without any attempt to coerce** the property owner into reaching an agreement.

- **Pay the agreed purchase price** before requiring the property owner to surrender possession of the property being acquired.

Claim files must contain documentation showing compliance with the above requirements.

Acquisition procedures are detailed in Publication 378, Right-of-Way Manual, Chapter 3, Acquisitions.

6.1 Personal Pre-Negotiation Contact
The negotiator must make all reasonable efforts to personally contact each real property owner or the owner’s designated representative and schedule an appointment at a convenient time and place. The purpose of this contact is to explain the negotiation process to the property owner as well as the responsibilities of both the negotiator and the property owner. This kind of personal contact can be of great importance as the negotiator strives to attain rapport with the property owner that can help inspire confidence in the process and the fairness of the offer.

If all reasonable efforts to make personal contact fail, or if personal contact is impracticable, for example, such as when an owner lives in another state, the owner may be contacted by certified mail or other means appropriate to the situation. Refer to Section 3.02, The Negotiation Process, Publication 378, Right-of-Way Manual, for more information.

6.2 Prompt Written Offer
Once the amount of just compensation has been determined, a prompt written offer must be made to the property owner. The offer must include a description, including location, of the real property or real property interests being acquired and the specific purchase price being offered. Along with the offer, the negotiator must provide the property owner a Summary Statement of Just Compensation that explains the basis of the offer and provides information necessary for the owner to make a reasonable
judgment concerning the amount of the offer. In addition to the offer amount and location, the summary statement should include an identification of buildings, structures and other improvements to be acquired, and an identification of any separately held ownership interest in the property such as a tenant-owned improvement and a statement, if appropriate, that such interest is not covered by the offer. Refer to Section 3.03, Specific Offer/Acquisition Situations, of Publication 378, Right-of-Way Manual, for more information.

6.3 Negotiations
The negotiator must give the property owner a reasonable opportunity to consider the offer. This not only provides the owner a chance to thoroughly review and evaluate the offer, it eliminates any appearance of coercion. It also provides a chance for the owner to present material he or she believes is relevant to determining the property’s value, and to suggest modifications to the proposed terms and conditions of the purchase.

Ongoing negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. For example, the negotiator should be careful not to threaten condemnation, advance the time of condemnation, defer negotiations, or delay the deposit of funds with the court to coerce an agreement with the property owner.

At a minimum, three negotiating contacts, typically within 30 days, should be made with any property owner. Every reasonable effort must be made to proceed to an amicable settlement. If, after three or more contacts are made, irreconcilable differences between the property owner and the acquiring agency exist, condemnation proceedings should be initiated. District Right-of-Way Administrator (or delegate) oversight and concurrence is required for all condemnation proceedings. Refer to Section 3.02, The Negotiation Process, of Publication 378, Right-of-Way Manual, for more information.

The Eminent Domain Code provides that the owner of any right, title, or interest (including a tenant’s interest) in real property acquired by an acquiring agency must be reimbursed for a portion or all reasonable expenses actually incurred for independent appraisal, attorney, and engineering fees. Limitations on these reimbursements are detailed in Chapters 3, Acquisitions, and 4, Relocation Assistance of Publication 378, Right-of-Way Manual.

6.4 Condemnation
Where an amicable settlement cannot be reached despite the best efforts of the parties, PennDOT has the power of condemnation to acquire the necessary property for its multimodal transportation project. The PennDOT Office of Chief Counsel is involved and helps lead the condemnation process. For the filing of a formal declaration of taking, a right-of-way plan signed by the Secretary must be recorded in the county Recorder of Deeds office where the property is located and the taking must be within one year of the date the plan was signed. If not, the plan must be authorized and re-recorded before the declaration of taking can be filed. PennDOT acquisition procedures for formal condemnation are the same for multimodal transportation projects as they are for regular highway projects. See Publication 378, Right of Way Manual, Section 3.08.

Legal title to the required area of the taking transfers immediately upon the filing of the declaration of taking in the county courthouse; notice of the taking is recorded in the Recorder of Deeds office the same day the declaration is filed. A landowner has 30 days from the date the declaration of taking is served to file preliminary objections. Where no objections have been filed or, if filed, where they are
disposed of in favor of PennDOT, the taking becomes final. The legal right to possession of the acquired area is different from legal title. In order to obtain the legal right to possession, PennDOT complies with the Uniform Act requirement that estimated just compensation must be either paid or deposited into court. Refer to Publication 378, *Right of Way Manual*, Section 3.09.

A landowner has six years from the date estimated just compensation is paid or deposited to file a petition for the appointment of a board of view. The petition initiates a damages action on the issue of just compensation. Prior to the filing of a petition, PennDOT has a procedure for post-condemnation settlement. However, once a petition for viewers is filed, the matter is deemed to be in formal litigation and the claim will be handled by the Office of Chief Counsel in a manner similar to claims in highway projects. See Publication 378, *Right of Way Manual*, Section 3.10.

### 6.5 Other Types of Acquisitions

**A. Administrative Settlements**

An administrative settlement is an administrative decision to settle a claim for an amount greater than PennDOT’s estimate of just compensation. As a general rule, the use of an administrative settlement should be considered only after diligent negotiations. District Right-of-Way Administrator (or delegate) oversight and concurrence is required for all administrative settlement actions. When the property owner rejects an offer and a counter demand presented by the owner has merit, an administrative settlement is a viable alternative to protracted condemnation proceedings. The prudent use of administrative settlements is especially helpful for low-value claims. Refer to Section 3.04, *Administrative Settlements*, of Publication 378, *Right-of-Way Manual* for more information, noting the following changes for multimodal projects:

The District Right-of-Way Administrator possesses the authority to approve an administrative increase up to $50,000 over the approved estimate of just compensation. The District Right-of-Way Administrator and a designated Bureau Director within the Multimodal Transportation Deputate together may approve an administrative increase up to $100,000 over approved damages. On claims where the amount of the administrative increase is more than $100,000, the written concurrence of the Deputy Secretary for Multimodal Transportation, along with the approval of the District Right-of-Way Administrator and the designated Bureau Director within the Multimodal Transportation Deputate is necessary. When appropriate, the District Executive may be consulted for approval in addition to, or in lieu of, the Multimodal Bureau Director. In any event, where an administrative settlement is used, the claim file and ROW Office must be documented appropriately.

**B. Dedications**

PennDOT may accept a parcel of land that a developer of a subdivision has dedicated or proposes to dedicate for transportation purposes. PennDOT may also accept the land if the dedication is made pursuant to the local planning process or at the request of the property owner for land use concessions.
Property acquired through normal zoning and subdivision procedures requiring the donation or dedication of strips of land in the normal exercise of police power is not considered an acquisition or taking in the constitutional sense. Thus, payment of just compensation or compliance with provisions of the Uniform Act is not required, since police power is used. Police power is the inherent right of government to pass such legislation as may be necessary to protect the public health and safety and to promote the general welfare. Refer to Section 3.03M, *Dedications of Real Property by a Governmental Body*, of Publication 378, *Right-of-Way Manual* for more information.

C. Offer to Purchase Uneconomic Remnants

When federal funds are involved in a project, PennDOT is required to make a formal, written offer to purchase land that it determined to be an uneconomic remnant. This is a minimum $100 offer and is separate from the offer to purchase the required property. However, unlike the acquisition of required property, the owner may decline the offer. Once declined, the matter is simply dropped and no further negotiations or action is necessary on the part of PennDOT. The offer officially expires when the right-of-way required has been acquired (either by deed or through the filing of a declaration of taking).

Federal funds may be used to acquire uneconomic remnants regardless of whether the remnants are incorporated into the other acquired property or not. Uneconomic remnants incorporated within the other acquired property limits lose their separate identity and become part of the acquired property. Remnants that are not incorporated within the acquired property would be disposed of in the same manner as disposed highway right-of-way. Refer to Section 3.03B, *Acquisition of Uneconomic Remnants*, of Publication 378, *Right-of-Way Manual* for more information.

D. Offer and Payment for Tenant-Owned Improvements

An improvement located on the property to be acquired should be treated as real property regardless of ownership. Acquisition from the tenant should follow the same procedures as those for acquiring real property from the owner. The exception to this rule is “off-premise” outdoor advertising devices, which should be acquired as personal property.

No payment should be made to a tenant-owner for improvements unless all the following apply:

- The tenant-owner assigns, transfers, and releases to the acquiring agency all of the tenant-owner’s right, title, and interest in the improvement.
- The owner of the real property on which the improvement is located disclaims all interest in the improvement.
- The payment does not result in the duplication of any compensation.

7. Relocation Assistance and Payments

The relocation of residential and non-residential properties is the most sensitive of all the right-of-way activities since people are being asked to move from their homes and businesses in addition to giving up a portion of their land. For that reason, federal and state laws and regulations have established an additional set of benefits and payments over and above the fair market value payment to assist persons in this situation.

The basic relocation requirements are:

- No residential occupant can be displaced unless and until comparable (decent, safe and sanitary) replacement housing has been provided for or is built.

- Replacement housing will be fair housing, open and offered to all affected persons regardless of race, color, religion, national origin, age, gender, or disability.

- Replacement housing will be within the financial means of the displaced persons and reasonably accessible to their places of employment, public services, and other conveniences.

- No person, family, business, farm operation, or non-profit organization will be required to move as a result of a project without having received a written General Information Notice, a Notice of Relocation Eligibility, and at least 90 days written notice of the proposed move date. Off-premise outdoor advertising devices are included within the definition of a business and require the above notices.

- Displaced persons must be informed of their right to appeal a determination of their eligibility for, or the amount of, any relocation payment.

- Claim files must contain documentation showing compliance with the above requirements.

Relocation procedures are detailed in Chapter 4, Relocation Assistance, of Publication 378, Right-of-Way Manual, and Bulletin 47, A General Guide to the Relocation Assistance Program of the Pennsylvania Department of Transportation.

7.1 Pre-Acquisition Survey and Relocation Plan

Relocation creates the most significant social and economic impacts of a project. Successful relocation requires planning. The relocation program is structured in an orderly and logical sequence of reports, assurances, and activities which are required on each project where displacement may occur, beginning with the preliminary engineering report and ending with the relocation of the last person or business on the project.
Housing resources must meet the needs of displaced persons in terms of size, location, and timely availability. Advisory services and various notices, some with specific timing requirements, must be provided. Payments must be made to displaced persons at the time they are needed in order to obtain replacement housing. Businesses must be given relocation assistance with a minimum of disruption to operations.

As part of the preliminary engineering phase and concurrent with the environmental study, a Conceptual Stage Survey is conducted prior to the right-of-way phase to provide pertinent data to uncover any easily identified relocation problems. The formal written presentation of the data is summarized into the Conceptual Stage Report and serves as the basis for the pre-acquisition survey to identify relocation needs and establish an inventory of available comparable housing and replacement housing sites.

If relocation of residential or business owners or tenants will be required, the District Right-of-Way Unit or the relocation consultant must prepare a pre-acquisition survey and relocation plan. The pre-acquisition survey cannot be completed until a right-of-way plan is prepared that indicates what real property must be acquired for the project. This report should be specific regarding the displacement of residences or businesses and should include a detailed relocation plan. Refer to Section 4.02, Relocation Program from the Conceptual Stage Until Initiation of Negotiations for the Project, Publication 378, Right-of-Way Manual, for more information.

### 7.2 Relocation Notices

State and federal law and regulations recognize the need of displaced persons to have access to information about the relocation process and require that certain notices be provided to them. The following are the notices that must be delivered to displaced persons. Refer to Section 4.02H, Relocation Notices, Publication 378, Right-of-Way Manual for more information on these notices.

#### General Information Notice

The purpose of the notice is to provide a general description of the PennDOT relocation program. PennDOT’s Bulletin 47 serves as this notice. This notice is given as a handout at public meetings for the project and eventually to individuals being displaced.

#### Notice of Relocation Eligibility

This notice informs the occupant that he or she will be displaced and, therefore, will be eligible for relocation benefits, as applicable. PennDOT’s RW-592 serves as this notice. This notice is given to the property owner at the initiation of negotiations.

#### 90-Day Notice (Advance Notice of Move Date)

The 90-day notice is a basic protection for displaced persons. As part of the General Information Notice mentioned above, potential displaced persons must be informed that they will not have to move without at least 90 days written notice. The 90-day Advance Notice of Move Date is then sent once the relocation plans for a displaced person becomes more precise. At this time, the displaced person will be informed at least 90 days in advance, of the earliest date by which he or she will be required to move.

#### 30-Day Notice (Notice to Vacate)

When actual possession of the property is required, a 30-day Notice to Vacate will be issued containing the required date of possession. The required date of possession cannot be less than the full 90-day period established by the Advance Notice of Move Date. Note that the 30-day period in the
Notice to Vacate cannot be given until the PennDOT has legal right to possession of the acquired property. The required date of possession may be extended when conditions warrant, but any extension must be in writing and must give another specific date by which the property must be vacated.

Shortly after the notice is received by the displaced person, the relocation advisor (see Section 7.6) must personally visit to offer relocation assistance and to establish the specific date to vacate based on the date shown on the certified mail return receipt card. Once this date is established, it should be noted on the District’s copy of the notice and in the Claimant Contact screen in ROW Office.

It is the relocation advisor’s responsibility to do everything possible to assist the displaced person in meeting the established schedule to vacate the property. If the displaced person does not vacate the premises as required, the District Right-of-Way Administrator (or delegate) can initiate a request to the PennDOT Office of Chief Counsel to prepare a petition for writ of possession to begin the process for eviction. See Section 3.10.D of Publication 378, Right-of-Way Manual, for additional details on eviction and writ of possession.

Note that this requirement may also apply to the owners of outdoor advertising devices (OAD) that are located within the required right-of-way. An owner of an OAD may choose to move the OAD and receive an actual moving cost payment for which assistance may be required. As an alternative, the owner may choose to abandon the OAD in-place and receive a tangible personal property loss payment which would not require relocation assistance. Refer to Section 4.05, Relocation of Off-Premise OADs, Publication 378, Right-of-Way Manual, for more information.

### 7.3 Residential Relocation Payments

Residential displaced persons are eligible to receive certain relocation benefits. Depending on length of occupancy and type of tenancy, a displaced person may be eligible to receive a Down Payment Supplement, Rent Supplement, or a Replacement Housing Supplement. Eligibility and limits for each benefit type are summarized below. Refer to Section 4.03, Relocation of Residential Owner and Tenant-Occupants, Publication 378, Right-of-Way Manual, for more information and for current eligibility requirements and limits.

**Replacement Housing Supplement**
This payment is to assist a displaced person to purchase a replacement dwelling. This is a 3-part payment consisting of the supplement, closing costs, and increased mortgage interest costs.

**Rent Supplement**
This payment is to assist a displaced person to rent a replacement dwelling. This payment consists of the supplement only. There are no closing or increased mortgage interest costs associated with renting.

**Down-payment Supplement**
This payment is to assist a displaced person to put a down payment on a replacement dwelling and help pay for closing costs. This is a lump sum payment for all eligible displaced persons.

**Moving Costs**
This payment is to assist a displaced person to move personal property. A displaced person may choose an actual cost move by a mover, a fixed-schedule payment, or a combination of those methods.
7.4 Replacement Housing of Last Resort
When it is apparent that a replacement-housing supplement in excess of $31,000 or a rent supplement in excess of $7,200 will be required, or when comparable replacement housing is simply not available, Housing of Last Resort must be provided. Housing of Last Resort procedures must also be used to provide a rent supplement to any less than 90-day occupant, regardless of the amount. In Last Resort Housing situations, PennDOT is required to provide replacement housing that places the displaced person in the same ownership or tenancy status from which he or she is being displaced. The exception is a less than 90-day occupant, who is entitled to receive a rent supplement only.

Prior to using Last Resort Housing, the District Right-of-Way Unit must prepare and submit to Central Office Right-of-Way Acquisition Unit for approval a “Last Resort Housing Plan” outlining the proposed method for providing comparable replacement housing. See Section 4.07.D, Last Resort Housing Plan Requirements, of Publication 378, Right-of-Way Manual.

7.5 Business Relocation Payments
Any business, farm, or non-profit organization is eligible for relocation payments if it meets specific eligibility criteria. Relocation payments for businesses include the following items. Refer to Section 4.05, Businesses, Farms and Nonprofit Organizations, Publication 378, Right-of-Way Manual for more information on:

- Moving Cost Payment
- Mortgage Interest Costs
- Personal Property Loss Payment
- Business Reestablishment Payment
- Searching Cost Payment
- Business Dislocation Damages Payment
- Appraisal, Attorney and Engineering Fees

7.6 Relocation Advisory Services
Another key element of the relocation program is relocation advisory services. These services provide displaced persons and businesses with information, counseling, advice, and encouragement and often require intense personal contact between a relocation advisor and the affected persons. Basic services include (refer to Section 4.06, Relocation Assistance, Publication 378, Right-of-Way Manual for more information):

- Explanation that no person can be required to move from a dwelling unless replacement housing is available.
- Explanation of relocation services and benefits.
- Explanation of the eligibility requirements for each type of relevant relocation payment.

FAA Advisory
The Business Dislocation Damage Payment is not a payment required under 49 CFR 24. Per the AIP handbook (FAA Order 5100.38), relocation payments that exceed eligible relocation payments under 49 CFR 24 may not be eligible for AIP reimbursement.
• Determination of the needs and preferences of the displaced persons.

• Provision of specific services such as providing current listings of available replacement properties, transportation for displaced persons to inspect potential replacement housing if they are unable to do so on their own, assistance in obtaining and completing applications and claim forms for relocation payments.
8. Right-of-Way Clearance Certificate

When completing the final construction plans during final design, PennDOT must verify that all work shown on the construction plans can be accomplished within the existing right-of-way or that all required right-of-way has been properly acquired. This verification step concludes with a Right-of-Way Clearance Certificate, which shows that all right-of-way and property needed for a project has been acquired and any residents of the property have been relocated as required by federal and state laws. The District Right-of-Way Administrator (or delegate) will evaluate all relevant acquisition and relocation information and complete the Right-of-Way Clearance Template. If acceptable, this information is sent along with a recommendation for certification to PennDOT Central Office. The Central Office Right-of-Way Administration Unit will issue the Right-of-Way Clearance Certificate. The certificate must be issued prior to authorization to advertise the project for bidding.
Appendix A: Sample Real Estate Purchase Option Agreement

Below is a sample Real Estate Purchase Option Agreement. The agreement includes multiple Exhibits which are not included here for brevity. The complete package, including the agreement and all associated Exhibits will be prepared with assistance from the Office of Chief Counsel.

REAL ESTATE PURCHASE OPTION AGREEMENT

FED.PROJ.NO.: COUNTY:
CITY-BORO-TWP: S.R./SEC.:
PROPERTY OWNER:

THIS AGREEMENT, made ________________, _____________, by the COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Harrisburg, Pennsylvania, its successors and/or assigns, hereinafter, whether singular or plural, called the COMMONWEALTH, and [insert name of property owner], his/her heirs, executors, administrators successors and/or assigns, whether singular or plural, hereinafter called the PROPERTY OWNER or GRANTOR.

WITNESSETH:

WHEREAS, the COMMONWEALTH has the authority to acquire, by gift, purchase, condemnation or otherwise, land in fee simple or such lesser estate or interest as it shall determine, in the name of the Commonwealth, for all transportation purposes pursuant to Section 513(e)(1) of the Administrative Code of 1929, as amended, 71 P.S. §513(e)(1); and

WHEREAS, this option agreement, in the nature of a continuing offer to purchase, is authorized by law as being incidental to the right of the COMMONWEALTH to purchase land in fee simple or such lesser estate or interest as it shall determine; and

WHEREAS, the parties hereto have agreed that the PROPERTY OWNER agrees to enter into an Agreement for the voluntary sale of the Subject Property in lieu of condemnation as per the Sales Agreement attached as Exhibit “A” and incorporated herein by reference, and to grant to the COMMONWEALTH at this time an Option to do so as set forth and described in this Agreement; NOW
THEREFORE, for and in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to the following:

1. In consideration of the sum of $[insert amount] paid to the PROPERTY OWNER, the receipt and sufficiency of which is hereby acknowledged, the PROPERTY OWNER grants to the COMMONWEALTH its successors and/or assigns, the sole and exclusive right and Option to purchase the Subject Property described in paragraph 14 of this agreement, together with all improvements, easements, and appurtenances to the Subject Property, within the time specified in this Agreement. In the event that the Option granted herein is exercised, the above-recited consideration shall be applied against and be considered as a part of the purchase price.

2. Subject to the provisions of paragraph 6, below, relating to notices, and the provisions of paragraph 11, below, relating to extensions of time, this Option may be exercised by the COMMONWEALTH at any time on or before 18 months from the executed date of this agreement as set forth above, by depositing written notice to that effect in the United States mail on or before that date or by delivering written notice of the exercise of this Option to the PROPERTY OWNER at the address set forth in this Agreement on or before the date set forth in this paragraph. Within thirty days (30) of such written notice the parties shall complete and execute the attached Agreement of Sale (Exhibit “A”) becoming a binding contract of purchase and sale between the parties. If the COMMONWEALTH fails to exercise this Option before its expiration, the PROPERTY OWNER shall retain the consideration paid pursuant to paragraph 1, above.

3. The purchase price for the Subject Property shall be determined by the COMMONWEALTH’s appraisal valuation process in compliance with PennDOT Pub. 378, Ch.2 and Appdx. A (The Appraisal Guide). The PROPERTY OWNER acknowledges the appraisal procedures of the COMMONWEALTH referenced herein to be a good faith methodology at arriving at a fair market value. Notwithstanding the terms of this paragraph, it is mutually agreed that the parties reserve the right to negotiate price. It is further understood that nothing in this Agreement constitutes a waiver of the right of the COMMONWEALTH to exercise the sovereign power of eminent domain to acquire the Subject Property for the payment of just compensation and other amounts as required by law.

4. Conveyance, title and possession shall be as set forth in the terms of the Agreement of Sale (Exhibit “A”), when completed.
5. The COMMONWEALTH, its employees or agents shall have the right to enter upon the Subject Property in order to make any inspections, studies, surveys and tests of the Subject Property that the COMMONWEALTH shall deem appropriate.

6. All notices provided for in this Agreement, if not delivered in person, shall be sent by the COMMONWEALTH by United States certified mail, return receipt requested, to the PROPERTY OWNER at:

[insert address of property owner]

And by the PROPERTY OWNER by United States certified mail, return receipt requested, to the COMMONWEALTH at:

Commonwealth of Pennsylvania
Department of Transportation
400 North Street, 9th Floor
Harrisburg, PA 17120

Either party shall have the right to designate a new address for the receipt of notices by written notice to the other party as provided by this paragraph.

7. This Agreement contains the entire agreement between the parties relating to the Option granted. Any oral representations or modifications concerning this Agreement shall be of no force and effect, and no subsequent modification to the Agreement shall be made except in a writing executed by the parties.

8. The GRANTOR agrees to comply with the Offset Provision, Contractor Integrity Provisions, and Provisions Concerning the Americans with Disabilities Act, all attached as Exhibit “B” and incorporated herein by reference.


10. The GRANTOR agrees to comply with the Contractor Responsibility Provisions attached as Exhibit “E” and incorporated herein by reference.
11. The time-limit set forth in paragraph 2, above, within which the COMMONWEALTH shall have the right to exercise this Option, may be extended at any time in writing by the execution by the parties of an EXTENSION OF TIME, which need not be supported by any further consideration. The EXTENSION OF TIME shall be on the form, as herein agreed to by the parties, attached as Exhibit “F” and incorporated herein by reference, which, if executed, shall operate as an amendment to this Agreement as a substitute for paragraph 2, above, with all other terms of this Agreement remaining in full force and effect. The Deputy Secretary of Transportation may delegate the authority to execute the EXTENSION OF TIME under this paragraph to the Special Assistant for Deputy for Local Area Transportation. Extensions of time under this paragraph shall not require any other approval, provided that they are on the form provided in Exhibit “F”. Any changes to Exhibit “F” shall be approved as to form and legality as provided by Pennsylvania law.

12. The GRANTOR agrees to comply with the Automated Network Clearing House Provisions attached as Exhibit “G” and incorporated herein by reference.

13. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, applies to this Agreement. Therefore, this Agreement is subject to, and the GRANTOR shall comply with, the clause entitled Contract Provisions – Right to Know Law, attached as Exhibit “H” and made a part of this Agreement.

14. A metes and bounds description, along with a plot plan believed to be accurate, is attached hereto and made a part hereof as Exhibit “I.”
IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST  

[insert name of property owner]

BY_________________________________________  BY_________________________________________
Title:                                              DATE      Title:                                         DATE

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY____________________________________
Deputy Secretary of                               DATE
Transportation

APPROVED AS TO LEGALITY
AND FORM

BY
For Chief Counsel                                  DATE

PRELIMINARILY APPROVED

BY
Assistant Counsel                                  DATE

RECORDED NO.
CERTIFIED FUNDS AVAILABLE UNDER
ACTIVITY PROGRAM

SYMBOL____________________________________
AMOUNT____________________________________

BY
Deputy General
Counsel                                          DATE

BY
__________________________________________
for Comptroller                                 DATE