

## 6. Acquisition

---

- 6.1. Introduction
- 6.2. Approval for Acquisition
- 6.3. Hiring of Consultants
- 6.4. Assignment of Parcels to DOT&PF Staff
- 6.5. Preparation by Acquisition Agent
- 6.6. Document Preparation
- 6.7. Initial Contact
- 6.8. Improvements in the Area to be Acquired
- 6.9. Counter Offers and Administrative Settlements
- 6.10. Conclusion of Negotiations
- 6.11. Right of Entry
- 6.12. Condemnation
- 6.13. Archaeologically Significant Sites
- 6.14. Functional Replacement
- 6.15. Acquisition from Federal and State Agencies, Including Native Interests through BIA
- 6.16. Early Acquisition

### 6.1. Introduction

DOT&PF is responsible for securing property rights necessary to certify a project in a timely manner. Certification means that all interests in the property adverse to the State's use have either been cleared or DOT&PF has secured legal entry.

All acquisition discussions are directed toward just and fair compensation to both the property owner and the State; that every courtesy, consideration, and patience is extended the property owner, and that the property owner feels confidence and respect toward DOT&PF and its employees. All offers shall represent the best and most current estimate of market value as determined through sound, approved appraisal and acquisition practices.

The DOT&PF ROW Agent makes every reasonable effort to expedite acquisitions by agreement with owners, to minimize litigation, and to promote public confidence in DOT&PF's land acquisition program.

### 6.2. Approval for Acquisition

The Review Appraiser forwards all approved and accepted appraisals and Recommendations of Just Compensation to the Regional ROW Chief. Waiver valuations are forwarded to the Regional ROW Chief. The Regional ROW Chief stamps the

Recommendation "Approved for Acquisition" and signs it or signs the waiver valuation, thus establishing just compensation for parcels to be acquired.

#### 6.2.1. Minimum Just Compensation

Just compensation is primarily based on the accepted appraisal standards set forth in this manual (See Chapters 4, 5, and 9) and must be no less than the recommendation established by the Department's authorized Right-of-Way Review Appraiser under the standards and guidelines set forth in this manual. The minimum just compensation for interests acquired by DOT&PF must not be less than \$500 for temporary acquisitions and \$1,000 for permanent acquisitions.

### 6.3. Hiring of Consultants

The Regional ROW Chief makes the decision to hire consultants to supplement ROW staff under a Professional Service Agreement (PSA).

On a given project, consultants may be used to perform some or all of the Acquisition functions performed by ROW Agents. The extent of consultant use and level of responsibility will be detailed in the consultant contract. Consultants are expected to follow the policies and procedures detailed in this Manual for the particular functions they are performing unless otherwise directed within the terms of the contract.

### 6.4. Assignment of Parcels to DOT&PF Staff

The ROW Agent supervising acquisitions may not supervise, formally evaluate the performance of, or influence any Appraiser or Review Appraiser unless FHWA waives the requirement after determining that it creates a hardship for DOT&PF. Nor may the ROW Agent assign to the agent who prepared the appraisal for the parcel any acquisition or negotiation activities on that parcel. However the ROW Agent supervising acquisitions may assign to the agent acquisition or negotiation activities on a parcel for which they prepared a waiver valuation if the estimated parcel value is \$25,000 or less (\$10,000 for airport parcels and \$50,000 for State-funded projects).

## 6.5. Preparation by Acquisition Agent

Unless otherwise specified, all instructions in the remainder of this chapter refer to the ROW Agent (“Acquisition Agent”) assigned to acquire the ROW.

Be familiar with and be able to express the following:

- the role of DOT&PF and its acquisition functions;
- the necessity for the proposed project; and
- project design and how the proposed project will affect the property.

During the course of acquisition discussions, remember that you are representing the interests of the public as well as that of the property owner. Care should be exercised at all times, particularly if the property owner may be unfamiliar or inexperienced in real estate transactions and real estate values. Conditions or characteristics of the property that were not available to be considered in the appraisal shall be fully considered and evaluated before acquisition of the property is continued.

Before the Acquisition Agent’s first contact with the property owner, assemble the following:

1. Valuation (the Estimate of Just Compensation), including one of the following:
  - a. approved [Value Estimate Form 25A-R420](#); or
  - b. approved appraisal and [Review Appraiser’s Recommendation of Just Compensation Form 25A-R505](#).
2. ROW plans and design plans;
3. current (within past six months) [Title Search Report Form 25A-R305](#) (or equivalent);
4. Letter of Offer to Purchase, as described in Sec. 6.6.4;
5. [Acquisition Incentive Program Form 25A-R604](#) (see Sec. 6.7.1), if approved for use on the project;
6. [Memorandum of Agreement Form 25A-R605](#) as described in Sec. 6.6.1;
7. Deed and/or other conveyance document with legal descriptions and plats listed in Sec. 6.6.2;

8. [Purchase Voucher Form 25A-R682](#) as described in Sec. 6.6.3;
9. [Record of Contact Form 25A-R685](#) as described in Sec. 6.7.12, or a document containing the same information);
10. Acquisition and Relocation Brochures; and,
11. If \$600 or more, IRS Form W-9 (Request for Social Security or Tax ID Number) (the property owner must complete the IRS forms) or Substitute W-9 DOT&PF Internal Form.

The title search will identify the individual or corporate ownership of the property.

The completed acquisition document package needs to be reviewed by the ROW negotiations and acquisition supervisor before presenting to the property owner.

## 6.6. Document Preparation

The ROW Agent will ensure that compliant forms are used to document property management and transfers. There are various approved forms provided throughout this manual and on the Alaska DOT&PF Right-of-Way website. ROW staff must also consult with DOT&PF’s [Title VI Non-discrimination Program Plan](#) (2020) to ensure the various appendices for contracts and deeds under [USDOT Order 1050.2A](#) are included as required. See <http://dot.alaska.gov/cvlrts/forms.shtml#titleVI>.

### 6.6.1. Memorandum of Agreement (MOA)

The [Memorandum of Agreement Form 25A-R605](#) (MOA) is the contract of sale between DOT&PF and the property owner. Each grantor or tenant must date and sign the MOA in ink.

The MOA should contain information on the land and improvements acquired, damages, total compensation due the owner, and any terms and agreements.

### 6.6.2. Conveyance and Related Documents

The deed to DOT&PF should, whenever possible, be a general warranty deed for a fee simple interest (see [AS 34.15.030](#)). (In some cases when a fee simple interest cannot be acquired, a permanent easement may suffice though it is not the policy of DOT&PF to acquire easements in lieu of fee simple interests merely for convenience. Refer to [AS 09.55.230](#) discussed in Section 6.7.2.) All parties with an

interest in the property need to execute the instrument. Conveyance and related documents can also be found on the DOT website at: [http://www.dot.state.ak.us/stwddes/dcsrow/pop\\_row\\_manual.shtml](http://www.dot.state.ak.us/stwddes/dcsrow/pop_row_manual.shtml).

Include the following in each conveyance document:

1. grantor's name (typed); show the name of the grantor exactly as it appears on the document that gave the grantor title. If differences appear, clearly identify the principals with an "AKA" (also known as) or "Nee" (maiden name);
2. grantor's legal capacity (executor, attorney-in-fact, guardian, etc.);
3. vesting (husband and wife, a single person, Alaska corporation, etc.) or how property is deeded;
4. grantor's mailing address;
5. amount of the consideration or a notation that consideration is exchanged; for example, "\$10 and other valuable consideration";
6. legal description;
7. project and parcel number;
8. page number for each attached plat;
9. area of the acquisition;
10. reservations or exceptions approved by DOT&PF (if land is to be conveyed subject to certain rights, such as easements or mineral rights, note those rights in the conveyance document; frame the document to convey all of the grantor's rights, title, and interests subject to those rights unless the MOA expressly provides otherwise);
11. other rights acquired by DOT&PF such as access control, etc.;
12. date the grantor signs the document; if numerous grantors are involved, the date of conveyance is the date of the final signature (add as many additional notary blocks to the form as necessary to accommodate persons signing on different dates); all signatures must be acknowledged; and
13. Access Control Clause (if portions of the access control clauses must be changed, carefully combine clauses in the deed so that the intent of

the deed is not changed. Request legal advice, if necessary, through the acquisition supervisor).

### Access Control

Use the following special warranty deeds to prepare deeds for controlled access facilities when only a portion of a property is acquired:

Use [Warranty Deed \(Standard/Partial Property/Controlled Access Without Frontage Road\) Form 25A-R615](#), [Warranty Deed \(Corporate/Partial Property/Controlled Access Without Frontage Road\) Form 25A-R622](#), or if the entire ROW is to be controlled access, [Warranty Deed \(Standard/Partial Property/Controlled Access With Frontage Road\) Form 25A-R618](#). Use the first two forms where no frontage road is provided and the other two where a frontage road will be built. If there is to be an opening, designate to which highway or roadway access is reserved and between specific engineers' stations ("...said highway" "B Avenue," "4th Street").

Use [Warranty Deed \(Standard/No Taking/Controlled Access\) Form 25A-R619](#) or [Warranty Deed \(Corporate/No Taking/Controlled Access\) Form 24A-R624](#) if there is no take area and only the access rights are to be acquired. Include access rights in all instruments necessary to clear the title. Modify the usual access clause as necessary to fit the situation. An example is:

"...the undersigned mortgagees do further release and discharge from the lien of said mortgage any and all rights or easements appurtenant to the remaining property..."

If acquiring an entire property for a controlled access facility, use [Warranty Deed \(Standard/Total Property\) Form 25A-R613](#) or [Warranty Deed \(Corporate/Total Property\) Form 25A-R621](#).

### Acknowledgments

Acknowledgments must be signed and sealed in accordance with [AS 09.63.100](#). All grantors and their spouses must sign the document in ink exactly as their names appear (as grantees) in the conveyance to them. Use "AKA" or "Nee," as appropriate. Add as many additional notary blocks to the form as necessary to accommodate persons signing on different dates.

If a corporation executes the document, it must be signed in the full and correct name of the

corporation by its duly authorized officer or officers, sealed with the corporate seal, and attested. The acknowledgment must specify the official designation of the corporate officers. The deed must be accompanied by a copy of the resolution authorizing the conveyance to DOT&PF.

If the document is executed by an attorney-in-fact, it must meet the following criteria:

- be signed in the name of the principal by the attorney;
- be properly acknowledged by the attorney as the free act and deed of the principal; and
- be accompanied by the original or a certified copy of the power of attorney in force at the time of its exercise, if there is not a prior recorded power of attorney in the appropriate recording district.

Organizations such as associations, clubs, and municipalities must have the appropriate acknowledgment attached to the deed, accompanied by a resolution authorizing the conveyance to DOT&PF.

### Exceptions in Deeds

A property owner may refuse to execute a warranty deed due to reservations in the owner's, or previous owner's patent, or from previous deed reservations. If this occurs, amend the warranty deed after consultation with the acquisition supervisor.

#### 6.6.3. Purchase Voucher

The [Purchase Voucher Form 25A-R682](#) is the method of payment from DOT&PF to the property owner. Fill it out to the extent that information is available.

#### 6.6.4. Letter of Offer to Purchase

A Letter of Offer to Purchase (Exhibit 6-1) sets forth the total amount of the approved just compensation and identifies the property interests and improvements being acquired. The compensation offered must be the total amount approved by the Regional ROW Chief.

### 6.7. Initial Contact

Promptly contact all persons with an interest in the property (land or improvements). Make the initial contact by a mail-out package offer or by personal contact. Make reasonable efforts to contact all

property owners, and document the type, date, and result of each attempt in the [Record of Contact Form 25A-R685](#) (see details in Sec. 6.7.12 "Record of Contact").

Determine that the person contacted has the authority to negotiate or convey the property to DOT&PF. If ownership differs from that shown on the title report, notify the appropriate persons for necessary changes to the title report, ROW plans, and documents. The owner may be represented by others. Sections 6.7.7 through 6.7.10 describe entities that may handle the acquisition instead of the owner.

Present the written offer package for the owner to read. This first presentation of a written offer to purchase is the "initiation of negotiations." Make sure that the owner understands all provisions. If there is concern that the owner does not understand, work with the DOT&PF Civil Rights Office to obtain assistance for the owner. Indicate where each owner or tenant-owner is to sign. If they choose not to sign at that point, allow them adequate time to consider the offer.

DOT&PF may not require any owner or tenant to surrender possession of real property before receiving the agreed purchase price or depositing with the court an amount not less than the approved Recommendation of Just Compensation.

Offer to tour the property with the owner during the first personal contact with them. If a translator is needed, work with the DOT&PF Civil Rights Office to select a translator with whom the owner is comfortable. Secure a signed affidavit from the translator that the owner is making any agreements knowingly, willingly, and without duress.

Make DOT&PF's offer in a clear and forthright manner. DOT&PF uses the one-offer method, which contemplates acquisition of the property based on DOT&PF's formal Recommendation of Just Compensation. When presenting the offer, thoroughly familiarize the owner with the approved appraisal or waiver valuation. Under no circumstances may condemnation be used as a threat or as a reason to accept DOT&PF's offer.

If questions arise that require clarification or further discussion, contact the Appraiser, Review Appraiser, or their supervisor, depending on the complexity of the issue.

Before making the first contact thoroughly read the appraisal and Review Appraiser’s Recommendation of Just Compensation. Be alert for any outdated information. Among other items consider market changes, new ownership information, and liens. If changes are necessary, submit a recommendation to the acquisition supervisor who will work with the Review Appraiser to obtain corrections.

**6.7.1. Acquisition**

The acquisition incentive program is intended to reduce project time and potentially costs by offering property owners an incentive above the approved just compensation for timely acceptance of the offer to acquire their property.

DOT&PF encourages “acquisition in person” as the procedure for all acquisitions. However, when not feasible, owners can be contacted by telephone with a package of information immediately mailed to them by certified mail, return receipt.

Give the owner at least two weeks to review the offer. If the owner does not respond within two weeks, make additional efforts to contact the owner.

If all reasonable measures fail, two offers sent in this manner to the last known address, followed by reasonable attempts to contact the owner personally or by telephone constitute a diligent attempt. If no response is received, send a third and final offer. If there is no response, consult with appropriate Regional ROW Chief to discuss options. The Regional ROW Chief will decide when it is appropriate to proceed to condemnation.

**Acquisition Incentive Program**

The use of acquisition incentives for a project requires prior written approval of the Pre-Construction Engineer. When multiple projects result from a single Environmental Document, incentives must be offered on either all or none of the projects. The Pre-Construction Engineer may grant exceptions where offers to parcel owners will be made at least one year after the bidding date of the adjacent project.

The incentive will be an amount of money above the approved just compensation. Incentives are to be applied to all parcels on approved projects except for parcels owned by governmental entities.

**Figure 1  
Incentive Offer Computation**

Where the Approved Compensation is:		The Incentive is Calculated as:	
Over:	But Not Over:	Incentive:	+ % of Amount Over
\$0	\$1,000	\$1,000	
\$1,000	\$2,500	\$1,000 base	+ 83.3% over \$1,000
\$2,500	\$5,000	\$2,250 base	+ 70% over \$2,500
\$5,000	\$7,500	\$4,000 base	+ 50% over \$5,000
\$7,500	\$10,000	\$5,250 base	+ 45% over \$7,500
\$10,000	\$20,000	\$6,375 base	+ 40% over \$10,000
\$20,000	\$30,000	\$10,375 base	+ 35% over \$20,000
\$30,000	\$100,000	\$13,875 base	+ 32.5% over \$30,000
\$100,000	\$300,000	\$36,625 base	+ 30% over \$100,000
\$300,000	\$513,500	\$96,625 base	+ 25% over \$300,000
\$513,500		\$150,000	

Note: Round incentive amount up to the next ten-dollar increment

**Example Part A:**

Approved Just Compensation on part acquired: \$150,000  
 Incentive amount  
 $\$36,625 + [(\$150,000 - \$100,000) \times 30\%] = \$51,625$

Incentive offer (rounded up to next \$10): \$51,630

Do not consider the uneconomic remnant value when calculating the incentive amount.

**Example Part B:**

Appraised value of part acquired (from Example Part A)	\$150,000
Incentive (calculated in Example Part A based on \$150,000)	+\$51,630
Appraised value of uneconomic remnant	<u>+\$20,000</u>

Total offer: \$221,630

If tenant-owned improvements require a separate offer, then the incentive is shared between the property owner and the tenant based on the percentage shares of the value for the whole property respectively attributable to each party.

**Example Part C:**

Approved Just Compensation on part acquired (from Example Part A) \$150,000

Allocated value of Tenant Improvement (as a portion of total above) \$30,000

Percentage of Incentive  
to Owner  $[1 - (\$30,000 / \$150,000)] =$  80%  
to Tenant  
 $[(\$30,000 / \$150,000)]$  OR (1-80% determined above) = 20%

Total Incentive Amount (calculated in Example Part A and rounded) \$51,630

Owner Portion of Incentive  
80% of \$51,630 (NOT rounded a second time) = \$41,304

Tenant Portion of Incentive  
20% of \$51,630 OR  $(\$51,630 - \$41,304) =$  (NOT rounded a second time) \$10,326

When there are multiple takings from the same parent tract (e.g. a fee and an easement) the incentive is based on the total just compensation for all the takings.

Incentives will be held open for 90 days from the date the initial offer is made. Advise property owners in writing of the expiration date of the incentives during the initial contact. Negotiations conducted after the expiration date of the incentive will be based on established just compensation without consideration of an incentive, unless the offer is formally withdrawn in writing and a revised “initial” offer is made due to alteration of the parcel being acquired. The revised “initial” offer will also have the incentive included and be held open for 90 days.

Incentive payments made based on the just compensation amount and settled within the 90-day period do not need additional approval. Any negotiated settlement above just compensation that

includes an incentive must be supported and approved according to this chapter.

Replacement housing payment (RHP) calculations for residential owners who have accepted offers with incentives will be based on the amount determined to be just compensation. The incentive will not be considered in the calculation and will not offset the amount of the RHP.

When parcels on the incentive projects must be acquired by eminent domain, suit will be filed based on approved just compensation. The incentive amount will not be included. The approved just compensation amount should be defended throughout the litigation process unless additional information or circumstances arise that alter the Department’s Recommendation of Just Compensation.

### 6.7.2. Explain the Impact of the Project

Explain the physical impact of the project on the property, the interest DOT&PF is seeking to acquire, and any interests DOT&PF will extinguish by the acquisition.

#### Physical Impact

Explain or reaffirm the public need and necessity of the project, and how the property fits into the overall project. Be positive. Inform the owner of the following:

- public necessity of the facility or improvement;
- positive effects the improvement will have on the neighborhood and the remaining property;
- engineering, environmental studies, and public hearings held that led to determining the final location; and
- impacts on the owner's property and DOT&PF's decisions or actions to deal with or mitigate those impacts.

Discuss the basic content of the acquisition's legal description with the owner and explain it on the ROW map. Avoid technical terminology as much as possible. Show the instruments of conveyance and explain them either during or after discussing the ROW map. Offer to walk with the owner around the acquisition.

Show the relationship between the layout of the proposed construction, the types and location of project improvements and the remaining land, including ingress and egress, proximity to the improvements, drainage patterns, relative elevation compared to the existing terrain, general details, the types and location of project improvements, etc. Point out where improvements or damages have been considered in the appraisal report, and what has been done about them (payment or mitigation measures).

#### Interest to be Acquired for the Project

It is the policy of Alaska DOT&PF to acquire fee simple interest whenever possible. [AS 09.55.230](#) allows for acquisition of fee simple interest for "public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned by them, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine... and for "any of the purposes for which

the department, on behalf of the state, is authorized by law to acquire real property by condemnation." Under this same statute, easements are reserved "for any other use", including temporary uses.

Explain the interest to be acquired, such as fee simple, easement, access control, temporary construction permit, right of entry, etc. Explain the documents necessary to acquire that interest.

#### Split Estate Lands and Subsurface Easements:

Split estate lands acquired adjacent to most communities are generally owned by the ANCSA village corporation (surface) and the ANCSA regional corporation (subsurface). DOT&PF makes offers based on the fee value of the combined surface and subsurface estates. DOT&PF does not divide estate values, does not negotiate with subsurface owners, and does not split payments between surface and subsurface owners. Property owners are responsible for negotiating and dividing the compensation amongst themselves without DOT&PF's involvement.

Note that if there is significant value estimated in sand, gravel, minerals, or other such resources, the appraisal should consider this in the analysis of highest and best use and other valuation principles. It may be helpful to include this in the appraisal scope. See Ch. 4.

If the sale involves an Administrative Settlement, the same unit value must be presented in a written counteroffer from both corporations.

DOT&PF often ends up with a different quality of interest in the two different estates. While DOT&PF occasionally obtains deeds for subsurface interests, subsurface easements are more commonly obtained.

Subsurface easements come in two forms. First, those that are part of split estate acquisition (compensable) are adequate title if they convey material rights and sub-lateral, subjacent support to the DOT&PF facility. Secondly, there are also subsurface easements, generally titled Non-Development Covenants, that protect DOT&PF facilities where only an ANCSA surface estate is held.

#### Existing Interests to be Extinguished

Explain any other pre-existing interest that must be extinguished (utility easements, tenant-owned improvements, leaseholds, etc.). Adhere to the same

procedures in the acquisition of less-than-fee interests and take the following actions:

- ensure that the conveyance documents reflect the proper interest to be acquired;
- verify that current title information is correct; and
- obtain any information needed to clear the title to the property (satisfaction of judgments or liens, re-conveyances of deeds of trust, missing or unrecorded documentation, etc.).

### **6.7.3. Uneconomic Remnants**

If DOT&PF determines that a remainder is uneconomic, as noted on the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#), include it in the offer. If the Appraiser has determined that the remainder is not an uneconomic remnant, but the owner advises that the remainder has little or no value or utility, advise the acquisition supervisor and the Appraisal Review Section.

Though DOT&PF is required to make an offer to purchase an uneconomic remnant the owner may choose to retain it.

### **6.7.4. Relocation Assistance Advisory Services**

If the parcel involves relocation, briefly explain the relocation assistance program to each property owner or tenant and explain that a Relocation Agent will be contacting the owner or tenant with more detailed information. Prepare the [Notice to Relocation Form 25A-R607](#) and transmit a copy to the Relocation Unit immediately following the initiation of negotiations. See Ch. 7.

### **6.7.5. Ending Initial Contact**

If the owner chooses not to sign the applicable documents, establish a date for a subsequent appointment, by mutual agreement.

### **6.7.6. Corporate Ownership**

Determine which officers are authorized to convey property and act in the corporation's behalf by requesting a copy of the corporation's articles of incorporation and bylaws for the files. If necessary, secure a corporate resolution authorizing conveyance of the property to DOT&PF. (Refer to the list of conveyance documents in Sec. 6.6.2. to find the forms intended for corporate use.)

### **6.7.7. Owner Represented by Attorney**

If the owner (or their authorized agent) advises DOT&PF to conduct all negotiations with an attorney, discuss the involvement of the attorney with the ROW Agent's supervisor, who will determine the need for the Department of Law (LAW) to attend meetings.

Following consultation with the ROW Agent's supervisor, make all contacts with the owner's attorney. Ask the owner or the owner's attorney to furnish written confirmation of the scope and fact of such representation, and place it in the parcel file. If the owner subsequently advises that an attorney no longer represents them, ask the owner to furnish a letter of notification for the file.

If the property owner employs someone as a representative to conduct discussions, including an attorney, thoroughly establish the extent of the authority of the owner's representative. Such authority or agreement must be in writing from the property owner.

### **6.7.8. Powers of Attorney (Owner Represented by Attorney-in-Fact)**

You may accept conveyance from the attorney-in-fact only after verifying the following conditions:

1. The power of attorney is current and recorded in the appropriate recording district; place a copy in the parcel file.
2. The power of attorney includes the authority to act for the principal in all matters relating to the property being conveyed.
3. A copy of the power of attorney is in the transaction package when transmitted for payment.

Even with an attorney-in-fact, you may accept conveyance directly from the individual or principal.

### **6.7.9. Owner Represented by a Fiduciary**

The title report or field work may indicate that a fiduciary (administrator, executor, guardian, trustee, personal representative, etc.) exists or is needed. The title report should note the existence of a court-appointed fiduciary if the court action was in (or was recorded in) the recording district where the property is located. If a fiduciary is needed, or if the existing court-appointed fiduciary does not have the power to convey, suggest that the party in interest (their heirs,



successors or assigns) obtain the services of an attorney.

When confirmed or appointed by a court, and acting under court order, a fiduciary may take the form of one of the following:

- administrator, executor, or personal representative of the estate of a decedent;
- court-appointed guardian of a minor, legally incompetent, or person with mental challenges;
- receiver of a corporation in receivership;
- referee or trustee of a person or business in bankruptcy; or
- a similar fiduciary role recognized under State law.

#### **6.7.10. Owner of a Restricted Native Allotment or Town-site Lot**

If the land being acquired is a restricted Native allotment or town-site lot, the Bureau of Indian Affairs (BIA) approves the conveyance with each owner's consent. Notify the BIA, or the Tribal Service Provider that provides real estate management for the land. Do this as early as possible, since BIA has its own mandated procedures that are time-consuming.

The requirements for obtaining a ROW ([25 CFR 169](#)) differ from those for acquiring a fee interest in restricted land ([25 CFR 152](#)). The BIA or the Tribal Service Provider can provide instructions for each process.

The BIA's Alaska Title Services Center can advise which entity to contact for a particular tract of land.

#### **6.7.11. Subsequent Occupants: Protective Lease Rental Agreement**

When a property contains rental units, there is the potential for the original tenants (in occupancy at the initiation of negotiations) to vacate the property and for new tenants to move in. Tenants who move in prior to final acquisition may become displaced persons entitled to relocation services and moving costs and replacement housing payments (see Ch. 7).

To avoid additional relocation payments, consider whether to enter into a [Protective Lease Rental Agreement Form 25A-R687](#) with the property owner for the vacated units.

Work with a Relocation Agent to analyze the cost effectiveness of this rental agreement. Consider the rental cost over the projected length of time to reach settlement with the owner versus the potential moving cost and availability of replacement housing (which might create the possibility of needing to make replacement housing payments under the provisions of last resort housing). The [Protective Lease Analysis Form 25A-R686](#) must be in writing, must be signed by the agents conducting the study, and must be approved by the Regional ROW Chief before any rental agreement may be entered into with the property owner.

If it is determined to be in the State's best interest to use a protective lease, negotiate a [Protective Lease Rental Agreement Form 25A-R687](#) with the property owner taking into consideration the following:

1. The rental amount should not exceed the market rent for similar units within the area.
2. The rent payments to the property owner are assured.
3. No cleanup, painting, or improvements are required prior to the lease.
4. The property owner will not be responsible for maintenance beyond that necessary to maintain the property in a safe and habitable condition.
5. The rental history of the unit being leased. Negotiations should begin at a rate equal to the average yearly occupancy rate multiplied by the most recent periodic rent previously paid for the unit.

The rental agreement is signed and dated by the Regional ROW Chief and the property owner. Send a copy of the agreement to the Pre-Audit Section for the purposes of making the monthly payments. The lease will continue on a month-to-month basis until the property is acquired, with the last periodic payment prorated to the date of closing or order of taking deposit, as appropriate. The cost of these payments will be coded as part of the settlement cost of the parcel.

#### **6.7.12. Record of Contact**

The agent assigned to acquire a property shall maintain a timely written record of all contacts (also sometimes referred to as the ROC or diary) with the property owner or owner's representative and any

tenants or lessees. ([Form 25A-R685 Record of Contact](#))

The purpose of the ROC is to record all contacts and efforts used by DOT&PF to acquire a parcel through settlement and negotiation prior to litigation. The ROC should indicate what has taken place during the negotiation.

Keep a current, detailed written diary for each parcel using the [Record of Contact Form 25A-R685](#), or a form that contains the same information. The Record of Contact contains questions regarding ethnicity and gender, required by FHWA.

During the interview, pay particular attention to the following things and consider including them in the ROC:

- owner's questions, requests, and responses to DOT&PF's offer;
- pertinent materials received from, or left with, the owner; list all documents given to each owner, such as the MOA, brochure, warranty deed, etc.;
- responses to specific questions or concerns, or promises made to the owner;
- problems noted or special requests made (construction features, etc.);
- specifics of any relocation benefits discussed with the owner;
- explanation of the owner's right to retain improvements, if applicable;
- offer to purchase uneconomic remnants, if any;
- explanation of the 90-day notice or rental provisions, if applicable;
- explanation of prepaid taxes or other reimbursable items;
- details of any counter-offers and the outcomes;
- explanation of any delays if a prompt offer was not made, and an explanation of any delays between subsequent contacts;
- any other information considered pertinent or helpful; and

- [Final Disposition Form 25A-R688](#) completed before transmitting for payment.

Make entries as soon as possible after each contact to assure accuracy. Since the ROC may be used as evidence in a court proceeding (including relocation assistance appeals) it is imperative that remarks in the ROC refer only to the negotiations and discussions with the owners/occupants and is limited to a recitation of the facts.

#### **6.7.13. Valuation**

Appraisals and waiver valuations are proprietary. Provide a copy of the valuation to the property owner or an authorized representative if requested, but leave the original in DOT&PF's possession until the parcel is settled or placed in condemnation. Retention schedules should comply with [23 CFR 710.201](#) (e).

#### **6.7.14. Revised Offer Letter or Withdrawal of Offer**

If the parcel is determined no longer required for a project, send a letter to the owner withdrawing the offer.

If the Review Appraiser issues a revised Recommendation of Just Compensation, or if the agent revises the waiver valuation, send a letter to the owner withdrawing the first offer, and present all revised offers in writing. Include one copy of each written offer with the paying documents or condemnation request for the region's files.

### **6.8. Improvements in the Area to be Acquired**

#### **6.8.1. Owner/Tenant Retention**

If the owner or tenant requests retention of an improvement, discuss it with the acquisition supervisor. If the supervisor determines it to be in DOT&PF's best interest, the Regional ROW Chief will establish a retention value, provided that it was not determined to deny owner retention on a project-wide basis during the plans-in-hand review. If the owner retains an improvement, withhold a deposit from the acquisition payment until the owner removes the improvement. Set a date and notify the owner for the removal of the improvement.

#### **6.8.2. Tenant/Leasehold Interests**

During the pre-appraisal contact, determine if there are any buildings, structures, or other improvements located upon the parcel to be acquired which are

held by a lessee. Often leases are not recorded or there may only be a memorandum of lease. The ROW Agent making the pre-appraisal contact should request copies of all leases and agreements that may be unrecorded. A title examination may also help determine if there is a recorded property lease.

When a lease is disclosed, DOT&PF deals separately with the owner for fee and leaseholder for their separated interests.

There must be a clearly separate and defined leasehold interest that can be distinctly appraised separate from the fee interest. DOT&PF will not be expected to attempt separate negotiations when the various interests cannot be clearly defined. The value of the leased fee and leasehold interests can only be estimated after the terms and conditions of the lease are determined.

The lease document should be reviewed for a “condemnation clause.” The condemnation clause often dictates the formula to be used in determining how much should be paid to the lessee.

Make separate offers to the owners of each legally recognized leasehold interest, and to owners of the underlying fee interests, identifying the property to be acquired. The interest acquired in any leasehold or tenant-owned improvement may not be less than the interest acquired in the underlying fee, regardless of the terms of the lease. With each letter, include one copy each of the acquisition brochure and the relocation brochure.

Conclude acquisition of tenant-owned improvements when:

- the fee owner disclaims all interest in the tenant-owned improvements, using the [Disclaimer of Interest Lessor-Lessee Release Form 25A-R683](#);
- the lessee conveys all rights, title, and interest in the improvements (and any leasehold interests in the land) via quitclaim deed; or
- the payment does not result in a duplication of compensation.
- If either offer is unacceptable, then both parties are joined in eminent domain proceedings. If a parcel has to be condemned, then a final offer letter is sent to the fee owner, with the consideration being the total approved value.

### 6.8.3. Notifying Property Management Unit

When improvements are acquired or if DOT&PF initiates condemnation action, prepare the [Assignment and Disposition of Improvements Form 25A-R690](#), listing all improvements, and deliver a copy to the supervising ROW Agent.

### 6.8.4. Utilities

In partial acquisitions, ensure that any affected utilities will be relocated or replaced. Set a completion date for utilities replaced by the owner.

## 6.9. Counter Offers and Administrative Settlements

An administrative settlement is any settlement made that differs from the approved waiver valuation or the Review Appraiser’s Recommendation of Just Compensation. Administrative settlements may be made when normal efforts to acquire have failed, and the Regional ROW Chief has determined that a negotiated settlement is reasonable, prudent, and in the public’s best interest.

If a property owner submits a counter offer requesting special construction items not shown on the plans, submit the request to the Project Manager for approval. The design Project Manager must approve the request in the space provided on the MOA. If the items requested might affect the value of the part to be acquired or the remainder, handle the request as an administrative settlement.

Prepare a memorandum to the Regional ROW Chief, through the supervising ROW Agent. For an administrative settlement, include a written counter offer from the owner in the documentation.

The memorandum may include the following attachments:

- all available indications of value, including any appraisals supplied by the owner;
- [Review Appraiser’s Recommendation of Just Compensation Form 25A-R505](#), or the approved waiver valuation;
- written diary ([Record of Contact Form 25A-R685](#)), also known as ROC;
- all justification for the settlement; and
- any additional information provided by the property owner with the written counter offer.

To be valid, the Regional Pre-Construction Engineer must approve the proposed settlement in writing. The Regional Pre-Construction Engineer may delegate the Regional ROW Chief to approve administrative settlements up to an increase of 10% above just compensation or \$50,000, whichever is more.

### 6.9.1. Mediation

Mediation may be used at the discretion of the Regional ROW Chief. Mediation is non-binding and may be formal or informal. Informal mediation may simply consist of the Regional ROW Chief assigning a Settlement Agent to the parcel who has no involvement with the current negotiations.

Formal mediation involves the Regional ROW Chief enlisting the services of a professional mediator, whose purpose is to arrive at a mutually agreeable settlement within a specified time. The owner must consent to formal mediation. The mediator has no power to enforce settlement, but DOT&PF expects the mediator to produce a settlement. The mediator should be a properly qualified, unbiased third party and should not be a DOT&PF employee.

### 6.9.2. Land Exchange

A land exchange is an alternative method of acquiring property for a DOT&PF project. It involves the acquisition of property rights needed by DOT&PF in exchange for a specific parcel of land desired by the property owner, who must initiate the request for a land exchange in writing.

The decision to acquire land by exchange is discretionary, and used only when it is clearly in the best interest of the State.

The Regional ROW Chief will forward the property owner's request to the Pre-Construction Engineer with a recommendation for either approval or denial. If the Pre-Construction Engineer denies the request, the Regional ROW Chief will notify the property owner of the right to appeal that decision to the Regional Director.

There are two general types of land exchanges; a Type 1 land exchange and Type 2 land exchange. A Type 1 land exchange involves land already owned by DOT&PF and that is exchanged as a part of the compensation for an acquisition. This exchange is considered a disposal of excess land. See Ch. 9 for the procedures to be followed in disposing of excess land. A Type 2 land exchange involves land

acquired by DOT&PF for the purpose of exchanging the land for property needed for the project. Type 2 exchanges are used primarily for a property owner whose principal business is holding land for long-term management (such as an ANCSA corporation or a land trust), and an exchange is essential to adhere to trust or corporate policy to maintain its land base. Type 2 land exchanges may also be used for environmental mitigation. DOT&PF will use the acquisition procedures in this chapter to acquire Type 2 exchange property.

Condemnation may be used only to clear title or if the condemnation action is non-hostile. The Uniform Act applies to the property needed for the project and to the acquired exchange land.

Federal-aid highway funds will only participate in the cost of property incorporated into a highway project; therefore the property needed for the project must be appraised, and the appraised value must be deducted from the cost of acquiring the exchange property. Any excess over the appraised value must be coded as nonparticipating.

If the land proposed for exchange is under the jurisdiction of the Alaska Department of Natural Resources or another State agency, follow the procedures in Sec. 6.15.4.

For both exchanges, the Commissioner must provide a formal declaration stating that the exchange is in the best interest of the public. Use the following form:

#### DECLARATION

The Commissioner of the Department of Transportation & Public Facilities hereby formally declares that the State's best public interest will be served by the Department acquiring Parcel Number \_\_\_\_\_ for exchange with Parcel Number \_\_\_\_\_ on Project Number \_\_\_\_\_, which will be used for transportation purposes.

#### RECOMMENDED FOR APPROVAL:

Chief Engineer, Division of Statewide Design and Engineering Services [or as delegated and described in the table of positions, units, and functions in Ch. 1 of this manual]

#### APPROVED:

Commissioner, Department of Transportation & Public Facilities

Date: \_\_\_\_\_

### 6.9.3. Donations

If the property owner elects to donate the property to DOT&PF, the department must inform the owner that under [23 CFR 710.505](#) they are entitled to receive just compensation for the property and that they have the right to an appraisal as described in Ch. 4 of this manual.

If DOT&PF has determined that no appraisal is necessary, or the owner waives an appraisal, the owner must sign this written statement:

*“(My/our) donation of (the above-referenced parcel) to DOT&PF is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation. (I/We) also release DOT&PF from the obligation of preparing an appraisal of this donated parcel.”*

If an appraisal is necessary, the owner must sign this statement:

*“(My/our) donation of (the above-referenced parcel) to DOT&PF is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation.”*

Advise the owner to consult with the Internal Revenue Service for guidance on potential tax liabilities related to the donation and related just compensation.

If independent appraisal/(s) is/(are) required, DOT&PF may charge the cost of the appraisal/(s) to the project.

If the owner requests an appraisal, follow Ch. 4 for valuation.

## 6.10. Conclusion of Negotiations

### 6.10.1. Title Clearance

Carefully analyze every encumbrance given or listed in a current title report or provided by the owner, and make a good faith effort to clear all encumbrances noted in the title report. For instance, the property may be involved in foreclosure, divorce proceedings, or bankruptcy, or there may be a lien on the property (such as a Federal tax lien filed by the IRS).

If an encumbrance or break in the chain of title cannot be cleared with reasonable effort, request a review by a title examiner through the appropriate

supervisor. The title examiner must make a written statement of the problem and an analysis of the potential liability to DOT&PF if the encumbrance or break is not cleared. The examiner may recommend one of the three following actions:

- The agent should continue the process, with recommended instructions for clearance of specific items;
- Condemnation for title purposes; or
- No further action should be taken due to limited potential liability to DOT&PF.

If the title examiner recommends that no further action be taken, written concurrence must be added to the recommendation by the acquisition supervisor, and the document must be approved by the Regional ROW Chief. The document is a part of the permanent parcel file, and the item is considered to be cleared for title purposes.

With the approval of the Regional ROW Chief, encumbrances to title may not need to be cleared for acquisitions valued at \$10,000 or less.

### 6.10.2. Reimbursement of Incidental Expenses

Prepare a separate purchase voucher (or equivalent document) for incidental expenses. The State will reimburse prepaid property taxes and special assessments prorated from the date of the warranty deed. Verify the tax payment status at the taxing authority’s office, break the annual tax down to a daily rate, and multiply that rate times the number of days left in the calendar year from the date of the signature on the warranty deed. Apply this rate only to the portion of property actually acquired. For example:

Amount owner paid in property taxes (from tax receipt): \$1,200

$\$1,200 \times 20\%$  (percentage of property acquired)  
= \$240 (property tax on percentage of property acquired)  $\div$  365 days = \$0.66/day (the property tax paid per day)  $\times$  165 (the number of days owner owned parcel this year) = \$108.49 (taxes the property owner owes on acquisition)

Reimbursable expense: \$240 (property tax on percentage of property acquired) - \$108.49 (taxes the property owner owes on acquisition) =

\$131.51 (reimbursement for prepaid property taxes due to the owner).

If the owner prepaid the taxes, DOT&PF automatically refunds any pro rata amount over \$10 and smaller amounts only at the owner's request. DOT&PF must reimburse any other incidental payments (boundary surveys, title, prepayment penalties, re-conveyance fees, etc.) incurred by the owner in transferring the property. If the owner is dissatisfied with the calculated amount, advise the owner that they may make an appeal to the Regional ROW Chief.

### 6.10.3. Acquisition Package

Complete the acquisition package and include the following:

- [Memorandum of Agreement Form 25A-R605](#);
- Deed, Other Conveyance Documents, Easement, or Permit;
- [Final Disposition Form 25A-R688](#);
- [Record of Contact Form 25A-R685 \(ROC\)](#);
- [Purchase Voucher Form 25A-R682](#) (if more than one, number "1 of \_\_," "2 of \_\_," etc.);
- Disclaimer of Interest (tenant-owned improvements);
- Report for Property Management Unit (Sec. 6.8.3);
- Appraisal/waiver valuation;
- Current title; and
- Any other pertinent or helpful documents.

Submit the package to the ROW Agent supervising acquisitions. Upon acceptance, ensure that all appropriate documents are recorded and submitted for payment.

### 6.11. Right of Entry

DOT&PF may obtain a right of entry for construction purposes before making payment to the owner. Use rights of entry only on an exceptional or emergency basis. Obtain prior approval from the Statewide Chief Engineer or designee for a right of entry on Federal-aid highway projects. Deliver an informational copy of the approval to the FHWA Division Administrator.

Do not use rights of entry solely to meet a predetermined construction schedule, unless the project itself is of an emergency nature.

Rights of entry are not acceptable for construction of FAA projects since they don't provide permanent interests.

### 6.12. Condemnation

Condemnation can be time-consuming and expensive for the State and for the property owner. Before turning a parcel over to LAW consider attempting mediation (Sec. 6.9.1.). If you are considering using mediation before turning a parcel over LAW, remember to obtain approval from Regional ROW Chief and FHWA.

There will be times when all honest efforts to reach agreement fail, and condemnation appears to be the only recourse.

Never threaten condemnation, even by inference or implication. Explain the condemnation process if asked. Describe the usual course of events in a condemnation proceeding, being careful not to provide any legal advice. Refer all legal questions to LAW and recommend that the owner secure legal advice through an attorney.

If condemnation becomes necessary, explain that the acquisition process is based upon certain constitutional and legislative protections.

If DOT&PF and the owner cannot reach an agreement, send a final letter of intent to condemn by certified mail, return receipt requested. Then proceed as outlined in Sec. 6.12.1.

Allow the owner adequate time to consider DOT&PF's offer. In exceptional circumstances, three contacts may be impractical. Take no action that might be considered coercive. (See Sec. 6.7.1 for reasonable measures)

#### 6.12.1. Recommendation to Place a Parcel in Condemnation

If the Regional ROW Chief determines that there is no reasonable alternative to legal action, then prepare a recommendation for their signature (see Ch. 8). Once this determination is made, formal condemnation proceedings must be initiated so the owner does not have to initiate legal proceedings to prove the fact of the taking of the real property.

Prepare a condemnation package that contains the following:

- list of all persons with an interest in the property and their addresses;

- written diary ([Record of Contact Form 25A-R685](#)), also known as ROC;
- Letter of Offer to Purchase;
- tract description, plat, and vicinity map;
- recently-updated title report;
- approved appraisals and the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#) or approved waiver valuation;
- decisional document;
- all correspondence;
- appropriate relocation Benefit Statement if applicable ([Benefit Statement \(Owner-Occupant of 180 Days or More Form 25A-R730\)](#), [Benefit Statement \(Occupant Less Than 90 Days\) Form 25A-R733](#), [Benefit Statement - Residential \(Owner-Occupant More Than 90 Days But More Than 90 Days\) Form 25A-R735](#), [Benefit Statement \(Tenant of More Than 90 Days\) Form 25A-R738](#), [Benefit Statement \(Tenant of Less Than 90 Days\) Form 25A-R740](#), or [Benefit Statement \(Business\) Form 25A-R743](#));
- letter of final offer and intent to condemn; and
- [Purchase Voucher Form 25A-R682](#) to the Clerk of Court for the acquisition amount.

### 6.13. Archaeologically Significant Sites

If the remains of archaeological or paleontological significance are encountered during the project, DOT&PF must abide by the National Historic Preservation Act Archeological Resources Protection Act ([16 USC 470 et seq.](#) and [54 USC 300101](#)). If the grave is that of a Native American, DOT&PF must abide by the Native American Graves Protection and Repatriation Act ([25 USC 3001, et seq.](#)) and coordinate with the local contact person. Notify the Project Manager immediately that any activity in the area of the grave must be stopped and the grave protected.

#### 6.13.1. Identification of the Grave

Make every effort to identify each grave to be relocated. After a grave is identified, request a copy of the death certificate of the deceased from the Alaska Bureau of Vital Statistics (Division of Public Health, Department of Health and Social Services).

Include the person's name and the date and place of death if known. If unable to identify a grave, document it by an affidavit indicating that a diligent and prudent attempt was made.

#### 6.13.2. Permission of Heirs or Survivors

Heirs may have substantial legal and emotional interests in the buried remains of a deceased person. To protect the State's interests, make every effort to locate the closest heirs. If none can be found, locate the group with the closest cultural affiliations. When the heirs or cultural affiliates are located, secure a signed document stating consent to relocate the deceased. If heirs or a cultural group cannot be found, prepare an affidavit that sets out all of the details and extent of the search. If the gravesite is that of a Native American, obtain permission to relocate from the tribe, Native group, or group of closest known cultural affiliation.

#### 6.13.3. Permits Required

When a body is to be relocated, the Bureau of Vital Statistics requires a Burial-Transit Permit and a Disinterment Permit issued by the local magistrate or the Bureau of Vital Statistics ([AS 18.50.250](#)). The permit also authorizes transportation, interment, or other final disposition of the body ([7 AAC 05.540](#)).

#### 6.13.4. Notices and Public Health Protective Measures

Notify the Department of Health and Social Services of any disinterment plans. They may furnish special handling instructions. Obtain a letter of approval for disinterment from the Bureau of Vital Statistics by submitting a copy of the death certificate, if possible, and a brief statement of the proposed disinterment and interment plan.

#### 6.13.5. Procedures

Follow these procedures:

1. Identify the deceased.
2. Obtain the death certificate or prepare appropriate affidavit of identification.
3. Take photographs.
4. Locate and secure permission from heirs or closest cultural affiliates.
5. Agree with heirs on a location for interment.
6. Agree with heirs on a minimum casket and grave box.

7. Agree with heirs on a minimum grave marker (bronze or stone) if no existing marker is in place.
8. Obtain at least two estimates from licensed morticians; an estimate must include the following:
  - a. burial plot (closest cemetery);
  - b. minimum casket and grave box; if casket is not required, appropriate burial bags;
  - c. grave marker;
  - d. labor (detailed); and
  - e. other expenses as required (detailed).
9. Obtain a Burial-Transit Permit (Sec. 6.13.3) and approval letter.
10. Follow appropriate bid procedures.
11. Monitor the contract.

#### **6.14. Functional Replacement**

Functional replacement is an alternative acquisition available on Federal-aid highway projects. It means to replace publicly-owned real property (land, facilities, or both) acquired as a result of a Federal-aid transportation project with land, facilities, or both, that provide equivalent utility.

The State must have the property appraised, have the appraisal reviewed, and present an offer. The affected public agency may then request functional replacement of its facility as an alternative to a sale. FHWA must concur that the functional replacement is in the public interest, and grant authority to proceed before the land transaction takes place.

Replacement sites and construction must comply with existing codes, ordinances, and zoning regulations, and be functionally equivalent to the subject. Except for utilities or railroads, the replacement facility must be in public ownership and continue the function of the acquired facility.

#### **6.15. Acquisition from Federal and State Agencies, Including Native Interests through BIA**

For lands administered by the Army, Air Force, Navy, Veterans Administration, and General

Services Administration, apply directly to those entities.

For restricted lands administered by the Bureau of Indian Affairs (BIA), contact BIA or the appropriate service provider to determine the process for the interest you are acquiring. For more information see [25 CFR 169](#) – Rights of Way Over Indian Lands.

For lands administered by the National Park Service (NPS), the method is mutually determined after meeting with representatives of the NPS.

Applications under the authority of the Federal Land Policy Management Act (FLPMA) (P.L. 94-579, October 21, 1976) fall under Title V, 90 Stat. 2776 ([43 USC 1761](#)).

#### **6.15.1. Applications to the BLM and the USFS**

##### **Sec. 317 Transfers**

FHWA is authorized to appropriate and transfer certain public lands owned by the United States and managed by the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS) to DOT&PF under the 1958 Highway Act ([23 USC 107](#) (d) and [23 USC 317](#)) for the following purposes for Federal-aid highways (commonly referred to as Sec. 317 Transfers):

- ROW;
- sources of materials for construction or maintenance;
- maintenance and stockpile sites; and
- roadside and landscape development.

Allow at least 120 days' lead time for processing and issuing rights of way or material sources.

Rights of way for utility relocation and, in some cases, trails or pathways are not covered by the above authorization. Apply for them using Standard Form 299. DOT&PF may also apply for highway ROW using this form.

The following sections outline the procedures for a Sec. 317 transfer.

##### **Preliminary Meeting**

Arrange a preliminary meeting with the agency head as soon as DOT&PF is aware of the need for the ROW or material site.



## **Appropriation Request**

The Regional ROW Chief must make a written request for appropriation to FHWA [see suggested format Exhibit 6-2 Sample Appropriation Request Letter (BLM)] or Forest Service [(see suggested format Exhibit 6-3 Sample Appropriation Request Letter (Forest Service))] and include the following:

- statement that the public land is essential for the ROW for the project;
- statement as to whether the land is under selection from the State or a Native corporation. If it is, include a letter of non-objection from the selecting agency;
- copy of the approved Environmental Document; and
- copy of the plat, which must include or have attached the signed Applicant's Certificate (Exhibit 6-4); and
- legal description.

## **Materials Sources on BLM Property**

Include a Mining and Reclamation Plan that consists of a map, plat, sketch, or aerial photograph showing the following:

- area applied for and its identification;
- area to be disturbed, including stockpile area;
- existing and proposed access; and
- names and locations of major topographic and known cultural features.

## **Mining Plan**

Include the following:

- description of proposed methods of operation;
- periods of operation, including starting date;
- description of measures to prevent hazards to public health and safety and unnecessary degradation;
- cross-section diagram showing pit design and original ground level;
- screening methods (if possible); and
- volume required.

## **Reclamation Plan**

Describe the proposed manner and time to complete rehabilitation, including re-vegetation methods, grade of back-slopes, backfill methods, and a map, plat, sketch, or aerial photograph showing the area to be reclaimed. Recommend future use.

## **Letter of Consent**

The agency issues a letter of consent to FHWA including any special stipulations. FHWA sends a copy of the letter to the Regional ROW Chief.

## **Transfer of Use Rights**

When the Regional ROW Chief receives the letter of consent, construction may proceed. After construction:

- the Regional ROW Chief must prepare a Highway Easement Deed for a highway right of way or a material source on BLM property (Exhibits 6-5 or 6-6) (Use a USFS Highway Easement Deed (Exhibit 6-7) for Forest Service property. Include in the deed as built plans and any additional stipulations from the letter of consent for the transfer to the State.);
- the region's Assistant Attorney General (AAG) reviews the deed for legal sufficiency and signs the appropriate space on the deed (the AAG returns the deed to the Regional ROW Chief, who transmits it to FHWA);
- FHWA must return the signed deed to the Regional ROW Chief for recording; and
- the region provides a copy of the recorded deed to the agency from which the property was appropriated.

FHWA administers the ROW or materials site grant as a nonexclusive right, subject to the reservation of leasable or salable minerals to the United States.

## **Termination**

The appropriation terminates if either of the following occurs:

- DOT&PF has not begun construction or use of the materials for highway purposes within 10 years (or less, if agreed upon between FHWA, the agency, and DOT&PF).

- DOT&PF notifies FHWA that the need for the ROW or materials no longer exists and the lands have been acceptably rehabilitated.

### **Applications Made to the BLM Town-site Trustee**

The Regional ROW Chief must make the request directly to the town-site trustee, and must also request issuance of a Trustee Deed.

### **Special Use Permit Applications Made to USFS**

Special Use permits are for materials sources, utilities relocation, trails, or pathways, or when the property is needed only for a short term such as restoration work on a slide, etc. Depending on the size and complexity of the project, allow at least 90 days' lead time for processing and issuing USFS permits. If possible, meet with the USFS District Ranger before or at the time of the application to discuss the project. Follow these procedures:

1. Submit the required number of copies of the application to the appropriate USFS office.
2. Prepare a legal description to accompany Special Use Permit applications. For materials sources, describe the area of the materials source and the haul road by metes and bounds.
3. Support each copy of the Special Use Permit application by a plat or map adequately showing the area to be acquired.
4. Obtain the estimated cost and estimated time to begin and complete the construction project and include this information on the Special Use Permit application.
5. Make available a copy of the Environmental Document, plus any further supporting documents such as U.S. Army Corps of Engineers permits, etc.

### **6.15.2. Applications to the BIA for Trust or Restricted Lands**

Allow at least 24 months for the processing and granting of BIA rights-of-way or deeds.

#### **Authority**

BIA grants actions affecting Native title on restricted land (owned by individual allotment or restricted town-site owners) primarily under the Act of February 5, 1948 (62 Stat. 17; [25 USC 323](#), [25 USC 324](#), [25 USC 325](#), [25 USC 326](#),

[25 USC 327](#), [25 USC 328](#)). See [25 CFR 169](#) for BIA's regulations. Regulations for materials sites are contained in [25 CFR 212](#) and [25 CFR 216](#).

### **BIA Right-of-Way Applications**

**Stage 1, Obtain Permission to Survey:** Since Trust and Restricted lands are not subject to [AS 34.65.020](#) and [AS 09.55.280](#) (entry upon land for survey purposes), DOT&PF must meet with or contact the BIA or the appropriate contract representative.

**Stage 2, Acquisition of Right of Way:** After a survey, or in the case of an existing ROW, the Acquisition Unit must proceed in accordance with BIA regulations, [25 CFR 169](#).

### **6.15.3. Applications to USFWS**

Applications to the U.S. Fish and Wildlife Service (USFWS) are time-consuming and require coordination as soon as possible.

#### **Permits for Special Uses (one year or less)**

USFWS prefers a written request in letter form for Special Use Permits.

#### **Right-of-Way Permits**

ROW permits are issued under the authority of the National Wildlife Refuge System Administration Act of 1966, Public Law 89-699 (80 Stat. 928, [16 USC 668dd](#)), as amended, or for oil and gas pipelines under Sec. 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, [30 USC 185](#), as amended by Public Law 93-153.

General regulations for processing ROW permits are found in [50 CFR 29](#). Regulations specific to processing Transportation and Utility system ROW permits are found in [50 CFR 36](#). Both sets of regulations would be used to process ROW permit requests for most projects. Use Standard Form 299 for ROW permits.

Lands within the boundaries of a National Wildlife Refuge on December 18, 1971, the date of enactment of the Alaska Native Claims Settlement Act (ANCSA), [43 USC 1621](#), remain subject to the laws governing use and development of that refuge, as provided in ANCSA Sec. 22g. Sec. 22g does not apply until the land is actually conveyed.

Use of these lands may be authorized by the landowner (e.g. a Letter of Non-objection) in consultation with the USFWS.

#### **6.15.4. Applications to the DNR Division of Mining, Land, and Water**

Obtain applications referred to in this section from the Alaska Department of Natural Resources (DNR) Division of Mining, Land, and Water.

Submit applications to DNR Division of Mining, Land, and Water for the following:

- rights-of-way for Federal-aid highways;
- sources of materials for construction or maintenance of Federal-aid highways;
- temporary easements and construction permits; or
- State airport Interagency Land Management Assignments (ILMAs).

Applications are time-consuming and require coordination with DNR as soon as possible.

#### **Application Preparation**

Follow these procedures in preparing a DNR application:

1. Use the forms supplied by DNR. (The forms include an Application for Easement, Land Use Permit Application or Material Sale Application.)
2. Submit one original of all applications directly to the Regional Office Manager, Division of Mining, Land, and Water.
3. Coordinate all DNR applications with DOT&PF's Environmental Section.

Submit reports to DNR annually and indicate the quantity of materials extracted from pits under DNR contracts, using the appropriate accounting voucher. If a materials source is depleted or unnecessary, DOT&PF may need to relinquish that materials source back to DNR.

#### **6.15.5. Application for Interagency Land Management Assignment (ILMA) and State Agency Leases**

Use ILMAs for airports, building sites, temporary research sites, and State public facilities and institutions. DNR may issue ILMAs for varying terms, based on proposed use. ILMAs are not transferable or assignable.

Use leases for administrative sites, school sites, State-constructed projects with eventual ownership by others (e.g., hospital, port, and terminal facility), etc. Leases may be transferable and assignable, depending on their construction (see [AS 38.05.810](#)).

DOT&PF's Commissioner (or designee) must submit an application to the appropriate DNR regional office, consisting of the following:

- transmittal letter;
- Application for ILMA; and
- Environmental Risk Questionnaire.

DNR's Regional Manager submits a final finding for the authorized officer's signature and returns the original ILMA or lease to the Regional ROW Chief.

#### **6.16. Early Acquisition**

Early acquisition means acquiring parcels for a project before the normal sequence of acquisition events. FAA does not have an early acquisition process. FHWA may approve early acquisition for a highway project in certain situations, as explained in the remainder of this section. (See Sec. 2.3.4.)

Generally, any acquisition that occurs early (prior to approval of a project's Environmental Document) is not eligible for Federal participation. However the State may undertake early acquisition under [23 CFR 710.501](#) for corridor preservation, access management, or other purposes (See Exhibit 6-8). Prior approval from FHWA is necessary to ensure Federal-aid participation.

The following early acquisitions are available prior to an Environmental Document:

- Acquisition Using State Funds with Project Matching Credit;
- Federally Funded Early Acquisition;
- Protective buying;
- Hardship acquisition; and
- State-Funded Early Acquisition Requesting Reimbursement.

Regardless of the process chosen, early acquisition has risks. These risks include:

- project becoming ineligible for Federal funds because the procedures were not followed;
- potential to prejudice route selection, which threatens Federal funding to the overall project;
- perception that it circumvents or conflicts with environmental process. Acquisition of property can't influence the environmental assessment of a project, including the need for the project or route selection;
- design issues (total or partial, redesign, etc.);
- public opposition; or
- maintenance, lease, or disposal issue if project does not get built or other alternatives are chosen.

The Regional ROW Chief should evaluate these risks before recommending early acquisition activities.

Early acquisition procedures are the same as standard acquisition, except that the former requires additional documentation and possibly different funding sources.

If State funds are used for early acquisition, no demolition or development of the property shall occur until the environmental process is complete. If Federal funds are used under 6.16.2, no ground disturbance, demolition, or development of the property is allowed until final FHWA certification of the project is obtained. Parcels impacted by Sec. (4)(f) cannot be acquired until an Environmental Document has been approved.

All early acquisitions must be incorporated into a Federal-aid project within 20 years following the fiscal year for which the request is made, unless the US Department of Transportation Secretary determines that a longer period is reasonable.

#### **6.16.1. Acquisition Using State Funds with Project Matching Credit**

DOT&PF may use its own funds to purchase right of way prior to approval of the Environmental Document and may apply the purchase price (or if donated, the fair market value) toward its share of project costs if it meets the requirements of [23 CFR 710.501](#) (c). This procedure is generally used to preserve a corridor for a future highway location, or to provide access management. While

the acquisition costs are not eligible for Federal-aid reimbursement, they may become eligible as a credit toward the State's share of a Federal-aid project. For that to happen, the following criteria apply:

- property was lawfully obtained;
- property was not parkland subject to [23 USC 138](#);
- property was not subject to National Historic Preservation Act procedures under [54 USC 100101](#);
- property was acquired in accordance with [49 CFR 24](#);
- DOT&PF complied with the Title VI of the Civil Rights Act of 1964;
- acquisition did not influence the environmental assessment for the project; and
- property will be incorporated into a Federal-aid project.

ROW Agents must follow the Uniform Act and [49 CFR 24](#) to preserve the project's eligibility for Federal participation.

To be eligible for the project cost credit, the Regional ROW Chief must demonstrate compliance with the Uniform Act and the requirements of [23 CFR 710.501](#) (c) to FHWA for each parcel acquired.

#### **6.16.2. Early Acquisition Using Federal Funds**

When using Federal funds for early acquisition, the right-of-way acquisition is a stand-alone project with parcel-specific [Statewide Transportation Improvement Plan](#) (STIP) and Environmental Documents (National Environmental Policy Act ([42 USC 4321 et seq.](#) also known as NEPA)). The Regional ROW Chief must certify to FHWA, in writing, that:

- the State has authority to acquire the real property interest under State law; and
- the acquisition;
  - is for a transportation purpose;
  - won't cause a significant adverse environmental impact; and

- won't limit the choice of reasonable alternatives for the project or influence the decision of the Secretary on any approval required for the project;
- does not prevent an impartial decision on accepting an alternative considered in the environmental review process;
- is consistent with the STIP process;
- complies with other applicable Federal laws (*i.e.* the Uniform Act);
- will be acquired through negotiation, without the threat of condemnation; and,
- won't result in a reduction or elimination of benefits or assistance to a displaced person.

The environmental process and approved documentation must be completed on each real property acquisition before authorizing Federal funds for this method of advanced acquisition.

The Regional ROW Chief certification should be substantially similar to the following:

*"I certify that the early acquisition complies with applicable Federal laws and regulations and is only for transportation purposes. The advance purchase of right of way will not influence the outcome of alternatives considered during the future project's NEPA process nor will it cause any significant environmental impacts (to the property). The acquisition will not be done under threat of condemnation and the early acquisition will not reduce or eliminate relocation benefits. Demolition of any improvement on the property or other irrevocable actions will not be taken until NEPA for the overall project is complete and the need for right of way is documented."*

### **Protective Buying**

Protective buying involves using Federal funds to acquire land within an identified corridor when the owner has *known* plans to develop the property in a way that precludes future transportation uses. Property offered for sale within an area of rapid commercial, industrial, or residential development could also be purchased through this method. Protective Buying Acquisitions must meet the following conditions for Federal funding:

- project is included in the currently approved STIP;
- DOT&PF has complied with applicable public involvement requirements in [23 CFR 450](#) and [23 CFR 771](#);
- determination has been completed for any property subject to the provisions of [23 USC 138](#);
- procedures of the Advisory Council on Historic Preservation are completed for properties subject to [54 USC 100101](#); and
- acquisition may not influence the environmental process, including the decision to construct the project or the selection of a specific location [[23 CFR 710.503](#) (d)].

The Regional ROW Chief must clearly demonstrate that a development is imminent and such development would limit future transportation choices. Further guidance on Protective Buying can be found in [23 CFR 710.503](#).

### **Hardship Acquisition**

Hardship acquisitions are found in [23 CFR 710.503](#) (c). Hardship acquisitions are permissive and not mandatory. DOT&PF may elect to conduct hardship acquisitions or not to utilize this advance acquisition technique.

When the Regional ROW Chief accepts and concurs with a hardship acquisition request by a property owner, FHWA does not require DOT&PF to accelerate condemnation. If a negotiated agreement cannot be reached with the property owner, DOT&PF may defer acquisition of the property to the time it would occur in the normal project schedule. The ROW Agent should inform the property owner of this possibility when it accepts for processing a hardship acquisition request.

Generally, hardship acquisitions are initiated by property owners who will experience a justified hardship, based on health, safety or financial reasons, if they continue ownership of a parcel until the normal project acquisition phase. The owners' application must set forth the exact circumstances creating the hardship and conclude that the only appropriate action is an immediate sale. At a minimum, the property owner must demonstrate that remaining in possession of the property creates an undue hardship compared to other property owners and the property owner is unable to sell the property because of the impending project.

The acquisition must meet [23 CFR 701.503](#) to be eligible for Federal funds. The Regional ROW Chief must demonstrate the following conditions are met:

- project is included in the currently approved STIP;
- DOT&PF has complied with applicable public involvement requirements in [23 CFR 450](#) and [23 CFR 771](#); and
- acquisition may not influence the environmental process, including the decision to construct the project or the selection of a specific location [[23 CFR 710.503](#) (d)].

The Environmental Section determines:

- whether the property is parkland subject to [23 USC 138](#) (d) (1) [also known as Section 4 (f)];
- whether the property is subject to Historic Preservation procedures under [16 USC 470](#) and, if so, that those procedures are completed; and
- acquisition will not influence the environmental process.

The Regional ROW Chief must submit proper documentation to show that the acquisition is in the public interest and is necessary for one of the following reasons:

- to alleviate particular hardship to a property owner in contrast to others because of documented health, safety, or financial reasons, including an inability to sell the property at market value within the time that would be typical for property that is not impacted by the impending project (the property owner must

submit this in writing to the Regional ROW Chief); or

- to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

The advance acquisition may not influence the environmental process, including the decision to construct the project or the selection of a specific NEPA alternative. All operating procedures affecting appraisal, negotiations, and relocation are applicable.

Use sound judgment in requesting approval of the acquisition. If the property is not incorporated (either in whole or in part) in the final ROW project, Federal funds will not participate in the cost of the property. If FHWA authorizes the acquisition, Project Control must process a PDA when it receives a current cost estimate that authorizes the region to proceed with the acquisition.

### **6.16.3. State-Funded Early Acquisition Requesting Reimbursement**

DOT&PF may use its own funds to purchase rights-of-way prior to an Environmental Document and be reimbursed. However, this requires meeting the very stringent conditions of [23 USC 108](#) (c) (3), as explained in [23 CFR 710.501](#) (d).

To be eligible for reimbursement the real property interests acquired must be incorporated into a project eligible for surface transportation program funds and the acquisition must be necessary to preserve environmental and scenic values.

Furthermore, in addition to the requirements contained in Sec. 6.16.1 the Regional ROW Chief must demonstrate, and FHWA must find that:

- any land acquired, and relocation assistance provided, complied with the Uniform Act;
- requirements of Title VI of the Civil Rights Act of 1964 have been complied with;
- State has a mandatory comprehensive and coordinated land use, environment, and transportation planning and the acquisition is

certified by the Governor or designee as consistent with the plan before the acquisition;

- acquisition is determined in advance by the Governor or designee to be consistent with the STIP;
- alternative for which the real property interest is acquired is selected by DOT&PF in consideration of the environmental impacts of various alternatives;
- NEPA and all other required environmental documentation is completed before the time that the cost incurred by DOT&PF is approved for Federal participation; and
- property acquired in advance of FHWA approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

Due to the additional need to have executive branch involvement, the Regional ROW Chief should exercise sound judgment and planning when seeking reimbursement as opposed to credit for early acquisitions.

Date:

RE: Project Name \_\_\_\_\_  
State Project No. \_\_\_\_\_  
Federal-Aid Project No. \_\_\_\_\_  
Parcel Number \_\_\_\_\_ Unit Number \_\_\_\_\_

LETTER OF OFFER TO PURCHASE

Dear \_\_\_\_\_:

By now, you are aware that the State of Alaska, Department of Transportation & Public Facilities (DOT&PF) is preparing to [describe project] \_\_\_\_\_.

As part of the project, we need to purchase your property and/or property rights, since a portion of the new construction will extend approximately \_\_\_\_\_ feet onto your property. I am DOT&PF's Agent in completing this transaction.

Your property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all of the elements that contribute to the market value of your property. The market value of your property has been determined to be \$ \_\_\_\_\_ for [insert appropriate Option and Clauses from Page 2 of this exhibit].

Please consider this a final offer to purchase your property.

The exact location and size of your property to be purchased is described on the enclosed Warranty Deed with the attached parcel plat. Other documents necessary to purchase your property are enclosed, including the Memorandum of Agreement, Purchase Voucher(s), Easement and Construction Permit. The enclosed brochure provides additional information about right-of-way acquisition procedures.

Your lending institution may require payment of funds for a partial release of those lands being acquired. After we have obtained all necessary releases, we will send the sale proceeds to you. The State of Alaska will reimburse prorated property taxes to you based on the percentage of your property acquired.

Please feel free to call me at [phone] \_\_\_\_\_, if I can be of assistance in this matter.

Sincerely,

\_\_\_\_\_  
Right-of-Way Agent

Enclosures

**Exhibit 6-1**  
**Sample Letter of Offer to Purchase**  
**Page 1 of 2**



ONLY THE OPTIONAL PARAGRAPHS THAT ARE APPLICABLE TO EACH INDIVIDUAL CASE ARE INCLUDED IN THE LETTER OF OFFER TO PURCHASE

OPTION 1: (Total Acquisition: Add Clause C as required)

... determined to be \$ \_\_\_\_\_ for fee simple interest in [square feet/acres] of land and [house, garage, pump house and pump, etc., as applicable in each case]

OPTION 2: (Partial Acquisition: Add Clauses A, B and C as required)

...determined to be \$ \_\_\_\_\_ for fee simple interest in [square feet/acres] of land [, access rights,] and [house, garage, etc.] including \$ \_\_\_\_\_ for all [severance or proximity] damages.

OPTION 3: (Used for less than fee acquisition: Add Clauses B and C as required)

... determined to be \$ \_\_\_\_\_ for [an easement/permit, etc.] across the portion of your property. This offer consists of \$ \_\_\_\_\_ for loss in market value (damages) to your property and \$ \_\_\_\_\_ for [list any improvements to be acquired].

OPTION 4: (Used for acquisition of access rights only: Add clauses A and B as required)

...determined to be \$ \_\_\_\_\_ for the purchase of access rights only.

OPTION 5: (Used for tenant-owned improvements: Add Clause C)

... determined to be \$ \_\_\_\_\_ for the purchase of improvement

Additional Clauses

CLAUSE A: (If there is an uneconomic remnant, add):

DOT&PF has determined that the acquisition of the needed right of way will leave you with a remainder containing an area of \_\_\_\_\_. If you wish to keep this remainder, you may do so; however, if you prefer to sell it, the State will pay you the market value of \$ \_\_\_\_\_ for this remainder. This would be in addition to the amount offered in this letter for the purchase of the needed property.

CLAUSE B: (Used in cases involving special benefits)

DOT&PF's Appraiser(s) conclude(s) that the completion of this project enhances the market value of your remaining property in the amount of \$(Item 1) \_\_\_\_\_; therefore, special benefits in the amount of \$(Item 2) \_\_\_\_\_ have been deducted from the damages of \$ \_\_\_\_\_.

Item 1: Enter the total amount of special benefits as shown on the approved Review Appraiser's Recommendation.

Item 2: Enter the amount of special benefits that have been deducted in computing the offer. This amount cannot exceed the amount of damages, if any, to the remainder of the property.

CLAUSE C: (If ROW Chief has approved owner's request to retain certain improvements in acquisition area – see Sec. 6.8.1.)

If you choose to keep the improvements and remove them from the site, you may retain them by paying the retention value of \$ \_\_\_\_\_ and by posting a performance deposit of \$ \_\_\_\_\_. Deducting them from the amount of the purchase price offered may pay both of these.

**Exhibit 6-1**  
**Sample Letter of Offer to Purchase**  
**Page 2 of 2**

Date \_\_\_\_\_

Project Name: \_\_\_\_\_

Project No. \_\_\_\_\_

Parcel No. \_\_\_\_\_

Division Administrator  
Federal Highway Administration  
P.O. Box 21648  
Juneau, AK 99802-1648

Dear Sir:

Enclosed is an application to the Bureau of Land Management for a \_\_\_\_\_ on Public Domain. The land(s) applied for is/are needed for construction and/or maintenance of a Federal-Aid (Highway)/(Airport) located at or near \_\_\_\_\_.

Please forward the application to the Bureau of Land Management with your recommendation for concurrence, based on the Interagency Agreement dated July 27, 1982.

We appreciate your assistance.

Sincerely yours,

Regional Right-of-Way Chief  
\_\_\_\_\_ Region

Enclosures

**Exhibit 6-2**  
**Sample Appropriation Request Letter (BLM)**

Date \_\_\_\_\_

Project Name: \_\_\_\_\_  
Project No. \_\_\_\_\_  
Parcel No. \_\_\_\_\_

Division Administration  
Federal Highway Administration  
P.O. Box 21648  
Juneau, AK 99802-1648

Dear Sir:

The Department of Transportation & Public Facilities hereby applies for right of way on Forest Service land located as hereinafter more particularly described, and states:

- This application is being filed under the Act of August 27, 1958 (72 Stat. 916, 23 USC 317).
- This application is an amendment to Application No. \_\_\_\_\_.
- That the rights-of-way sought to be acquired are necessary in order to construct and/or maintain a (highway) (airport) connecting the towns of (or located in) \_\_\_\_\_ in the State of Alaska.
- That the desired right of way will occupy a total of \_\_\_\_\_ acres, more or less.
- That the total centerline length of the desired right of way is \_\_\_\_\_ miles, more or less.
- That construction will be undertaken during the \_\_\_ construction season, scheduled to begin \_\_\_\_\_.
- The Department of Transportation & Public Facilities requests immediate right of entry pending final grant of right of way.

The Department of Transportation & Public Facilities agrees that the application, if approved, will be subject to the terms and conditions of the applicable regulations of the Department of Agriculture and agrees to utilize the right of way requested within ten (10) years following the transfer of the land.

In support of this application and in compliance with the rules and regulations of the Department of Agriculture governing rights-of-way, the following are attached and made a part thereof:

Four (4) parcel descriptions of this application, together with four (4) plats are submitted, showing the location of the land to be acquired. No field notes are attached, since all angles and dimensions constituting the field notes are shown thereon.

(Use one of the following statements as appropriate)

In accordance with Federal regulations, the project has been reevaluated and the project will not adversely affect the environment. A Finding of No Significant Impact (FONSI) is attached.

The final Environmental Assessment (Impact Statement) for this project has been (was) approved on \_\_\_\_\_.

WHEREFORE, the applicant requests that the right of way herein applied for be approved.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Regional Right-of-Way Chief

Region

**Exhibit 6-3**  
**Sample Appropriation Request Letter (Forest Service)**

## APPLICANT'S CERTIFICATE

This is to certify that \_\_\_\_\_,  
who subscribed the statement hereon, is the person employed by the undersigned applicant to supervise the  
preparation of this map, which has been adopted by the applicant as the approximate final location of the project  
hereby shown; and this map is filed as part of the complete application and, in order that the applicant may obtain  
the benefits of the Act of August 27, 1958 (72 Stat. 885, 23 USC 317), and I further certify that the right of way  
herein described is desired for Alaska Project No. \_\_\_\_\_.

Director, Design and Construction

\_\_\_\_\_ Region

Attest: \_\_\_\_\_

### Exhibit 6-4 Applicant's Certificate

## HIGHWAY EASEMENT DEED

### FOR HIGHWAY RIGHT OF WAY ON BLM PROPERTY

THIS DEED, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter referred to as the STATE:

#### WITNESSETH:

WHEREAS, the STATE has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 USC Sec. 317), for a right of way of a highway over certain Federal land under the jurisdiction of the DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT in the State of Alaska, and,

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right of way for \_\_\_\_\_, \_\_\_\_\_ Highway, \_\_\_\_\_, Project \_\_\_\_\_; and,

WHEREAS, the DEPARTMENT OF THE INTERIOR, acting by and through the BUREAU OF LAND MANAGEMENT, in its consent to the appropriation of the Federal land, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE;

NOW, THEREFORE, the DEPARTMENT, as authorized by law and in compliance with all requirements imposed by or pursuant to Title 49 CFR , DEPARTMENT OF TRANSPORTATION, Subtitle A, Office of Secretary, Part 21, nondiscrimination in Federally-assisted programs of the DEPARTMENT OF TRANSPORTATION (49 CFR 21.2 - 21.23) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC 2000d to 2000d-4), does hereby grant to the STATE an easement for a right of way for the construction and maintenance of the \_\_\_\_\_ Highway, a Federal-Aid \_\_\_\_\_ Highway, and use of the space above and below the existing ground surface for highway purposes on, over, across, in and upon the following described Federal land within \_\_\_\_\_, \_\_\_\_\_ Meridian, \_\_\_\_\_ Recording District, State of Alaska, as shown on the right of way plans dated \_\_\_\_\_, sheets \_\_\_\_\_, marked as Exhibit A, and attached hereto and made a part hereof, subject, however, to the following terms and conditions:

- 1) Outstanding valid claims, if any, existing on the date of this grant, and the STATE shall obtain such permission as may be necessary on account of any such claims.
- 2) Use of the right of way is to be undertaken by the STATE in compliance with the Act entitled "An Act for the Preservation of American Antiquities" approved June 8, 1960, (34 Stat. 225, 26 USC 432-433), and State laws where applicable.
- 3) The easement herein granted shall terminate 10 years from the date of the execution of this deed by the UNITED STATES OF AMERICA in the event development of the right of way has not commenced during such period.

**Exhibit 6-5**  
**Highway Easement Deed (Highway ROW on BLM Property)**  
**Page 1 of 4**

4) The easement herein granted is limited to use of the described right of way and the space above and below the existing ground surface for the purpose of development and maintenance of a right of way in accordance with the approved plans described in the following condition No. 5 and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the BUREAU OF LAND MANAGEMENT to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the DEPARTMENT shall be consulted prior to the exercise of such rights: and provided, further that nothing herein shall preclude the BUREAU OF LAND MANAGEMENT from locating DEPARTMENT OF THE INTERIOR information signs on the portions of the right of way outside of development limits as long as concurrence to do so is first obtained from the STATE.

5) The use of this right of way will be in accord with the provisions of Title 23, U.S. Code-Highways, and amendments; the provisions of regulations issued pursuant thereto; the construction specifications of the STATE highway department as approved by the DEPARTMENT for use on Federal-aid projects; and the following terms and conditions specified by the BUREAU OF LAND MANAGEMENT attached as Exhibit \_\_\_\_\_.

6) Consistent with highway safety standards, the STATE shall protect and preserve soil and vegetative cover and scenic and aesthetic values on the right of way outside of development limits.

7) The STATE shall maintain this right of way to acceptable standards of repair, orderliness, neatness, sanitation and safety.

8) The STATE shall maintain the right of way clearing by means of chemicals only after specific written approval has been given by the DEPARTMENT after consultation with the BUREAU OF LAND MANAGEMENT. Application for such approval must be in writing and specify the time, methods, chemicals and the exact portion of the right of way to be chemically treated.

9) When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the STATE shall give notice of that fact to the DEPARTMENT and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Secretary of the DEPARTMENT OF THE INTERIOR or his assigns.

The STATE, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

(a) no person shall, on the grounds of race, color, national origin, gender, age, income, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such land hereby conveyed;

(b) that the STATE shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, nondiscrimination in Federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

**Exhibit 6-5**  
**Highway Easement Deed (Highway ROW on BLM Property)**  
**Page 2 of 4**

In the event of breach of any of the above-mentioned nondiscrimination conditions, the DEPARTMENT shall have the right to enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to and vest in and become the absolute property of the Secretary of the DEPARTMENT OF THE INTERIOR and its assigns, as such interest existed prior to this instrument.

IN WITNESS WHEREOF, I, \_\_\_\_\_, Division Administrator for Alaska, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By:

Name: \_\_\_\_\_  
Division Administrator, Alaska Division

STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared

\_\_\_\_\_,  
being to me personally known and known to me to be the Division Administrator for the Alaska Division, Federal Highway Administration, and acknowledged that the foregoing instrument bearing the date \_\_\_\_\_, 2\_\_\_\_, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his act and deed as Alaska Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska  
My Commission expires:

**Exhibit 6-5  
Highway Easement Deed (Highway ROW on BLM Property)  
Page 3 of 4**

In compliance with the conditions set forth in the foregoing deed, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, certifies and, by the acceptance of this deed, accepts the right of way over certain lands herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

By:

Name: \_\_\_\_\_  
Regional Right-of-Way Chief  
For the Commissioner

STATE OF ALASKA )

) ss.

\_\_\_\_\_ JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he in his capacity as \_\_\_\_\_ executed the same voluntarily on this day.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska

My commission expires:

DEED APPROVED AS LEGALLY SUFFICIENT
DATE: _____, 20____
Signature: _____
Name: _____
Assistant Attorney General
Alaska Attorney General's Office
Alaska Bar Association No: _____

**Exhibit 6-5**  
**Highway Easement Deed (Highway ROW on BLM Property)**  
**Page 4 of 4**



HIGHWAY EASEMENT DEED  
FOR A MATERIAL SOURCE ON BLM PROPERTY

THIS DEED, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter referred to as the STATE:

WITNESSETH:

WHEREAS, the STATE has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 USC Sec. 317), for a right of way for Material Source \_\_\_\_\_ over certain Federal land under the jurisdiction of the Department of the Interior, Bureau of Land Management in the State of Alaska, and,

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right of way for a material source; and,

WHEREAS, the Department of the Interior, acting by and through the Bureau of Land Management in its consent to the appropriation of the Federal land, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE;

NOW, THEREFORE, the DEPARTMENT, as authorized by law and in compliance with all requirements imposed by or pursuant to Title 49 CFR , DEPARTMENT OF TRANSPORTATION, Subtitle A, Office of Secretary, Part 21, nondiscrimination in Federally-assisted programs of the DEPARTMENT OF TRANSPORTATION (49 CFR 21.2 - 21.23) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC 2000d to 2000d-4), does hereby grant to the STATE an easement for a material source for the construction and maintenance of the \_\_\_\_\_ Highway, a Federal-Aid \_\_\_\_\_ Highway, and use of the space above and below the existing ground surface for highway purposes on, over, across, in and upon Federal land within \_\_\_\_\_ Meridian, \_\_\_\_\_ Recording District, State of Alaska, as shown on the plat dated \_\_\_\_\_, marked as Exhibit A, attached hereto and made a part hereof, subject, however, to the following terms and conditions:

- 1) Outstanding valid claims, if any, existing on the date of this grant, and the STATE shall obtain such permission as may be necessary on account of any such claims.
- 2) Use of the material source is to be undertaken by the STATE in compliance with the Act entitled "An Act for the Preservation of American Antiquities" approved June 8, 1960, (34 Stat. 225, 26 USC 432-433), and State laws where applicable.
- 3) The easement herein granted shall terminate 10 years from the date of the execution of this deed by the UNITED STATES OF AMERICA in the event development of the material source has not commenced during such period.

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 1 of 4**

4) The easement herein granted is limited to use of the described right of way and the space above and below the existing ground surface for the purpose of development and maintenance of a material source in accordance with the approved plans described in the following condition No. 5 and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the BUREAU OF LAND MANAGEMENT to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the DEPARTMENT shall be consulted prior to the exercise of such rights: and Provided, further that nothing herein shall preclude the BUREAU OF LAND MANAGEMENT from locating DEPARTMENT OF THE INTERIOR information signs on the portions of the right of way outside of development limits as long as concurrence to do so is first obtained from the STATE.

5) The use of this material source will be in accord with the provisions of Title 23, U.S. Code-Highways, and amendments; the provisions of regulations issued pursuant thereto; the construction specifications of the STATE highway department as approved by the DEPARTMENT for use on Federal-aid projects; and the following terms and conditions specified by the BUREAU OF LAND MANAGEMENT attached as Exhibit \_\_\_\_\_.

6) Consistent with highway safety standards, the STATE shall protect and preserve soil and vegetative cover and scenic and aesthetic values on the right of way outside of development limits.

7) The STATE shall maintain this material source to acceptable standards of repair, orderliness, neatness, sanitation and safety.

8) The STATE shall maintain the right of way clearing by means of chemicals only after specific written approval has been given by the DEPARTMENT after consultation with the BUREAU OF LAND MANAGEMENT. Application for such approval must be in writing and specify the time, methods, chemicals and the exact portion of the right of way to be chemically treated.

9) When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the STATE shall give notice of that fact to the DEPARTMENT and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Secretary of the DEPARTMENT OF THE INTERIOR or his assigns.

The STATE, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

(a) no person shall, on the grounds of race, color, national origin, gender, age, income, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such land hereby conveyed;

(b) that the STATE shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, nondiscrimination in Federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 2 of 4**

In the event of breach of any of the above-mentioned nondiscrimination conditions, the DEPARTMENT shall have the right to enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to and vest in and become the absolute property of the Secretary of the DEPARTMENT OF THE INTERIOR and its assigns, as such interest existed prior to this instrument.

IN WITNESS WHEREOF, I, \_\_\_\_\_, Division Administrator for the Alaska Division, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By:

Name: \_\_\_\_\_

Division Administrator, Alaska Division

STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT )

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, being to me personally known and known to me to be the Division Administrator for the Alaska Division, Federal Highway Administration, and acknowledged that the foregoing instrument bearing the date \_\_\_\_\_, 2\_\_\_\_, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his act and deed as Alaska Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska

My Commission expires:

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 3 of 4**

In compliance with the conditions set forth in the foregoing deed, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, certifies and, by the acceptance of this deed, accepts the right of way over certain lands herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

By:

Name: \_\_\_\_\_  
Regional Right-of-Way Chief  
For the Commissioner

STATE OF ALASKA )

) ss.

\_\_\_\_\_ JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he in his capacity as \_\_\_\_\_ executed the same voluntarily on this day.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public for Alaska

My commission expires:

DEED APPROVED AS LEGALLY SUFFICIENT
DATE: _____, 20_____
Signature: _____
Name: _____
Assistant Attorney General
Alaska Attorney General's Office
Alaska Bar Association No: _____

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 4 of 4**

**HIGHWAY EASEMENT DEED  
FOR A HIGHWAY RIGHT OF WAY ON FOREST SERVICE LAND**

THIS DEED, made this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF ALASKA; DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES; hereinafter referred to as the STATE:

W I T N E S S E T H:

WHEREAS, the STATE has filed application under provisions of the Act of Congress of August 27, 1958, as amended (23 USC Sec. 317), for a right of way of a highway over certain land owned by the United States in the State of Alaska which is under the jurisdiction of the Department of Agriculture, United States Forest Service; and,

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966 [80 Stat. 931, 937, Sec. 6 (a) (1) (A)]; and,

WHEREAS, the Regional Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right of way for the existing Alaska Federal-Aid \_\_\_\_\_ Highway, Route \_\_\_\_\_; and,

WHEREAS, the Department of Agriculture, acting by and through the Forest Service, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE:

NOW THEREFORE, the DEPARTMENT, as authorized by law, does hereby grant to the STATE an easement for a right of way for the construction, operation, and maintenance of a highway, and use of the space above and below the established grade lane of the highway pavement for highway purposes on, over, across, in and upon the following described lands of the United States within the \_\_\_\_\_ National Forest, State of Alaska:

SURVEYED

RANGE	TOWNSHIP	SECTION(S)	MERIDIAN
-------	----------	------------	----------

UNSURVEYED

RANGE	TOWNSHIP	SECTION(S)	MERIDIAN
-------	----------	------------	----------

and as shown on the following described plats:

Right-of-Way map, Alaska Project sheets marked "EXHIBIT A" attached hereto and made a part hereof, subject, however, to the following terms, conditions and covenants:

(1) Outstanding valid claims, if any, existing on the date of this grant, and the STATE shall obtain such permission as may be necessary on account of any such claims.

(2) The STATE and the Regional Forester shall make determinations as to the necessity for archaeological and paleontological reconnaissance and salvage to the extent determined necessary because of construction of the highway facility is to be undertaken by the STATE in compliance with the Act entitled "An Act for the preservation of American antiquities" approved June 8, 1906 (34 Stat. 225, 16 USC 432-433), and State laws where applicable.

**Exhibit 6-7  
Highway Easement Deed (Highway ROW on Forest Service Land)  
Page 1 of 4**

(3) Unless the STATE and Regional Forester stipulate as to a shorter time, the easement herein granted shall terminate ten (10) years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right of way is not started during such ten year period.

(4) The easement herein granted is limited to use of the described right of way and the space above and below the established grade line of the highway pavement for the purposes of construction, operation and maintenance of a highway in accordance with approved plans and does not include the grant of any rights of non-highway purposes or facilities.

Provided, that the right of the Forest Service to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto, would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the STATE and the Federal Highway Administration shall be consulted prior to the exercise of such rights: And Provided, Further that nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right of way outside of construction clearing limits.

(5) Consistent with highway safety standards, the STATE shall:

(a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right of way outside of construction limits.

(b) Provide for the prevention and control of soil erosion within the right of way and adjacent lands that might be affected by the construction, operation or maintenance of the highway, and shall vegetate and keep vegetated with suitable species, all earth cut or fill slopes feasible for re-vegetation, or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Regional Forester and the STATE, shall maintain all terracing, waterbars, lead-off ditches, or other preventative works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides that occur during or after construction.

(6) The STATE shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depots or disposal areas within the right of way, unless shown on approved construction plans, without first obtaining approval of the Regional Forester.

(7) The STATE shall maintain the right of way clearing limits by means of chemicals only after specific written approval has been given by the Regional Forester. Application for such approval must be in writing and specify the time, method, chemicals, and the exact portion of the right of way to be chemically treated.

(8) The STATE, in consideration of the grant of this easement, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

(a) No persons shall, on the grounds of race, color, national origin, gender, age, income, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed;

b) The STATE shall use said easement and right of way so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**Exhibit 6-7**  
**Highway Easement Deed (Highway ROW on Forest Service Land)**  
**Page 2 of 4**

(9) When need for the easement herein granted shall no longer exist, the STATE shall give notice of that fact to the Secretary of Transportation and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Department of Agriculture.

IN WITNESS WHEREOF, I, \_\_\_\_\_, Division Administrator for the Alaska Division, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By:

Name: \_\_\_\_\_

Division Administrator, Alaska Division

STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT )

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, being to me personally known and known to me to be the Division Administrator for the Alaska Division, Federal Highway Administration, and acknowledged that the foregoing instrument bearing the date \_\_\_\_\_, 2\_\_\_\_, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his act and deed as Alaska Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska

My Commission expires:

**Exhibit 6-7**  
**Highway Easement Deed (Highway ROW on Forest Service Land)**  
**Page 3 of 4**

In compliance with the conditions set forth in the foregoing deed, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, certifies and, by the acceptance of this deed, accepts the right of way over certain lands herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

By:

Name: \_\_\_\_\_  
Regional Right-of-Way Chief  
For the Commissioner

STATE OF ALASKA )

) ss.

\_\_\_\_\_ JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he in his capacity as \_\_\_\_\_, executed the same voluntarily on this day.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Notary Public for Alaska

My commission expires:

DEED APPROVED AS LEGALLY SUFFICIENT
DATE: _____, 20 ____
Signature: _____
Name: _____
Assistant Attorney General
Alaska Attorney General's Office
Alaska Bar Association No: _____



Early Acquisition/Corridor Preservation options allowable under 23 USC 108; 23 CFR 710.501 and 503; 23 CFR 771.113; and MAP-21	
Option 1	<b>State Funded with no match or reimbursement</b>
	<ul style="list-style-type: none"> <li>• Comply with the Uniform and Relocation Act (URA)</li> <li>• Comply with Title VI of the Civil Rights Act of 1964 (Title VI)</li> <li>• Cannot have an adverse environmental impact</li> <li>• Cannot limit the choice of reasonable alternatives</li> </ul>
Option 2	<b>State Funded with matching credit</b>
	<ul style="list-style-type: none"> <li>• Comply with the URA</li> <li>• Comply with Title VI</li> <li>• Cannot involve Section 4(f) lands</li> <li>• The State determines that the action doesn't influence NEPA</li> <li>• The FHWA concurs with the State's NEPA determination</li> <li>• Only the cost of the acquisition (not appraisal, title search, relocation, etc.) can be used as the match</li> <li>• The State needs to determine if the FMV or the historical value will be determined as match (this determination will apply every time match is requested)</li> <li>• The procedure for requesting and processing matching credit must be in an approved ROW Manual (DOT&amp;PF's manual is up for approval in December 2015 so an approved addendum would be acceptable at this time)</li> <li>• The credits to the State's matching share cannot exceed the State's matching share of the total cost of the project</li> <li>• "Excess" credits cannot be used on other projects</li> <li>• The State assumes the risk</li> </ul>
Option 3	<b>State Funded with Federal reimbursement</b>
	<ul style="list-style-type: none"> <li>• Comply with the URA</li> <li>• Comply with Title VI</li> <li>• Cannot involve Section 4(f) lands</li> <li>• The State must have a comprehensive and coordinated land use, environment and transportation planning process</li> <li>• The acquisition must be certified by the Governor or designee as consistent with the State plans before the acquisition</li> <li>• The acquired property must be included into the chosen alternative</li> <li>• The State determines that the action doesn't influence NEPA</li> <li>• The FHWA concurs with the State's NEPA determination</li> <li>• Environmental compliance is completed prior to reimbursement</li> </ul>
Option 4	<b>Federally Funded early acquisition</b>
	<ul style="list-style-type: none"> <li>• The acquisition must be programmed as a project in the approved STIP</li> <li>• The acquisition may be a single parcel or a corridor</li> <li>• The State must certify that the acquisition(s): <ul style="list-style-type: none"> <li>*is for a transportation purpose</li> <li>*does not cause adverse environmental impacts</li> <li>*does not limit the reasonable alternatives</li> <li>*does not prevent impartial decision making on the alternatives</li> <li>*was acquired without threat of condemnation</li> <li>*does not result in a reduction of benefits or assistance</li> <li>*has independent utility</li> <li>*does not limit consideration of alternatives for future transportation improvements</li> </ul> </li> <li>• NEPA review must be completed and approved by FHWA</li> <li>• The land(s) acquired may not be improved (developed)</li> </ul>
Other items of note:	
<ul style="list-style-type: none"> <li>• UT has developed a program which has created a revolving acquisition fund</li> <li>• Early acquisition can be considered a subset of corridor preservation</li> <li>• Other actions which can be taken to preserve corridors – building restrictions or zoning</li> </ul>	

**Exhibit 6-8  
Options for Early Acquisition/Corridor Preservation**

*This page intentionally left blank.*