

settlement, such sum as will in the opinion of the Court or the official effecting the settlement, reimbursements and expenses, including reasonable attorney, appraisal, and engineer fees, actually incurred because of the proceeding.

#### T. Donations:

An owner whose real property is being acquired may, after being fully informed by the State of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the State as such owner shall determine. The State is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the State from such obligation, except as provided in 49 CFR 24.102 (c)(2).

HRS 264-24, Wherein Director may, on behalf of the State, with the approval of the Governor accept donations of land, money, or other property for deposit in the State Highway Fund or for any purpose of this part, upon such terms and conditions as are acceptable to the director, and not inconsistent with the proper discharge of the director's duties and functions or prejudice to the obtaining of the Federal-Aid funds payable to the State without such donations.

In other words, nothing in this procedure manual shall be construed to prevent a qualified bona fide owner whose real property is being acquired for a Federal-Aid highway project from making a gift or donation of such property or any part thereof, or of any of the compensation paid therefore, after such qualified owner has been fully informed of their rights to receive just compensation for the acquisition of the real property or interest.

#### U. Appraisal Waiver and Invitation to Owner:

The purpose of the appraisal waiver provision is to provide the State a technique to avoid the cost and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers may make the waiver valuations freeing appraisers to do more sophisticated work. The State employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is of low value and uncomplicated. Since the waiver valuations are not appraisals, as defined by the Uniform Act, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and the Agency official must still establish an amount believed to be just compensation to offer

the property owner(s).<sup>9</sup> In other words, comparables, data and some analysis must be presented in order to support the de minimus valuation.

An appraisal is not required if the State determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on review of available data. However, documentation and presentation is still recommended to support the valuation opinion.

Although a Summary Statement is not required from the Appraisal Section, because no appraisal is required, justification and reasons for a nominal value should be documented and supported. A summary of those findings should be stated in the letter offer with the minimum information stated in Item E of this section.

- (A) When an appraisal is determined unnecessary, the State shall prepare a waiver valuation or Compensation Estimate.
- (B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation, preferably, one that has a license or certification of qualification.
- (C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the State appraise the property. If the property owner requests an appraisal, the State shall obtain an appraisal and not use procedures described in this paragraph.<sup>10</sup>

#### V. Conflict of Interest:

No persons performing the waiver valuation shall have any interest, direct or indirect in the real property being valued by the Agency, nor shall compensation to the person performing a waiver valuation be based on the amount of valuation estimate. No person shall attempt to unduly influence or coerce an appraiser, review appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or appraisal waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser

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<sup>9</sup> 49 CFR 24.102 (c) (2). Appraisal Waiver.

<sup>10</sup> 49 CFR 24.102 (c) Appraisal Waiver thereof, and invitation to owner.

performing appraisal or appraisal review work except if the Federal Funding Agency waives this requirement if the agency determines that the situation would create a hardship for the State. An appraiser, review appraiser or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation if the offer to acquire the property is \$10,000 or less.<sup>11</sup> An agent may be involved in the scope of work and have input in informing the appraiser for the need of a solution to an appraisal valuation problem.

#### W. When to Update an Offer of Just Compensation:

An appraisal should be updated or a new appraisal ordered if the information presented to the owner(s) indicates that there is a material change in the character or condition of the property that indicates the need for new appraisal. An update or new appraisal should also be made if a significant delay has occurred since the time of the appraisal of the property, the State shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in purchase offer is warranted, the State shall promptly reestablish just compensation and offer that amount to the owner in writing.<sup>12</sup>

#### X. Administrative Settlement:

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized State official (Branch Manager) approves such an administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.<sup>13</sup>

An administrative settlement is any authorized settlement made by a responsible acquiring official, who the valuation is in excess of the State's approved valuation of just compensation. The Uniform Act requires that the head of an Agency shall make every reasonable effort to acquire expeditiously real property by negotiations. Negotiation implies an honest effort by the acquiring agency to resolve

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<sup>11</sup> 49 CFR 24.102 (n) (2) Conflict of Interest

<sup>12</sup> 49 CFR 24.102 (g) Updating Offer.

<sup>13</sup> 49 CFR 24.102 (l) Administrative Settlement.

differences with property owners. Negotiators should recognize the inexact nature of the process by which just compensation is determined. The law requires an attempt to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in courts. Cost savings are in the area of salaries, witness fees, travel, per diem costs, excessive court awards, appraiser's fees, etc. FHWA endorses administrative settlements as they can expedite agreement with owners. The administrative settlement process should be maintained separately from the appraisal/appraisal review function.

For example, if there is a difference of opinion between the owner and the State as to the Highest and Best Use that may be difficult to document, this could be a plausible basis for settlement before triggering the legal process. Some of the items that can assist the approving agency in his approval are: appraisals, offer of just compensation, recent court awards, negotiator's diary and records of negotiations, valuation problems, and estimates of trial costs.

#### Y. Payment before Taking Possession:

Before requiring the owners to surrender possession of the real property, the State shall pay the agreed purchase price to the owner(s), or in the case of a condemnation, deposit with the court for the benefit of the owner(s) an amount not less than the State's approved appraisal of the market value of such property or the court award of compensation in the condemnation proceedings for the property. With prior approval of the owner, the State may obtain a right of entry (ROE) for construction purposes before making payment available to the owner.<sup>14</sup>

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project or dealing with another government agency, e.g., Department of Hawaiian Home Lands, where licenses will not be given until the project is completed, when there is no time to make an appraisal or purchase offer and the property owner is agreeable to the process. This can be accomplished by the Right-of-Way Certification (2): Although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project has been acquired.<sup>15</sup>

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<sup>14</sup> 49 CFR 24.102 (j) Payment Before Taking Possession

<sup>15</sup> 23 CFR 635.309 Authorization

Z. Expenses Incidental to Transfer of Title to the Agency:

The owner of real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

- (1) Recording fees, transfer taxes, documentary stamps, legal descriptions of the real property, and any other similar expenses incidental to conveying the real property to the State. However, the State is not required to pay costs solely required to perfect the owner's title to the real property.
- (2) Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered in good faith encumbering the real property.
- (3) The pro-rata portion of any prepaid real property taxes, which are allocable to the period after the State obtains title to the property or effective possession of it whichever is earlier. Whenever feasible, the State shall pay these costs directly to the billing agent so that the owner will not have to pay such cost and then seek reimbursement from the Agency.<sup>16</sup>

AA. Emergency Projects:

Notice of Requisition of real property (128-22 HRS and Governor's Proclamation) ref HRS 113-1, 113-5, 128-22, 128-23, 171-30, 23 CFR 635.309, 49 CFR 24.102 (j). See attachments on pages 2.2-A through 2.2-O.

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<sup>16</sup> 49 CFR 24.106 Expenses Incidental to Transfer of Title to the Agency