

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

OWNERSHIP VERIFICATION

The LPA must determine the correct ownership and interest in the property being acquired and must provide the following to MDOT with their ROW submittal.

Temporary Rights:

- Value \$10,000 and under - a tax sheet/BS&A printout is required at a minimum.
- Value over \$10,000 - see permanent rights requirements below.

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

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

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

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

VALUATION

State and Federal regulations require that a property owner be offered just compensation. This value can be determined by completing either a Waiver Valuation or an Appraisal with an Appraisal Review (depending on complexity and value). The LPA must approve (establish) just compensation in writing prior to the initiation of negotiations (Michigan Act 87 & CFR 24.102(d)). Just compensation must be supported, regardless of the property right(s) (temporary or permanent) by a Waiver Valuation or an Appraisal and Appraisal Review. The set compensation cannot be less than the supported (Waiver Valuation or Appraisal) valuation amount. A summary statement breakdown of how the just compensation was calculated must be provided to the owner (can be in the Good Faith Offer, a separate summary statement, or in the appraisal).

Waiver Valuation - There are three approved Waiver Valuation Reports that may be used:

- Market Study
- Broker Price Opinion
- Assessor's Sales Report

A Waiver Valuation Report may be used on parcel acquisitions that are uncomplicated and with an estimated value of \$10,000 or less. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to prepare the waiver valuation (49 CFR Part 24, 24.102(c)(iii)(B)).

Vacant land comparable sales with the same, or similar, highest and best use as the subject should be used in the market study. Improved property may be used if the market shows the property is being sold as if vacant, i.e. the highest and best use is as vacant. Using the State Equalized Value (SEV) land value or allocated/extracted land value from the tax records is not an acceptable practice.

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

Appraisal & Appraisal Review – If the parcel being acquired has an estimated just compensation value more than \$10,000 (see government-government caveat) or where the determination of just compensation is complicated at ANY VALUE, an appraisal must be completed. A complicated appraisal includes, but is not limited to, damages to the remainder parcel.

If an appraisal is completed, no matter the value, a review appraisal must also be completed by a separate Michigan Licensed Appraiser. The review appraisal shall identify the appraisal as one of the following:

- Recommended (used for the basis of just compensation)
- Accepted (meets requirements but not recommended – used when more than one appraisal)
- Not Accepted

Temporary Rights or Discount to Value – Any discount to the fee value for either valuation method used (waiver valuation or appraisal/appraisal review) needs to be supported by market data. In the case of temporary rights, the LPA must either offer the fee value or show supportable market data for another value. Capitalization rates or land rental rates may be used as support for temporary right's compensation. The supportable data must be generated by someone with knowledge of how to develop this information. If a source (appraiser, published service, etc.) is used, the name of the source, and contact information needs to be documented and provided in the report along with the rates.

OFFER

Setting Compensation - The Agency must set the just compensation supported by the waiver valuation or the appraisal/appraisal review report. A consultant CANNOT set the compensation and the set amount shall not be less than the appraised value or the lowest documented sale if a Waiver Valuation was used. A designated Agency official may set the just compensation by doing one of the following:

- Signing the Good Faith Offer Letter
- Signing a separate document that sets compensation for each parcel

Negotiation - A property owner must be advised of their rights under the Uniform Act by means of a written statement or brochure. The property owner must also be informed of the acquisition process and their right to receive just compensation. MDOT has two booklets, [Your-Rights-And-Benefits.pdf \(michigan.gov\)](#) and [Public-Roads-Private-Property.pdf \(michigan.gov\)](#) to assist Local Agencies in advising property owners of their rights.

Negotiations should be carried out by personal contact where possible. Property owners must be given reasonable opportunity (not less than 30 days) to review the offer before any condemnation proceedings may begin. The negotiator must provide the owner(s) with a written good faith offer, summary statement, and keep notes on their contact with the owner(s), communications, and discussions.

Written Good Faith Offer (GFO) Act 87 UCPA 213.55 & 49 CFR 24.102(d)

The property owner(s) must be given a WRITTEN good faith offer to acquire the property for the full amount believed to be just compensation. A conveyance document is not a GFO. The GFO contains:

- All parties of interest named
- Rights to be acquired
- Amount of just compensation being offered
- Whether the Agency reserves or waives its right to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property

Compensation Summary Statement CFR 24.102(e) 1-3

The owners shall be given a written compensation summary statement of the basis for the offer of just compensation. This breakdown may be shown in the appraisal or if a waiver valuation was used may be placed in the GFO or on a separate statement. This statement of the basis of just compensation shall include:

- Description and location of the real property & the interest to be acquired
- Total just compensation offered (including a breakdown of how derived)
- Damages to the remainder, if any, stated separately from the real property compensation
- Identification of any improvements being acquired in the offer; any tenant owned improvements shall be separated

Memorandum of Negotiations

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

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

DONATION & ADMINISTRATIVE SETTLEMENTS

Donation of Compensation: A property owner may choose to donate all or a portion of their compensation for their property rights that are needed for a project. The owner may donate their compensation ONLY after they have been provided with the written good faith offer notifying them that they are entitled to just compensation (see caveat to this rule under 'Donation by Governmental Entity'). After being fully informed of their rights, the property owner may then decide to donate their property and waive their right to just compensation. There are two types of donations, Donation in Lieu of Compensation & Donation in Exchange for Construction Features or Services.

Donation in Lieu of Compensation: This allows the owner to donate all or a portion of their compensation.

Donation in Exchange for Construction Features or Services: An LPA may accept a property owner's offer to donate all or a portion of their property in exchange for services rendered that shall benefit the property owner. A comparison of the estimated value of the right-of-way right(s) against the cost of the construction feature(s) must be made to establish the economic justification for the exchange. The feature/service cost must have supporting documentation. If the amount of the feature or service is more than the estimated compensation for the ROW, the Local Agency must provide an Administrative Settlement Memo providing justification for the additional expense.

Donation by Participating Governmental Entity: If a Governmental entity participates or partners (contributing funding to project) in a transportation project, they may donate property rights to the LPA without the need for an offer of just compensation. The entity must be participating in the project and must be made aware they have the right to just compensation. If they choose to donate and request the property still be valued, a valuation per the regulations must be provided to the entity. This type of donation requires the following documentation for approval:

- Written pre-approval by REC
- Memorandum of Negotiation
- Executed Donation agreement
- Ownership verification: BS&A/Tax Sheet
- Properly executed conveyance documents

Administrative Settlement

When reasonable efforts to negotiate an agreement at the offered amount have failed, the Agency may agree to a payment more than the initial offer. This agreement is considered an Administrative Settlement. A written justification of the settlement must be prepared and signed by the Agency, which states what available information supports and justifies such a settlement.

CONFLICT OF INTEREST – Valuation and Negotiation

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

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

MISC. GOVERNMENTAL & NON-MOTORIZED PATH ACQUISITIONS

Same Agency-Different Name: If the LPA (County, City, etc.) is building outside the ROW on property held in the LPA's name, no consent/permit is needed. However, if the LPA is building on property owned by another entity within the LPA (e.g. Road Commission building on Health Department property), then a letter of consent from the respective entity authorizing the construction is needed. No compensation needs to be offered unless the LPA's charter, bylaws, etc. require it (LPA must determine this). If compensation is required, it must follow the Uniform Act and follow the MDOT Procedure Manual requirements.

Participating/Partnering Project: See Donations by Governmental Entity above.

Non-Motorized Paths - may be acquired from other governmental agencies by:

- Agreement to Construct & Maintain - For participating agencies that are not Act 51 Agencies, and an Act 51 Agency is acting on their behalf by building a non-motorized path on their property, the Act 51 Agency must certify they have permission to build on the non-Act 51 Agency's property. An agreement between the Agencies may be executed in lieu of an easement. The agreement must explain the situation and state:
 - The non-Act 51 Agency grants the Act 51 Agency permission to enter and construct the improvements.
 - Which party is responsible for the improvement's continued operation and maintenance.
- License - A renewable license agreement may be used for non-motorized paths on publicly owned property or privately owned utility corridors in lieu of a permanent easement. All standard documentation for an acquisition must be provided to the property owners when acquiring a non-motorized path including the Good Faith Offer (if not donating). The non-motorized path license agreement shall be automatically renewable and include:
 - Minimum of 10-year (preferably 12 year) term

- Right of occupancy by Agency including right to enter, construct, maintain and control access if needed
- Designated responsible party of continued maintenance
- Permit - Obtaining rights to construct for a non-motorized path from a Governmental/Public Entity may be considered a permit and not require an offer provided that:
 - Governmental/public entity's purpose includes transportation or the public's enjoyment of the government/public entity's natural and cultural resources, or similar mission.
 - No permanent property rights are conveyed to the Agency from the governmental/public entity for the path and, upon completion, the path improvement will become the ownership of the governmental/public entity.
 - Standard permit/agreement fees paid by the Agency to the governmental/public entity may apply.
 - Executed Permit/Agreement allows for the Agency to enter and construct path & designates the party responsible for continued maintenance.
 - Documentation provided to MDOT REC:
 - Properly executed Permit/Agreement
 - Ownership Verification – as if a permanent acquisition
 - Memorandum of Negotiations

COERCION

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

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

SUBMITTING ROW DOCUMENTATION FOR APPROVAL

Attachment A of the Program Application should be submitted to the LPA Staff Engineer as soon as it is known that real estate maybe needed for the project.

Once all ROW has been secured, the ROW documentation may be submitted to the LPA Real Estate Coordinator. The steps for ROW submittal are below:

- 1) LPA Engineer submits Attachment B (Program Application) to the MDOT Staff Engineer. All ROW MUST be in the LPA's possession prior to submitting Attachment B to the MDOT Staff Engineer.
- 2) LPA reviews Local Public Agency Parcel Checklist to verify all required documentation has been obtained.
- 3) ROW documentation is submitted to MDOT LPA Real Estate Coordinator
 - a. If it is a small project, 1-3 parcels, documentation may be emailed directly to MDOT-LPA@michigan.gov.
 - b. If it is a project with more than 3 or 4 parcels and the LPA has access to ProjectWise, the LPA may request a 'Property Acquisition' folder be created in ProjectWise by emailing MDOT-LPA@michigan.gov. The real estate coordinator will notify the LPA once the folder is available. The LPA must then email the Real Estate Coordinator once all documentation is submitted for review.
 - c. If ProjectWise is not accessible, contact MDOT-LPA@michigan.gov to discuss other options for submittal.
- 4) Once the project is submitted, the LPA Real Estate Coordinator will review the documentation and notify the LPA if the ROW is approved or if additional information is needed.